



Training Module for Legal Aid Defense Counsel



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LIST OF ABBREVIATIONS

AIR	All India Reporter
BCI	Bar Council of India
BSA	Bharatiya Sakshya Adhiniyam
BNS	Bharatiya Nyaya Sanhita
BNSS	Bharatiya Nagarik Suraksha Sanhita
CBI	Central Bureau of Investigation
CDs	Compact Discs
CILAS	Committee for Implementing Legal Aid Schemes
CNR	Case Number Register
CPC	Code of Civil Procedure
CrPC	Code of Criminal Procedure
CRPD	Convention on the Rights of Persons with Disabilities
CRC	UN Convention on the Rights of the Child

CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
DIG	Deputy Inspector General
DNA	Deoxyribonucleic Acid
DRPSC	Department Related Parliamentary Standing Committee
DLSA	District Legal Services Authority
DV Act	Domestic Violence Act
e-SCR	Electronic Supreme Court Reports
MTP Act	Medical Termination of Pregnancy
NALSA	National Legal Services Authority
NCT	National Capital Territory
NDPS	Narcotic Drugs and Psychotropic Substances Act
NI Act	Negotiable Instruments Act
NIA	National Investigation Agency
POCSO	Protection of Children from Sexual Offences Act

POA	Power of Attorney
POSH	Prevention of Sexual Harassment
PwDs	Persons with Disabilities
PCR	Police Control Room
PIL	Public Interest Litigation
PLACs	Prison Legal Aid Clinics
PLVs	Para-Legal Volunteers
RPwD Act	Rights of Persons with Disabilities Act
SCLSC	Supreme Court Legal Services Committee
SCR	Supreme Court Reports
SDG	Sustainable Development Goal
SLSA	State Legal Services Authority
SLP	Special Leave Petition
SMS	Short Message Service
SOP	Standard Operating Procedure

TLSA	Taluk Legal Services Authority
TPPRA	Transgender Persons (Protection of Rights) Act
UAPA	Unlawful Activities (Prevention) Act
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
VWDC	Vulnerable Witness Deposition Complex
WHO	World Health Organisation
WP	Writ Petition
WPA	Wildlife Protection Act

EXECUTIVE SUMMARY

Access to justice is a constitutional mandate under Article 39A of the Constitution of India to ensure justice for all and especially those who cannot afford legal representation due to socio-economic or other constraints. In view of the above mandate, the Legal Services Authorities Act, 1987 established legal services institutions at various levels to provide free legal services to weaker sections of the society and to organise Lok Adalats. Under a legal services institution, a network of empanelled advocates provide legal services to the beneficiaries of legal services as defined under Section 12 of the Legal Services Authorities Act, 1987. In order to train these lawyers, the National Legal Services Authority (NALSA) has developed a comprehensive training repository through its Training Module for Legal Services Lawyers in Parts I, II and III comprising material on essential advocacy skills and chapters on foundational civil and criminal laws etc.

Building upon this foundation, the present ‘Training Module for Legal Aid Defence Counsel’ addresses the specialised needs of criminal defense advocates under the Legal Aid Defense Counsel System. It provides guidance on their unique roles and responsibilities, covers provisions under the new criminal laws and enables them to effectively provide legal services to the beneficiaries while leveraging modern tools of legal practice such as e-filing, online legal research etc.

It is designed to serve as a resource for trainers as well as a self learning guide for the LADCs. This module complements NALSA’s existing modules and SOPs by focusing on specialised procedural knowledge, ethical norms and contemporary lawyering skills vital for rendering effective legal services to the beneficiaries in criminal matters.

This module is divided into five chapters:

Chapter 1: Overview of Legal Aid Framework- Provides an overview on the Legal Aid System In India and the Legal Aid Defence Counsel Scheme.

Chapter 2: Core Lawyering Skills- Details the roles and responsibilities, legal and professional ethics, advocacy skills, techniques for interacting with vulnerable groups and media engagement protocols essential for LADCs.

Chapter 3 and 4: Training on Rights of the accused and role of LADCs during various stages of criminal proceedings- Provides a comprehensive overview of rights of the accused at different stages of criminal proceedings, and special laws affecting vulnerable groups.

Chapter 5: Procedural Skills and Use of Technology- Guides the LADCs to navigate the modern court systems including e-filing, case management platforms and digital documentation.

Chapter 6: Legal Research- Equips LADCs with essential research methodologies to conduct legal research using both traditional and online resources.

Key Takeaways/Insights

1. Constitutional Mandate for Legal Aid and Protection of Vulnerable Accused

The LADC system ensures the legal representation of beneficiaries who are in need of legal services during different stages of criminal proceedings.

2. Core Lawyering Skills

This part consists of the basic responsibilities, advocacy skills and ethical considerations for a LADC. Including the effective representation of vulnerable groups requires knowledge of special laws.

3. Rights during different stages of Criminal Proceedings

This consists of the fundamental statutory rights available to beneficiaries at each stage of the criminal proceedings. It aims to equip LADCs with a clear understanding of the rights to ensure effective legal services.

4. Law of Evidence

This part traces the development of evidence law in India. It introduces the foundational concepts of evidence laws by discussing various landmark decisions of the Supreme Court.

5. e-Filing and Digital Case Management

The technology literacy ensures LADCs from all backgrounds can navigate modern court systems and access legal databases. Digitization of courts requires proficiency in e-filing (registration, document preparation, filing, tracking), digital case management (case status, cause lists, orders, e-notifications) and online payments.

6. Guide to Legal Research

Effective legal research entails understanding precedent, using online databases, properly using citation styles, and finding relevant authorities like laws, case laws, and scholarly articles.

By consolidating the fundamentals of criminal law from NALSA's existing training modules, with new chapters on the aforementioned topics, this module aims to serve as both a ready reckoner for resource person training LADCs and a self-study guide to the LADCs.

Limitations

While the Module is comprehensive in scope, it has certain limitations. It is primarily developed as a general reference tool and may not cover jurisdiction specific variations in criminal procedure or the different realities of defense practice across different states and courts. The Module focuses on foundational aspects of defense practice but does not substitute continuous professional developments, specialisation or experienced training from years of practice. Also, not all topics from the entire corpus of criminal laws have been covered, as lawyers are expected to have studied these subjects in detail during their formal legal education. Moreover, considering the evolving nature of criminal law reforms and technology-driven legal procedures, the Module will require regular updates to remain aligned with legislative and procedural changes.

INTRODUCTION

The Legal Aid Defense Counsel (LADC) System enforces the constitutional mandate of access to justice under Article 39A of the Constitution of India. Recognising the challenges that legal aid defence counsels face when rendering legal services to the beneficiaries who belong to the weaker sections of the society, this module provides a comprehensive study of criminal procedure, specialized laws, and advocacy skills to help legal aid defence lawyers.

Purpose of the Module

This module is designed to serve as a practical guide for LADCs and for resource persons training LADCs. It aims to strengthen procedural understanding of criminal law and criminal defence jurisprudence while imbuing the LADCs with sensitivity to the needs of vulnerable groups, media sensitivities, professional ethics, legal research skills and familiarity with digital tools.

The module is divided into five chapters, each dealing with a topic relevant to criminal defence of vulnerable groups in India:

Chapter 1: Overview of Legal Aid Framework gives an overview on the Legal Aid System in India, its evolution, relevant jurisprudence and the Legal Aid Defence Counsel Scheme along with their monitoring and mentoring through DLSA, SLSA and NALSA.

Chapter 2: Core Lawyering Skills lists the roles and responsibilities for LADCs, professional dos and don'ts as mentioned in the LADCs Scheme, legal and professional ethics under the Bar Council of India Rules, advocacy skills like criminal drafting, arguments including opening and closing statements, cross examinations, techniques for interacting with

vulnerable groups such as children in conflict with law, and media engagement tips essential for LADCs.

Chapter 3: Training on Rights of the Accused and Role of LADCs discusses and gives an overview of different stages of criminal proceedings like pre-arrest, arrest, investigation, trial, rights of accused persons and prisoners and special laws affecting vulnerable groups, specialised laws pertaining to vulnerable groups, and appreciation of evidence with responsibilities of LADCs at each stage with list of relevant case laws for each topic.

Chapter 4: Procedural Skills and Use of Technology helps the LADCs to navigate the modern court systems including e-filing, e-court payment, filing an interim application, finding case laws on SCR portal, case management platforms and digital documentation.

Chapter 5: Legal Research provides the LADCs with essential research methodologies and tips to conduct legal research using both traditional and online resources, covering the doctrine of precedent and understanding different citation styles.

How to Use this Module

This module has been designed with flexibility to serve multiple uses and purposes. Each part in the module starts with a brief on learning objectives, outcome and a guide to conducting exercises like group discussions, role plays, quizzes, experience sharing, brainstorming sessions based on the topics. It is followed by detailed notes covering necessary information on the topics discussed in each part of the Module.

The module can be utilised by Resource Persons, including senior lawyers from the bar, Professors/Assistant Professors from the local law colleges, to impart training to LADCs by

using the first part of each chapter as a lesson plan outlining the objectives as well as the topics under the chapter and the second part comprising the detailed note as reference material. It is recommended that the resource person use the detailed notes for preparation before conducting the actual sessions and employ the pedagogy tools like quizzes, roleplay, case studies, etc, provided in the first part as a ‘pre’ as well as a ‘post’ assessment tool to gauge both the pre-existing and post session understanding of participants based on the tool used.

For self-study, the Training Module is equally suitable to newly inducted and experienced LADCs. To facilitate self-studying for new LADCs and continuing legal education for experienced LADCs seeking to enhance skills, the module comprises tables, new BNS, BNSS and BSA provisions relevant to the LADCs along with the corresponding sections from IPC, CrPC and Evidence Act, verbatim statutory language, list of relevant case laws for each topic with citations, and stage-wise procedural guidance under specialised laws, tips on legal research both primary and secondary and pictorial guides on navigating the e-courts website .

Training Methodologies Used

- a) **Ice Breaking:** a short ice breaking session is extremely useful to motivate participants to open up, share and contribute to discussions in the actual sessions. These ice breaking sessions ensure associative and active rather than passive participation. They are often interactive, meaningful fun sessions before a full and focused program is run. At the start of the Training Session, each participant introduces himself/herself by

giving usual information of name and work, adding some interesting fact little known to others.

- b) Lecture Method:** It is an important approach for extending knowledge to the participants of the Training. In this approach, the resource person systematically presents topics mentioned in the module, explaining the core concepts, statutory framework, procedural nuances and discussing case laws relevant to the practice of lawyers during criminal proceedings. Lectures provide clarity and comprehensiveness, helping participants to understand complex topics. By integrating real-life or hypothetical examples and addressing query of participants, the lectures fosters an environment conducive to effective learning and professional development among legal aid defense counsels.
- c) Group Discussion and Presentation:** Group discussions provide participants an opportunity to find answers to specific questions using their existing knowledge and experience. At the end of each group's presentation, the resource person fills gaps in information with their own experience and learning, referring to information in the module.
- d) Quiz:** The quizzes are meant to show participants that although topics are familiar, there is still scope to learn. The resource person can open discussion on questions that call for elaborate answers.
- e) Experience Sharing:** LADCs participating in the program are already in legal practice and have experience in the topics being covered. Experience sharing extracts information from participants themselves. The resource person supplements

information not provided by participants, saving them from the monotony of hearing what they already know while making learning participatory.

- f) Brainstorming:** Brainstorming is thinking together. Participants discuss in the whole group but before actual discussion, they think on each sub-topic with the help of a fellow participant.
- g) Role-Play & Moot Court:** Role-play is one of the best modes of learning by performing. The whole group may be divided by the resource person into small groups of about five. While some participants perform the given role, others watch and give feedback. Everyone learns what is intended to be imparted. Incorporating moot court exercises within role-play further enhances the training by simulating courtroom scenarios. It enables participants to argue and examine witnesses.

PART I: OVERVIEW OF LEGAL AID FRAMEWORK

Objective:

- To develop a comprehensive understanding of the legal aid framework by examining the constitutional mandate comprising Articles 21, 22 and 39A of the Constitution of India, and the statutory provisions under the Legal Services Authorities Act, 1987, with a focus on Supreme Court's directions in *Suhas Chakma v. Union of India*,¹ and several other landmark judgments on the legal aid framework.
- To understand the structure, functions and the operation of the Legal Aid Defence Counsel System as a distinct, full time-office based legal services system distinguishable from the traditional assigned panel lawyer system within the legal aid framework.

Expected Learning Outcomes

- The Legal Aid Defence Counsels are expected to familiarise themselves with the constitutional and statutory basis for free legal services and accurately reference Section 12 beneficiaries and the scope of legal services.
- LADCs would comprehend their roles, engagement terms, workflows, monitoring, and ethics etc.

Training Methods

1. Lecture

¹ 2024 INSC 813.

2. Power Point Presentation

Session Plan

- I.** Introduction, ice-breaking and interactive lecture by Resource Person/Facilitator
- II.** Resource Person/Facilitator will set the tone of the day training programme telling how training makes a difference in performance. This introductory lecture shall also include the perspective given in the detailed note, ‘Overview of Legal Aid Framework, constitutional and statutory perspectives (Legal Services Authorities Act, 1987 and the LADC Scheme) provided as reading material:
 - 1. Opening and expectations: Importance of training to performance; overview of day; link to Constitution as a mandate.
 - 2. Constitutional and statutory architecture: Articles 39A, 21, 22, how courts read, right to counsel/legal aid; Section 12 eligibility; institutional roles (NALSA/SLSA/DLSA).
 - 3. LADCS: Purpose; human resources involved, exclusive full-time engagement; scope of work; workflows; monitoring and code of ethics; different from panel system.
- III.** Q & A, and Concluding Remarks

Note: In the preparation of the training module, in addition to the note and the module given herein, assistance can be taken from resources listed under the Reading List.

Reading list

- LADCS Modified Scheme 2022.
- Legal Services Authorities Act, 1987 and NALSA FAQs on eligibility and income ceilings.
- NALSA, “Training Module for Legal Services Lawyers, Part-1”, (2015).
- NALSA, “Training Module for Legal Services Lawyers, Part-2”, (2016).
- NALSA, “Training Module for Legal Services Lawyers, Part-3”, (2018).
- Suhas Chakma v. Union of India, 2024 INSC 813.
- Official Websites of NALSA, SCLSC, and SLSAs.

1. Evolution of Legal Aid Framework

In the early English criminal justice system, a significant principle emerged which reads, “*We will not sell, or deny, or delay right or justice to anyone*”.² Drawn from the Magna Carta, the principle emphasises the importance of a fair, timely, and impartial justice system. It laid the foundation of access to justice in criminal matters, which culminated in the statute of Henry VII (1495) stating that ‘*the justices shall appoint attorney and attorneys for the same poor person or persons*’.³

In the present times, access to justice forms the backbone of a fair and equitable legal system, with the purpose of ensuring the effective participation of all citizens. It is the basic principle of the rule of law.⁴ Access to justice is at the core of the Sustainable Development Goal (SDG) 16.3, committing the member states to ensure equal justice for all.⁵ It focuses on the facilitation and accessibility of legal services by removing barriers such as high costs, geographical isolation, language differences, and the intimidating nature of formal processes.⁶ Legal aid plays a vital role in ensuring that opportunities to secure justice are not denied to any person belonging to weaker sections of the society.

² Magna Carta, Cap. 40.

³ Statute of Henry VII, 1495, 11 Hen. VII, C. 12.

⁴ United Nations and the Rule of Law, *available at*:

<https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/> (last visited on September 25, 2025).

⁵ SDG Indicators - Metadata Repository, United Nations Department of Economic and Social Affairs Statistics Division, *available at*: <https://unstats.un.org/sdgs/metadata/?Text=&Goal=16&Target=16.3> (last visited on September 03, 2025).

⁶ Deborah L. Rhode, “*Access To Justice: A Roadmap For Reform*”, 41 Fordham Urb. L.J. 1227 (2014), *available at*: <https://ir.lawnet.fordham.edu/ulj/vol41/iss> (last visited on September 25, 2025).

A. International Instruments

The international standards for legal aid are set out in the United Declaration of Human Rights, 1948 and the International Covenant of Civil and Political Rights, 1966, providing that in criminal proceedings, the accused shall be entitled to free legal assistance of his/her own choice, if he/she does not have sufficient means to pay.⁷ Moreover, according to the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, legal aid is an essential component of a fair, humane, and efficient criminal justice system.⁸

B. History of Legal Aid in India

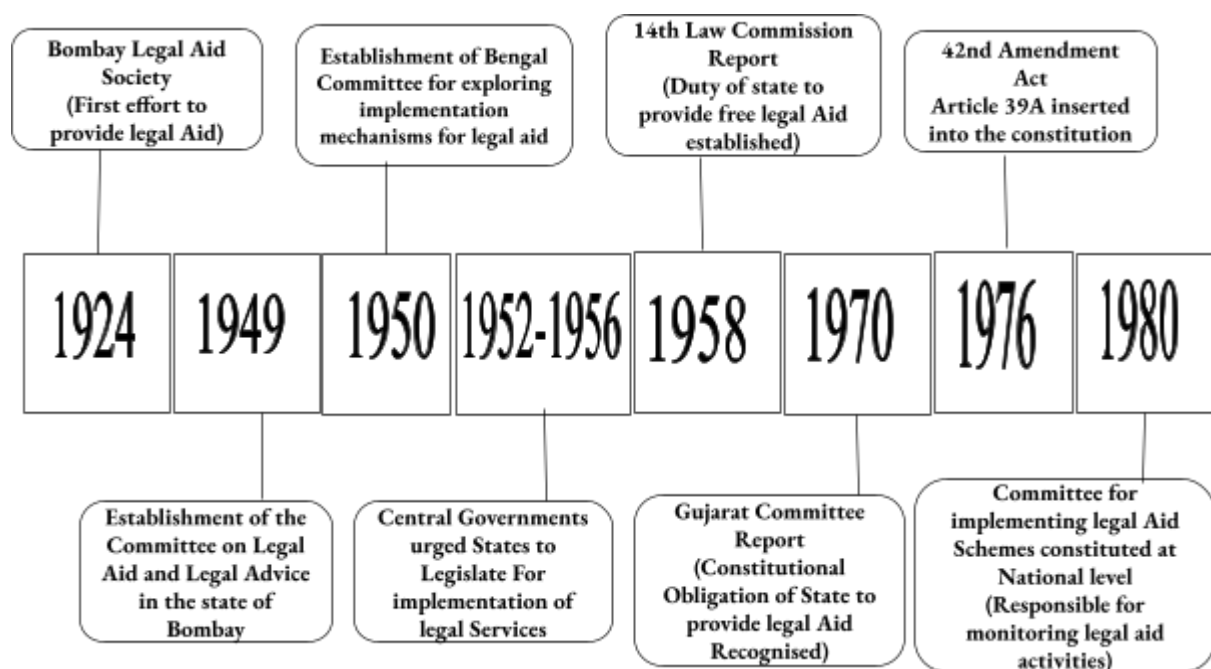


Figure: Evolution of Legal Aid in India

⁷ Universal Declaration of Human Rights (General Assembly resolution 217 A (III)), 1948, art. 11, para. 1; International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex) 1966, art. 14, para. 3(d).

⁸ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (General Assembly resolution 67/187), para. 1.

In India, the first organised effort to provide legal aid can be traced back to 1924 by the Bombay Legal Aid Society. This society, which emerged through the philanthropic efforts of lawyers, was registered with the primary objective of bridging the gap between legal resources and economic capabilities as an initiative in the pre-independence era.⁹

After Independence, the development of the legal aid framework took shape with the establishment of the Committee on Legal Aid and Legal Advice in the state of Bombay in 1949, under the chairmanship of Justice N.H. Bhagwati.¹⁰ The Committee's report treated legal aid as a service and not a charity, which constitutes the state's obligation and extends to both parties in a judicial proceeding.

Thereafter, in 1950, the Government of West Bengal established the Bengal Committee to explore implementation mechanisms for legal aid schemes.¹¹

Within the first year after the adoption of the Constitution, the Supreme Court of India in the case of *Janardan Reddy v. State of Hyderabad*,¹² expressed concern over lack of legal representation available to a person in Court proceedings. A constitution Bench of the Supreme Court noted that a court of appeal or revision is not powerless to interfere, if it found that the accused was so handicapped for want of legal aid that the proceedings against him maybe said to amount to negation of fair trial.

Between 1952 and 1956, the Central Government urged states to legislate for the implementation of legal services. The state governments expressed their inability to

⁹ Government of Maharashtra Press, "Report of the Committee on Legal Aid and Legal Advice in the State of Bombay" (1950), available at: <https://archive.org/details/dli.ministry.20183> (last visited on September 25, 2025).

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² 1951 INSC 18.

implement comprehensive schemes due to insufficient financial resources. Subsequently, the 14th Law Commission Report on Reform of Judicial Administration, published in 1958 under M.C. Setalvad, established that the State owes a duty to provide free legal aid to persons of limited means and that this obligation binds both the State and members of the legal profession.¹³

In pursuance of the same, the Central Government prepared an outline for a legal aid scheme in 1960 and in line with this, the Third All India Lawyers Conference was held in 1962, which viewed the provision of legal aid as an obligation of both Central and State governments. A seven-judge Bench judgement of the Supreme Court in *State of Madhya Pradesh v. Shobharam*,¹⁴ noted that an accused so deprived of the “right to be defended by one’s own counsel” stands “in danger of losing his personal liberty.” Thereafter in 1970, a National Conference on Legal Aid was held, which recommended legislation to make legal aid a statutory obligation of the State.

In 1970, the Gujarat Committee Report recognised that the State has a constitutional obligation to provide legal services under Articles 14 and 22(1) of the Constitution of India and advocated for free legal aid in civil and criminal courts as well as tribunals, and recommended establishing legal aid schemes at state, district, and taluk levels.¹⁵ Subsequently, in 1973, an Expert Committee on Legal Aid submitted its report “*Processual Justice to the People*”, which observed that legal aid is an essential component of the legal

¹³ Law Commission of India, “14th report on Reform of Judicial Administration” (1958).

¹⁴ 1966 SCC OnLine SC 229.

¹⁵ Government of Gujarat, “Report of the Legal Aid Committee: Appointed by the Government of Gujarat Under Government Resolution, Legal Department, No. LAC-1070-D” (June, 1970), available at: https://www.google.co.in/books/edition/Report_of_the_Legal_Aid_Committee/oWVdGQAACAAJ?hl=en (last visited on September 25, 2025).

system and advocated for a network of Legal Service Institutions at national and state levels.¹⁶

In *Madhukar G.E. Pankakar v. Jaswant Chobbildas Rajani*,¹⁷ the Supreme Court supported the idea of establishing a National Legal Service Authority. It noted that “if a National Legal Service Authority funded largely by the State comes into being, then a large segment of the legal profession may be employed part-time in the enabling occupation of legal aid to the poor.”

After these committees’ recommendations, the Constitution (Forty-Second) Amendment, 1976¹⁸ was passed, which inserted Article 39A into the Constitution of India. In the same year, another committee was formed called the *Committee on National Juridicare* under Justice P.N. Bhagwati and Justice Krishna Iyer, which submitted its report "*National Juridicare: Equal Justice - Social Justice*" that advocated for decentralization of justice and proposed restructuring the entire justice delivery system.¹⁹

In 1980, a committee, known as *CILAS (Committee for Implementing Legal Aid Schemes)*, was constituted at the National Level, to oversee and supervise legal aid programmes throughout the country. Under the Chairmanship of Hon’ble Mr. Justice P.N. Bhagwati, the Committee was responsible for monitoring legal aid activities throughout the country.²⁰ In the

¹⁶ Government of Maharashtra Press, “Report of the Committee on Legal Aid and Legal Advice in the State of Bombay” (1950), available at: https://archive.org/details/dli_ministry.20183 (last visited on September 25, 2025).

¹⁷ 1976 INSC 75.

¹⁸ The Constitution (Forty-second Amendment) Act, 1976, available at: <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-forty-second-amendment-act-1976> (last visited on September 25, 2025).

¹⁹ Ministry of Law, Justice Affairs, Department of Legal Affairs, “Report on National Juridicare: Equal Justice, Social Justice” (1978), available at: https://books.google.co.in/books/about/Report_on_National_Juridicare.html?id=Zux9AQAAACAAJ&redir_esc=y (last visited on September 25, 2025).

²⁰ National Legal Service Authority Website, available at:

landmark judgement of *Hussainara Khatoon v. Home Secretary, State of Bihar*,²¹ the Hon'ble Supreme Court of India reinforced the State's obligation to provide free legal aid to indigent accused, highlighting legal aid as an essential ingredient of 'reasonable, fair and just,' procedure implicit under Article 21 of the Constitution of India. In 1986, this position was further cemented in *Sukh Das v. Union Territory of Arunachal Pradesh*,²² whereby the appellant was convicted without any legal representation during his trial. The High Court upheld his conviction, arguing that he had not made a formal application for legal aid. The case went up to the Hon'ble Supreme Court, which overturned the decision of the High Court and held that "*failing to provide this right (legal aid) to an indigent accused constitutes a fatal constitutional infirmity that vitiates the entire trial.*"

C. Landmark Judgements on Legal Aid in India

The judicial discourse on legal aid in India began with the landmark judgment of *Hussainara Khatoon v. Home Secretary, State of Bihar*,²³ which highlighted the plight of thousands of undertrial prisoners incarcerated without legal representation. Building on this foundation, a series of judgments have been delivered which developed the framework laying down guidelines and enforceable entitlement for legal aid within India's justice system. The case arose from the atrocious state of the Bihar prisons, where thousands of under-trial prisoners were incarcerated without advocates. The intervention of the Hon'ble Supreme Court was a watershed moment in legal aid jurisprudence. The court opined that legal services form a part of 'reasonable, fair and just' procedure under Article 21 of the Constitution. The court

<https://nalsa.gov.in/about-nalsa/#:~:text=Justice%20P.N.%20Bhagwati%2C%20a%20former,aid%20activities%20throughout%20the%20country>. (last visited on September 25, 2025).

²¹ (1980) 1 SCC 98.

²² (1986) 2 SCC 401.

²³ (1980) 1 SCC 98.

observed that every accused person who cannot engage a lawyer due to poverty, indigence, or incommunicado detention, is entitled to State-appointed counsel if justice demands so. The Court ordered the appointment of lawyers by magistrates at the State's expense to prisoners who were eligible for release on bail or who had undergone half of the maximum sentence. This decision has been dubbed the first acknowledgement of legal aid by the Court as a legally enforceable right.

Building on this precedent, *Khatri v. State of Bihar*²⁴ dealt with systemic fault lines in legal aid delivery with respect to the cases of prisoner abuse. The Court, through its observation, concluded that the prisoners were being habitually produced before magistrates without disclosing to them their right to legal representation. This decision led to the formulation of procedural protections by requiring magistrates to affirmatively advise accused individuals of their entitlement to free legal representation from their first court appearance, especially when imprisonment is a possible penalty. The Court summarily rejected State positions that fiscal deficits or administrative burdens justified non-compliance with constitutional mandates of access to legal aid. But the judgment also brought about some limitations, indicating that economic offences, prostitution or child abuse cases may not always need legal aid provision.

In the case of *M. H. Hoskot v. State of Maharashtra*,²⁵ the Supreme Court applied constitutional safeguards beyond trial procedure to appeal processes. In deciding an appeal against a conviction for the offence of cheating, the Court held that the constitutional right to legal aid operates with equal vigour at trial and appellate levels, whenever issues of life or

²⁴ (1981) 1 SCC 627.

²⁵ (1978) 3 SCC 544.

liberty of the person are involved. This judgement requires courts to appoint qualified counsel in cases where defendant individuals are unable to hire legal counsel because of indigency or other conditions. The State is responsible for bearing the cost of the services of such legal counsel.

The territorial boundaries of legal aid were judicially settled in *State of Maharashtra v. Manubhai Pragaji Vashi*,²⁶ where the Supreme Court extended legal aid requirements at various stages of the trial. Under this approach, the Court appreciated that sound legal assistance should not be limited to formal trial proceedings. That timely intervention of the law is a significant check upon the misuse of constitutional rights and ensures procedural justice in the criminal justice system.

The Supreme Court, in *Sheela Barse v. State of Maharashtra*,²⁷ dealt with the special needs of women prisoners in framing general guidelines for the provision of legal assistance. Reacting to reported abuse in Bombay prisons, the Court directed legal representation for all prison detainees in Maharashtra prisons. Through this judgement, the court reasserted the constitutional requirement that indigent defendants whose lives or liberty are threatened with deprivation, have the right to counsel to ensure public trust in the judicial system and protect prisoners from torture and inhuman treatment. The Court directed the prisons to supply lists of under-trial prisoners to district legal aid committees and to make arrangements for lawyer-prisoner consultations. This led to the creation of systematic mechanisms for the purpose of ensuring access to legal aid.

²⁶ (1995) 5 SCC 730.

²⁷ (1978) 3 SCC 544.

In the case of *Sukh Das v. Union Territory of Arunachal Pradesh*,²⁸ the importance of active judicial responsibility in making accused individuals aware of their rights was dealt with. In this case, the appellant was convicted of the offence under Section 506 read with Section 34 of the Indian Penal Code, 1860. During the trial, he was not represented by a lawyer since he was unable to afford a legal representation for him due to poverty. The Supreme Court set aside the conviction on the basis that the presiding magistrate had not discharged his constitutional mandate to inform the accused of his right to free legal representation, giving rise to the existence of constitutional obligations as distinct from express requests from accused persons.

The proficiency and capability of legal representation were under challenge in *Mohammad Hussain v. The State (Govt. of National Capital Territory) Delhi*,²⁹ where a convicted individual was sentenced to death in the case of a bus bombing. The Court ruled that the legal aid counsel appointed failed to appear at most hearings of trial and had not cross-examined crucial prosecution witnesses. This was a deprivation of effective assistance of counsel and violated fundamental due process safeguards and right to fair trial.

In *Ajmal Mohammad Amir Kasab v. State of Maharashtra*,³⁰ where the accused persons were tried for committing a terrorist attack, the Court reaffirmed that the accused persons are entitled to legal aid when they are first brought before magistrates for cognizable offences, and the magistrates are under an obligation to inform them properly to that extent. This judgment created the possibility of departmental action against defaulting magistrates. But the Court held that while the absence of a lawyer during trial proceedings makes subsequent

²⁸ (1986) 2 SCC 401.

²⁹ (2012) 2 SCC 584.

³⁰ (2012) 9 SCC 1.

convictions illegal, pre-trial absence may not have as great an impact unless State supervision demonstrably prejudices trial proceedings

Quality of legal representation was examined by the Supreme Court in *Anokhilal v. State of Madhya Pradesh*,³¹ which was a case of a death sentence for the rape and murder of a minor girl. The Court held that the assigned amicus curiae was not provided with adequate time for preparation and thus the representation was neither actual nor effective. The conviction was set aside and the Court formulated exhaustive guidelines to avert such events which includes the appointment of lawyers with at least ten years' experience for death or life sentence cases; preference to be given to Senior Advocate to be appointed as amicus curiae in High Court death sentence confirmation hearings, and granting adequate time for preparing the case to the counsel.

An individual is entitled with the right to legal aid at the appellate stage as well. In the case of *Rajoo @ Ramakant v. State of Madhya Pradesh*,³² an appellant involved in a gang rape appeared in the absence of counsel in the High Court. The Supreme Court held that free legal assistance must be provided to all poor accused, irrespective of the severity of the crime attributed to them, at every stage of the criminal proceedings and could not be restricted to the trial stage only. Neither the Constitution of India nor the Legal Services Authorities Act, 1987 makes any distinction between a trial and an appeal for the purposes of providing free legal aid to an accused or a person in custody. Therefore, free legal services shall be provided to an eligible person at all stages of the proceedings, which includes the trial as well as appellate stage.

³¹ (2019) 20 SCC 196.

³² (2012) 8 SCC 553.

Prisoners are also the beneficiaries of free legal services. In the case of *Suhas Chakma v. Union of India*,³³ the court highlighted various issues of the prisoners, including inhumane treatment, prison overcrowding, and the ineffectiveness of legal aid etc. The court issued explicit directions related to legal services for the incarcerated population, specifying the administrative and technological modalities for its implementation. The court further observed that the legal awareness is one of the most important functions of the legal services institutions and the being aware of the right to file Appeals/SLPs and the process, its filing, in essence, protects Article 21 of the Constitution of India as much of the convicts in custody as of any other convict.

2. Legal Aid Framework in India

In 1976, Article 39A was inserted in the Constitution through the Constitution (Forty-Second) Amendment Act, 1976, which provides that “*the State shall provide free legal aid to ensure that opportunities for obtaining justice are not taken away from any citizen due to economic or other disabilities.*”³⁴ Moreover, Articles 14 and 22(1) of the Constitution of India make it obligatory for the State to ensure equality before law and a legal system which promotes justice based on equal opportunity to all. To give effect to the constitutional goal enshrined under Article 39A, the Legal Services Authorities Act, 1987 (hereinafter referred to as ‘Act’) was enacted.³⁵ As per the Act, legal services include the rendering of any service in the conduct of any case or other legal proceedings before any court or other authority or tribunal and the rendering of advice on any legal matter.³⁶

³³ 2024 INSC 813.

³⁴ The Constitution (Forty-second Amendment) Act, 1976, *available at*: <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-forty-second-amendment-act-1976> (last visited on September 25, 2025).

³⁵ Legal Services Authorities Act, 1987, No. 39, Acts of Parliament, 1987 (India).

³⁶ Legal Services Authorities Act, 1987, s. 2(c).

A. Legal Services Authorities Act, 1987

The Legal Services Authorities Act, 1987, establishes the statutory framework for providing free legal services in India. The objective of the Act was to bridge the gap of economic constraints and other social barriers that restrict persons from engaging a lawyer, thereby operationalising the constitutional promise under Article 39A of the Constitution of India and ensuring that no person is denied access to justice due to economic or other disabilities.

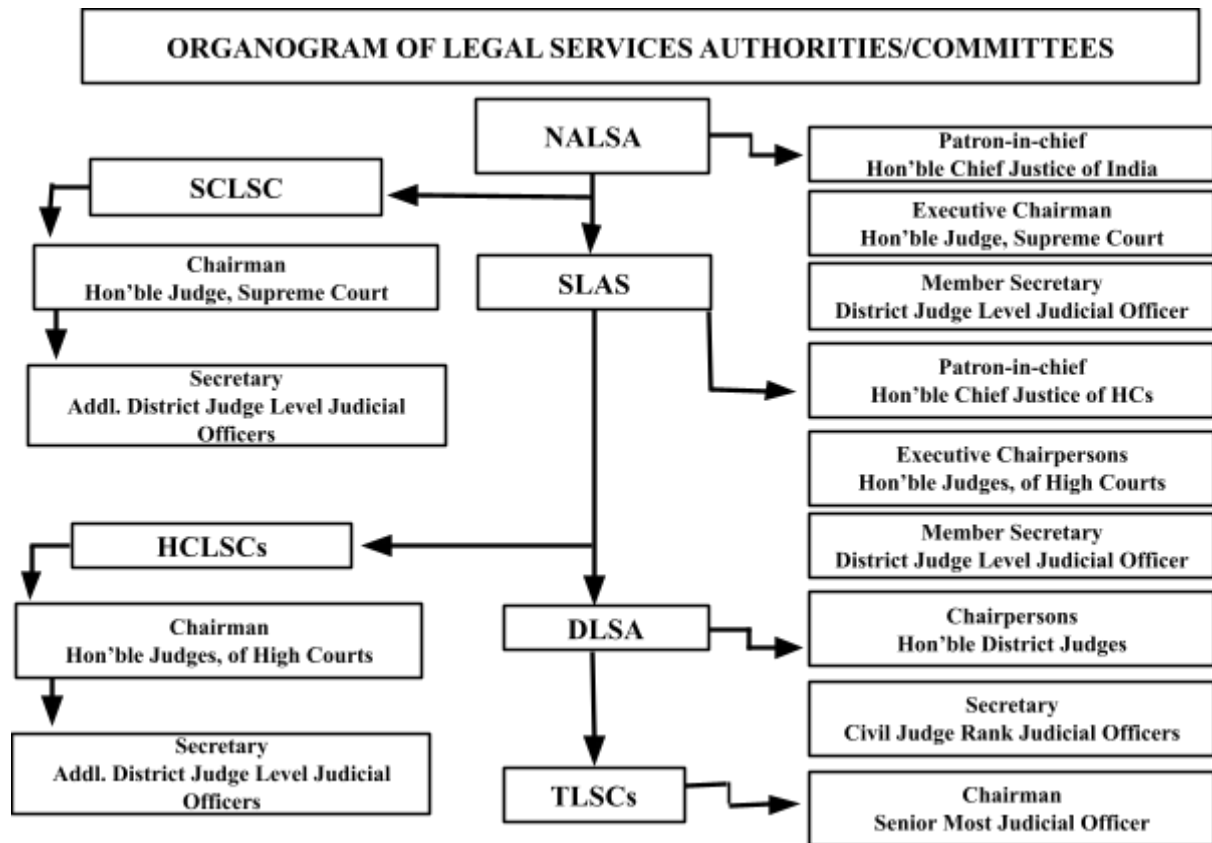
The Act established a comprehensive institutional structure under Sections 3, 6, and 9 to ensure the effective delivery of free legal services, including the establishment of National Legal Services Authority (NALSA) at the National level, followed by various bodies at state, district and taluk levels - the State Legal Services Authority (SLSA), District Legal Services Authority (DLSA) and Taluk Legal Services Authority (TLSA), respectively. Additionally, the High Court Legal Services Committees and the Supreme Court Legal Services Committee were established at the various High Courts and the Supreme Court of India to manage legal aid programmes at the highest judicial levels. NALSA supervises the implementation of legal aid schemes, working alongside state and district legal services authorities to promote legal awareness and facilitate alternative dispute resolution through Lok Adalats.

As per the Act, the Central Authority is responsible for framing policies, schemes, and programmes to make legal services accessible effectively and economically.³⁷ Further, the Central Authority carries out multiple functions including allocating funds to State and District Authorities, promoting social justice litigation and alternative dispute resolution, organizing legal aid camps and awareness drives particularly for weaker Sections,

³⁷ Legal Services Authorities Act, 1987, s. 4.

undertaking research, supporting clinical legal education through law colleges and legal aid clinics, spreading legal literacy, enlisting support of voluntary organisations, providing grants for legal aid schemes, monitoring and evaluating their implementation, ensuring commitment to fundamental duties, and coordinating with State Authorities, District Authorities, court-based committees, and NGOs for the proper implementation of legal services programmes.

These functions collectively embody the comprehensive mandate of the Central Authority to secure “equal access to justice for all.” Through policy formulation, legal aid scheme development and coordination with various legal services institutions, voluntary organisations, and academic institutions, the Authority has established a uniform nationwide framework for the delivery of legal aid, thereby giving effect to the spirit of Article 39A of the Constitution of India.



B. Beneficiaries of Legal Aid

Section 12 of the Legal Services Authorities Act, 1987 sets out the persons eligible to free legal services.³⁸ These include members of Scheduled Castes and Scheduled Tribes, victims

³⁸ The Sections of the society as enlisted under Section 12 of the Legal Services Authorities Act are entitled for free legal services, they are :

- a) A member of a Scheduled Caste or Scheduled Tribe;
- b) A victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
- c) A woman or a child;
- d) A mentally ill or otherwise disabled person;
- e) A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- f) An industrial workman; or
- g) In custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile home within the meaning of clause(j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986); or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987(14 of 1987); or
- h) a person in receipt of annual income less than the amount mentioned in the following schedule (or any other higher amount as may be prescribed by the State Government), if the case is before a Court other than the Supreme Court, and less than Rs 5 Lakh, if the case is before the Supreme Court.

of human trafficking and forced labour (begar), women and children, persons with disabilities, and victims of disasters, ethnic violence, or caste atrocities. Additionally, industrial workmen, individuals in custody (including protective homes or psychiatric hospitals), and those with an income below a prescribed limit are also entitled to legal aid.

Additionally, certain states have expanded this list to include individuals affected by HIV, senior citizens, acid attack victims, transgender persons, and victims of drug abuse, with state governments also establishing varying income thresholds for legal aid eligibility.

For instance, Haryana's rules identify ten categories beyond those in Section 12, including persons in psychiatric hospitals, cases impacting numerous poor individuals, special deserving cases not meeting the means test, cases where high courts or the Supreme Court provide legal service, public interest litigation, ex-servicemen and their families, riot and terrorist victims and their families, freedom fighters, transgender people, and senior citizens aged 60 and above.³⁹ Similarly, Delhi has set an income limit of Rupees 4 lakh for senior citizens and transgender individuals, along with provisions for acid attack victims and persons affected by HIV/AIDS.

For other citizens, eligibility is determined by the annual income, which varies from state to state and the court level. For instance, the income limit for a case before the Supreme Court is Rs 5,00,000, while many states have set their limit at Rs. 3,00,000 for other courts.⁴⁰

³⁹ Haryana State Legal Services Authority Rules, 1996, rule 19.

⁴⁰ National Legal Services Authority, available at: <https://nalsa.gov.in/legal-aid/> (last visited on September 2, 2025).

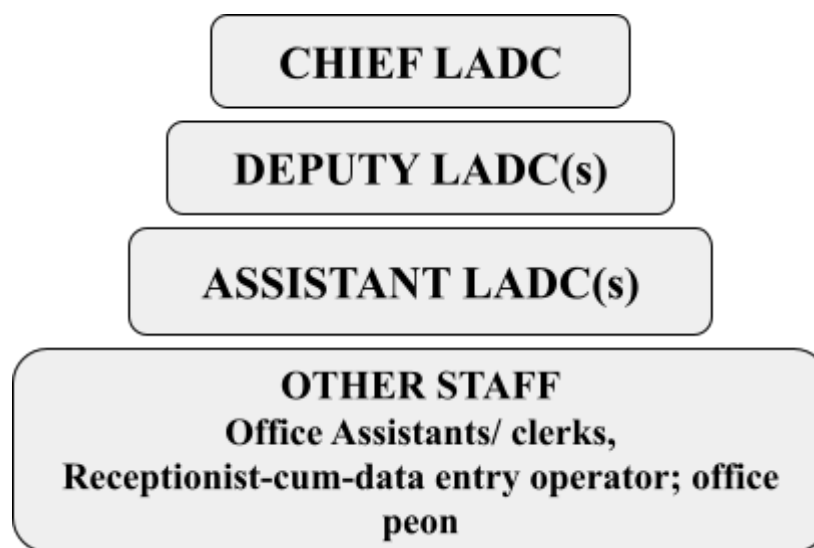
3. The Legal Aid Defence Counsel System (LADCS)

Before the introduction of LADCS, the assigned/panel counsel system or the legal aid counsel system was followed by the Legal Services Institution in India. Under the system, legal aid cases were assigned to the panel lawyers by the concerned legal services institution. Such panel lawyers were engaged in their private practice and were allowed to take up their own cases. Due to this they were unable to devote sufficient time for the legal aid matters. Their accessibility and availability for the beneficiaries/clients remained an issue for a long time.

In order to strengthen the delivery of legal services, the NALSA introduced the LADCS. This system aims to provide competent legal services in criminal matters by adopting a model similar to the public defender system prevalent in several other countries. The Legal Aid Defense Counsel System 2022 stipulates full-time engagement of legal aid defense counsels to render legal services to an accused or a convict, or any person otherwise eligible under Section 12 of the Act in all the stages of criminal proceedings . Before the introduction of LADCS, the traditional legal aid assigned counsel system, i.e. a system of assigning panel lawyers who, apart from providing free legal services to beneficiaries, were also engaged in private practice. The beneficiaries of the legal aid faced difficulties with these lawyers due to poor availability and accessibility, and couldn't get timely updates on their cases. This systemic inefficiency and lack of accountability led to public distrust and hindered the effective delivery of justice. To address the shortcomings of the previous system of assigning panel lawyers, NALSA introduced the Legal Aid Defence Counsel Scheme, 2022.

A. Structure of LADCS

To ensure professional, accountable, effective and timely legal services, LADCS provides full-time, dedicated defense counsels in criminal matters at the district level, supported by other human resources. Each office comprises a Chief, Deputy, and Assistant Legal Aid Defense Counsels, along with clerical and support staff, working exclusively on legal aid cases from pre-arrest to appellate stages.



The staff of LADCS is selected through a merit-based system, with periodic performance reviews to ensure accountability and competence. The scheme lays down ethical codes, work profiles, monitoring mechanisms, and provisions for honorariums of human resources, infrastructure, and operational expenses, as discussed later in the module. This institutionalised framework aims to ensure timely, professional, and effective legal defense for the poor and marginalized, thereby enhancing access to justice across the criminal justice system.

B. Functions of LADC Office

Legal Aid Defense Counsel Office deals exclusively with legal aid matters in criminal matters of the District or the headquarters as the case may be, wherein it is established. The office provides legal services from the early stages of criminal justice till appellate stage and includes visits to jails that entail catering to the legal needs of unrepresented inmates. The office of the Legal Aid Defence Counsel undertakes the following work:

- Legal Advice and Assistance to all individuals visiting the office.
- Representation/Conducting trials and appeals including all miscellaneous work in all criminal courts such as Sessions and Special Courts and before the Magistrate, including executive courts.
- Handling Remand and Bail work.
- Providing legal assistance at pre-arrest stage as per need and also in accordance with NALSA's scheme for providing such assistance.
- Any other legal aid work related to District Courts or as assigned by the Secretary, DLSA.
- Periodic visit to Prisons of the district under the guidance of the Secretary, DLSA.

Broadly, the administrative duties in an LADCs office are undertaken by the Chief Legal Aid Defence Counsel and Deputy Legal Aid Defence Counsel. This includes assigning duties within the LADCs Office and also coordinating with SLSAs, DLSAs and NALSA on

different occasions, both to report on the functioning of the office, as well as to update on any specified work that may be assigned.

Administrative Duties	Court Related Work	Case Management	Quality & Documentation	Other Duties
Chief Legal Aid Defense Counsel				
- Assigning duties to deputy legal Aid Defense Counsels in the office. - Assigning duties to Assistant legal Aid Defence Counsel for assisting him and Deputy Chief Legal Aid Defense Counsel and for other work including legal	Conducting trials, appeals and bail matters in courts along with deputy, chief & assistant legal Aid Defense Counsels.	- Ensure maintenance of complete files of legal aid seekers. - Consultation and ensuring updation of the case progress to the client and his/her relative(s).	- Ensure proper legal research, planning effective defence strategy and thorough preparation in each and every legal aided case. - Ensure	Any work/duty assigned by the Legal Services Authority.

research. Will be overall in charge of administration of the office of Legal Aid Defense Counsel.			proper documentation with regard to legal aid assistance provided, ensure maintenance of up-to-date record of legal aided cases. Ensure quality legal aid.	
Deputy Chief Legal Aid Defense Counsel				
All or any of the work of the Chief defence Counsel as per assignment,	Conducting trials/ appeals/ Remand work /Bail applications/visits to prisons	- Maintaining complete case files. - Proper client interviews at various stages	Doing legal research in legal aided cases and guiding assistant legal	Any work/duty assigned by the Legal Services Authority.

	etc., as assigned by Chief Legal Aid Defense Counsel. • Filing and arguing appeals and bail applications in Courts.	for quality research work and representation at remand, trial and appellate stage.	Aid Defense Counsel and law students attached with the office in legal research.	
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C. Monitoring and Mentoring the LADCs

i. Administration of the LADCS Office

The District Legal Service Authority consists of the Chairman and the other members including the Secretary, nominated by the State Government in consultation with the Chief Justice of the High Court. The Secretary, DLSA is a member of the State Judicial Service not lower in rank than that of a Subordinate Judge or Civil Judge posted and exercises such powers and performs such duties under the Chairman of that Committee as assigned to him by the Chairman. Generally, the Secretary works in an administrative capacity within the DLSA office and facilitates coordination within the LADCS Office. When legal aid applications are received, the Secretary reviews them administratively and thereafter assigns the legal aid matters to the Chief Legal Aid Defence Counsel. Coordination of the Chief

LADC with the Secretary, DLSA ensures that LADCs have proper authorisation and necessary support in terms of the resources that may be required from time to time in the office.

a. Review and Meetings

Monthly Review Meeting: The meeting is to be held under the chairmanship of the Chairman, DLSA, with the minutes of the meetings to be sent to SLSA.⁴¹ The work undertaken in the Legal Aid Defense Counsel Office is closely monitored by the Secretary of DLSA. It is important for the LADCs to attend such review meetings and supply the prescribed information to the concerned DLSA.

Quarterly Review Meeting: These meetings are to be held between every LADCS office and the Secretary, DLSA by the Member Secretary, SLSA and with the minutes to be sent to NALSA.⁴²

b. Monitoring

At the end of six months the performance of every human resource at the Legal Aid Defense Counsel Office shall be evaluated by the SLSA under the guidance of Hon'ble Executive Chairman, SLSA. The Monitoring and Mentoring Committee monitors the legal aid work of the Legal Aid Defense Counsel Office.

c. Mentoring

The Chief LADC is involved in the Monitoring and Mentoring of the LADCS. He/She plays a crucial mentoring role within the LADCS. Along with supervising the functioning of the

⁴¹ NALSA Legal Aid Defense Counsel Scheme, 2022.

⁴² *Ibid.*

office, the Chief is to provide continuous guidance and professional support to the LADCs ensuring that each counsel uphold high standards of defense representation. The Chief is responsible for allocating and assigning cases judiciously among LADCs, monitors their performance, and offers feedback to enhance their legal acumen and efficiency. Through regular interaction and review, the Chief ensures that every legal aid beneficiary receives competent and effective legal services in criminal matters by the LADCs.

d. Office Operations, Renovations and Supplies

The Chief Legal Aid defence counsel is the overall incharge of administration of the office of Legal Aid Defense Counsel with the Secretary SLSA incharge of Purchasing office supplies on need basis, ensuring proper functioning of Legal aid Counsel System Office, providing Books such as Bare Acts and Commentaries for Legal Aid Defense Counsel Office. To this end, the requisition for the office operations supply is sent from the Chief Legal Aid Defence Counsel to the Secretary, SLSA, who ensures these requirements are taken care of.

Office space planning, and providing infrastructure for office preferably inside or in proximity to court complex, providing Office furniture, Office equipment including computers, printer, internet connectivity and other equipment and renovation of office space when necessary are also undertaken by the SLSA, on the requisition sent by the Chief Legal Aid Defence Counsel on behalf of the LADC Office.

e. Human Resource Management

The SLSA facilitates human resource requirements for the Legal aid Counsel System Office with regular training and refresher courses for legal aid counsel engaged in the The Legal Aid

Defense Counsel System 2022 stipulates full-time engagement of legal aid defense counsels to render legal services to an accused or a convict, or any person otherwise eligible under Section 12 of the Act in all the stages of criminal proceedings. Before the introduction of LADCS, the traditional legal aid assigned counsel system, i.e a system of assigning panel lawyers who, apart from providing free legal services to beneficiaries, were also engaged in private practice. The beneficiaries of the legal aid faced difficulties with these lawyers due to poor availability and accessibility, and couldn't get timely updates on their cases. This systemic inefficiency and lack of accountability led to public distrust and hindered the effective delivery of justice. To address the shortcomings of the previous system of assigning panel lawyers, NALSA introduced the Legal Aid Defence Counsel Scheme, 2022.

f. Financial Management

NALSA and the concerned SLSA & DLSA, oversees the timely payment of monthly honorarium to legal aid counsel and all staff engaged for Legal aid defense counsel office, as well as payment with regard to expert witnesses, if their services are taken. Payment for incidental expenses such as travelling expenses, stationary/office expenses etc. are also covered by the respective SLSA & DLSA.⁴³ The Chief LADCs may coordinate with the Secretary of the concerned DLSA regarding the same.

The introduction of the LADCS as a dedicated, full-time engagement serves as a crucial reform to overcome the previous panel lawyer system. It aims to address the gaps in the earlier panel lawyer system while ensuring competent legal services to beneficiaries in the

⁴³ Legal Aid Defense Counsel Scheme, 2022, para. 9.

criminal proceedings. The LADCS model is not just a mere shift of an institutional model, it also focuses on accountability, professionalism, and client interaction, with the aim to build public trust in the justice delivery system.

In essence, this system reinforces the idea that justice is a right, not a privilege, for every person, irrespective of their status. LADCS brings closer the idea of realising the promise of access to justice for all.

PART II: CORE LAWYERING SKILLS

The following topics are covered under this chapter:

Topic 1: Roles And Responsibilities Of LADCs

Topic 2: Do's And Don'ts For LADC

Topic 3: Ethics

Topic 4: Advocacy Skills (Drafting; Client-Counseling; Evidence; Witness Examination; And Arguments)

Topic 5: Interacting With Vulnerable Groups

Topic 6 : Media Training

Objective:

- Develop an extensive system of hands-on legal capabilities to enhance the delivery of quality services to disadvantaged populations. The training endeavours to bridge the theoretical-practical divide in legal knowledge, such that Legal Aid Defence Counsels (LADCs) can operate efficiently within real-life legal contexts with professional excellence and ethical compliance.
- Facilitate critical thinking skills that enable LADCs to methodically examine legal issues and provide legal advice and consultation with emphasis on skills in drafting. The training ensures that petitions, applications, and other legal documents are professionally presented and effectively advance the beneficiary's interests.

- Advocacy skills training deals with the nuances of legal practice, which will include the LADCs pleading cases competently, involving understanding and application of the law of evidence, examination of witnesses, and formulating convincing arguments. Court-craft skills facilitate LADCs to handle judicial procedure with confidence and present their beneficiary with competence and professionalism.
- Ethics training to aid LADCs work in challenging situations where conflicts of interest and boundaries must be handled with caution, along with interaction training with vulnerable populations to train LADCs to communicate effectively with marginalized groups, including children, older adults, people with disabilities, and those with socio-economic disadvantages.
- Media training modules to equip LADCs to effectively communicate legal issues to wider audiences, allowing them to plead for systemic reform and raise legal rights awareness, especially in sensitive cases.

Expected Learning Outcomes

- The Legal Aid Defence Counsels are expected to familiarise themselves with the understanding of professional functions and duties as a part of the legal aid framework and display competency in legal drafting, creating clear, concise, and legally valid documents fitting a range of contexts. LADCS will acquire effective client counseling skills that show cultural sensitivity and relevant communication approaches to legal aid beneficiaries.
- The chapter aims to build proficient advocacy skills, such as presenting evidence, witness examination methods, and oral argumentation skills and facilitate the

learning and application of ethical principles throughout their practice, being aware of situations of conflict and professional boundaries.

- The course will help LADCs to work effectively with media representatives and explain legal ideas to non-legal audiences. Participants will learn to work sensitively with vulnerable groups without loss of professional capability and without compromising client outcomes for the workforce.

Training Methods

1. Lecture
2. Power Point Presentation
3. Case study analysis
4. Mock court exercises
5. Role Play
6. Practical drafting sessions

Session Plan :

- I.** Introduction, Ice-breaking and interactive lecture by Resource Person/Facilitator
- II.** Topic 1: **Roles and Responsibilities of LADCs**
 - a. Opening Activity**
 - Participant introduction with current role challenges

- Quick discussion on most difficult aspects of LADC work

b. Core Content

III. Topic 2: Professional Do's and Don'ts

a. Opening Review

- Quick recap of LADC responsibilities

b. Core Content

IV. Topic 3: Ethics

a. Foundational Understanding

- Ethics in Legal Practice
- Indian Context and Expectations

b. LADC-Specific Ethics

V. Topic 4: Advocacy Skills (Drafting; Client-Counseling; Evidence; Witness Examination; And Arguments

a. Foundation Building on each topic with fundamentals

b. Practical Application

c. Interacting with Vulnerable Groups

d. Media Training and Public Communication

NOTE: In the preparation of the training module, in addition to the note and the module given herein, assistance can be taken from resources listed under the Reading List.

Reading list

- NALSA Manual For District Legal Services Authorities 2023.
- NALSA Training Module For Legal Services Lawyers- Part 1 (2015).
- State of Maharashtra v. Manubhai Pragaji Vashi, (1995) 5 SCC 730.
- Indira Jaising v. Supreme Court Of India, (2023) 8 SCC 1.

Legal practice, particularly of LADCs, involves much more than a familiarity with statutes and case laws. It requires mastering essential lawyering skills that bridge the gap between academic and practical knowledge.

The practice of a LADC as an advocate requires enabling the consonance of technical skills, ethical reasoning and cultural awareness, with a knack for problem solving.⁴⁴ These skills have to be complemented by skills such as legal research and analysis, sound courtroom presence involving drafting and examination, formulating arguments, and possessing proficiency with legal research tools. Furthermore, client counselling and communication assume special importance being a defence lawyer in the legal aid system.⁴⁵ Defense counsel needs to establish trust, simplify complicated legal procedures and advise beneficiaries who are at risk of severe penalties, as well as inspire trust in the witnesses who may also belong to the vulnerable groups. The interaction as an LADC also extends to the interaction with prosecution and police personnel, which should be as regulated as possible.

This involves technical communication as well as emotional and cultural competency, and in the age of high penetration of media, the interaction involving both print and digital becomes important. The ethical aspects of criminal defense are multifaceted and demand high-level decision-making that has to be dealt with utmost caution.

Effective practice is, therefore, an exercise of blending all these skills in the practice of law.

⁴⁴ American Bar Association, “Fundamental Lawyering Skills Report of the ABA Task Force on Law Schools and the Profession: Narrowing the Gap (“The MacCrate Report”)” (1992).

⁴⁵ A. Tanveer and Kumar, R. , “*Clinical Legal Education: Bridging Theory and Practice Through Experiential Learning and Client-Centered Skills*”, (Cambridge Open Engage, 2025).

1. Roles and Responsibilities of LADCS

The Legal Aid Defense Counsel Scheme, 2022 explicitly states the roles and responsibilities of LADCs which are as follows:⁴⁶

Category	Specific Roles and Responsibilities
Legal Advice and Assistance	- Provide legal advice and assistance to all visitors. - Handle and update legal aid seekers on their case progress. - Answer legal queries related to criminal matters via telephone.
Court Representation and Advocacy	- Conduct trials and appeals in all criminal courts (Sessions, Special, Magistrate, and executive courts). - Handle all miscellaneous work related to representation. - File cases and conduct trials in Magistrate trial cases.
Case Strategy and Investigation	- Provide legal assistance at pre-arrest and arrest stages. - Develop defense strategies by analysing prosecution evidence and hearing the accused's version. - Conduct on-site visits to the alleged crime location and speak with family members for effective input.
Pre-Trial and	- Handle remand, bail, and other related miscellaneous work.

⁴⁶ Legal Aid Defense Counsel Scheme 2022, p.no. 10.

Miscellaneous Work	- Conduct legal research for legal aid cases.
Administrative and Support Duties	- For Assistant LADCs: Assist Chief and Deputy Legal Aid Defense Counsel(s) in conduct of legal aid cases - Maintain complete files for all legal aid cases. - Perform any other legal aid work assigned by the Chief Counsel or the Legal Services Authority.
Outreach and Monitoring	- Conduct periodic visits to district prisons and legal aid clinics as directed.
Legal Advice and Assistance	- Provide legal advice and assistance to beneficiaries. - Handle and update legal aid seekers on their case progress. - Address legal queries of beneficiaries related to criminal matters.

a. Specific Roles & Responsibilities of LADCs:

Chief Legal Aid Defense Counsel	Deputy Chief Legal Aid Defense Counsel	Assistant Legal Aid Defense Counsel
• Conducts trials, appeals, and bail matters alongside	• Handles trials, appeals, remand	• Case Filing and handles Magistrate

Deputy and Assistant Counsel. • Assigns duties to Deputy and Assistant Legal Aid Defense Counsels. • Oversees legal research, defense strategy planning, and case preparation. • Ensures proper documentation and record-keeping of all legal aid cases. • Responsible for administration of the Legal Aid Defense Counsel Office. • Ensures quality legal aid and client communication (case updates, consultations).	work, bail applications, and prison visits. • Files and argues appeals and bail applications in court. • Maintains complete case files and conducts legal research. • Guides Assistant Counsel and law students. • Conducts client interviews at all stages. • May perform all duties of Chief Counsel as delegated.	trials, remand, bail, and other tasks. • Engages in legal research and prison/legal aid clinic visits. • Provides pre-arrest assistance to suspects. • Assists in developing defense strategy and conducting investigations. • Handles client queries, provides case updates, and maintains case files. • Manages telephone legal queries. • Assists Chief and Deputy Counsels
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• Handles any other duties assigned by the Legal Services Authority	• Performs any duty assigned by the Legal Services Authority.	whenever required. • Takes on any legal aid-related duties assigned.
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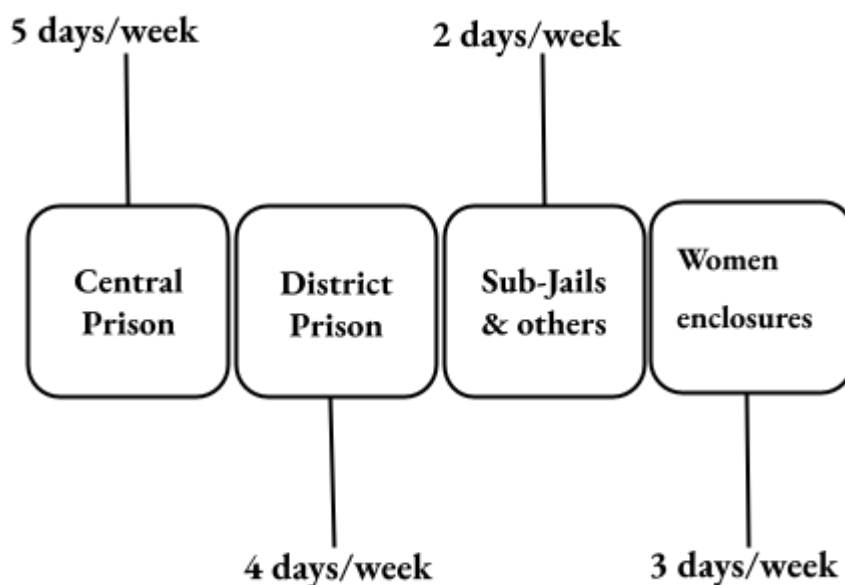
The LADCS is integral to providing qualitative and competent legal services in criminal matters to all eligible persons, in a professional and efficient manner, including the dissemination of legal awareness. To this extent, the LADCS Scheme, 2022, outlines the aforementioned roles and responsibilities.

Prison Legal Aid Clinics

The NALSA Standard Operating Procedures on Access to Legal Aid Services to Prisoners and Functioning of the Prison Legal Aid Clinics, 2022 was created to improve the procedure of PLAC'S and address the socio-legal difficulties that prisoners face. The SOP implements the mandate as laid down by Section 12 of the Legal Services Authorities Act, 1987.

A Prison Legal Aid Clinic is established inside every prison by the DLSA. It is meant to be the first line of contact for the prisoners to access legal aid, advice, awareness, grievance redressal, legal representation. In the case of *Suhas Chakma v. Union of India*⁴⁷ reiterated the conditions laid down in 'SOP on access to legal aid services to prisoners and functioning of the Prison Legal Aid Clinics (PLACs)' for setting up and functioning of PLACs. For different categories of prisons the suggested number of days for which a PLAC may be operational is:

⁴⁷ 2024 INSC 813.



Functions / Objectives of PLAC

- Ensure that no person in any stage of criminal proceedings is left without legal representation.
- Bridge information gap between prisoner & court.
- Facilitate communication between prisoner & lawyer.
- Ensure special needs of vulnerable groups (women, young offenders, mentally ill, foreign nationals etc.) are addressed.
- Act as grievance redressal centre, legal awareness, legal aid services.

Role of Legal Aid defence Counsel (LADC) in PLACs

The Legal Aid Defence Counsel (LADC) may form a crucial link in the Prison Legal Aid Clinic (PLAC) mechanism. Once applications for legal aid are filed at PLACs by Para-Legal Volunteers (PLVs) or Jail Visiting Lawyers (JVLs), they are forwarded to the District Legal Services Authority (DLSA). The DLSA thereafter assigns the cases to LADCs, who provide

legal services to the prisoners. The LADCs may regularly visit prison to interact with the prisoners to provide effective legal services.

Within this structure, LADCs perform the following essential functions:

- The LADC may ensure effective legal representation to prisoners irrespective of their identities, status and background.
- The LADC may serve as a connecting bridge between the prisoner and the court in coordination with other Functionaries of PLAC.
- The LADC may also act as the point of contact for prisoners' grievances related to the issues of their incarceration. This also includes coordination and collaboration with the other functionaries of the PLACs. The LADC must ensure that the rights of prisoners are not violated while they are incarcerated.
- The LADC may further provide assistance to the prisoner in filing the form for seeking legal aid in coordination with the JVLs And PLVs.

2. Do's And Don'ts for LADCS

LADCs play an important role in making access to justice available for beneficiaries by rendering legal services during all stages of criminal proceedings. Therefore, compliance with certain professional and ethical standards is essential to providing effective legal services to those who need it most.

While there are no standardised institutional do's and don'ts for lawyers, some industry practices have evolved over the years that may be helpful in reaching an understanding of

what may constitute acceptable and what practices may constitute unacceptable within the legal practice for a LADC.

The following may be helpful in making that assessment:⁴⁸

A. DO's for LADCs⁴⁹

Case management and preparation	- To defend the accused and prepare the case well, as if the accused has engaged him/her privately. - The essence of good lawyering is acquainting oneself with the apparently relevant law, on the subject at hand. The essence of good advocacy is to know the facts of your case and then apply the law to those facts.⁵⁰ - To be present in the court assigned during remand hours and whenever an assigned case is listed for hearing. - Having accepted a matter, to show his utmost commitment to see that the matter concludes and as far as possible in law, favorably to the beneficiary. - If during visit to any jail, protection home, legal services clinic or any other institution, a Legal Aid Defence Counsel (LADC) finds that a beneficiary is in need of legal assistance, the LADC shall facilitate the filing of a legal aid application before the concerned
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⁴⁸ National Legal Services Authority, “*Module For Training Of Legal Services LawyersPart-I*”, Topic No 14

⁴⁹ *Ibid.*

⁵⁰ Fali S. Nariman, *Before Memory Fades: An Autobiography* (Hay House Publishers, Delhi, 2012).

	District Legal Services Authority (DLSA), rather than engaging as a private counsel.
Client communication and ethics	- Must communicate with the accused/his family members. - To keep the beneficiary reasonably informed about his/her case. - To answer reasonable requests from the beneficiary for information. - To respond to the beneficiary's telephone calls. - To keep appointments with the beneficiary, or provide timely explanation or apology in circumstances when unable to keep such an appointment.
Victim and police station protocol	- While representing a victim of a sexual crime particularly a woman or child, to ensure that the name of the victim is never-disclosed, the victim is examined by the prosecution and the defence with due sensitivity and respect for dignity and protect them from societal scrutiny. - At the police station, to ensure that a lady police officer records the statement or FIR with all relevant details.
Proactive legal action and institutional	- To be proactive when noticing any violation of human, fundamental or other legal rights of any person or persons in the village or community and try to use various provisions in BNS, BNSS and

compliance	BSA to remedy the situation at the district courts. - To abide by the instructions of a legal service institution, issued from time to time e.g. submitting bills in time, regularly informing about progress of case, submitting data regularly as per the formats circulated by the concerned DLSA etc.
Act in a dignified manner	- During the presentation of his case and also while acting before a court, LADC should act in a dignified manner. He should at all times conduct himself with self-respect. However, whenever there is a proper ground for serious complaint against a judicial officer, the advocate has the right and duty to submit his grievance to proper authorities.⁵¹
Respect the court	- LADC should always show respect towards the court and maintain decorum both in physical as well as virtual hearings.
Refuse to act in an illegal manner towards the opposition	- LADC should refuse to act in an illegal or improper manner towards the opposing counsel or the opposing parties. He shall also use his best efforts to restrain and prevent his client from acting in any illegal, improper manner or use unfair practices in any matter towards the judiciary, opposing counsel or the opposing parties.

⁵¹ Bar Council of India, available at:

<https://www.barcouncilofindia.org/info/rules-on-an-advocates-duty-towards-the-court> (last visited on September 25, 2025).

Refuse to represent clients who insist on unfair means	- LADC shall refuse to represent any client who insists on using unfair or improper means. An advocate shall exercise his own judgment in such matters. He shall be dignified in use of his language in correspondence and during arguments in court. He shall not scandalously damage the reputation of the parties on false grounds during pleadings.
Appear in proper dress code	- LADC should appear in court at all times only in the dress prescribed under the Bar Council of India Rules and his appearance should always be presentable.
Carry out legitimate promises made	- LADC shall do his best to carry out all legitimate promises made to the opposite party even though not reduced to writing or enforceable under the rules of the Court.
LADCs duty, not appear in cases where another Adv has filed his POA.	- LADC should not appear in any matter where another advocate has filed a vakalat or memo for the same party. In case an advocate is not able to present the consent of the advocate who had filed the matter for the same party, then he should apply to the court for appearance. He shall in such application mention the reason as to why he could not obtain such consent. He shall appear only after obtaining the permission of the Court.

B. DON'Ts for LADCs⁵²

Financial misconduct and exploitation	- Charging any fee in whatsoever mode from the beneficiary. - Receiving money from or on behalf of the beneficiary for any purpose and under any pretext. This must be strictly avoided by the LADCs, because not only the counsel fee but all other expenses such as court fee, clerkage, process fee, expenses of witnesses etc. are paid by the state through the legal services institutions. - Taking improper advantage of the youth, inexperience, lack of education or sophistication, ill health, or unbusiness-like habits of the client/beneficiary.
Unfair practices and unethical conduct	- Using unfair means like making an attempt to win over the witnesses or to intimidate them. - Using insulting words for a woman witness or complainant while defending a male accused. - Abandoning the beneficiary's legal rights or disclosing the beneficiary's identity. - Committing, whether professionally or in the lawyer's personal capacity, any act of fraud or dishonesty, e.g. by falsifying a

⁵² *Ibid.*

	document, even without fraudulent intents. - Making untrue representations or concealing material facts from the client/beneficiary with dishonest or improper motives. - Knowingly assisting, enabling or permitting any person to act fraudulently, dishonestly or illegally toward the beneficiary. - Avoid exaggerating in court about the facts of your case or the applicable law.⁵³ - Assist the court in a fair manner by not concealing the facts of the cases⁵⁴
Misuse of position and private practice	- Developing a networking with the ply that he/she is mentoring and monitoring, to enhance his/her private practice. - Taking undue advantage of being a LADCs, before any authority. - Propagating his private practice by distributing his visiting cards or in any other manner, during visits to jails, protection home or legal care & support center etc.
Breach of duty to court and client/beneficiary	- Failing to discharge the obligation to the court as an officer of the court, as expected to be absolutely frank and candid in all dealings with the court, fellow lawyers and other parties to proceedings, subject always not to betray the client/beneficiary's cause.

⁵³ Fali S. Nariman, *Before Memory Fades: An Autobiography* (Hay House Publishers, Delhi, 2012).

⁵⁴ *Kusha Duruka v. State of Odisha*, (2024) 4 SCC 432.

Not communicate in private	- LADC should not communicate in private to a judge with regard to any matter pending before the judge or any other judge. An advocate should not influence the decision of a court in any matter using illegal or improper means such as coercion, breach, bribe etc.
Refuse to appear in front of relations	- LADC should not enter appearance, act, plead or practice in any way before a judicial authority if the sole or any member of the bench is related to them as father, grandfather, son, grandson, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law or sister-in-law.
Not to wear bands or gowns in public places	- LADC should not wear bands or gowns in public places other than in courts, except on such ceremonial occasions and at such places as the Bar Council of India or as the court may prescribe
Not appear in matters of pecuniary interest	- LADC should not act or plead in any matter in which he has financial interests.
Not stand as surety for client	- LADC should not stand as a surety or certify the soundness of a surety that his beneficiary requires for the purpose of any legal proceedings.

Not to negotiate directly with opposing party	- LADC shall not in any way communicate or negotiate or call for settlement upon the subject matter of controversy with any party represented by an advocate except through the advocate representing the parties.
Not advertise or solicit work	- LADC shall not solicit work or advertise in any manner. He shall not promote himself by social media, circulars, advertisements, touts, personal communications, interviews other than through personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned.
Not promote unauthorized practice of law	- LADC shall not permit his professional services or his name to be used for promoting or starting any unauthorised practice of law.

3. Ethics

Professional ethics can be termed as a written or unwritten code for the regulation of the conduct of a practicing lawyer towards himself, his client/ beneficiary, his opposing counsel in law and towards the Court.⁵⁵

⁵⁵Chunni Lal Anand, *Professional Ethics of the Bar: Popularly Known as Legal Ethics* (Law Book Company, 2nd edn., 1987).

Legal practice, as by its venerable and noble tradition, is a profession of service to the community. That service goes far beyond what lawyers achieve in their official work within the courtrooms. The profession is not centered primarily for the advantage of its practitioners, but as an institution established by the state for the purpose of obtaining effective administration of justice.⁵⁶

Justice Sundaram Aiyar, in lectures to law graduates at Madras University, stated this principle:

*“Lawyers should never take on ‘the standards of a business profession’ but rather preserve their position as custodians of civilization. This higher calling demands practitioners to place ethical behavior above current financial interests, even when the two are at odds with each other.”*⁵⁷

Ethics is foundational to legal practice. It sets law apart from commerce and legitimates the profession in society. George Sharswood, in his foundational treatise on Legal Ethics, cautioned that the notion of “mere money-making lawyers” is “one of the greatest curses with which any State or community can be visited.” This comment highlights the inherent tension between commercial interests and professional obligation that lawyers will need to manage in their professional lives. The legal career is built on a principle of public trust that compels the

⁵⁶ Chunni Lal Anand, *Professional Ethics of the Bar: Popularly Known as Legal Ethics* (Law Book Company, 2nd edn., 1987).

⁵⁷ *Ibid.*

upholding of ethical principles well above those demanded in conventional business relationships.⁵⁸

Lawyers are officers of justice and friends of the court, and not just representatives of clients.⁵⁹ Practitioners must reconcile zealous representation of clients with wider responsibilities to the administration of justice. Ethical duty falls especially on making legal services available to those who are not able to pay for private representation.⁶⁰

Ethical practice and professional excellence are intertwined values and not mutually exclusive ones. As observed by scholars, there are five indispensable functions of great lawyers that encompass counseling, advocacy, professional development, public leadership, and public service, which illustrates how ethical responsibilities serve to augment rather than limit professional competence.

The lawyer who comprehends those wider responsibilities is more able to engage clients and represent them well than the lawyer who perceives ethics as nothing more than compliance with regulations. This conjunction of ethical obligation with professional skill is what comes to be described as “practising law in the grand manner - the only way it is worth practising.”⁶¹

A. Professional Ethics for Lawyers in India

The legal profession and, by extension, lawyers hold a respectable place in society. Therefore, the expectation regarding their personal and professional behavior is naturally high.

⁵⁸ Sudipto Sarkar and Sidharth Sethi, *Hints on Modern Advocacy, Professional Ethics and the Art of Cross-Examination* (5th edn., 2002).

⁵⁹ *Ibid.*

⁶⁰ Sudipto Sarkar and Sidharth Sethi, *Hints on Modern Advocacy, Professional Ethics and the Art of Cross-Examination* (5th edn., 2002).

⁶¹ *Supra* at 5.

As noted by the Supreme Court in *In Re: Sanjiv Datta*⁶² that the practice of law is a serious and solemn profession. “It is a noble calling and all those who belong to it are its honourable members.” While the access to the profession can be gained by obtaining only the qualification of technical proficiency, the prestige as a professional must be upheld by its members through their exemplary behavior both within and outside the court.

The legal profession is unique among professions in the context that the actions of lawyers impact not only an individual but the administration of justice which is the bedrock of a civilised society.

If individuals lose faith in the profession due to the aberrant means of some of its members, not only the profession but the administration of justice itself would be affected. The current trend, unless restricted, is bound to take us to a point when the system will be found destroyed from within before it is destroyed from without. It is for the members of the profession to reflect and take the remedial measures in time and also save the courts from the unpleasant task.

A detailed listing of what will entail good conduct of an advocate can hardly be provided in one place altogether, but certain codified rules do regulate the conduct. The Bar Council of India, pursuant to Section 49(1)(c) of the Advocates Act, 1961, has drafted ‘Standard of Professional Conduct and Etiquette’ which provides for certain guidelines that must be followed by legal professionals at all times in a manner becoming their position as officers of the Court, a privileged member of society.⁶³

⁶² (1995) 3 SCC 619.

⁶³ Standards of Professional Conduct and Etiquette to be Observed by Advocates, Standards of Professional Conduct and Etiquette (Made by the Bar Council of India under s. 49(1)(c) of the Advocates Act, 1961), available at: http://34.93.66.95/sites/default/files/2024-04/courtrulefile_x09d4f6e.pdf (Last visited on September 25, 2025).

B. Professional Ethics for LADCs

For LADCs, adherence to professional ethics is significant. There are two reasons that have been attributed to it.⁶⁴

Firstly, LADCs are entrusted with the responsibility of representing individuals from the weaker and marginalized sections of society. Justice stands defeated if such cases are not handled with the utmost sensitivity and caution. Strict adherence to ethical standards must be both evident and transparent, so as to reinforce the confidence of beneficiaries of legal aid in the justice delivery system.⁶⁵

Secondly, the LADCs are compensated out of public funds and it is incumbent upon them to ensure that such resources are utilised responsibly. They must exercise prudence and restraint so that no unnecessary expenditure is incurred, thereby upholding accountability in the use of public funds.⁶⁶

Along with deference of high level to beneficiaries, the advocates are also expected to practice utmost respect for the bench as well. As belonging to a group, every lawyer has a responsibility to follow the ethos of that group and to behave in such a way that the image and reputation of the group is not sullied in any way. With respect to the conduct of a lawyer towards the court or a presiding officer, the misdemeanour is always looked down upon.

Conflict of Interest	- No personnel shall act in any matter in which he/she has a direct or indirect personal or financial interest.
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⁶⁴ National Legal Services Authority, *Module For Training Of Legal Services Lawyers Part-*, Session IV - Professional Ethics For Lawyers, p.no. 109.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

Confidentiality	- No personnel shall wilfully disclose or use, whether or not for the purpose of pecuniary gain, any information that he/she obtained, received or acquired during the fulfilment of his/her official duties and which is not available to members of the general public. - Section 126-129 of the IEA which corresponds to Sections 132-134 of the BSA, protects the Professional communications between the legal advisers, advocates, barristers, attorneys and their clients, interpreters, clerks or servants of barristers. These sections prevent the legal advisers from disclosing any communication that was made during the course of their advocate-client relationship, with a few exceptions.
Use of Office for Private Gain	- No personnel within the office of Legal Aid Defense Counsel shall make use of his/her office or employment for the purpose of promoting or advertising any outside activity.
Outside Activities	- No personnel within the office of Legal Aid Defense Counsel shall engage in any outside activity or act as an independent practitioner. - Legal Aid Defense Counsel shall devote his/her full time to his/her duties for the office of Legal Aid Defense Counsel and shall not engage in private practice of law during the

	term of employment.
Gifts and Favors	- The Legal Aid Defense Counsel shall not solicit, agree to accept or accept, whether directly or indirectly, any gift, favour, service, or other thing of value under circumstances from which it might be reasonably inferred that such gift, service, or other thing of value was given or offered for the purpose of influencing him/her in, or rewarding him/her for, the discharge of his/her official duties.
Public Trust and Professional Conduct	- Every Personnel of the office of Legal Aid Defense Counsel shall strive to preserve the public's confidence in the office's fair and impartial execution of its duties and responsibilities. - Legal Aid Defense Counsel shall also follow the code of ethics prescribed by Bar Council of India for lawyers.

i. Statutory Provisions for Professional Ethics of LADCs

There is a regulatory framework which has to be followed by the LADCs. The Bar Council of India, established under the Advocates Act, 1961, is the regulating authority for the legal profession in India. The disciplinary jurisdiction of the Bar Councils is over all issues of professional misconduct, and advocates are expected to be careful about their own conduct both inside and outside the courtroom in order to uphold their reputation in this noble profession.

For the LADCs, the Standards of Professional Conduct and Etiquette to be observed by advocates, made by the Bar Council of India under Section 49(1)(c) of the Advocates Act, 1961, along with the *Code of Ethics* laid down in the LADC Scheme, 2022⁶⁷ serves as the guiding principles to be followed for understanding the legal ethics and the purview of their conduct.

The LADCs, shall not refuse to represent any client on any ground other than mentioned in the BCI rules.⁶⁸ Rule 46 of the BCI rules suggests that an advocate in the practice of profession shall bear in mind that anyone genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it fully, free assistance to the indigent is the highest obligation of the advocate towards the society.

Standards of Professional Conduct and Etiquette to be observed by LADCs⁶⁹:

- LADCs must conduct themselves with dignity, self-respect, and in a manner befitting their status as officers of the Court.
- They must uphold the interests of clients fearlessly, but always within fair and honourable means.
- LADCs should not influence judicial decisions by improper or illegal means and must avoid private communications with judges regarding pending cases.

⁶⁷ National Legal Services Authority, *Legal Aid Defense Counsel Scheme 2022*, P.no. 12 available at: <https://cdnbbsr.s3waas.gov.in/s3ec04643de7cf7ba769c7466ccbc4adfd/uploads/2023/12/2023122748.pdf> (last visited on September 25, 2025).

⁶⁸ Bar Council of India, *Rules on an Advocate's Duty Towards the Court*, available at: <https://www.barcouncilofindia.org/info/rules-on-an-advocates-duty-towards-the-court> (last visited on September 25, 2025).

⁶⁹ Bar Council of India, “*Standards of Professional Conduct and Etiquette to be Observed by Advocates*”, available at: <https://www.barcouncilofindia.org/info/bci-rules> (last visited on September 25, 2025).

- LADCs are bound to accept briefs, unless exceptional circumstances justify refusal.
- Withdrawal from a case should not occur without sufficient cause and proper notice; unearned fees must be refunded.
- LADCs must avoid conflicts of interest, including acting in matters where they have a pecuniary interest or where they may become witnesses.
- Where monies are received from or on behalf of a client, the LADCs must handle the same with transparency. Proper accounts must be maintained, and balances settled or refunded.
- Advocates must provide free legal assistance within their means to indigent or oppressed persons, recognizing it as one of their highest obligations.

ii. Landmark Judgements on Professional Ethics

The Supreme Court of India has taken a very strong stand against the misconduct. In the case of *Mahipal Singh Rana v. State of Uttar Pradesh*,⁷⁰ in which an advocate, who practiced in Etah District Court, attempted to intimidate and threaten the Civil Judge, Senior Division at Etah. He abused the judge inside the courtroom by using filthy words for not passing an order in his favour. On another occasion, he behaved badly with the judge for refusing to hear his case despite his case being adjourned to a later time. The Senior Division Civil Judge, Etah referred the matter to the concerned High Court through the learned District Judge, Etah alleging that the advocate's actions amounted to Criminal Contempt. The appellant was held

⁷⁰ (2016) 8 SCC 335.

guilty of criminal contempt of court by the High Court for intimidating and threatening a Civil Judge and was sentenced to a simple imprisonment of two months along with a fine of Rs. 2,000 and in case of default of payment of the said fine, the appellant would serve additional imprisonment of 2 weeks.⁷¹ The conviction was challenged before the Supreme Court, wherein the conviction was upheld and the court made the following observation:

“Conviction of the appellant is justified and is upheld; Sentence of imprisonment awarded to the appellant is set aside in view of his advanced age but sentence of fine and default sentence are upheld. Further direction that the appellant shall not be permitted to appear in courts in District Etah until he purges himself of contempt is also upheld; Under Section 24A of the Advocates Act, the enrollment of the appellant will stand suspended for two years from the date of this order; As a disciplinary measure for proved misconduct, the licence of the appellant will remain suspended for further five years.”

In *A.S. Mohammed Rafi v. State of Tamil Nadu*⁷², the Supreme Court held that professional ethics requires that a lawyer cannot refuse a brief, provided that the client is willing to pay his fee and has not been engaged otherwise, any action of the bar association, passing a resolution that none of its members will represent or appear for the client is against all norms of the constitution, the statute and the professional ethics. The court further held that every

⁷¹ *Ibid.*

⁷² (2011) 1 SCC 688.

person, irrespective of the fact that he is a policeman, suspected terrorist, rapist, mass murderer etc. has the right to be defended in a court of law.

Further, in *K. Vijaya Lakshmi v. State of Andhra Pradesh*,⁷³ the Supreme Court held that all the accused have the right to be defended lawfully, and it is the duty of the advocate to represent them, in accordance with law. The court was of the opinion that taking any contrary view in the facts of the present case will result in making the appellant suffer for the role of the husband who is discharging his duties as an advocate in furtherance of the fundamental rights of the accused.

To sum up, the phrase “*never refuse a client*” is an ethical statement. The principle is the very essence of the legal system committed to “*equal justice for all*”.

4. Advocacy Skills

A. Drafting

Drafting provides a structure to criminal defence advocacy. It is to be seen as far more than a procedural formality. The erstwhile Code of Criminal Procedure provides for written arguments in criminal trials stating that “*Any party to a proceeding may, as soon as may be after the close of his evidence, address concise oral arguments, and may, before he concludes the oral arguments, if any, submit a memorandum to the Court setting forth concisely and under distinct headings, the arguments in support of his case and every such memorandum shall form part of the record.*”⁷⁴ This written record becomes the most reliable mechanism to preserve legal issues, objections, and case law for appellate review, where oral arguments alone often fail to capture nuanced points.

⁷³ (2013) 5 SCC 489.

⁷⁴ The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), s. 314.

The importance of good drafting is not just limited to appellate preservation but also extends to liberty and often leads to life changing ramifications. For defence lawyers, that can be bail that involves accurate factual narration, antecedents, parity, delay, and legal standards within a written bail brief assist courts in making rights-protective, reasoned decisions. It has been held that sentencing and mitigation are drafting-drive. Effective mitigation requires structured written submissions on personal history, vulnerabilities, prospects of reform, and social context, work that may not be carried out without careful drafting.⁷⁵ Additionally, empirical studies undertaken to examine sentencing in trial courts have demonstrated systemic deficits in individualized sentencing and mitigation inquiry. Defence led mitigation investigation and written sentencing memos can correct this, producing reasoned and proportionate outcomes (including avoidance of the death penalty or securing alternatives).⁷⁶

Some of the application that may be drafted by an LADCs in the course of a trial have been provided :

Trial Court Proceedings⁷⁷

Miscellaneous Applications

Applications under Section 230 BNSS (207 CrPC; Document Supply)

Section 230 of the BNSS mandates that the accused person be supplied with a copy of the police report and other documents free of cost. This stage of a criminal trial is crucial as it allows the accused to access the documents on the basis of which they have been arrested.

⁷⁵ (1976) 4 SCC 190.

⁷⁶ Law Commission of India, Report No. 245, 2014; Project 39A, Death Penalty India Report, Vol. 1 (2016)

⁷⁷ National Legal Services Authority, *Module For Training Of Legal Services Lawyers Part-I* , Session V And Vi, Topic No 26 (NALSA, 2015) available at:

<https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/202504091687950007.pdf> (last visited on September 25, 2025)

Scrutiny of the charge sheet, complaint, and accompanying materials requires meticulous attention and forms the basis for future reliefs such as seeking bail or even for acquittal of the accused person. The application under Section 230 of the BNSS must mention all the statements of witnesses and documents relied upon and received by the accused.

Purpose:

- *Seeking copies of documents filed with the charge sheet.*

Key Drafting Requirements:

- *Specify all statements of witnesses and documents relied upon and received by the accused.*
- *Separately indicate statements and documents relied upon by prosecution but not received.*
- *Highlight statements and documents received but illegible.*
- *Address seizure memos and accompanying documents not supplied.*
- *Examine electronic records (CDs, computer printouts) for completeness.*
- *Conclude with a request for the prosecution's statement that no further documents will be relied upon.*

Exemption Applications under Sections 228/355 BNSS

Applications for exemption from personal appearance of an accused can be moved before a court of a Magistrate under Section 228 BNSS. Where the accused person is unable to attend the proceedings, and having adequate reasons for the same, the magistrate may dispense with the personal attendance of the accused and allow them to be represented by their advocate. Under Section 355 BNSS, if the magistrate or judge is satisfied that the personal attendance of the accused is not necessary in the interest of justice, then they may dispense with the personal attendance of the accused.

Key Drafting Requirements:

- *Clear statement of reasons for non-appearance.*
- *Supporting documents have been provided where appropriate.*
- *Demonstrate the applicant's bona fides (number of previous appearances, case stage).*
- *For the evidence stage: Include undertakings regarding identity, no prejudice claims, and consent to proceedings in the absence.*
- *Specify that counsel holding a valid power of attorney will appear.*
- *For permanent exemptions: Provide detailed reasons and counsel undertakings.*

Superdari Applications (Section 497 & Section 503 of BNSS)

A 'Superdari Application' is an application that seeks the temporary release of property, such as a vehicle or document, that the police have seized during an investigation or case.

Key Drafting Requirements:

- *Establish a connection between the applicant and the property*
- *Provide documentary evidence substantiating the claim.*
- *In the case of motor vehicles: Attach the registration certificate and ownership documents.*

Plea Bargaining Applications (Section 289 and Section 290 of BNSS)

Plea Bargaining Application can be moved under Section 290 of the BNSS. For this provision to be applicable, the offence must not be punishable by death, imprisonment for life, or imprisonment for a term exceeding seven years.

Eligibility Conditions:

- *The offence must not be punishable by death, life imprisonment, or over seven years imprisonment.*
- *The offence should not affect the socio-economic condition of the country or has*

been committed against a woman or a child.

Mandatory Components:

- *Brief case description including the relevant offence.*
- *Accompanying affidavit stating:*
 - *Voluntary nature of the application.*
 - *No previous conviction for the same offence.*
 - *Understanding of punishment provisions.*

Discharge Application (Section 250 of the BNSS and Section 262 of the BNSS)

A discharge application for a sessions trial can be filed by the accused under Section 250 of the BNSS within sixty days from the date of commitment of the case as provided under Section 232 of the BNSS. After perusal and consideration of the record of the case and related documents, the judge finds that there is not sufficient ground for proceedings against the accused, the accused is discharged with reasons recorded for such discharge.

For trial under warrant cases, instituted on a police report, a discharge application can be preferred under Section 262 of the BNSS within sixty days from the date of supply of copies of documents under Section 230 of the BNSS. After consideration of the police report and other documents sent under Section 193 of the BNSS and examination, if the magistrate finds

the charge against the accused to be groundless, the accused is discharged, with reasons recorded for such discharge.

A discharge application ideally comprises:

- *brief facts of the case,*
- *factual and legal grounds for discharge,*
- *prayer along with the name of the advocate as undersigned and*
- *verification by the accused.*

Bail and Remand Applications

The Bharatiya Nagarik Suraksha Sanhita, 2023 provides a comprehensive framework for securing bail at different stages of criminal proceedings.

Types of Applications:

a) Opposition to Remand with Bail Prayer:

- *Challenge remand grounds.*
- *Assert no case against the accused.*
- *Highlight completion of recoveries.*

- *Emphasize a clean criminal record.*
- *Express willingness to comply with conditions.*

b) Regular Bail (Section 480 of the BNSS):

- *Before a Magistrate for eligible offences.*
- *Clear statement of FIR allegations.*
- *Specific grounds for bail.*

c) Bail for Serious Offences (Section 483 of the BNSS):

- *Sessions Court first, then High Court.*
- *Attach the challenged order and FIR copy.*
- *Demonstrate why the order should be set aside.*
- *Include the accused's background and social roots.*
- *Provide an undertaking against evidence tampering.*

d) Anticipatory Bail (Section 482 of the BNSS):

- *Sessions Court and/or High Court jurisdiction only.*
- *Specific styling is required.*

- *Include the accusation's nature, applicant's antecedents, and imprisonment history.*
- *Provide undertakings regarding justice and compliance with conditions.*

Note: It is advised to practice absolute disclosure regarding previous similar applications and court orders.

Legal Interview Application

An accused when produced from custody (police or judicial) is entitled to legal representation in court. Very often, the accused has critical information which he needs to pass over to his lawyer and therefore, the presence of a lawyer at this stage in the Court is of critical importance. Additionally, a lawyer must move an application for a legal interview within the confines of the Court room. The application must set out the reasons for such an interview.

Purpose: Secure legal representation access for custody prisoners.

Requirements:

- *State reasons for interview necessity.*
- *File within courtroom confines.*

Jail Manual Compliance Applications

An undertrial prisoner is entitled to receive basic amenities such as food, water, medicines and clothing at the jail. These are granted to him as per provisions of the Constitution of India and the various jail manuals.⁷⁸ An application for compliance of provisions of the jail manual may be filed in cases where there is a violation of rights of the prisoner given by the jail manual.

Basis: Constitutional rights and jail manual provisions.

Scope: Basic amenities (food, water, medicine, clothing).

When to file: Rights violations by jail authorities.

Appeals and Revisions

Section 422 of the Bharatiya Nagarik Suraksha Sanhita, 2023 outlines the process for hearing appeals to the Court of Session. An Additional Sessions Judge or Chief Judicial Magistrate shall hear only those appeals assigned to them by the Sessions Judge or directed by the High Court.

⁷⁸ Delhi Jail Manual, (Capital Law House, Delhi, 2014), *available at* https://tiharprisons.delhi.gov.in/sites/default/files/generic_multiple_files/delhi_jail_manual.pdf (last visited on 25 September, 2025); Maharashtra Prison Manual, 1979, *available at* <https://cdnbbsr.s3waas.gov.in/s32c6ae45a3e88aee548c0714fad7f8269/uploads/2025/04/20250427235314538.pdf> (last visited on 25 September, 2025).

Appeals to Sessions Court from Magistrate Orders (Sections 422 & 423 of the BNSS) ⁷⁹

- Every appeal shall be made in the form of a petition in writing
- Required Annexures: Original conviction and sentence order.
- Grounds Structure:
 - Non-application of mind to facts.
 - Improper evidence appreciation.
 - Legal infirmities in order or proceedings.
 - One ground per paragraph for clarity.

(If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall forward the Petition and copies to the appropriate Appellate Court: Section 424, BNSS)

Sentence Suspension: Combine with a suspension application demonstrating (Section 430 of the BNSS)

- *Prima facie* case merit.
- Previous bail status during trial.

⁷⁹ National Legal Services Authority, *Module For Training Of Legal Services Lawyers Part-I* , Session V And VI, Topic No 26.

- Good antecedents.⁸⁰

Revision Petitions (Section 438 and 442 of the BNSS)

- Scope: Challenge the correctness, legality or propriety of orders.
- Limitations: Cannot challenge interlocutory orders.

B. Client-Counseling

Client counseling by lawyers, can be defined broadly as the general extent of consultancy that lawyers can offer clients which “may be in several settings (law firms, community bulletin boards, courtrooms) and may entail several types of functions (planning, advice, legal recourse)”.⁸¹

Client Counselling encompasses three major themes:⁸²

- Assisting clients to comply with the law and take appropriate advantage of its opportunities;
- Doing no more harm to third parties than reasonably required to serve legitimate client interests.
- Dealing with a client as one would with a good friend.

⁸⁰ *Saudan Singh v. State of Uttar Pradesh*, (2023) 17 SCC 446.

⁸¹ Robert S. Redmount, *An Inquiry Into Legal Counseling*, available at: https://www.arunachaluniversity.ac.in/admin/uploads/online_education/An_enquiry_into_a_legal_counselling5.pdf (Last visited on September 25, 2025).

⁸² Thomas D. Morgan, *Thinking About Lawyers as Counselors*, 42 (Fla. L. Rev. 439 (1990)), available at: <https://scholarship.law.ufl.edu/flr/vol42/iss3/2> (Last visited on September 25, 2025).

The importance of continuous client engagements have been held to be of utmost importance. In *Mohd. Hussain @ Julfikar Ali v. State of Delhi*,⁸³ the Supreme Court has held that denial of meaningful legal representation vitiates trial. The Court observed that:

“17...The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result, the accused charged with a serious offence must not be stripped of his valuable right of a fair and impartial trial. To do that, would be negation of the concept of due process of law, regardless of the merits of the appeal.”

Therefore, effective and continuous client engagement, especially for the weaker sections of the society, is indispensable to a fair trial.

With respect to LADCs, effective client counseling assumes utmost importance. The beneficiaries of free legal services, as mentioned under Section 12 of the Legal Services Authorities Act, 1987, belong to the weaker sections of the society who might not be well versed with the law and justice delivery system. This combined with their hesitation in navigating the state's mechanism which may appear intimidating and inaccessible to them, often prevents beneficiaries from sharing complete information regarding their case to their lawyers. Therefore, lawyers dealing with beneficiaries of legal aid must understand and acknowledge the beneficiaries' circumstances, while demonstrating strong communication skills. Client counseling is how the representation is actually made available in practice.

⁸³ (2012) 2 SCC 584.

Furthermore, the obligations of the LADCs as a member of the bar, as per the Bar Council of India, call for them to uphold dignity, confidentiality, and independent judgement.⁸⁴

Some of the qualities for a successful counselling to a legal aid beneficiary are listed as under:⁸⁵

Empathy	Understand the beneficiary's problem from their perspective, recognizing its social, familial, and emotional dimensions.
Listening Skills	Carefully listen to the beneficiary's full story without interruption, looking for key information and showing respectful body language.
Patience	Be patient with beneficiaries who may be slow, verbose, or talk in a roundabout way, as they may be unaccustomed to sharing their problems.
Compassion & Tolerance	Maintain a calm and understanding demeanor, as this builds trust and encourages full disclosure of all relevant details.
Questioning Skills	Frame neutral, open-ended questions that reflect genuine interest

⁸⁴ Bar Council of India, *BCI Rules*, available at: <https://www.barcouncilofindia.org/info/bci-rules> (last visited on September 25, 2025).

⁸⁵National Legal Services Authority, *Module For Training of Legal Services Lawyers Part-I*, Topic No 15 (NALSA, 2015), available at: <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/202504091687950007.pdf> (last visited on September 25, 2025)

	and encourage the beneficiary to share all information without judgment.
Confidentiality	Uphold absolute confidentiality regarding all information shared by the beneficiary, including sensitive or incriminating details.
Professionalism	Observe a professional and respectful relationship with the beneficiary, and avoid personal entanglements or exploiting the power imbalance.
Guidance	Tactfully guide beneficiaries toward the right legal decisions, respecting their autonomy while pointing out fallacies in their reasoning.
Sensitivity	Be especially sensitive to the needs of marginalised groups like women, children, the elderly, and members of SC/ST communities, and provide tailored solutions.
Integrity	Maintain the highest standards of integrity.

The Department Related Parliamentary Standing Committee on Personal, Public Grievances, Law and Justice, in its 116th Report observed that *“Majority of Indians are eligible to receive legal aid, but the number of people actually receiving legal aid is a miniscule percentage of those entitled.”*⁸⁶

⁸⁶ National Legal Services Authority, “Legal Aid Defense Counsel Scheme 2022,” p.no. 2.

For the success of the legal aid mechanism, awareness is the key.⁸⁷ There still exists a lacuna in public awareness of the scheme, and specifically, within communities which contain the most number of persons eligible for availing the benefits of the scheme. Many people in the rural areas or even the literate ones are not aware of their rights and entitlements.⁸⁸ Therefore, the LADCs, as officers within the legal aid framework, also have a role in publicising the LADC Scheme and informing beneficiaries about how they can avail the legal services.

Suggestions for spreading awareness of LADC scheme to beneficiaries:

- Liaising with Legal Aid Clinics in each district and surrounding educational institutions to plan outreach programs to ensure that the beneficiaries are made aware of the scheme.
- LADCs who are deputed to undertake prison or jail visits must periodically share information and resources to inmates and pro-actively identify those who are covered under the scheme.
- Information about the scheme must be publicized in regional languages in prisons, courts, police stations and other areas frequented by accused persons who might require legal defense.
- Information about the scheme in the form of posters, pamphlets and flyers can also include pictorial representations to aid persons who are sub-literate or illiterate.

⁸⁷ *Suhas Chakma v. Union of India*, (2024) SCC OnLine SC 3031.

⁸⁸ *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401.

- LADCs must identify communities and weaker sections of society, especially in rural areas who are periodically under scrutiny by law enforcement.

C. Cross-Examination in Legal Practice

Cross-examination represents the interrogation of witnesses by the opposing party's counsel⁸⁹ with the fundamental principle underlying resting on the belief that the power and opportunity to cross-examine witnesses constitutes one of the principal tests devised by law for truth ascertainment, proving to be a most efficacious method.⁹⁰

In legal proceedings, cross-examination serves two primary functions.⁹¹

- First, bringing out desirable case facts that modify examination-in-chief testimony or establish the cross-examiner's own case.
- Second, impeaching witness credibility. This primarily involves revealing facts that diminish or impeach witness trustworthiness, as such facts generally remain undisclosed during examination-in-chief, making cross-examiner interrogation essential for bringing them out.

The law recognizes cross-examination as essential for truth discovery that testimony from witnesses denied cross-examination opportunities becomes inadmissible, though actual exercise of the cross-examination right is not required for admissibility.⁹² When cross-examination opportunities are offered but not utilized, the deposition remains perfectly

⁸⁹ John Henry Wigmore, *A Treatise on the Anglo-American System of Evidence in Trials at Common Law*, p.no. 28 (3rd edn. Little Brown and Company, 1940).

⁹⁰ Thomas Starkie, *A Practical Treatise of the Law of Evidence: And Digest of Proofs, in Civil and Criminal Proceedings* (J. & W. T. Clarke, 1824).

⁹¹ Sudipto Sarkar & Sidharth Sethi, *Hints on Modern Advocacy, Professional Ethics and The Art of Cross-Examination* (5 edn. Indian Law House, 2002).

⁹² *Bahram Tikaram Marathe v. E.*, 1945 N 1.

admissible, and the omission to cross-examine indicates that the witness testimony's truth is not disputed.

Cross-examination offers unique strategic advantages beyond mere fact-gathering, particularly when witnesses called by one party can provide important information supporting the opposing party's case. While the calling party naturally avoids questioning witnesses about matters favoring opponents, opposing counsel has the duty to elicit these facts through cross-examination rather than calling additional witnesses.

Under Section 143 of BSA, the order of examination of witnesses is provided. Although the Criminal Procedural Laws do not specify what would constitute a cross-examination, it provides the nature of questions that can be asked, while in examination-in-chief, the line of questioning has to be restricted to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.⁹³

The following tips, in the absence of a clear codification, may prove helpful for preparation of a case for the purpose of conducting cross -examination:⁹⁴

- | |
|--|
| <ul style="list-style-type: none">- Study the charge-sheet/complaint carefully and understand the nature of allegations made and the case of the prosecution. |
| <ul style="list-style-type: none">- Analyse the First Information Report (F.I.R), statements of witnesses, the delay if any, in making them, the role assigned to each accused, the medical report and the |

⁹³ Bhartiya Sakshya Adhiniyam, 2023, (Act 47 of 2023), s. 143.

⁹⁴ National Legal Services Authority “*Module For Training Of Legal Services Lawyers Part-I (2015)*”, Session V And VI, Topic No 27.

post-mortem report, recoveries, if any, made from an accused, study the time and place of occurrence, chemical examiner's report and all other documents that are relied upon by the prosecution.
- Where the case of the prosecution relates to an occurrence having taken place at a particular spot, lawyers must inspect the scene of crime and make notes on points of interest of the scene of crime, after analysis of site-plan prepared by Police for the said occurrence. - He is also required to examine the location of a particular accused vis-à-vis the victim or the deceased or location of another eye witness.
- Find out the witnesses who have been summoned for a particular day of hearing, well in advance.
- Separate the statements made under Section 180 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 [examination of witness by police] or any previous statements made by the witnesses along with the document/documents that they seek to prove.
- Understand how the witness/witnesses fit into the broader prosecution case.
- Have extensive meetings with your beneficiary or the representative of your beneficiary to understand the factual matrix of his defence. Also, if the witness is known to your client, your endeavour should be to understand the witness's past, the reason for deposing against your client and to ascertain whether there is any evidence to undermine his testimony and credibility, including past or present cases against him or any observation

made by a Court against him. Question of character [as per Section 49 of the Bharatiya Sakshya Adhiniyam (BSA), 2023] can be asked only when character is in question.
- Develop a cross-examination plan to establish key defense facts. Anticipate witness testimony from their Section 180 BNSS (or equivalent prior CrPC Section 161) statements and prepare targeted questions.
- During examination-in-chief, object to inadmissible evidence (e.g., hearsay, uncertified electronic records, or improperly proved documents). Insist on primary evidence unless secondary evidence is justified. Note omissions and contradictions between the witness's deposition and prior statements.
- Question forensic, handwriting, DNA, or cyber experts on accuracy, scientific reliability, chain of custody, qualifications, impartiality, and methodology. Highlight that opinions are advisory, not conclusive.
- Keep cross-examination concise, focused, and non-excessive. Present only defense-strengthening documents, ensuring they are marked/exhibited to prevent later rejection.
- Ensure that all the depositions made before the court are accurately recorded in court and in case there is any omission, that must be objected to and reported immediately.
- Maintain detailed notes on admissions, contradictions, and key points for final arguments.

Excerpts from Judgements regarding cross examination

➤ *Kehar Singh v. State (Delhi Administration)*⁹⁵

“37....This provision (Section 145 of IEA) permits that a witness may be cross- examined as to the previous statement made by him in writing or reduced to writing relevant to the matters in question without such writing being shown to him or being proved. But if it is intended to contradict him by the writing his attention must be drawn to these parts of the writing; and it can be proved. A witness could be cross examined on his previous statement but if a contradiction is sought to be proved then that portion of the previous statement must be shown to him and proved in due course.

“38. Sec. 155 of the Evidence Act provides for the use of a previous statement to impeach the credit of a witness.

“39. This section provides that the credit of a witness may be impeached in the following ways by an adverse party with the consent of the Court by the party who calls him and the third sub-clause refers to a former statement which is inconsistent with the statement made by the witness in evidence in the case and it is permissible that the witness be contradicted about that statement. The third provision is Sec. 157 which provides for the use of a previous statement for corroboration.....A perusal of these three Sections clearly indicates that there are two purposes for which a previous statement can be used. One is for cross examination and contradiction and the other is for corroboration. The first purpose is to discredit the witness by putting to him the earlier statement and contradicting him on that

⁹⁵ (1988) 3 SCC 609.

basis. So far as corroboration is concerned it could not be disputed that it is none of the purposes of the defence to corroborate the evidence on the basis of the previous statement. Sec. 145 therefore is the main section under which relief was sought by the accused. The use for which the previous statement was asked for was to contradict him if necessary so that that contradiction be put to the witness and that part of the statement can be proved.”

40.To my mind, there could be no other purpose for which the appellants could use the previous statements of those witnesses. Contradiction could be used either to impeach his credit or discredit him or to pull down or bring down the reliability of the witness. These purposes for which the previous statements are required could not be said to be purposes which were not against the witness.”

Analysis:

The Supreme Court while upholding the conviction of Kehar Singh for conspiracy and murder, emphasised how cross-examination exposed inconsistencies in the witness statements (e.g. omission in a witness’s initial statement) but ultimately the prosecution's case was reinforced through circumstantial evidence like; gold ornaments.

➤ ***Anita Sharma v. New India Assurance Co. Ltd.***⁹⁶

“19.The failure of the respondents to cross examine the solitary eye witness or confront him with their version, despite adequate opportunity, must lead to an inference of tacit admission on their part. They did not even suggest the witness that he was siding with the claimants. The High Court has failed to appreciate the legal effect of this absence of

⁹⁶ (2021) 1 SCC 171.

cross-examination of a crucial witness.”

“20. The importance of cross-examination has been elucidated on several occasions by this Court, including by a Constitution Bench in Kartar Singh v. State of Punjab, which laid down as follows:

“278. Section 137 of the Evidence Act defines what cross-examination means and Sections 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:

(1) to destroy or weaken the evidentiary value of the witness of his adversary;

(2) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party; (3) to show that the witness is unworthy of belief by impeaching the credit of the said witness;

and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character.”

22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be

mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with nonexamination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in Dulcina Fernandes v. Joaquim Xavier Cruz⁴ wherein this Court reiterated that:

“7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pick up van as set (2013) 10 SCC 646.

Analysis

The Supreme Court reiterated that in case of failure to utilize opportunity to cross-examine a material witness may amount to admission of the facts deposed by such witness, and that may lead to adverse inference.

➤ *State of Punjab v. Gurmit Singh*⁹⁷

“22.The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The Court, therefore, should not sit as a silent spectator while the victim of crime is being

⁹⁷ (1996) 2 SCC 384.

cross-examined by the defence. It must effectively control the recording of evidence in the Court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings, what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as "discrepancies and contradictions" in her evidence."

Analysis:

The Supreme Court set a precedent for handling the cross-examination of rape victims, emphasising that aggressive or irrelevant questions can intimidate the vulnerable witness and obstruct justice. The Court held that minor discrepancies in the testimony of a minor, especially under traumatic circumstances should not lead to discrediting her testimony unless the case is struck at its core.

[NOTE: With Respect to Cross Examination of Witness under the Indian Evidence Act, 1872 and Bharatiya Sakshya Adhiniyam, 2023 a detailed note has been provided under Part IV on page number 317-319 of this Module. The Note can be referred to for supplementing the existing understanding on the topic of cross-examination in addition to the information provided in this part.]

D. Arguments

Arguments are the advocate's chance to examine evidence, infer, challenge credibility, defend conduct, show inconsistencies in testimony, emphasize matters of common knowledge, and make analogies, all tools of analysis that are not available at opening statements. Arguments inform judges what evidence signifies instead of what evidence exists.⁹⁸

When arguing before the court, the arguments of a lawyer must be clear and precise and he/she shouldn't be confused.⁹⁹ Sound arguments are marked by how well they stitch together a unifying theme that starts in opening, winds through direct and cross-examination, and ties up the case in the final argument, exercising the advocate's privilege to make inferences, exhortations, and calls to action not allowed in the opening statement.¹⁰⁰

Successful arguments utilise forensic strategies such as foreshadowing, utilize theme-based key words and phrases, and deploy principles of primacy and recency to gain maximum persuasive effect, staying within the advocate's linguistic comfort zone and refraining from exaggerated guarantees they cannot keep. While there is no set of rules on what entails good arguments, certain tips may be able to guide the LADCs better in formulating their arguments.

⁹⁸ Dr. B. Malik, "The Art of persuasion: crafting your opening and closing remarks" in *Art of a Lawyer (Cross Examination, Advocacy, Courtmanship)*, p. no. 442 (Universal Law Publishing Co., New Delhi, 11th edn., 2014).

⁹⁹ Fali S. Nariman, *Before Memory Fades: An Autobiography* (Hay House Publishers, Delhi, 2012).

¹⁰⁰ *Ibid.*

i. For Opening Remarks¹⁰¹

Key Strategy	Explanation
For Defense (Going Second)	- <i>Hear Prosecution's Case First</i>: The defense gets to hear the prosecution's complete evidence description before their own opening statement. - <i>Respond Directly</i>: The defense may refer to the prosecutor's opening in their own response. - <i>Control the Narrative</i>: The defense may choose to incorporate or dispute the prosecution's facts to their advantage.
For Multiple Defendants	- <i>Go First (Primacy)</i>: The defendant who goes first can take advantage of the primacy principle, making a strong initial impression on the bench. - <i>Go Last (Recency)</i>: If a defendant cannot go first, going last allows them to benefit from the recency principle, as the bench will best remember what they heard most recently.

¹⁰¹ Dr B Malik, "The Art of persuasion: crafting your opening and closing remarks" in *Art of a Lawyer (Cross Examination, Advocacy, Courtmanship)*, p.no. 442 (Universal Law Publishing Co., New Delhi, 11th edn., 2014).

ii. Closing Arguments¹⁰²

Content	- Identify human elements that will help build a case to demonstrate beneficiary's innocence or cast a reasonable doubt. - <i>Connect to Opening</i>: Reconnect to narrative built in the opening statement and show how the evidence supports the defense's theory. - Develop and build on narratives that highlight inconsistencies in the prosecution's case, if any. The essence of good advocacy is to know the facts of your case, and then apply the law to those facts.¹⁰³
Closing Strategies	- <i>Emphasise Burden</i>: Stress that the prosecution must prove guilt beyond reasonable doubt. - <i>Know When to Stop</i>: Make your points and sit without over-arguing or building on a false story.
Key Reminders	- Address the prosecution's strongest points to build a case for oneself if you wish to neutralise them. - Emphasise the reasonable doubt standard throughout. - Highlight gaps in the case of prosecution. - Protect your beneficiary's presumption of innocence.

¹⁰² *Ibid.*

¹⁰³ Fali S. Nariman, *Before Memory Fades: An Autobiography* (Hay House Publishers India, 2012).

iii. Some General Guidelines that may be followed in order to argue better:¹⁰⁴

- Read the trial files carefully, keeping in mind the charges framed, facts and circumstances of the case and look for contradictions, omissions and variations in the prosecution's case.
- Remember that every witness produced by the prosecution was required to prove a particular aspect of the prosecution case.
- Review court statements to see if witnesses proved any fact in issue or provided material evidence for the prosecution or if they fell short. Highlight portions where a witness was confronted with their previous statements for final arguments.
- Re-examine documents supposedly proved in evidence to ensure they have passed the litmus test of 'proof'.
- With electronic records, examine all Section 63 of the BSA (erstwhile the certificates under Section 65B of the Indian Evidence Act) testimonies to ensure they satisfy legal requirements and the Supreme Court's decision in Anwar P.V. v. P.K. Basheer¹⁰⁵.
- Read evidence to establish a chronological flow of alleged facts, not necessarily in witness order (e.g., PW 1, PW 2, etc.). Read testimonies of witnesses to the same event together to highlight contradictions. In circumstantial evidence cases, note proved, not proved, and disproved circumstances and determine if a chain of guilt is established beyond doubt.
- For every submission in final arguments, rely on relevant judgments, which are not overruled by the Supreme Court. If any charges were inconclusively proven, refer to

¹⁰⁴ National Legal Services Authority, *Module For Training of Legal Services Lawyers Part-I*, Session V And VI, Topic No 28 (NALSA, 2015) available at: <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/202504091687950007.pdf> (last visited on September 25, 2025).

¹⁰⁵ (2014) 10 SCC 473.

those specific charges. Refer to principles of criminal jurisprudence, like “proof beyond reasonable doubt” and “presumption of innocence.”

- Carefully examine the Section 351 BNSS (Section 313 CrPC) statement in order to determine if the important questions related to circumstances or facts relied on by the prosecution were put to the accused. This will ensure that the accused can present their version of events or be penalised for refusing to answer.
- Be cautious of points like the validity of a sanction order or juvenility, which can be raised for the first time during final arguments.

5. Interaction with Vulnerable Groups

The nature of lawyer-client interactions is a factor in determining the access to justice, especially for the vulnerable populations. Being sensitised and trained is not merely a professional courtesy, but becomes central to fair procedure, witness reliability and ultimately human dignity. The changing legal environment in India acknowledges that special procedures, child-sensitive settings, disabled friendly processes, and protection-sensitive protocols are a precondition to effective justice, as noted in the Witness Protection Scheme, 2018¹⁰⁶ and various judgments pronounced by the Supreme Court and different High Courts.

The Supreme Court, in the case of *Amantullah khan v. The Commissioner of Police, Delhi*,¹⁰⁷ while exercising suo motu powers, addressed the systemic concerns regarding the policing practices affecting the poor and marginalised. It was held that no mechanical entries shall be entered in the ‘History sheets’ against individuals who belong to certain communities like

¹⁰⁶ 2018 INSC 1153.

¹⁰⁷ 2024 INSC 383.

socially, economically and educationally disadvantaged backgrounds, including those belonging to backward communities, SC, and ST. The court further observed that selective maintenance of the record on the basis of caste means continuation of the colonial era prejudices, rendering these communities as invisible victims thus infringing their right as guaranteed by Article 21 of the Constitution.

The observation of the Supreme Court in *Sakshi v. Union of India*¹⁰⁸ approves the use of accommodations like screens, video-link testimony, in-camera trials, and scheduled breaks demonstrates judicial recognition that appropriate procedural modifications enhance rather than compromise the truth-seeking function of courts. Child-friendly and trauma-sensitive practices serve dual purposes i.e. protecting dignity and improving evidence quality.

Chapter VI of the POCSO Act¹⁰⁹ codifies the procedural safeguards for recording the statements of a child with the purpose of minimising the repeated trauma experienced by the victims of child sexual abuse. The Act mandates the prompt recording of statements preferably at a location chosen by the child, through trained officers, and in the presence of trusted persons, thereby ensuring a child friendly process.

Following the Supreme Court's directions in *Smruti Tukaram Badade v. State of Maharashtra*,¹¹⁰ various High Courts have been mandated to establish Vulnerable Witness Deposition Complexes (VWDCs) and adopt comprehensive deposition schemes. In this context, reference can be taken from the Delhi High Court's 2024 Guidelines¹¹¹ that include the best practices, prescribing separate ingress and egress, screening arrangements, support

¹⁰⁸ (2004) 5 SCC 518.

¹⁰⁹ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), Chapter VI.

¹¹⁰ (2022) SCC Online SC 78.

¹¹¹ Delhi High Court, Guidelines for Recording of Evidence of Witnesses in Criminal Matter, *available at*: <https://delhicourts.nic.in/public/Circulars/2024/10/25aa.pdf> (last visited on September 25, 2025).

person access, and scheduled breaks when dealing with vulnerable witnesses in criminal matters.

Article 39A mandates that the State shall ensure that the operation of the legal system promotes justice on a basis of equal opportunity and provides free legal aid, while the Supreme Court has consistently interpreted Article 21's right to life as encompassing speedy trial and competent legal assistance, particularly for those in custody.

The Section 12 of the Legal Services Authorities Act, 1987 enlists the beneficiaries of free legal services including:

- Women and children
- Members of Scheduled Castes and Scheduled Tribes
- Victims of trafficking, mass disaster, ethnic violence, caste atrocity, and natural disasters
- Persons with disabilities and mental illness
- Industrial workers
- Persons in custody (including protective and juvenile homes)
- Individuals below prescribed income thresholds

This framework is supplemented by specialized schemes and initiatives formulated by the National Legal Services Authority¹¹² for addressing the needs of specific vulnerable

¹¹²NALSA, Preventive & Strategic Legal Services Schemes, *available at*: <https://nalsa.gov.in/preventive-strategic-legal-services-schemes/> (last visited on September 25, 2025).

populations. These initiatives provide standard operating procedures and training materials that anchor systematic support through legal services institutions at different levels.

The recent promulgation of Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA) provides for the procedural accommodations for vulnerable witnesses, with codification of electronic processes including e-FIR registration and audio-video recording of statements, which can ultimately reduce trauma and improve participation.¹¹³

The following table provides a comprehensive understanding of the legal frameworks and practice requirements that are in place that may aid in the effective interactions of LADCS with the beneficiaries:

Group	Legal Frameworks and Practice Requirements to aid beneficiaries
Children in Legal Proceedings	- POCSO and JJ Act provisions provide comprehensive protection for child victims and witnesses. POCSO Sections under Chapter VI deal with the procedure that is to be undertaken for recording statement of a child which includes medical examination with Section 37 mandating trials to be conducted in camera while the JJ Act's principles in Sections 3 and 7 demand

¹¹³ Analysis of the Bharatiya Nagarik Suraksha Sanhita, 2023, PRS *available at*: <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023> (last visited on September 25, 2025)

	non-intimidating settings and participatory processes across Juvenile Justice Boards and Children's Courts. - Lawyers must ensure anonymized filings consistent with the strict non-disclosure requirements established in <i>Nipun Saxena v. Union of India</i>¹¹⁴, while actively requesting video-link testimony, screens, and in-camera proceedings as endorsed in <i>Sakshi v. Union of India</i>¹¹⁵
Survivors of Domestic and Sexual Violence	- The Protection of Women from Domestic Violence Act, 2005 provides specific procedural protections including in-camera proceedings under Section 16, specialized service mechanisms through Protection Officers under Section 13, and comprehensive relief measures. - Lawyers must coordinate safety planning while avoiding repeated trauma recounting, utilizing the Act's counseling provisions under Section 14 where appropriate. For sexual offence cases, the convergence of anonymity requirements, testimony accommodations and witness protection creates layered safeguards that legal practitioners must actively invoke and enforce.¹¹⁶

¹¹⁴ (2019) 2 SCC 703.

¹¹⁵ (2004) 5 SCC 518.

¹¹⁶ The Protection of Women From Domestic Violence Act, 2005, *available at*: https://www.indiacode.nic.in/bitstream/123456789/15436/1/protection_of_women_from_domestic_violence_act_%2C_2005.pdf (last visited on September 25, 2025).

SC/ST Communities Facing Atrocities	- The SC/ST (Prevention of Atrocities) Act, 1989 establishes special courts with enhanced procedural duties, immediate FIR requirements, and comprehensive relief and rehabilitation measures. - The Act's protection provisions must be coupled with witness protection applications where intimidation risks exist, creating multi-layered safeguards for vulnerable community members.¹¹⁷ The Supreme Court has also categorically taken cognisance of the discrimination inside prisons vis-a-vis vulnerable groups, especially caste-based discrimination and has cast certain duties to curb such instances . In case of The LADC any incidents of caste-based discrimination or violations of fundamental rights involving their beneficiary in prison, the LADCs must promptly notify the DLSA.¹¹⁸
Persons with Disabilities	- Section 12 of the Rights of Persons with Disabilities Act, 2016 mandates barrier-free court access and procedural accommodations including accessible

¹¹⁷ The Scheduled Castes and the Scheduled Tribe (Prevention of Atrocities) Act, 1989, *available at*: https://www.indiacode.nic.in/bitstream/123456789/15338/1/scheduled_castes_and_the_scheduled_tribes.pdf (last visited on September 25, 2025).

¹¹⁸ *Sukanya Shantha v. Union of India*, 2024 INSC 753.

	formats, interpreters, and assistive measures. Section 125 of the BSA operationalizes these requirements by providing for a separate procedure to be followed through interpreter and special educator provisions, with mandatory videography for testimony involving sign language, writing, or augmentative and alternative communication.¹¹⁹ - Terminologies and language also inspire trust, in order to deal with beneficiaries with greater compassion, the correct terminologies vis-a-vis the disability may help the LADCs interact more effectively with the beneficiaries. For the same, reference can be taken from the 'Handbook Concerning Persons with Disability'¹²⁰ The handbook comprises the correct terminology and nomenclature and the general language usage that restricts the perpetuation of stereotypes.
Persons with Mental Illness	- Section 115 of the Mental Healthcare Act, 2017 establishes presumptions of severe stress in suicide attempts while mandating rights-centric care involving

¹¹⁹ Rights of Persons with Disabilities Act, 2016.

¹²⁰ Supreme Court Of India, Handbook Concerning Persons With Disabilities, 2024 available at: <https://Cdnbbsr.S3waas.Gov.In/S3ec0490f1f4972d133619a60c30f3559e/Uploads/2024/09/2024092873.Pdf> (last visited on September 25, 2025).

	nominated representatives and advance directives.¹²¹ - NALSA's specialized schemes, the NALSA (Legal Services to Persons with Mental Illness and Persons with Intellectual Disabilities) Scheme, 2024 provide detailed SOPs emphasising sensitive legal representation and coordination with treating professionals.¹²² Under the Scheme, the Legal Services Unit - Manonyay (LSUM) comprises panel lawyers, para legal volunteers, and Legal Aid Defense Counsel (LADC), who work together to provide legal services to persons with mental illness and intellectual disabilities. - LADCs under the guidance and supervision of the Secretary, DLSA, shall: - Provide necessary information to the person with mental illness in making decisions on legal interventions.¹²³
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¹²¹ The Mental Healthcare Act, 2017, *available at*: <https://www.indiacode.nic.in/bitstream/123456789/2249/1/A2017-10.pdf> (last visited on September 25, 2025).

¹²² NALSA (Legal Services to Persons with Mental Illness and Persons with Intellectual Disabilities) Scheme, 2024, *available at*: <https://cdnbbsr.s3waas.gov.in/s3f8df2e15374e3dc37766e59ac494f0fd/uploads/2025/04/202504171479987623.pdf> (last visited on September 25, 2025).

¹²³ NALSA (Legal Services to Persons with Mental Illness and Persons with Intellectual Disabilities) Scheme, 2024, *available at*: <https://cdnbbsr.s3waas.gov.in/s3f8df2e15374e3dc37766e59ac494f0fd/uploads/2025/04/202504171479987623.pdf> (Last visited on September 25, 2025).

Undertrials and Prisoners	- <i>Hussainara Khatoon v. State of Bihar</i>¹²⁴ and <i>Sheela Barse v. State of Maharashtra</i>¹²⁵ mandate speedy trial procedures along with the provisions for confidentiality and humane treatment standards. Research has also proved that low uptake and quality concerns in state legal aid brings the importance of early, active engagement by legal aid counsel to the forefront.¹²⁶
Professional Standards and Ethical Framework	- The Bar Council of India rules has formulated rules governing the conduct of advocates with the clients, courts and fellow advocates. These standards comprise dignity in language, confidentiality, and client interaction.¹²⁷

6. Interaction with Media

The digital age has created new professional vulnerabilities that require specific competencies. Lawyers need to adhere to professional obligations to develop competency with emerging technologies, including social media platforms and digital communication ethics that traditional legal education does not address.¹²⁸ The deeper penetration of media

¹²⁴ (1980) 1 SCC 98.

¹²⁵ (1983) 2 SCC 96.

¹²⁶ Jeet Singh Mann, “Plight of Legal Aid Counsels at the District Courts of India” 55 *Economic and Political Weekly* (2020), available at: <https://www.epw.in/engage/article/plight-legal-aid-counsels-district-courts-india> (last visited on September 25, 2025).

¹²⁷ BCI Rules, available at: <https://www.barcouncilofindia.org/info/bci-rules> (last visited on September 25, 2025).

¹²⁸ P. J. Scarola, “Technology competence and professional responsibility in modern legal practice” 45 *Vermont Law Review* 3, 567-592 (2021).

requires improved media literacy skills among lawyers.¹²⁹ This becomes especially important for the lawyers to continually adjust communication techniques depending on audience and setting with abilities not often transmitted in law school.¹³⁰

A nine-judge constitutional bench of the Supreme Court held that the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.¹³¹ Thus, the legal professionals must protect the privacy of the beneficiaries they are dealing with in this digital age. The principle for open justice must give way to considerations of privacy, especially for vulnerable groups. The victims of rape, domestic violence, and victims of other offences need protection of their identities in order to facilitate their coming forward and giving evidence. Privacy protection has two purposes: avoiding public humiliation and obtaining the best available evidence.¹³²

The Bar Council of India Rules address the duties of advocates towards their clients, especially around maintaining confidentiality of their clients.¹³³ It mandates the advocates to maintain confidentiality of all the information of clients as provided under Section 126 of the IEA corresponding to Section 132 of the BSA.

¹²⁹ K Dell, “Media literacy as professional competency in legal education” (Touro Law Review, 35(2), 287-315, 2019).

¹³⁰ R.S. Jacobowitz, “Career consequences of social media missteps: An empirical study of legal professionals” (Legal Ethics Review, 2020) 15(2), 203-229.

¹³¹ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

¹³² Madhavi Garodia Divan, ‘Reporting Judicial Proceedings’ in *Facets of Media Law*, Pg no 651 (Lucknow : Eastern Book Co, 2005).

¹³³ BCI Rules, Rule 7 of Section II, Chapter II, Part VI, available at: <https://www.barcouncilofindia.org/info/rules-on-an-advocates-duty-towards-the-client> (last visited on September 25, 2025).

The growing reach of media across various platforms has intensified public scrutiny of sensitive cases, often resulting in sensationalised coverage that, in some instances, leads to media trials.

The Supreme Court in *Sahara India Real Estate Corp. Ltd. v. SEBI*¹³⁴ and *R. Rajagopal v. State of Tamil Nadu*¹³⁵ observed that media trials prejudices judicial proceedings. In *Prashant Bhushan, In re (Contempt Matter)*,¹³⁶ the Supreme Court observed that releasing statements to the press regarding a sub judice matter, is an act of impropriety and has the effect of interfering with the judicial process and fair decision making. The court further observed that such an act is an attempt to coerce the decision of the Court by the influence of media which cannot be conducive for the fair administration of justice. Therefore, when advocates comment publicly on sub-judice matters, through press conferences, television debates, or social media, they not only violate professional ethics, but also actively undermine the administration of justice.

When a lawyer engages with the media on pending cases, there is a risk of divulging privileged information, and also influencing public opinions. For the rule of law to function properly, lawyers must exercise self-restraint and understand their obligation to the court and towards their clients. This conduct directly contravenes the Contempt of Courts Act, 1971,¹³⁷ and the Bar Council of India Rules, which demand that advocates maintain the dignity of the profession and avoid any action that interferes with judicial proceedings. In order to preserve the integrity of the proceeding, the LADCs should exercise restraint in divulging information and releasing statements to the media, specially in a sub-judice matter.

¹³⁴ (2012) 10 SCC 603.

¹³⁵ (1994) 6 SCC 632.

¹³⁶ (2021) 3 SCC 160.

¹³⁷ The Contempt of Courts Act, 1971 (Act 70 of 1971).

PART III: RIGHTS DURING DIFFERENT STAGES OF CRIMINAL PROCEEDINGS

Understanding Key Provisions of the Indian Penal Code, 1860/Bharatiya Nyaya Sanhita, 2023 ; Code of Criminal Procedure, 1973/Bharatiya Nagarik Suraksha Sanhita, 2023 ; The Indian Evidence Act, 1872/Bharatiya Sakshya Adhiniyam, 2023 along with other Criminal Laws relevant to Defence Practice.

Topics covered in this chapter:

Topic 1: Rights During Different Stages Of Criminal Proceedings

Topic 2. Special Laws.

Learning Objectives:

- Familiarise the LADCs with all the stages of criminal proceedings and the role of LADCs in safeguarding the rights of the beneficiaries at every stage.
- Understand the procedural aspect of FIR registration, bail application, remand etc. under CrPC/BNSS and also understand statutory, constitutional, and international protections available to accused persons and prisoners.
- Sensitise LADCs to issues of dignity, health, and rehabilitation for vulnerable groups and train LADCs in defending cases involving women, children, SC/STs, PwDs, transgender persons, and manual scavengers and ensure LADCs adopt a sensitive, rights-based approach when representing the beneficiaries of legal aid.

Learning Outcomes:

- Application of provisions governing FIR, complaint, arrest, remand and bail and applying constitutional safeguards (Articles 20, 21 and 22) and statutory rights during all the stages of the criminal proceedings
- File and argue for regular, interim, and anticipatory bail with reliance on precedent. Distinguish bail application and procedure for different types of bail. Critically assess judicial discretion and evolving jurisprudence on liberty along with the rights of accused and people in custody.
- Recognition of interSectional vulnerabilities of accused persons and the Application of statutory protections under POCSO, JJ Act, SC/ST Act, POSH, DV Act, RPwD Act, that are available to their beneficiary.
- Interpretation of admissibility and relevancy under BSA, 2023. Engage with expert witnesses and cross-examine effectively and critically assess reliability of forensic, digital, and scientific reports.

Training Methods:

1. Lecture
2. Powerpoint Presentation
3. Snowballing Method
4. Case study analysis
5. Role Play/Moot court exercise

Session Plan:

- I.** Introduction, Ice-breaking and interactive lecture by Resource Person/Facilitator.
- II.** TOPIC 1: Rights of Beneficiaries and Duties of LADCs at Different Stages of Criminal Proceedings:

- Pre-arrest
- Arrest
- Remand
- Bail
- Trial
- Hearing of Sentence
- Death Penalty
- Appeal
- Parole
- Furlough
- Remission

III. TOPIC 3. Special Laws

- Vagancy Laws
- Child Protection Laws: Juvenile Justice Act, 2016;

- Disability Law: Rights of Persons with Disabilities Act, 2016; Mental Healthcare Act, 2017;
- Transgender Persons (Protection of Rights) Act, 2019.
- UAPA, 1967 and NDPS Act, 1985
- Wildlife Protection Act

IV. TOPIC 4: Law of Evidence and Emerging Issues

- Indian Evidence Act, 1872; Bharatiya Sakshya Adhiniyam, 2023; Cyber Laws, Forensic Evidences;
- Understanding ballistic, serological, handwriting, fingerprint, cyber-forensics reports;
- Engaging with expert witnesses and conducting effective cross-examination of witnesses

V. Concluding Remarks and Q/A

NOTE: In the preparation of the training module, in addition to the note and the module given herein, assistance can be taken from resources listed under the Reading List.

Reading List

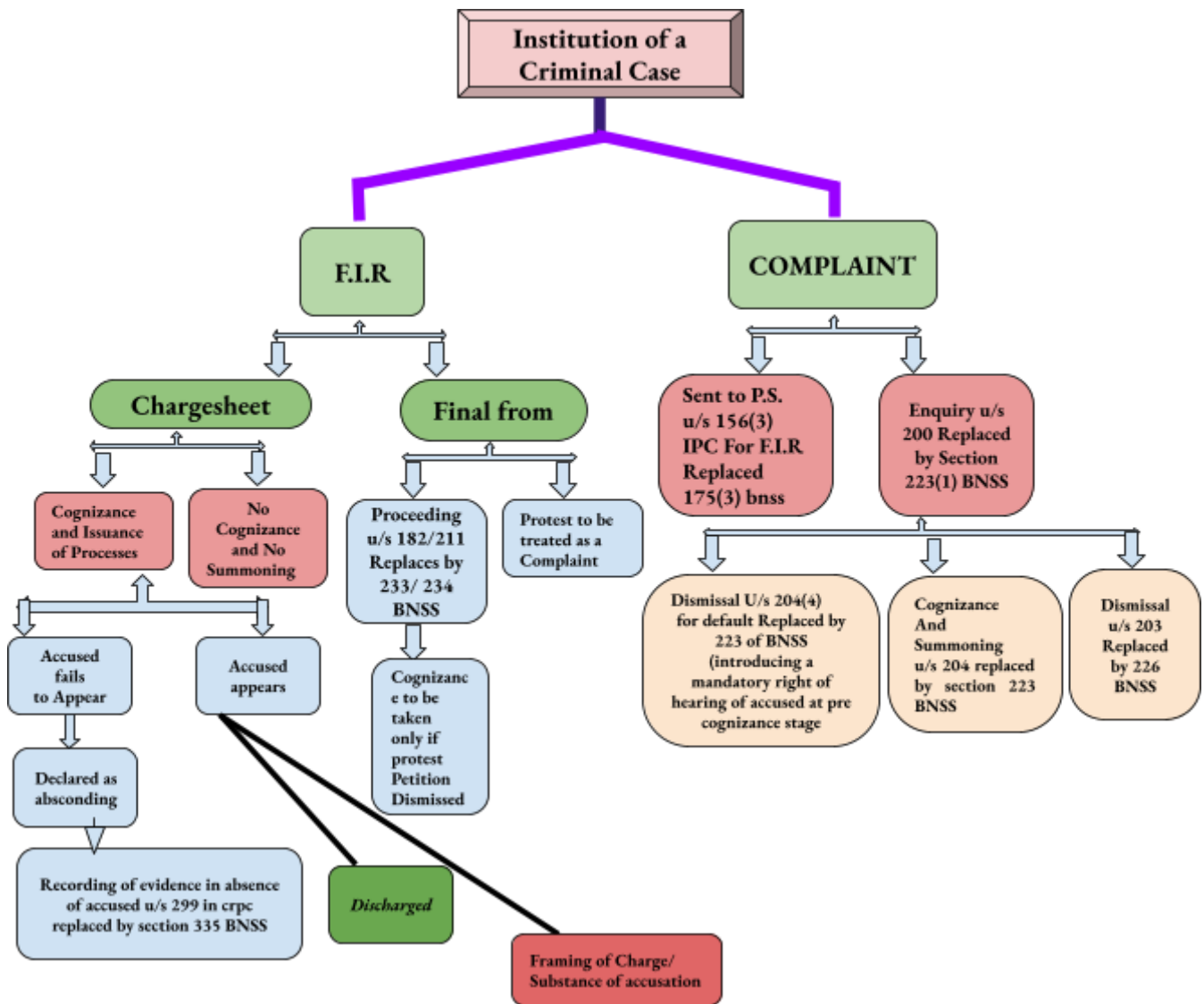
- NALSA's Early Access To Justice at Pre-Arrest, Arrest and Remand Stage
- Special Laws: Training Module For Legal Services Lawyers Part 2 (2016)- Module For Session III, V, VII, VIII, IX Pg. No: 57-74, 107-123 & 151-220;
- Training Module For Legal Services Lawyers And Probation Officers Attached To The Juvenile Justice Boards Under The Juvenile Justice (Care And Protection of Children) Act 2015: Pg. 10-265;
- Training Module For Legal Services Lawyers Part 3 (2018): Pg. 207-218.
- Training Module For Legal Services Lawyers- Module For Session I & II Part 2 (2016)- Pg. No.7- 39
- Training Module For Legal Services Lawyers, Part 1, Module For Session III Topics 16,17,18,19,20,21, 22 And 23 On The Topics Of Rights Of An Arrested Person, Jurisprudence On Bail, And Plea Bargaining; Session VI And; Topics 32, 33, And 43 On The Rights Of Prisoners And Legal Services, From Pg No 132-137

RIGHTS AT DIFFERENT STAGES OF CRIMINAL PROCEEDINGS

(For ease of reference, the corresponding provisions of the BNSS, 2023 are indicated in parentheses alongside the sections of the CrPC, 1973)

1. Rights of Accused and Roles of LADCs at Different Stages of Criminal Proceedings

The following figure illustrates the various stages in a criminal proceedings following the institution of a criminal case under the CrPC/BNSS, along with the corresponding statutory provisions governing each stage-



A. Pre-Arrest

A person who is arrested has the right to seek legal aid at all stages of criminal proceedings. Free legal assistance for the poor and indigent at the cost of the State is a fundamental right of a person under Article 21 even if the person does not seek legal assistance on his own.¹³⁸ Access to justice is available at all stages of the Criminal Proceedings, which includes pre-arrest (from registration of FIR), arrest, remand, bail and plea bargaining.

Access to justice is important at all stages of the criminal process, as it ensures that the rights of the arrested individual are protected from the moment they are, or about to be detained. Before an individual can be detained or arrested, a complaint must be filed with the concerned police station, who then registers a First Information Report (FIR). Sections 154-156 of the CrPC / Sections 173- 175 of the BNSS deal with the procedure involved in receiving information connected to an offence, and the manner in which the registration of FIR regarding a cognizable offence and the procedure for how investigation takes place, the provisions in BNSS also introduce and formalise the process of registering a zero FIR.

A police complaint alone does not ensure that an FIR will be registered. The police complaint is simply a formal report made by the complainant, which could be either written or verbal. The basic purpose of a police complaint is to bring information regarding an alleged offence to the attention of the police. On the other hand, a FIR is a written document that is prepared by the police when they first receive information about the commission of a cognizable offence in accordance with provisions of the CrPC & BNSS. A criminal investigation is commenced only when an FIR is duly registered. The Supreme Court has held that an

¹³⁸ *Suhas Chakma v. Union of India*, 2024 INSC 813.

individual's right to personal liberty under Article 21 shall include their right to access the FIR registered against them so as to enable them to take important steps to protect their rights. Therefore, the court mandated that all FIRs must be uploaded online, except in cases where the offence is of a sensitive nature.¹³⁹

i. Constitutional and Statutory rights available pre- arrest

The Constitution of India guarantees several rights, including human and fundamental, to every citizen. Article 20 provides for protection in respect of conviction for offences. Article 20 (1) states that-

“No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.”

Therefore, an individual can be convicted and punished for the commission of an offence only if such an act was an offence under law in force at the time of commission of the offence. However, only criminal legislation is barred from retrospective application and not the imposition of civil liabilities. In the exceptional case where the retrospective application of a law is beneficial to the accused person, the Supreme Court allowed for retrospective application of a law after conviction of the accused. It was held in the case of *Rattan Lal v. State of Punjab*¹⁴⁰ that the rule of beneficial construction must be applied in such petitions to reduce the punishment to the accused person.

¹³⁹ *Youth Bar Association of India v. Union of India*, (2016) 9 SCC 473.

¹⁴⁰ 1964 SCC OnLine SC 40.

Article 20 (2) of the Constitution states that-

“No person shall be prosecuted and punished for the same offence more than once.”

The protection against double jeopardy is grounded in the common law maxim of *nemo debet bis vexari* - that a man shall not be brought into danger for one and the same offence more than once. If a person is charged again for the same offence, he can plead, as a complete defence, his former acquittal or conviction, or as it is technically expressed, take the plea of *autrefois acquit* or *autrefois convict* which is covered u/s 300 of CrPC and 337 of BNSS. The corresponding provision in the U.S. Constitution is embodied in the 5th Amendment¹⁴¹ which declares that no person shall be subject for the same offence to be twice put in jeopardy of life or limb. The principle has been recognised in the existing laws in India and is enacted in Section 26 of the General Clauses Act, 1897, and Section 300 CrPC which corresponds to 337 BNSS. In the case of *Raja Narayanlal Bansilal v. Maneck Phiroz Mistry*,¹⁴² it was held by the Supreme Court that the constitutional right guaranteed by Article 20(2) against double jeopardy can be successfully invoked only where the prior proceedings on which reliance is placed must be of a criminal nature instituted or continued before a Court of law or a Judicial Tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure.

In addition to the Constitutional Rights guaranteed to both accused and persons in custody, several other rights are also guaranteed under different statutory provisions as discussed below:

¹⁴¹ U.S. Const. amend. V.

¹⁴² 1960 SCC OnLine SC 160.

➤ Pre-arrest Notice

In 2008, Section 41A was introduced by amending the CrPC, which removed the necessity for arrest or police custody for certain classes of offences.¹⁴³ Section 41A requires the police to issue a pre-arrest notice for appearance to a person suspected of committing a cognizable offence. This was a statutory safeguard that introduced a ‘pre-arrest’ stage within the framework of criminal proceedings. Similarly, the corresponding sub-Section 3 of Section 35 of the *Bharatiya Nyaya Suraksha Sanhita, 2023* requires a notice to be issued in conditions where arrest is not necessary.¹⁴⁴ There are certain conditions where arrest may be avoided and when the provisions of Section 41A of CrPC and the corresponding Section 35 of BNSS are attracted, which are as follows:

- Applies to offences where arrest is not necessary;
- Applies to offences where credible information is received or reasonable suspicion exists that a cognizable offence is committed;
- Not available if the individual fails to comply with the terms of the notice.
(Upon the non-compliance of the terms of the notice, the accused will be arrested under Section 35(6) BNSS.)

➤ Procedure in accordance with Section 41A of CrPC / Section 35 of BNSS

There have been instances of non-compliance with the pre-arrest procedure as per the provisions of Section 41A of CrPC and the corresponding Section 35 of the BNSS. In *Satender Kumar Antil v. C.B.I.*,¹⁴⁵ the Supreme Court approved the guidelines formed by the

¹⁴³ Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009).

¹⁴⁴ Bharatiya Nyaya Surakhsha Sanhita, 2023 (Act 46 of 2023), s.35.

¹⁴⁵ (2021) 10 SCC 773.

Delhi High Court regarding the procedure to be followed by all police/ investigating officers. Accordingly, standing orders were issued by the authorities of each state to ensure compliance with the Supreme Court's guidelines which list the procedure to be followed in the pre-arrest notice stage, *inter alia*, the aforementioned guidelines require that:

- The notice for appearance must be issued in all cases where the arrest of the person is not required.¹⁴⁶
- The notice for appearance must contain the serial number, police station, FIR/ Case Number, date and time of appearance.
- If any document is required to be produced before the police, a summons must be issued in accordance with Section 91 of CrPC/ Section 94 BNSS.
- The notice for appearance must be endorsed/ acknowledged by the investigating officer once the person so summoned has attended the investigation or enquiry.
- Notice under Section 35(3) BNSS / 41A CRPC must be formally served and service of notice through Whatsapp or electronic modes are not acceptable modes of service.
- If the person is unable to appear at the given time, intimation must be given to the investigating officer immediately and alternative time must be proposed, along with justifiable cause for non-attendance.¹⁴⁷

¹⁴⁶ *Amandeep Singh Johar v. State of National Capital Territory of Delhi*, 2018 SCC OnLine Del 13448.

¹⁴⁷ *Satender Kumar Antil v. Central Bureau of Investigation*, 2025 SCC Online SC 1578.

➤ Rights available to a suspected individual at Pre-Arrest stage:

- Police must notify the suspected individual of their right to legal assistance during interrogation;
- All suspected individuals are entitled to receive a leaflet of rights upon arrival at the Police Station;
- Police must inform why the suspected individual is called for interrogation;
- The suspected individual is not required to answer any questions which have the effect of self-incrimination. However, accurate details of name, address and identity must be provided on demand;
- The suspected individual is entitled to have a lawyer present if the police interviews them;
- To seek medical help if the suspect is ill or injured.¹⁴⁸

List of Cases

- *Rakesh Kumar v. Vijayanta Arya (DCP)*, 2021 SCC OnLine Del 5629.
- *Amandeep Singh Johar v. State (National Capital Territory of Delhi)*, 2018 SCC OnLine Del 13448.
- *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51.

¹⁴⁸ NALSA, “Material on Early Access to Justice at Pre-Arrest, Arrest and Remand Stage”, p. no. 9-10.

➤ *Satender Kumar Antil v. CBI*, 2025 INSC 909.

➤ Anticipatory bail

Anticipatory bail is a form of pre-arrest relief that is available to individuals apprehending arrest for non-bailable offences. It is an important protective remedy for individuals who apprehend arrest where there is reasonable belief that they have been falsely implicated in an FIR due to personal or political rivalry, family disputes, professional disputes etc. Section 438 of CrPC and the corresponding Section 482 of BNSS provides for grant of bail to persons apprehending arrest.

The power to grant anticipatory bail is conferred only to a Sessions Court or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred and cannot be considered as an essential ingredient of Article 21 of the Constitution. The non-application of anticipatory bail to a certain special category of offences cannot be considered as violative of Article 21.¹⁴⁹ The filing of a first information report is not a condition precedent to the exercise of the powers under Section 438 of CrPC and the corresponding Section 482 of BNSS. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet filed.¹⁵⁰ The power to grant or refuse bail is discretionary and the discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant on

¹⁴⁹ *State of Madhya Pradesh v. Ram Kishna Balothia*, (1995) 3 SCC 221.

¹⁵⁰ *Enforcement Directorate v. Deepak Mahajan*, (1994) 3 SCC 440; *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565.

finding new material or circumstances at any point of time.¹⁵¹ Anticipatory bail once granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge sheet till end of trial.¹⁵²

Since the introduction of the BNSS 2023, there have been certain developments in the conditions for grant of anticipatory bail, which is elucidated in Section 482 of the BNSS.

No Mandatory Factors	Interim Order	Notice Requirement	Mandatory Presence	Police Arrest Powers
Section 438 CrPC required courts to mandatorily consider some factors before granting anticipatory bail. Section 482 BNSS has removed the mandatory factors.	New Provision under Section 482 BNSS wherein Courts can now grant interim anticipatory bail even when the main application for the same is pending	New Provision under Section 482 BNSS wherein Minimum 7 days notice must be given to Public Prosecutor and Superintendent of Police when interim bail is granted	New Provision under Section 482 BNSS wherein Applicant's presence is obligatory at final hearing if court considers it necessary in interest of justice	New Provision under Section 482 BNSS wherein police can arrest without warrant if no interim order is passed or application is rejected. CrPC provision was silent on this.

Figure: Comparison of Section 438 of CrPC with Section 482 of BNSS

Although anticipatory bail is an important legal protection from arrest, it is not an absolute protection and is subject to certain limitations (the accused shall not be entitled to anticipatory bail if he is accused under Sections 65 & 70 (2) of BNS).¹⁵³ When hearing the anticipatory bail applications, the courts assess the possibility of the accused to influence prosecution witnesses, threatening the family members of the victim, fleeing from justice or

¹⁵¹ *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694.

¹⁵² *Sushila Aggarwal v. State (National Capital Territory of Delhi)*, (2020) 5 SCC 1.

¹⁵³ *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694 at para 122.

creating obstructions in the fair investigation.¹⁵⁴ The factors to be considered in granting anticipatory bail are as follows:¹⁵⁵

- Anticipatory bail is limited only to cases where the nature and gravity of offence;
- Whether the applicant has criminal antecedents or previous convictions;
- Possibility of the applicant to flee from justice;
- Possibility of applicant to repeat the particular offence;
- the impact of granting Anticipatory bail in cases with large magnitude or involving a large number of people;
- Balance has to be struck between rights of the applicant and ensuring full, fair and free investigation;
- Courts must consider reasonable apprehension of the applicant tampering with evidence.

Apprehension for arrest has to be based on concrete facts and not on vague or general allegations. The Application for anticipatory bail must consist of clear and essential facts relating to offence and the reason behind the apprehension of his/her arrest along with the facts of the case.¹⁵⁶ It was also held that anticipatory bail can be granted even after an FIR is registered, so long as the individual has not been arrested. The applicant must show the court that they have an appropriate reason for apprehending arrest. In the case of *Gurbaksh Singh*

¹⁵⁴ *Vipan Kumar Dhir v. State of Punjab*, (2021) 15 SCC 518.

¹⁵⁵ *Dr. Naresh Kumar Mangla v. Anita Agarwal*, (2021) 15 SCC 777.

¹⁵⁶ *Sushila Aggarwal v. State (National Capital Territory of Delhi)*, (2020) 5 SCC 1.

Sibbia v. State of Punjab,¹⁵⁷ a Constitution bench of the Supreme Court observed that anticipatory bail cannot be granted to a person to do something which is likely to be interpreted as commission of a crime even if the offender intended it as something in exercise of his rights. The applicant must show that he has ‘reason to believe’ that he may be arrested for a non-bailable offence. These grounds for belief must be objective and capable of being examined by the court.

Role of LADC at the time of Pre-arrest

- The LADCS shall apprise themselves of the allegations against the suspected individual.
- They shall explain the alleged offence and the reason for which the individual has been called for interrogation.
- They shall provide legal advice and assistance as sought and required in the situation.
- They shall not interrupt or obstruct interrogation.
- They may appropriately advise the police, if they proceed to arrest the individual without any basis.
- In case of a foreign individual, the LADCS may inform the police to intimate the concerned High Commission, Embassy or Consulate.

¹⁵⁷ (1980) 2 SCC 565.

- In case the suspected individual does not understand the language, then arrangements may be made for an interpreter.
- They may ensure that women are not called to the police station or to any place other than their place of residence for questioning.
- In case a minor/ child has been called to the Police Station, the LADCs shall take necessary steps to safeguard the child's rights as provided under Juvenile Justice (Care and Protection) Act, 2015.¹⁵⁸

B. Arrest

Arrest is the act of detaining or bringing an individual under the custody of the police, when such an individual is suspected or if the police have received information that such individual has committed an offence. Although the terms 'Arrest' and 'Custody' are not defined in any legislation, it has been through judicial interpretations. Section 35 of BNSS and the corresponding Section 41 of CrPC deals with the procedure for arrest. Section 35 of the BNSS combines Sections 41 and 41-A of CrPC. The BNSS expands the scope of the concept of arrest with sub-Section 7 as a new addition.¹⁵⁹ Sections 41A, 41B and 41D of the CrPC and the corresponding Sections 35, 36 and 38 of BNSS provides safeguards to avoid arbitrary arrest and also confer certain rights on the person arrested.¹⁶⁰

¹⁵⁸ NALSA, "*Material on Early Access to Justice at Pre-Arrest, Arrest and Remand Stage*", p.no. 11-12.

¹⁵⁹ J.K. Verma, *Bharatiya Nagarik Suraksha Sanhita, 2023 (Criminal Procedure): A Commentary* 39 (EBC Publishing (P) Ltd., Lucknow, 1st edn., 2024).

¹⁶⁰ NALSA, "*Material on Early Access to Justice at Pre-Arrest, Arrest and Remand Stage*", p.no. 3.

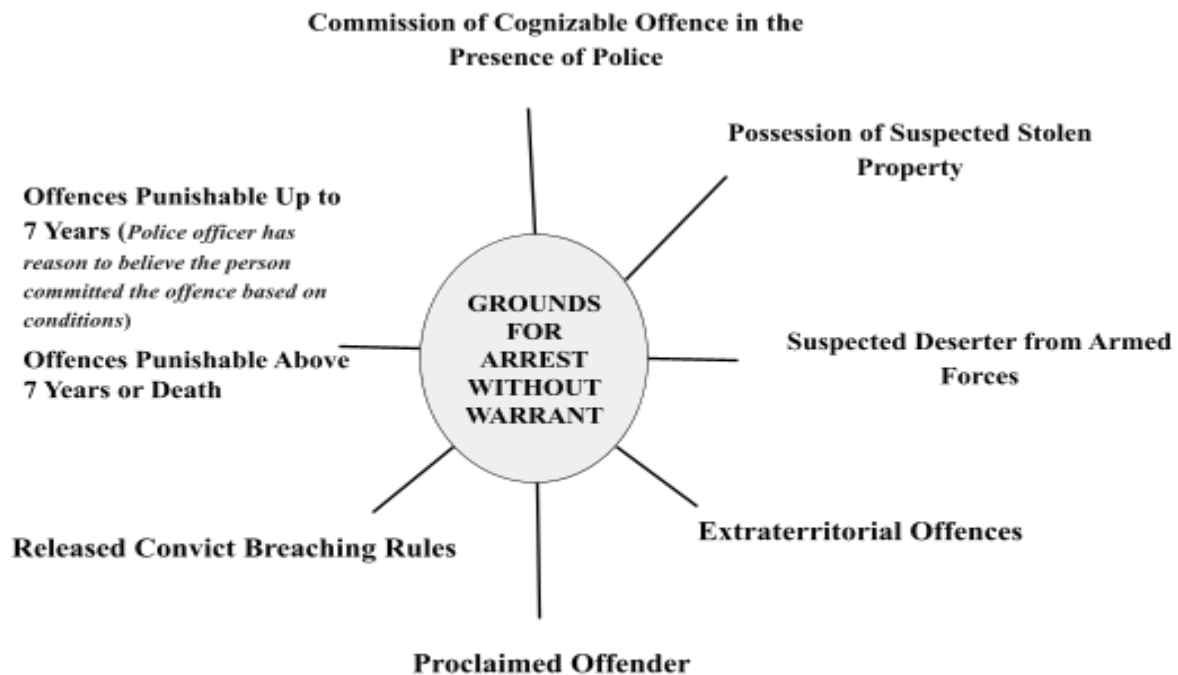


Figure: Section 35 BNSS: When police may arrest without warrant: (Section 41, CrPC 1973)

i. Constitutional and Statutory Rights of Arrested Persons

The Constitution of India, by virtue of Articles 20, 21 and 22, ensures that the rights of individuals who are taken into custody, or detained by the police are adequately protected. Article 20 provides for protection in respect of conviction for offences.

The right to legal aid is an implicit facet to the right to life and personal liberty guaranteed under Article 21 of the Constitution. The scope of Article 21 is not limited to protection against deprivation of personal liberty, but rather extends to all limbs and faculties of life. The Supreme Court has interpreted this to state that the right to life extends beyond ensuring

a mere animalistic existence.¹⁶¹ Further, it is a settled position of law that arrest should be the last resort and it should be restricted to those applicable cases where arresting the accused is imperative in the facts and circumstances of the case.¹⁶²

The expression “personal liberty” in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19. In the case of *Maneka Gandhi v. Union of India*,¹⁶³ the Supreme Court introduced the concept of the golden triangle which links Article 21 of the Constitution with Articles 14 and 19 to hold that the procedure established by law, or the law itself must be fair, reasonable and just.

The Constitution of India guarantees several rights, including human and fundamental, to every citizen.¹⁶⁴ The Constitution of India has guaranteed several rights to an arrested person under Articles 22(1) and (2).

Moreover, in the landmark judgment of *D.K. Basu v. State of West Bengal*¹⁶⁵ the Supreme Court had issued guidelines for the police personnel to follow in cases of arrest or detention of an individual. The guidelines are substantially incorporated in the CrPC and the BNSS. The following table highlights the incorporation of guidelines in the *D.K. Basu* in CrPC and BNSS:

¹⁶¹ *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, 1981 SCC (Cri.) 212.

¹⁶² *Sushila Aggarwal v. State (National Capital Territory of Delhi)*, (2020) 5 SCC 1 at para 123.

¹⁶³ (1978) 1 SCC 248.

¹⁶⁴ National Human Rights Commission, “*Rights of Prisoners*,” p.no. 1 (2021), available at: <https://nhrc.nic.in/sites/default/files/11%20Rights%20of%20Prisoners-compressed.pdf> (last visited on September 25, 2025).

¹⁶⁵ (1997) 1 SCC 416.

D.K. Basu Guidelines	CrPC Section CrPC	Corresponding provision in BNSS	Brief Summary of the Provision
Identification of police personnel	Sec. 41B(a)	Sec. 35(1)(a)	Arresting officer must bear clear identification and name tag.
Preparation of arrest memo	Sec. 41B(b)	Sec. 35(1)(b)	Arrest memo to be prepared at time of arrest, attested by a witness and signed by the arrestee
Informing friend/relative of arrest	Sec. 41B(c) & Sec. 50A(1)	Sec. 41B(c) & Sec. 50A(1)	Friend/relative to be informed about the arrest and place of detention.
Communication of arrest details to next of kin	Sec. 50A(2)–(3)	Sec. 48(2)–(3)	Duty to inform about arrest and maintain records in a police control room.

Medical examination of arrestee	Sec. 54 & 55A	Sec. 53 & 54	Arrestee must be medically examined at the time of arrest and every 48 hours by a medical officer
Preparation of inspection memo of injuries	Sec. 54	Sec. 53(2)	Memo of injuries to be prepared, signed by the arrestee and officer.
Right to meet lawyer during interrogation	Sec. 41D	Sec. 38	Arrestee entitled to meet advocate during interrogation (not throughout).
Police control room to display details of arrests	Sec. 50A(4)	Sec. 48(4)	Police control room at district/state level to display details of arrested persons.

In addition to the constitutional rights guaranteed to both accused and persons in custody, several other rights are also guaranteed under different statutory provisions as discussed below:

➤ Rights to be informed of grounds of arrest

The right to be informed of the grounds of arrest is a precious right of an arrested person. Since the arrest impinges upon his right to life and liberty, a fundamental right confirmed and protected by the Constitution of India, it is legitimately expected that no infringement of such right would come except in accordance with the procedure established by law.¹⁶⁶

Section 47 of BNSS and the corresponding Section 50 (1) of the CrPC provides that any person arrested without a warrant must be immediately informed of the full particulars of the offence or the grounds for such arrest. The Supreme Court in *Joginder Kumar v. State of Uttar Pradesh*,¹⁶⁷ held that these rights are an integral part of Article 21 and 22 (1) of the Constitution and require to be recognised and protected. Moreover, the accused is also entitled to a copy of police report and other relevant documents, free of cost, under Section 207 of CrPC / 230 of BNSS.

List of Cases

- *Vihaan Kumar v. State of Haryana*, 2025 INSC 162.
- *Vishal Ravani v. State*, 2024 SCC Online Bom 3859.
- *Sachin Mahipati Nimbalkar v. State of Maharashtra*, 2024 SCC Online Bom 3493.

¹⁶⁶ (1997) 1 SCC 416.

¹⁶⁷ *Joginder Kumar v State Of Uttar Pradesh*, (1994) 4 SCC 260.

➤ *Ajit Kisan More v. State of Maharashtra*, 2025 SCC Online Bom 2899.

➤ Rights to Consult a Legal Practitioner

Section 38 BNSS (Section 41D CrPC) provides that an arrested person has the right to meet an advocate of his choice during interrogation. In the case of *M.H. Wadanrao Haskot v. State of Maharashtra*,¹⁶⁸ the Supreme Court held that the right to legal aid is one of the ingredients of fair procedure.¹⁶⁹ If a prisoner sentenced to imprisonment is unable to defend or appeal before the court for want of a lawyer, then the court has the power under Article 142, read with Articles 21 and 39-A of the Constitution, to assign a lawyer for such prisoner for doing complete justice.¹⁷⁰ Article 22 (1) of the Constitution provides the right to consult and to be defended by a legal practitioner of the choice of accused.

Article 39A of the Constitution further provides for the State to provide free legal aid to the poor and weaker sections of society, including prisoners. The poor accused person has the right to avail a legal aid lawyer at the state's expense.¹⁷¹ It was held by the Supreme Court in the case of *Hussainara Khatoon (IV) v. State of Bihar*,¹⁷² that the right to free legal services is an essential ingredient of 'reasonable, fair and just' procedure, guaranteed under Article 21, for a person accused of committing an offence.

¹⁶⁸ (1978) 3 SCC 544.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² (1980) 1 SCC 98.

List of Cases

- *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar*, (1980) 1 SCC 98
- *M.H. Hoskat v. State of Maharashtra*, (1978) 3 SCC 544
- *Sheela Barse v. State of Maharashtra*, (1980) 2 SCC 96
- *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401
- *Ajmal Mohammad Amir Kasab v. State of Maharashtra*, (2012) 9 SCC 1

➤ Right to Medical Examination

Section 53 of the BNSS and the corresponding Section 54 of the CrPC provides that an arrested person shall be entitled to be examined by a medical officer, as was held in the case of *D.K. Basu v. State of West Bengal*.¹⁷³ The examination is important for recording all injuries or marks on the body of the arrested person and provides a check on any kind of torture or violence that the arrestee/ detainee might face while being in Police custody. Sub section (2) of Section 53 requires the medical practitioner to furnish a copy of the report of medical examination to the arrested person or any other person nominated by the arrestee.

¹⁷³ (1997) 1 SCC 416.

Brief Procedure of Medical Examination under Section 51 of the BNSS

Definition of “examination”

Includes collection of blood, semen, swabs, sputum, sweat, hair, nail clippings, etc., using modern techniques like DNA profiling, plus any other test the doctor finds necessary.

Who can be examined

Under CrPC, any person who is arrested could be examined.

Under the new law, any person arrested on a charge of committing an offence of a certain nature and circumstances prescribed can only be examined.

Authority for examination

Under section 54 of the CrPC, the examination is to be conducted by a government medical officer, or if unavailable, a registered medical practitioner.

The new law retains the provision: examination may be carried out by a medical officer and in case of his non availability by a registered medical practitioner at the request of a police officer. Persons assisting in good faith under the doctor's direction may also help.

Safeguard to Female Accused

If the arrested person is a woman, examination can only be done by or under **supervision of a female registered medical practitioner.**

Report

The doctor must prepare a record of the examination, note injuries/marks with approximate timing, and forward it without delay to the investigating officer and also provide **a copy of the report to the arrested person** or nominee.

List of Cases

- *Sunil Batra v. Delhi Administration*, 1987 (4) SCC 494.
- *Shri Ram Murthy v. State of Karnataka*, (1997) 2 SCC 642

➤ Rights to Compensation for Unlawful Arrest and against Unnecessary Restraint

Section 399 of the BNSS empowers magistrates to award compensation to individuals subjected to wrongful arrests or detention. Section 43(3) of the BNSS (Section 49 of the CrPC) prohibits the use of handcuffs or other restraints unless necessary. The Supreme Court of India has issued guidelines in *D.K. Basu v. State of West Bengal*,¹⁷⁴ that the police must comply with in all cases of arrest and detention. It is important for all arrested persons to know these guidelines, to know their rights and the police's duties toward them.

¹⁷⁴ (1997) 1 SCC 416.

D.K. Basu Guidelines:¹⁷⁵

The Supreme Court's Guidelines in the case of *D.K. Basu v. Union of India*¹⁷⁶ was a watershed movement in the protection of personal liberties against unchecked police power. The court laid down the following duties of police and rights which the detainee is entitled to:

Duties of Police personnel:

- Must wear name tags clearly indicating their name and designation.
- Enter complete details of police officials conducting the interrogation in a register.
- Officers making the arrest must prepare an arrest memo that records details of the arrest. The Arrest memo must contain the signature of one witness, details of time, date and place of arrest. It must also contain the signature of the detainee in the arrest memo.
- If requested by the detainee, the arresting officer must also prepare an inspection memo to record any minor/major injuries on their body. This memo must be signed by the arresting officer and the arrested person, and a copy of the same must be given to the arrested person.

¹⁷⁵ (1997) 1 SCC 416.

¹⁷⁶ *Ibid.*

- Police must enter details of every arrest made in the daily diary of the police station. Diary entry must include the name of a relative/friend who was informed of the arrest.
- Police must inform a relative/friend of the detainee the time, place of arrest and the location where the arrested person is detained at the earliest. If the relative/friend is in a different district/city, the concerned police station must be informed within 8-12 hours of arrest so they may convey information of the arrest. The information of arrest must also be sent through the district legal aid committee.
- Police must send one copy of all documents relating to the arrest including the arrest and inspection memo to the Magistrate.

List of Cases

- *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526
- *State of Maharashtra v. Ravikant S. Patil*, (1991) 2 SCC 373.
- *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494.
- *Citizens for Democracy v. State of Assam*, (1995) 3 SCC 743.

➤ Right to be Free from Arbitrary Arrest

Section 35 of the BNSS (corresponding Section 41 of the CrPC) outlines the conditions under which a police officer may arrest without a warrant. In the recent case of *Satender Kumar Antil v. Central Bureau of Investigation*,¹⁷⁷ the Supreme Court has reiterated that “bail is the rule and jail is the exception”. The procedure laid down under Section 35 entails an element of substantivity which is in the nature of a safeguard, especially when the liberty of an individual is involved. The judgment aimed to protect individuals from arbitrary arrests and uphold the principle of natural justice.

➤ Rights of a woman accused

Women accused shall not be arrested after sunset or before sunrise. Only in exceptional situations such an arrest could be made but it should be made only by a woman police personnel on a written police report and after obtaining the permission of the judicial magistrate.¹⁷⁸ In case the LADC is dealing with the case of a woman accused, they must ensure that the woman is not called to a police station in odd hours and only in exceptional circumstances it is done.

Role of LADCS at the time of Arrest

The arrest stage is one of the most important events for a lawyer/ LADCS to be present as it can ensure that the rights of the accused individual are well protected. Presence of a lawyer at

¹⁷⁷ (2022) 10 SCC 51.

¹⁷⁸ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 43.

the time of arrest reduces the chance of wrongful detention, custodial violence and coercion or false implication.

- Assist the accused individual with understanding why they are being arrested
- Protection against intimidation, self-incrimination, ill-treatment and torture
- Actualization of procedural safeguards which confer some rights on the accused person
- Informing the accused person of their right to be informed about the grounds of arrest and their right to seek bail
- Ensuring that information of arrest and place of detention is conveyed to a friend of family member of the accused individual
- Ensure that the accused individual is produced before a magistrate within 24 hours of arrest.¹⁷⁹

List of Cases

- *Vihaan Kumar v. State of Haryana*, 2025 INSC 162.
- *Vishal Ravani v. State*, 2024 SCC Online Bom 3859.
- *Sachin Mahipati Nimbalkar v. State of Maharashtra*, 2024 SCC Online Bom 3493.

¹⁷⁹ NALSA, “Material on Early Access to Justice at Pre-Arrest, Arrest and Remand Stage”, p.no. 12-13.

- *Ajit Kisan More v. State of Maharashtra*, 2025 SCC Online Bom 2899.
- *Kavita Manikikar v. CBI*, 2018 SCC Online Bom 1095.
- *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.
- *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260.
- *Khatri v. State of Bihar*, (1981) 1 SCC 627.
- *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526.

C. **Remand**

Remand authorizes temporary detention to facilitate investigation or trial preparation, its legitimacy tethered to constitutional safeguards. Article 21, read with Article 22, mandates due process and judicial oversight within 24 hours.¹⁸⁰ Section 57 of the CrPC and the corresponding Section 58 of the BNSS states that any police officer who arrests a person without warrant shall not detain them in custody for more than 24 hours without special permission of a magistrate under Section 167 of the CrPC and the corresponding 187 of the BNSS. This special permission is what is known as remand. Remand is a form of pre-trial detention. To remand something means to send it back, or to return.

In criminal law, remand plays an important role in balancing the effective investigation of crimes with restricting an individual's personal freedom. Under Indian law, this balance is

¹⁸⁰ Judicial Academy Jharkhand, "Reference *Material for regional conference on key issues of remand and bail jurisprudence*", p. no. 53 (August 2023).

captured in Article 21 of the Constitution which states, “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*”¹⁸¹ Section 187 BNSS / 167 CrPC deals with the procedure for Remand in India. The new provision for remand under the BNSS 2023 slightly differs from the existing provision under the CrPC. Under Section 167 of the Code of Criminal Procedure of 1973 (CrPC), police custody was capped at a maximum of 15 days, to be strictly within the first remand period of 15 days. However, Section 187(2) of the BNSS retains a maximum of 15 days of police custody, but also permits these 15 days to be taken at any time during the extended period of remand 40 days or 60 days, if the total remand period is 60 or 90 days respectively.¹⁸²

i. Police Custody v. Judicial Custody

Section 167 of the CrPC and the corresponding Section 187 of the BNSS states that any person who is arrested and detained in custody must be produced before a magistrate within a period of 24 hours. When it appears that the investigation cannot be completed within this period, the magistrate is empowered to authorize the detention of such a person for up to 15 days in police custody. If at the end of the 15 day period, there is a need for further detention, the magistrate may order judicial custody of the arrested person.

Police custody refers to the 15 days after arrest where the arrested person may be held directly in the police station in order to facilitate interrogation. Although police custody is not under judicial oversight, it requires approval from a competent magistrate within 24 hours of arrest. The primary purpose of police custody is to facilitate effective investigation by allowing the police to access the accused person.

¹⁸¹ Constitution of India, art. 21.

¹⁸² Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.187.

If the Magistrate is convinced that the accused person is required to be detained for a further period beyond the 15 days, they may order that the accused be remanded to judicial custody in a jail or prison. This extends detention, but under the supervision of the court.

Police Custody	Judicial Custody
● Custodial authority: Police ● Location of detention: Accused person is held in a police station ● Duration of detention: Up to 15 days (could be at any time during the extended remand period, including the initial period of arrest) ● Rights of Accused: ○ Right to legal representation ○ Right against self incrimination ○ Right to medical examination ○ Right to remain silent ● Interrogation:	● Custodial authority: The court ● Location of detention: Accused person is held in a prison or jail ● Duration of detention: Up to 60 days (for offences punishable with imprisonment of less than 10 years) & up to 90 days (for offences punishable with death, life imprisonment or imprisonment of more than 10 years) ● Rights of Accused: ○ Right to apply for bail ○ Right to legal counsel ○ Right to humane treatment ● Interrogation:

Police can directly interrogate the accused person	Police need court's permission to interrogate the accused person
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Figure: Distinction in police custody and judicial custody under the BNSS

The Supreme Court in the case of *CBI v. Anupam J. Kulkarni*¹⁸³ held, “the 15-day period is absolute...no further police custody is permissible.” However, this 15-day custody restriction was directed to be reconsidered by a larger bench of the Supreme Court in *V. Senthil Balaji v. The State Represented by Deputy Director*¹⁸⁴ The court ruled that the 15-day police custody could span the entire investigation period (60 or 90 days), rather than being confined to the first 15 days post-arrest. This ruling formed the basis for the enactment of Section 187 of the BNSS, which explicitly allows the 15 days of police custody to be taken at any point during an extended remand period of 40 or 60 days.

ii. Rights of prisoners at the time of Remand

A prisoner is any person confined in a prison under the order of a competent authority.¹⁸⁵ It means that a prisoner is a person who is kept in jail or prison under custody because he or she has committed any act which is in contravention with the law of the land.¹⁸⁶ Prisoners are entitled to the same constitutional rights as any other individual. Although, their rights can be curtailed by procedure that satisfies all the requirements of the due process. In the case of

¹⁸³ (1992) 3 SCC 141.

¹⁸⁴ 2024 INSC 739.

¹⁸⁵ Ministry of Home Affairs, Model Prison Manual, 2016, available at: https://www.mha.gov.in/sites/default/files/2025-04/PrisonManualA2016_20122024_2.pdf (last visited on September 25, 2025).

¹⁸⁶ National Human Rights Commission, “Rights of Prisoners,” (2021), available at: <https://nhrc.nic.in/sites/default/files/11%20Rights%20of%20Prisoners-compressed.pdf> (last visited on September 25, 2025).

State of Andhra Pradesh. v. Challa Ramkrishna Reddy,¹⁸⁷ the Supreme Court held that a prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed. Further, in the landmark decision of *Sunil Batra v. Delhi Administration*,¹⁸⁸ the Supreme Court held that the protection to life and liberty of a prisoner should not be congealed to mere animal existence but shall extend to all those limbs and faculties by which life is enjoyed.¹⁸⁹

In *Re-Inhuman Conditions in 1382 Prisons*,¹⁹⁰ the Supreme Court issued directions to constitute the Undertrial Review Committees (UTRC) in every district of the country to conduct regular meetings to take appropriate steps for the release of undertrial prisoners and convicts who have undergone their sentences or are entitled to be released because of the remission granted to them. It was also directed to implement Sections 436 and 436A of the CrPC so that those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason.¹⁹¹

The Model Prison Manual, 2016 provides a list of rights of the prisoners which have been incorporated in the jail/prison manuals of the various states.¹⁹²

➤ Right of inmates to live in humane and good conditions

In the case of *Upendra Baxi v. State of Uttar Pradesh*,¹⁹³ the Supreme Court issued directions in order to ensure that the inmates of the protective home at Agra did not continue to live in

¹⁸⁷ (2000) 5 SCC 712.

¹⁸⁸ (1980) 3 SCC 488.

¹⁸⁹ *Ibid.*

¹⁹⁰ (2016) 3 SCC 700.

¹⁹¹ *Ibid.*

¹⁹² Ministry of Home Affairs, Model Prison Manual, 2016, available at: https://www.mha.gov.in/sites/default/files/2025-04/PrisonManualA2016_20122024_2.pdf (last visited on September 25, 2025), p.no. 8-10.

¹⁹³ (1983) 2 SCC 308.

inhumane and degrading conditions and that the right to live with dignity enshrined in Article 21 of the Constitution was made real and meaningful for them.

➤ Right against Custodial Violence

Prisoners have the right to protest against any custodial violence or torture while under the police custody. Custodial violence may be physical torture, rape or sexual harassment, custodial death.

In the case of *Sunil Batra v. Delhi Administration*,¹⁹⁴ the Supreme Court took cognizance of a letter informing them of a jail warden torturing another prisoner (Prem Chand) in order to extract money from the victim through his visiting relations. The Court initiated proceedings against the State and the concerned officials. It was held that Prem Chand the prisoner, has been tortured illegally and the Superintendent cannot absolve himself of responsibility even though he may not be directly a party.

In the case of *D.K Basu v. State of West Bengal*¹⁹⁵ certain directions to be followed by the police personnel during arrest were issued. In another case involving the custodial death of the arrested person and the gangrape of his wife inside the police station, the court while relying on the judgement of *D.K Basu* held that custodial violence in police custody is violative of the directions passed in *D.K Basu Case*.¹⁹⁶

Recognising the growing role of technology in ensuring transparency and accountability in law enforcements, the Supreme Court has mandated the installation of CCTV cameras at the police stations covering all the areas with audio video recording. The Court focused on the

¹⁹⁴ (1978) 4 SCC 494.

¹⁹⁵ (1997) 1 SCC 416.

¹⁹⁶ *Mehboob Batcha v. State*, (2011) 7 SCC 45.

preservation of the CCTV footage in all cases of custodial violence, serious injuries, or deaths, which shall be subject to summons by Human Rights Commissions and Human Rights Courts.¹⁹⁷

Moreover, for the cases related to police encounters a set of guidelines have been issued in *PUCL v. State of Maharashtra*,¹⁹⁸ whereby the court issued certain guidelines which are reproduced in the table below:

Mandated Action
Mandatory registration of F.I.R Registering an F.I.R and forwarding the same to the court of jurisdiction without delay where the police used a firearm resulting in death.
Independent Investigation The investigation must be conducted by independent investigating agency like the CID
Magisterial inquiry In all cases that occurred in the course of police action, as expeditiously as possible.
Prompt Prosecution Prompt prosecution or disciplinary action must be initiated against all officers found guilty.

¹⁹⁷ *Paramvir Singh Saini v. Baljit Singh*, (2020) 7 SCC 397.

¹⁹⁸ (2014) 10 SCC 635.

No Instant Rewards

No instant gallantry rewards like promotions shall be bestowed on officers concerned soon after the incident.

List of Cases

- *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416.
- *Nilbati Behera v. State of Orissa*, (1993) 2 SCC 746.
- *Harbans Kaur v. Union of India*, 1995 SCC 1 623.
- *Gyanesh Rai v. State of Uttar Pradesh*, 2015 SCC OnLine All 3801.
- *Yashwant v. State of Maharashtra*, 2018 SCC Online SC 1336.

➤ Right to meet friends and consult lawyer

In the case of *Sunil Batra v. Delhi Administration*,¹⁹⁹ the Supreme Court recognised the right of the prisoners to be visited by friends and relatives. The Court favoured their visits but subject to search and discipline and other security criteria. Visits to prisoners by family and friends are a comfort in their isolation and prison inmates cannot be deprived of the same. The right to society of fellow-men, parents and other family members cannot be denied.

¹⁹⁹ (1978) 4 SCC 494.

➤ Right to be examined by mental health professionals

The Model Prison Manual, 2016 mandates that prisoners suffering from mental health conditions be admitted to mental health institutions, and psychiatrists and counsellors be made available to examine the prisoners periodically. It also directs regular mental health evaluation for death row prisoners.

List of Cases

- *Sartaj v. State of National Capital Territory of Delhi*, 2023 SCC Online Del 4764.

➤ Rights of Women Prisoners²⁰⁰

Some of the rights of the women prisoners are mentioned below:

Female Prison Staff	Gender - specific task by female staff.
Accommodation	Cells/barracks prescribed under the Model Prison Manual: barracks for 20 inmates, dormitories for 4–6, and single rooms for study/privacy. Segregated cells to be provided for violence/health concerns. Proper heating, cooling, washrooms, laundries, and personal storage must be available.

²⁰⁰ Ministry of Women and Child Development, “Women in Prisons” (June 2018).

Sanitation & Hygiene	One toilet and bathing cubicle per 10 inmates; women's toilets must be secure and separate from male access. Women may bathe as needed. Accommodation must be regularly cleaned, disinfected, and pest-controlled. Women prisoners cannot be made to perform menial or conservancy work in enclosures. Adequate clothing and undergarments must be provided as per climate and hygiene standards.
Health	Every prison must have a hospital with separate wards and Lady Medical Officers, providing screenings, vaccinations, and special care for women, elderly, and drug-dependent inmates. Health checks must respect women's privacy, dignity, and medical confidentiality.
Nutrition	State Prison Manuals mandate three fresh, hot meals daily with prescribed calories and hygiene standards. Pregnant and lactating women must get enhanced diets with extra protein, minerals, and supplements like milk, fruits, and vegetables.
Education	Literacy is compulsory for offenders aged 18–21; inmates may pursue formal education with access to

	books.
Skill and Vocational Training	All prisons must provide training with equal wages for women, deposited in their accounts, to aid post-release support.
Legal Aid	Article 39A ensures free legal aid for weaker Sections to secure justice.
Violence	Cases of abuse must lead to immediate counselling, legal recourse, and complaints under the concerned prison rules or the Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013. ²⁰¹
Contact with the outside world	Inmates may meet relatives fortnightly, send/receive letters, and make phone calls under rules. Women must be accompanied by a female relative during transit.
Children	Children up to six may stay with mothers if no alternative care exists. In <i>R.D. Upadhyay v. State of Andhra Pradesh</i> , ²⁰² guidelines were issued to ensure

²⁰¹ Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013 (Act 14 of 2013).

²⁰² (2007) 15 SCC 360.

	food, shelter, health care, education, and recreation for such children. Pregnant and lactating women must receive better diet, prenatal/postnatal care, and delivery in hospitals outside prison where possible; children's birth certificates must not mention prison as birthplace.
Re integration in society after release	Women face stigma, loss of family ties, and financial hurdles post-release. The Manual prescribes advance notice to family, escorts in plain clothes, and after-care measures like home leave, open prisons, halfway houses, community programmes, and rehabilitation grants.
Special procedure for arrest for women	Women cannot be arrested after sunset or before sunrise without the Magistrate's permission, and searches must only be conducted by female officers with due regard to decency.

List of Cases

- *Sheela Barse v. State of Maharashtra*, (1978) 3 SCC 544
- *Jan Adalat v. State of Maharashtra*, 2017 SCC Online Bom 239.

- *High Court on its own motion v. State of Maharashtra*, 2016 SCC Online Bom 8426.

iii. Role of LADCS at the time of Remand

The role of a Legal Aid Defence Counsel at the time of remand is important to ensure that the additional rights available to the arrested person at the later stage of investigation is properly represented and protected. The LADC, at the time of remand, is expected:

- To seek a copy of application for remand.
- To interact with the arrested person and seek further information about the prosecution's allegation and grounds for seeking remand.
- Challenging arrest.
- To file a bail application.
- To aid the arrested person with local surety / other conditions for bail.
- To translate the documents given in a language that the arrested person is not familiar with.
- In case of a foreign person, to inform the required High Commission/ Embassy/ Consulate.

- If the arrested person is a child or person of unsound mind, to bring such a fact to the notice of the court and ensure that due legal protections are granted.²⁰³

List of Cases

- *Prabir Purkayastha v. State National Capital Territory of Delhi*, 2024 INSC 414.
- *Payal Sharma v. State of Punjab*, (2024) INSC 896.
- *Sachin Mahipati Nimbalkar v. State of Maharashtra*, 2024 SCC Online Bom 3493.
- *Matloob Hussain @ Matloob v. State of Uttar Pradesh*, 2023 AHC 229747.
- *Priya Indora v. State of Karnataka*, (2023) INSC 1008.
- *Sunil Gupta v. State of Madhya Pradesh*, (1990) 3 SCC 119.

D. Bail

The right to bail is an important facet of Article 21. The term ‘Bail’ is derived from the French word ‘*Baillier*’ which means ‘*to give away or deliver*’. It is the process of “*release of a person accused or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or court on execution by such person of a bond or a bail bond*”.²⁰⁴

²⁰³ NALSA, “*Material on Early Access to Justice at Pre-Arrest, Arrest and Remand Stage*”, p.no. 17-22.

²⁰⁴ Bharatiya Nyaya Suraksha Sanhita, 2023, (Act 46 of 2023), s. 2(1)(b).

Therefore, there are two essential components which ought to be satisfied for the grant of bail. These components are bail bond and bond, where bail bond refers to undertaking with sureties for the release of an accused from the custody while a bond refers to a personal undertaking without sureties.²⁰⁵

In India, bail jurisprudence is primarily governed by the Sections 436 to 450 CrPC corresponding Sections 478 to 496 of the BNSS, which lays down procedures and conditions for granting bail. There are two classes of offences under the IPC and the corresponding BNS: Bailable and Non bailable offences.

i. Bail in bailable offences

According to Section 2(1)(c) of BNSS / Section 2(a) of CrPC, ‘Bailable Offence’ means an offence which is mentioned as bailable in the First Schedule of the BNSS, or which is made bailable by any other law in force. In Bailable offences, an accused person can seek Bail as a matter of right. It is also the duty of the police officer to inform the person accused of a bailable offence that they have the right to get bail.²⁰⁶

Section 478 of the BNSS, provides for the cases in which bail is to be granted. The conditions to be fulfilled for grant of bail are:

- A person who is accused of any offence, other than a non-bailable offence.
- Is arrested or detained without warrant.
- The accused is prepared at any time while in custody or at any stage of proceeding before court to seek bail.

²⁰⁵ Judicial Academy Jharkhand, “*Bail - Comparative Study of CrPC 1973 and BNSS, 2023*,” (July 2025).

²⁰⁶ Bharatiya Nyaya Suraksha Sanhita, 2023, (Act 46 of 2023), s 47(2).

- Then such person shall be released on bail.

Under Section 478 of the BNSS, grant of bail is mandatory in nature given the conditions are fulfilled. The court or the police are not granted discretionary powers in this matter. Further, the Proviso to Section 478 provides for an indigent person to be released on bond without sureties, provided that they had not previously violated the conditions of their bail bond such as failing to attend court, appear before court in the same case or if they are brought back to court under custody. The accused will be considered indigent if he fails to furnish a bail bond within a week from his arrest.

ii. Bail in non-bailable offences

Non-bailable offence refers to any other offence other than those which are covered under the definition of bailable offence under Section 2(1)(c) of the BNSS. The procedure for grant of bail in non-bailable offences is covered under Section 480 of the BNSS and the corresponding Sections 437 and 439 of the CrPC. Section 480 of the BNSS states the conditions in which bail may be taken in the case of non-bailable offences. It also outlines the exceptions where bail may be rejected, which are as follows:

- If there are reasonable grounds to believe that the offence committed by the accused person is punishable with life imprisonment or death.
- If the person is accused of a cognizable offence and has also been convicted for an offence punishable with death penalty or imprisonment for life or for seven years or more, or has been convicted twice or more for offences punishable with imprisonment for three years or more but less than seven years.

In these cases, the court is granted with discretionary powers to grant bail to the accused if the court finds it just for special reasons. Further, the court has discretionary power to grant bail if the accused is a woman, child, sick or infirm. There are also certain special conditions under which the court may grant bail to the accused person. Firstly, if the trial is not concluded within sixty days from the first date fixed for taking evidence and secondly, when the court before passing a judgement believes that the accused person is not guilty of the offence, may grant bail to the accused person.

Unlike in bailable offences, in non-bailable offences bail is not a matter of right for the accused person. In the case of *Sanjay Chandra v. Central Bureau of Investigation*,²⁰⁷ the Supreme Court laid down the factors to be considered when considering an application for bail under Section 437 and 439 of the CrPC and the corresponding Sections 480 and 483 of the BNSS. It was held that the severity and gravity of the alleged offence and severity of punishment are important factors to be considered to maintain a balance between preserving personal liberty and securing the presence of an accused person during trial. However, it was also held that bail must ordinarily be granted and only be refused in extraordinary circumstances.

As observed in a plethora of judgments of the Hon'ble Supreme Court, the factors which are considered by the court in allowing a bail application are as follows:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if

²⁰⁷ (2012) 1 SCC 40.

released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger of justice being thwarted by grant of bail.²⁰⁸

iii. Bail Under BNSS

The BNSS recognizes four main types of bail, each tailored to specific stages of criminal proceedings:

➤ Regular Bail

Regular bail applies to individuals in custody, whether under arrest or judicial detention. Applications may be filed before Magistrates, Sessions Courts, or High Courts, depending on the case's complexity. Section 479 of the BNSS introduces a groundbreaking reform: the Superintendent of Jail must proactively apply for bail for undertrial prisoners who have served one-third (for first-time offenders) or one-half of the maximum sentence for their offence, except in cases punishable by death or life imprisonment. This provision, inspired by the Supreme Court's ruling in *Satender Kumar Antil v. CBI*,²⁰⁹ that aims to decongest prisons and protect vulnerable undertrial prisoners.

➤ Anticipatory Bail

Section 482 of the BNSS deals with anticipatory bail. This allows individuals apprehending arrest for non-bailable offences to seek pre-arrest relief. The BNSS also removes the CrPC's requirement for the Public Prosecutor's mandatory hearing and the applicant's presence.²¹⁰

²⁰⁸ *State of Haryana v. Dharamraj*, (2023) 17 SCC 510.

²⁰⁹ (2022) 10 SCC 51.

²¹⁰ Bharatiya Nagarik Suraksha Sanhita, 2023, (Act 46 of 2023), s. 482

The Supreme Court in *Dhanraj Aswani v. Amar S. Mulchandani*²¹¹ held that a person who was already in custody in connection with one case can file anticipatory bail in another case in which he was wanted in, as such, the applicant is entitled for anticipatory bail. The court clarified that such applications shall be heard and decided by the competent courts on their own merits. There is no express or implied restriction in the CrPC or in any other statute that prohibits the Court of Session or the High Court from entertaining and deciding an anticipatory bail application in relation to an offence, while the applicant is in custody in relation to a different offence.

➤ Transit Anticipatory Bail

Although not codified in the BNSS or other statutes, Courts in India have awarded transit bail from time to time. ‘Transit bail’ or ‘transit anticipatory’ allows temporary protection to the accused person to reach the location where they are facing arrest and apply for regular or anticipatory bail, as applicable. This remedy was affirmed by the courts in the case of *Priya Indoria v. State of Karnataka*,²¹² where it was held that Courts are granted the power to issue transit anticipatory bail as an interim measure in cases where the FIR is registered outside the applicant’s jurisdiction.

➤ Interim Bail

Interim bail provides temporary release pending a final bail decision, often granted in cases involving humanitarian concerns, such as medical emergencies or family crises. While not explicitly codified, the BNSS retains this practice through inherent judicial powers. The

²¹¹ 2024 INSC 669.

²¹² (2024) 4 SCC 749.

Supreme Court in *Umarmia v. State of Gujarat*²¹³ emphasised that interim bail applications must be disposed of expeditiously, recommending timelines of one week for subordinate courts and two to three weeks for High Courts.

➤ Statutory (Default) Bail

Under Section 187(2) of the BNSS, if the police fail to file a chargesheet within 60 days (for offences punishable by up to ten years) or 90 days (for graver offences with punishment over 10 years), the accused is entitled to statutory bail, provided they furnish a bail bond. The BNSS allows 15 days of police custody to be distributed over the initial 40 or 60 days of detention, unlike the CrPC's fixed 15-day limit. This change could delay statutory bail, particularly if police custody is strategically staggered, raising concerns about its impact on undertrials' rights.

➤ Bail After Conviction

Granted to a person who has been convicted and sentenced, pending the outcome of an appeal under Section 430 of the BNSS (corresponds to Section 389 CrPC) by Appellate Court or the Trial Court under specific conditions. Suspension of sentence is a prerequisite.

The suspension of a sentence is governed by Section 389 of the CrPC, which corresponds to Section 430 of the BNSS. It is a power granted to the Appellate Court to temporarily postpone the execution of a sentence passed against a convicted person while their appeal is pending. In *Vijay Kumar v. Narendra*,²¹⁴ it was held that the Appellate Court is duty-bound to

²¹³ (2017) 2 SCC 731.

²¹⁴ (2002) 9 SCC 364.

assess the matter objectively and to record reasons for the conclusion that the case warrants suspension of execution of the sentence and grant of bail.

The power conferred under this section is discretionary and is invoked to ensure that a convicted person who has a reasonable chance of acquittal, or a substantial question of law in their appeal, is not unjustly incarcerated for a potentially long period until their appeal is finally heard. Grant of bail to the convicted person under this section is discretionary and depends on the facts of the case. In *Mohd. Mohsin Khan v. State*,²¹⁵ it was held that merely because the convict has served five years in jail or half of the sentence, would not automatically entitle him to be released on bail.

The Court considers various factors, such as the gravity of the offence, the length of the sentence already served, whether the applicant has been on bail during the trial, and the likelihood of success in the appeal. The Appellate Court may impose specific conditions for suspension and the release of the convict on bail, ensuring the person's presence when required and preventing misuse of the interim liberty.

In *Sonadhar v. State of Chhattisgarh*,²¹⁶ the Hon'ble Supreme Court highlighted the issue of life convicts continuing in custody despite having served significant periods, even beyond what might warrant premature release consideration. The Apex Court emphasised the need for High Courts to take a proactive approach in identifying cases where convicts have undergone substantial periods of custody to examine the feasibility of suspending their sentences and granting bail pending the disposal of their appeals.

²¹⁵ 2013 SCC OnLine Raj 2023.

²¹⁶ 2021 SCC OnLine SC 3542.

Similarly, in *Saudan Singh v. State of Uttar Pradesh*,²¹⁷ the Supreme Court held that, in cases where the court is ready to hear the appeal, the bail application should not be considered. However, in cases where the person has already served 14 years of actual sentence, a different norm comes into place requiring the case to be considered thoroughly under the Uttar Pradesh Prisoners Release and Prohibition Rules, 1938 and to deny bail to a person for the fault of the counsel who does not argue, the accused having nothing to gain which would be a failure of justice. As the appellant in that case had already served 17 years in custody and the application for bail was rejected as the counsel was not prepared to argue the case, the court, considering the facts of the case, granted bail to the appellant.

iv. Criteria for Grant and Refusal of Bail in India

Based on the Supreme Court's landmark decisions in the case of *Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh*,²¹⁸ *Satender Kumar Antil v. Central Bureau of Investigation*²¹⁹ and other subsequent pronouncements, the criteria that courts follow when deciding on the grant or refusal of bail is as follows:

- Nature and seriousness of the offence.
- Evidence available and prima facie case against the accused.
- Position and status of the accused and likelihood of misuse of liberty.
- Chances of accused absconding or repeating the offence.
- Need to balance individual liberty with societal interest.

²¹⁷ (2023) 17 SCC 446.

²¹⁸ (1978) 1 SCC 240.

²¹⁹ (2022) SCC OnLine SC 825.

In the case of *State of Rajasthan v. Balchand*,²²⁰ the courts emphasised that the basic rule is bail, not jail, except where the circumstances suggest fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences.

In the case of *Satender Kumar Antil v. Central Bureau of Investigation*,²²¹ the Court reiterated that unnecessary arrests and detention must be avoided. It further emphasised the principle of presumption of innocence until conviction. Further, it was directed that investigating agencies and courts must strictly comply with Sections 41 and 41A of Cr.P.C. corresponding to Sections 35 and 36 of the BNSS, limiting arrest in cases where imprisonment is less than 7 years. The Court also issued detailed guidelines.

v. Bail under Special Laws

Special legislations often have alternate procedures for application and grant of bail. For instance, Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, provides strict conditions for grant of bail. As per the Act, bail may only be granted after:

- The Public Prosecutor has been heard, and
- The Court is satisfied that there are reasonable grounds for believing that the accused is not guilty and that they will not commit any offence while on bail.²²²

In the case of the *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India*,²²³ the Supreme Court has observed that the grant of bail under special

²²⁰ (1977) 4 SCC 308.

²²¹ 2025 INSC 909.

²²² Narcotic Drugs and Psychotropic Substances Act, 1985, (Act 61 of 1985), s. 37.

²²³ (1994) 6 SCC 731.

legislations have remained inconsistent and unpredictable, and therefore issued certain directions as enumerated below:

- Under-trials charged with offences punishable by five years or less can be released on bail after serving half the sentence.
- For offences exceeding five years, bail is set at a minimum of Rs 50,000.
- Special conditions apply for foreign under-trials, including passport impounding and assurance from their embassies.

➤ The Narcotic Drugs and Psychotropic Substances, Act, 1985

Under the NDPS Act, bail is granted only in special circumstances. The rationale for such strict conditions and difficulty in obtaining bail for an accused person under the NDPS Act is that the State is under apprehension that the accused person may revert back to, or continue to traffic drugs, thus endangering society.

Note: For additional information on *Narcotic Drugs and Psychotropic Substances, Act, 1985*, please refer to the detailed note on the same under Topic 2, Part III ‘Special Laws’ of this Module.

➤ Protection of Children from Sexual Offences Act, 2012

Under the Protection of Children from Sexual Offences Act, 2012, the provisions for granting bail are stringent in nature, given that it is a special law which aims to protect children from sexual harassment and assault. Given the sensitive nature of the offence and the victims

involved in such cases, the Courts have scrutinized bail jurisprudence for persons accused under POCSO with a stricter standard. In exceptional cases, the factors such as the accused being a minor and absence of prima facie evidence against the accused were considered by the court in awarding bail under POCSO.

Note: For additional information on *Protection of Children from Sexual Offences Act, 2012*, please refer to the detailed note on the same under *Topic 2, Part III, Special Laws* ' of this Module.

➤ Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

The anticipatory bail, under Section 438 of the CrPC and the corresponding Section 482 of the BNSS, is prohibited in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.²²⁴ However, in cases where prima facie case is not made out for the applicability of the provisions of the Act, then the bar created by Sections 18 and 18-A(i) shall not apply and thus the court would not be precluded from granting pre-arrest bail to the accused persons under Section 438 of the CrPC.²²⁵

Under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sections 15A(3) and 15A(5) makes it mandatory for the court to ensure the presence of the victim during the hearing of bail applications, this provision ensures that the victim is present at the time of hearing of the bail of the accused and in case the bail is granted without

²²⁴ The Scheduled Castes and the Scheduled Tribes (Prevention Of Atrocities) Act, 1989 (Act 33 of 1989), ss. 18, 18A.

²²⁵ *Prathvi Raj Chauhan v. Union of India*, (2020) 4 SCC 727.

granting an opportunity of being heard to the victim it may be a ground for the cancellation of bail, which was held in the case of *Hariram Bhambhi v. Satyanarayan*.²²⁶ In this case, the court held that Sections 15A(3) and (5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, providing for the prior reasonable notice and right to be heard are to be followed mandatorily, and failure to comply is not curable at the latter stage like, bail cancellation.

Duty of LADC is to ensure that the notice as required u/s 15A (3) is served duly to the victim and an opportunity of being heard under section 15A (5) is granted to the Victim as it will avoid any delay of the bail proceedings as well as it prevent the possibility of cancellation of bail granted to the accused in the future.

➤ Unlawful Activities (Prevention) Act, 1967

The Unlawful Activities (Prevention) Act, 1967 have harsher conditions for application and grant of bail. As per Section 43D(5) of the UAPA, no bail can be granted for any person who is accused of an offence punishable under Chapters IV and VI of the act unless, the Public prosecutor has been given an opportunity to be heard, and the court is of the opinion that there are reasonable grounds for believing that the accusation against such a person is *prima facie* true.

Note: For additional information on *Unlawful Activities (Prevention) Act, 1967*, please refer to the detailed note on the same under Topic 2, Part III, 'Special Laws' of this Module.

²²⁶ 2021 INSC 701.

Role of LADCS at the stage of Bail

At the stage where the arrested person is eligible to seek bail, it is important for a LADC to ensure that the right of the arrested person to seek bail is acted upon as soon as they are willing and able. The LADC at the time of bail application is expected to:

- To file a bail application in appropriate cases.
- To assist the arrested person with furnishing the bail bond/bond.
- To inform and assist the family of the arrested persons for furnishing bail bond or surety.
- In case of rejection of bail, to inform the District Legal Services Authority immediately.
- To inform the arrested person of their right to seek bail application in Higher courts.
- To assist the arrested person with application for bail before higher courts, if they choose to do so.

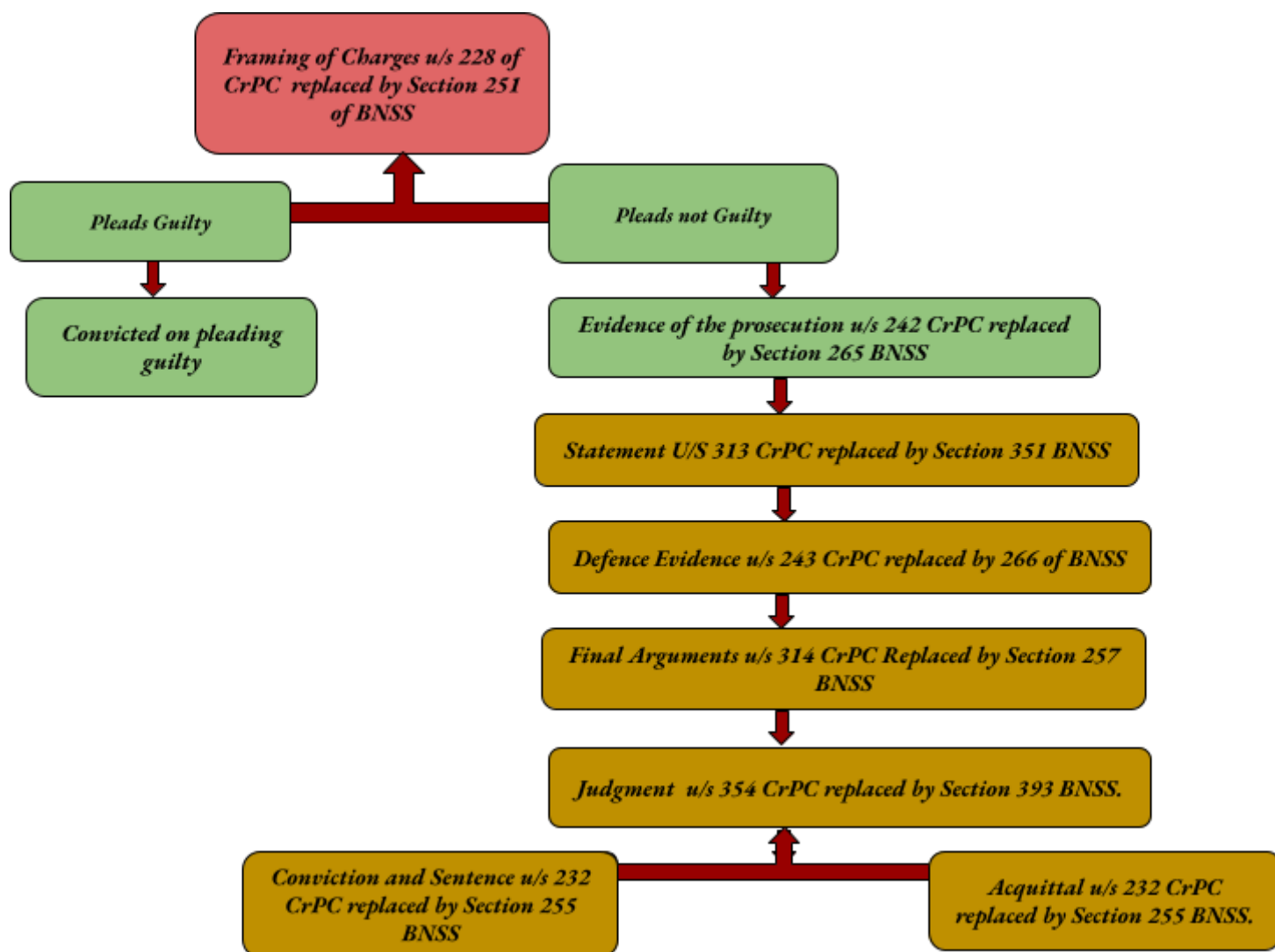
List of Cases

- *Satender Kumar Antil v. Central bureau of investigation*, 2025 SCC Online SC

- *Dhanraj Aswani v. Amar S. Mulchandani*, 2024 SCC Online SC 2453
- *Shajan Skaria v. The State of Kerala*, 2024 INSC 625
- *Manish Sisodia v. Directorate of Enforcement*, 2024 INSC 595
- *Frank Vitus v. Narcotics Control Bureau*, 2024 INSC 479
- *Md. Asfak Alam v. State of Jharkhand*, (2023) 8 SCC 632
- *Rahna Jalal v. State of Kerala*, (2021) 1 SCC 733
- *Sushila Aggarwal v. State National Capital Territory of Delhi*, (2020) 5 SCC 1
- *Sanjay Chandra v. C.B.I.*, (2012) 1 SCC 40
- *Gurbaksh Singh Sibbia v. State of Punjab* (1980) 2 SCC 565
- *Hussainara Khatoon v. Home Secretary*, (1980) 1 SCC 98

E. Trial

The following figure illustrates the various stages in a criminal trial under the CrPC or the corresponding provisions of the BNSS, along with the corresponding statutory provisions governing each stage-



The first step in a criminal trial is framing the charges. This is the most important step since it is when the judge decides if there is enough evidence to move forward. During this phase, the

court reads the precise charges to the accused and explains them. The accused is entitled to know with precision what is the law on which they are put to trial.²²⁷ The accused enters a plea of "guilty" or "not guilty."

It is important to consider that in numerous instances, criminal proceedings are initiated in cases pertaining to civil disputes. In *Shikhar Chemicals v. State of Uttar Pradesh*,²²⁸ the Supreme Court set aside the order of the Allahabad High Court and held that the settled position of law is that in cases of civil disputes, a complainant could not be allowed to resort to criminal proceedings as it would amount to abuse of the process of law. It is the duty and obligation of the court to exercise a great deal of caution in the issuing process particularly when the matter is essentially of civil nature.²²⁹

i. Right to speedy trial

Right to speedy trial is a fundamental right of a prisoner implicitly guaranteed under Article 21 of the Constitution of India. This right protects the individuals from prolonged detention, and upholding the principle of justice delayed is justice denied. The Constitution ensures just, fair and reasonable procedure as regards trial. In the case of *Hussainara Khatoon v. State of Bihar*,²³⁰ the Supreme Court expressed its concern about the delay in trial and stated that the poor are denied justice because they are too poor to afford bail and the courts have no time to try them. The Supreme Court held that a procedure which keeps such a large number of people behind bars without trial for so long cannot possibly be regarded as reasonable, just or fair so as to be in conformity with the requirement of Article 21.

²²⁷ *Vinubhai Ranchhodbhai Patel v. Rajubhai Dudabhai Patel*, (2018) 7 SCC 743.

²²⁸ 2025 SCC OnLine SC 1643.

²²⁹ *G. Sagar Suri v. State of Uttar Pradesh*, (2000) 2 SCC 636; *Rikhab Birani v. State of Uttar Pradesh*, 2025 INSC 512.

²³⁰ (1980) 1 SCC 81.

In *P. Ramachandra Rao v. State of Karnataka*, the Supreme Court held that it is the constitutional obligation of the State to dispense speedy justice, and more so in cases of criminal law.²³¹

The court, further, in *Abdul Rehman Antulya v R.S. Nayak*, observed that the Right to Speedy Trial flowing from Article 21 encompasses all the stages namely the stage of investigation, inquiry, trial, appeal, revision and retrial.²³²

Under the BNSS, certain timelines have been prescribed to ensure that the mandate of speedy trial is upheld.

- In case of cognizable offences punishable with 3 years or more but less than 7 years, preliminary inquiry is to be conducted within 14 days to see if a prima facie case exists.²³³
- A period of a maximum of 14 days (without undue delay) from the date of appearance or production of the accused is prescribed under BNSS for providing a copy of relevant documents to the victim and the accused (For proceedings instituted on police report).²³⁴
- A further timeline of delivery of judgment within a period of 30 days from the date of completion of the arguments is also prescribed under BNSS. This period can be further extended by 15 days i.e. to a maximum of 45 days with reasons.²³⁵

²³¹ (2002) 4 SCC 607.

²³² (1988) 2 SCC 602.

²³³ Bharatiya Nagarik Suraksha Sanhita, 2023, (Act 46 of 2023), s. 173(3).

²³⁴ Bharatiya Nagarik Suraksha Sanhita, 2023, (Act 46 of 2023), s. 230.

²³⁵ Bharatiya Nagarik Suraksha Sanhita, 2023, (Act 46 of 2023), s. 258.

List of Cases

- *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar*, (1980) 1 SCC 98.
- *P. Ramachandra Rao v. State of Karnataka*, (2002) INSC 203.
- *Imtiyaz Ahmad v. State of Uttar Pradesh*, (2012) INSC 67.
- *Sheela Barse v. State of Maharashtra*, (1980) 2 SCC 96.
- *Shaheen Welfare Association v. Union of India*, (1996) INSC 324.
- *Javed Gulam Nabi Shaik v. State of Maharashtra*, (2024) INSC 645.

ii. Right against self incrimination

Article 20 (3) of the Constitution provides for the protection against self incrimination as:

“No person accused of any offence shall be compelled to be a witness against himself.”

It declares that no person accused of an offence shall be compelled to be a witness against himself. This provision embodies the principle of protection against compulsion of self-incrimination. Analysing the terms in which the guarantee is contained in the Constitution, it may be stated to consist of the following three components:

- It is a right pertaining to an individual accused of an offence;
- It is a protection against compulsion to be a witness; and
- It is a protection against such compulsion resulting in individuals giving evidence against themselves.

In *Selvi v. State of Karnataka*,²³⁶ the Supreme Court held that the compulsory administration of lie-detector tests was violative of the right against self-incrimination, and that such tests cannot be admitted as evidence. However, such a right does not bar the accused individual from volunteering to undergo such tests. Their results are admissible in evidence only in the instance that they have been conducted strictly in accordance with the guidelines laid down by the National Human Rights Commission.²³⁷

iii. Supply of documents to the accused under Section 230 of the BNSS

Section 230 of the BNSS, which corresponds to section 207 of the CrPC states that in any criminal proceeding instituted on a police report, the Magistrate must, without delay and not later than fourteen days from the date of the accused's production or appearance, supply to the accused and, if represented, to the victim's advocate, free of cost, copies of all essential documents on which the prosecution relies. This section embodies the constitutional guarantee of fair trial under Article 21 and natural justice under Article 14 of the Constitution of India. Although the word 'shall' has been used in the legal provision, however, in *Bhole v. State of MP*,²³⁸ it was held that the use of 'shall' in this section is only directory and not mandatory, and non-compliance does not vitiate the trial.

The purpose of this section is to ensure transparency and fairness at the very start of the trial process. An accused person must know the accusations and evidence against them to prepare an effective defence. Similarly, the victim's counsel is entitled to the same documents to follow the proceedings meaningfully.

²³⁶ (2010) 7 SCC 263.

²³⁷ *Ibid.*

²³⁸ 1992 SCC OnLine MP 209.

The Supreme Court in *Youth Bar Association of India v. Union of India*,²³⁹ held that an accused has a right to obtain a copy of the FIR at an earlier stage than prescribed under Section 207 of the CrPC, which corresponds to Section 230 of the BNSS, which typically provides access after the Magistrate takes cognizance of the offence.

List of Cases

- *Naresh Kumar Yadav v. Ravindra Kumar*, (2008) 1 SCC (Cri) 277.
- *V.K. Sasikala v. State*, (2012) 9 SCC 771.
- *Jitendra v. State of Madhya Pradesh*, (2004) 10 SCC 562.

iv. All Evidences to be recorded in the presence of the accused

The right of an accused to watch the prosecution witnesses deposing before a court of law indisputably is a valuable right.²⁴⁰ Section 308 of the BNSS provides that, unless specifically provided otherwise, all evidence during a trial or other proceeding must be recorded in the presence of the accused. If the court has excused the accused from personal appearance, the evidence may instead be taken in the presence of their advocate, including through audio-video electronic means at a location designated by the State Government. The proviso to Section 308 of the BNSS, safeguards victims of sexual offences under eighteen years of age, allowing the court to prevent their direct confrontation with the accused while still ensuring the accused's right to cross-examine them.

²³⁹ (2016) 9 SCC 473.

²⁴⁰ *Jayendra Vishnu Thakur v. State of Maharashtra*, (2009) 7 SCC 104.

Section 308 of the BNSS is corresponding to Section 273 of the CrPC. Section 308 expressly provides for the recording of evidence through the electronic means. It is based on the principle of natural justice. It is pertinent for the LADC to ensure that the evidence is recorded in his/her presence and any violation of the said provision should be objected to before the court in the course of trial.

List of Cases

- *State of Maharashtra v. Dr. Praful B. Desai*, (2003) 4 SCC 601.
- *Atma Ram v. State of Rajasthan*, (2019) 20 SCC 481.
- *A.T. Mydeen v. Commr. of Customs*, (2022) 14 SCC 392.

v. Statements of the Accused under Section 351 BNSS

Section 351 of the BNSS which corresponds to Section 313 of the CrPC empowers the court to examine the accused after the evidence for the prosecution has been taken. The object behind examining the accused is to grant him an opportunity to explain any circumstances that may incriminate him, and further explain the circumstances that appear against him in the evidence. The section re-inforces the principle of '*Audi alteram partem*'.

The Supreme Court in *Nar Singh v. State of Haryana*,²⁴¹ considered the kinds of examination available under section 313 of the CrPC, and held that:

²⁴¹ (2015) 1 SCC 496.

“There are two kinds of examinations under section 313 of the CrPC. The first under section 313(1)(a) CrPC relates to any stage of inquiry or trial, while the second under section 313(1)(b) CrPC takes place after the prosecution witnesses are examined and before the accused is called upon to enter his defence. The former is particular and optional; but the latter is general and mandatory.”

Basic principles of examination of witness

There are 12 basic principles of examination of the accused as enumerated in the case of *Indrakunwar v. State of Chattisgarh*,²⁴² which have evolved over time. These include:

- *The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.*
- *The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.*
- *The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.*
- *The ultimate test when concerned with the compliance of the section is to enquire and ensure whether the accused got the opportunity to say his piece.*
- *In such a statement, the accused may or may not admit the involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.*

²⁴² 2023 SCC OnLine SC 1364.

- *The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.*
- *This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.*
- *This statement is to be read as a whole. One part cannot be read in isolation.*
- *Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.*
- *The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.*
- *The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.*
- *Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision.*

List of Cases

- *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116.
- *Ravasaheb v. State of Karnataka*, (2023) 5 SCC 391.
- *Basavaraj R. Patil v. State of Karnataka*, (2000) 8 SCC 740.
- *Brajesingh v. State of Madhya Pradesh*, (2012) 4 SCC 289.
- *Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793.

F. Hearing of sentencing

Hearing of sentences refers to a court proceeding that takes place after the accused has been found guilty or pleaded guilty, to determine the quantum of punishment. Section 235 of CrPC and the corresponding Section 258 of the BNSS deals with the judgement of acquittal or conviction and is reproduced below:

(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case, as soon as possible, within a period of thirty days from the date of completion of arguments, which may be extended to a period of forty-five days for reasons to be recorded in writing.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 401, hear the accused on the question of sentence, and then pass sentence on him according to law.

Therefore, the accused has a right to be heard on the question of sentence after he/she is acquitted.

In the case of *Allauddin Mian Sharif Mian v. State of Bihar*,²⁴³ the Supreme Court held that a sentencing decision under the Sexual Harassment of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013 was taken without taking into consideration the requirements under section 235(2) of the CrPC. The Court was of the opinion that the trial court that had passed such an order had treated Section 235 (2) as a mere formality and that sentencing on the same day as the conviction is not in accordance with the law, as it denies the parties sufficient time to prepare and present evidence related to the sentence.

List of Cases

- *Mithu v. State of Punjab*, (1983) 2 SCC 277.
- *Santa Singh v. State of Punjab*, (1976) 4 SCC 190.
- *Rajendra Prasad v. State of Uttar Pradesh*, (1979) 3 SCC 646.
- *Mohammad Giasuddin v. State of Andhra Pradesh*, (1977) 3 SCC 287.
- *Dhananjoy Chatterjee v. State of West Bengal*, (1994) 2 SCC 220.

²⁴³ (1989) 3 SCC 5.

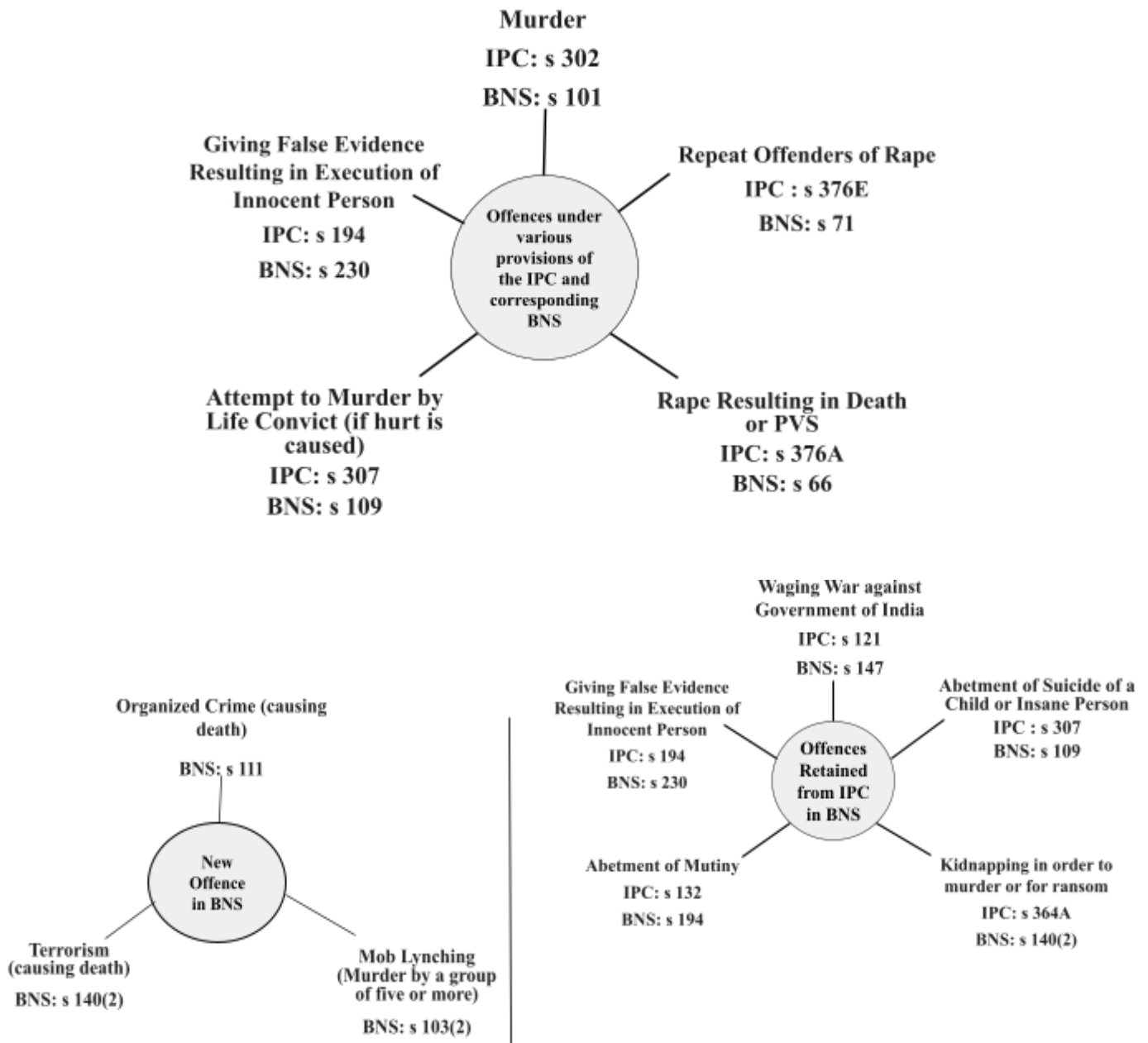
➤ *Rameshbhai Chandubhai Rathod v. State of Gujarat*, (2011) 2 SCC 764.

➤ *Chhannu Lal Verma v. State of Chhattisgarh*, (2019) 12 SCC 438.

G. Death Penalty

Capital punishment represents the most severe form of legal punishment/penalty for offences in India's legal system. The imposition of capital punishment is guided by the principle of “*rarest of the rare*” cases which is a doctrine laid down by the Supreme Court of India. The principle ensures that the punishment is reserved for the most heinous offences. Section 354(3) of the CrPC and the corresponding Section 393(3) of the BNSS requires the special reasons to be recorded while awarding a death sentence.

The IPC and the BNS define the crimes and their corresponding punishments. As outlined in Section 53 of the IPC and the corresponding Section 4 of the BNS, death sentence is listed as one of the six forms of the punishment. The IPC prescribed the death penalty for several specific crimes. The BNS has expanded the total number of punishable offences by death from twelve to eighteen, including the offences as enumerated below:



(Figure: Comparison of sections under IPC and BNS for offences punishable with death sentence)

i. From CrPC to BNSS: The Procedural Changes regarding Death Penalty

Legal Provisions	Procedural Aspect
Imposition of Death Sentence CrPC: Section 354(3) BNSS:Section 393(3)	Requires ‘special reasons’ to be recorded. This principle is retained.
Mandatory High Court Confirmation CrPC: Section 366 BNSS: Section 407	Crucial safeguard is retained and codified.
Commutation of Sentence CrPC: Section 433 BNSS: Section 474	The BNSS only allows commutation to life imprisonment, unlike the CrPC, which permits commutation to any lesser punishment.
Commutation for Pregnant Women BNSS: Section 456 (Newly added)	Mandates commutation to life imprisonment. No such corresponding provision exists in the CrPC.

Mercy Petitions BNSS:Section 472(2) (Newly added & codified procedure with time limits)	Legislative response to Supreme Court's mandate in <i>Shatrughan Chauhan</i> . ²⁴⁴ No such corresponding provision exists in the CrPC.
Method of Execution CrPC: 354(5) BNSS: Section 393(5)	Retains the method of hanging till death for a person sentenced to death.

In the case of *Bachan Singh v. State of Punjab*,²⁴⁵ the Supreme Court upheld the constitutional validity of capital punishment but at the same time formulated the principle of rarest of rare doctrine, which mandates that death penalty should only be imposed in heinous offences. Furthermore, the courts were directed to provide “special reasons” in their judgement while awarding the death penalty. The death penalty can be awarded in a rarest to rare case where the alternative option than death penalty is reasonably foreclosed. Moreover, the following guidelines have emerged from the case of *Bachan Singh*:²⁴⁶

- Death penalty may be inflicted in gravest cases of extreme culpability.

²⁴⁴ (2014) 3 SCC 1.

²⁴⁵ 1980 SCC (Cri.) 580.

²⁴⁶ *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470.

- Before opting for the death penalty the circumstances of the ‘offender’ also require to be taken into consideration along with the circumstances of the ‘crime’.
- Life Imprisonment is the rule and death penalty is an exception.
- A balance sheet of aggravating and mitigating circumstances has to be drawn up and a balance has to be struck between aggravating and mitigating circumstances before the option is exercised.

ii. Rarest of the rare doctrine

The doctrine of the ‘*rarest of the rare*’ was elaborated in the case of *Machi Singh v. State of Punjab*²⁴⁷ in which the court held that two careful considerations must precede before imposing the death penalty: first, whether life imprisonment would be insufficient in serving the ends of justice; and second, whether, after giving due consideration to all mitigating factors, no punishment other than death penalty would be appropriate. The judgment further outlined five broad categories of cases that fall under the purview of ‘rarest of rare’ doctrine, which are:

- the manner of commission of crime;
- the motive behind the crime;
- social impact of the crime;
- magnitude of the crime, and
- the vulnerability of the victim.

²⁴⁷ 1983 SCC (CrL.) 681.

Moreover, in the case of *Gurvail Singh @ Gala v State of Punjab*²⁴⁸ three tests were propounded by the Supreme Court for the courts on awarding a death penalty:

“1. the crime test, the aggravating circumstances have to be fully satisfied;

2. the criminal test, there should be no mitigating circumstances favouring the accused; and

3. If both these tests are satisfied, then, the rarest of rare cases test, “which depends on the perception of the society and not ‘judge-centric,’ that is whether the society will approve the awarding of death sentence to certain types of crime or not.” While applying this test, the Court held that “it has to look into a variety of factors like society’s abhorrence, extreme indignation and antipathy to certain types of crimes.”

Further it has been observed that in case the crime is committed in the most cruel and inhuman manner which is an extremely brutal, grotesque, diabolical, revolting and dastardly manner, where the act of the accused affects the entire moral fiber of the society, e.g. crime committed for power or political ambition or indulge in organized criminal activities, death sentence should be awarded.²⁴⁹ Similarly in the case of *Sudam @ Rahul Kaniram Jadhav v. State of Maharashtra*,²⁵⁰ the Supreme Court observed that killing a woman and her four

²⁴⁸ (2013) 2 SCC 713.

²⁴⁹ *Hareesh Mohandas Rajput v. State of Maharashtra*, (2011) 12 SCC 56.

²⁵⁰ (2011) 7 SCC 125.

children in a pre-mediated and planned manner is a beastly, extremely brutal, barbaric and grotesque act that resulted into intense and extreme indignation of the community and shocked the collective conscience of the society implying that the accused is beyond reformation. Thus, awarding a punishment lesser than death penalty shall be fraught with danger as it may expose the society to peril once again at the hands of the accused.

The Supreme Court in the case of *Ishwari Lal Yadav v. State of Chhattisgarh*,²⁵¹ confirmed death sentences for the married couple in a case involving human sacrifice of a two-year-old. The judgement was pronounced while relying on the guidelines laid down in *Sushil Murmu v. State of Jharkhand*²⁵² which involved the human sacrifice of a 9 year old. In *Ishwari Lal Yadav v. State of Chhattisgarh*,²⁵³ it was held that the case falls under the ambit of “the rarest of the rare cases,” deserving the death sentence.

Moreover, the Court has emphasised that while deciding whether a case falls within the category of the rarest of rare, the brutality, and/or the gruesome and/or heinous nature of the crime is not the sole criterion. It is not just the crime which the Court is to take into consideration, but also the criminal, the state of his mind, his socio-economic background, etc.²⁵⁴ Awarding death sentences is an exception, and life imprisonment is the rule.²⁵⁵

iii. Mitigating and Aggravating Factors

In awarding a death sentence, while examining whether the case falls within the ‘rarest of rare’ category, there are several factors that the court takes into account. Factors that dissuade

²⁵¹ (2019) 10 SCC 423.

²⁵² (2004) 2 SCC 338.

²⁵³ (2019) 10 SCC 423.

²⁵⁴ *Mohd. Mannan @ Abdul Mannan v. State of Bihar*, (2019) 16 SCC 584.

²⁵⁵ *Ibid*.

the court from sentencing the accused death penalty are called mitigating factors, while the circumstances that lead the court to decide affirmatively that the act of the accused is such that the offence will entail death sentencing are called ‘aggravating circumstances’. Initially, in *Bachan Singh v. State of Punjab*²⁵⁶ and over the years through other landmark judgments, the following list of mitigating and aggravating circumstances may be referred to by the LADCs while arguing a death sentence:

Mitigating Circumstances

Age-Related Factors

If the accused is young or old, he shall not be sentenced to death.

Young age points to the possibility of reform.

(if the accused is of 27 years of age and has committed rape he still can in future be a useful member of the society if he is put through rehabilitation)

- *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684, para 206.
- *Ramnaresh v. State of Chhattisgarh*, (2012) 4 SCC 257.
- *Rameshbhai Chandubhai Rathod (2) v. State of Gujarat*, (2011) 2 SCC 764.

²⁵⁶ (1980) 2 SCC 684, para. 206.

- Amit v. State of Maharashtra, (2003) 8 SCC 93.
- Rahul v. State of Maharashtra, (2005) 10 SCC 322.
- Santosh Kumar Singh v. State, (2010) 9 SCC 747.
- Amit v. State of Uttar Pradesh, (2012) 4 SCC 107.

Mental State and Capacity

Offence committed under the influence of extreme mental or emotional disturbance can be a mitigating circumstance as the defect could have impaired his capacity to appreciate the criminality of his/her conduct.

(if an accused was emotionally disturbed due to the elopement of his wife with some other person and that his children were suffering in absence of their mother with them, this caused the accused mental impairment)

- Bachan Singh v. State of Punjab, (1980) 2 SCC 684, para 206.
- Manoj Suryavanshi v. State of Chhattisgarh, (2020) 4 SCC 451.
- Shamshul Kanwar v. State of Uttar Pradesh, (1995) 4 SCC 430.
- Elavarasan v. State, (2011) 7 SCC 110.
- Surendra Mishra v. State of Jharkhand, (2011) 11 SCC 495.

Probability of Future Conduct

Probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society along with the probability that the accused can be reformed and rehabilitated.

- Bachan Singh v. State of Punjab, (1980) 2 SCC 684, para 206.
- Chhannu Lal Verma vs The State Of Chhattisgarh, (2019) 12 SCC 438.
- Rameshbhai Chandubhai Rathod (2) v. State of Gujarat, (2011) 2 SCC 764.

Possibility of Reform and Rehabilitation

The benefit of the possibility of reformation is given where the offenders were not a danger to society, and the possibility of reform was not closed.

- Mohd. Chaman v. State (National Capital Territory of Delhi), (2001) 2 SCC 28.
- Bantu v. State of Madhya Pradesh, (2001) 9 SCC 615.
- Haresh Mohandas Rajput v. State of Maharashtra, (2011) 12 SCC 56.
- Nirmal Singh v. State of Haryana, (1999) 3 SCC 670.
- Raju v. State of Haryana, (2001) 9 SCC 50.
- Surendra Pal Shivbalakpal v. State Gujarat, (2005) 3 SCC 127.

Superstitious Beliefs

In the facts and circumstances, the accused believed that he was morally justified in committing the offence; the Accused acted under the duress or domination of another person.

Crime motivated by ignorance and superstition

(if the accused murdered a woman and her child believing that sacrificing them would help recover a lost treasure, committing the crime out of superstition and ignorance)

- State of Maharashtra v. Damu, (2000) 6 SCC 269.

Post-Crime Conduct

Post-murder remorse, penitence or repentance can be a mitigating factors

- Bachan Singh v. State of Punjab, (1980) 2 SCC 684, para 208.

Special Provisions for Juveniles

A child (person under 16 years at the date of murder) cannot be tried, convicted and sentenced to death or life imprisonment - a special reformatory procedure applies.

- Bachan Singh v. State of Punjab, (1980) 2 SCC 684, para 207.

Aggravating Circumstances

Manner of Commission of Murder

Murder committed after previous planning and involves extreme brutality; Murder involves exceptional depravity

(Carrying out a series of five planned attacks in one night, killing seventeen people; murdering wife, three minor children and his parents, brutally attacking them with an axe while they slept, in a premeditated and cold-blooded act driven by anger and personal animosity; Raping and murdering an 11-year-old girl, strangled her, and mutilated her private parts before dumping her body in a field)

- Bachan Singh v. State of Punjab, (1980) 2 SCC 684, para 202.
- Machhi Singh v. State of Punjab, (1983) 3 SCC 470, para 33.
- Ravji v. State of Rajasthan, (1996) 2 SCC 175, para 24.
- Bantu v. State of Uttar Pradesh, (2008) 11 SCC 113.
- Jumman Khan v. State of Uttar Pradesh, (1991) 1 SCC 752.
- Kamta Tiwari v. State of Madhya Pradesh., (1996) 6 SCC 250.
- Shivaji @ Dadya Shankar Alhat v. The State of Maharashtra, (2008) 15 SCC 269.
- Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546, para 55.

- Sushil Murmu v. State of Jharkhand, (2004) 2 SCC 338.

Motive for the Commission of Murder

Murder for motive with total depravity and meanness

(Pre-planned murder for monetary gain or by hired assassins for monetary reward.)

- Machhi Singh v. State of Punjab, (1983) 3 SCC 470, para 34.
- Bachan Singh v. State of Punjab, (1980) 2 SCC 684, para 205.

Anti-Social or Socially Abhorrent Nature of Crime

Murder of a Scheduled Caste/minority member to terrorise, deprive of land/benefits or to restore social balance; Bride burning, dowry deaths, murder to remarry for extracting dowry or to marry another woman due to infatuation

- Machhi Singh v. State of Punjab, (1983) 3 SCC 470, para 35.

Magnitude of Crime

Crime enormous in proportion

(Multiple murders of all or almost all family members or a large number of persons of particular caste/community/locality; Murder by firearm, automatic projectile, bomb or weapon creating high simultaneous risk of death/injury to multiple persons)

- Machhi Singh v. State of Punjab, (1983) 3 SCC 470, para 36.
- Bachan Singh v. State of Punjab, (1980) 2 SCC 684, para 205.

Personality/Characteristics of Victim

A victim is a person vis-a-vis whom the murderer is in a position of domination or trust.

(Innocent child who could not have or has not provided an excuse or provocation for murder; Helpless woman or person rendered helpless by old age or infirmity; Murdering victim with moderate intellectual disability by strangulated her, and raped her for three days and mutilated her private parts)

- Machhi Singh v. State of Punjab, (1983) 3 SCC 470, para 37.
- Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546, para 54.
- Md. Mannan v. State of Bihar, (2011) 8 SCC 65.

Status/Category of Victim

Murder of a member of armed forces, police force or public servant while on duty or in consequence of lawful discharge of duty; Murder of a person who acted in lawful discharge of duty under Section 43 CrPC or who rendered assistance to a magistrate or police officer

- Bachan Singh v. State of Punjab, (1980) 2 SCC 684, para 202.

Relationship and Breach of Trust

of Trust Betrayed trust reposed in the accused in a cruel and calculated manner

(Killing wife and children; the accused worked as a mason in the victim's grandfather's house and had sent the child to buy betel was seen to take the child on his bicycle and then she was never seen.)

- Ravji v. State of Rajasthan, (1996) 2 SCC 175, para 24 - Implications: The judgment reinforces that (a) absence of motive does not preclude capital punishment when evidence is overwhelming, and (b) multiple, barbaric murders of vulnerable victims without provocation constitute the 'rarest of rare,' warranting death penalty. No new legal doctrine was created, but the decision underscores existing sentencing principles and the Court's commitment to uphold deterrent punishment in exceptionally heinous cases)
- Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546, para 54.
- Md. Mannan v. State of Bihar, (2011) 8 SCC 65.

Post-Crime Conduct/Lack of Remorse

No remorseful after killing and committed further crimes in a cool and calculated manner

(if an accused murdered family and afterward continued his routine calmly, showing no remorse or emotional disturbance following the killings; Conspired to abduct to extort a

ransom and assaulted, strangled and dismembered the victims and then made a series of ransom calls even after the killing)

- Ravji v. State of Rajasthan, (1996) 2 SCC 175, para 24.
- Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498. (no new precedent was set, but existing death penalty jurisprudence was reinforced and applied conservatively)

Absence of Provocation

All heinous crimes are committed without any provocation.

(The cold-blooded family massacre without provocation)

- Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498.

Impact on Society/Collective Conscience

Crime invited extreme indignation of the community and shocked the collective conscience of society.

Ruthless crime shocks not only the judicial conscience but the conscience of society.

(In a case the accused worked as a mason in the victim's grandfather's house and had sent the child to buy betel was seen to take the child on his bicycle and then she was never seen. The court said this falls under the category of the rarest of rare cases- the Court concluded that the

crime shocked the conscience of society and that the accused posed a continuing menace- no reform can take place- given death penalty)

- Md. Mannan v. State of Bihar, (2011) 8 SCC 65.
- Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546.

Figure: List of mitigating and aggravating factors

List of Cases

- *Mithu v. State of Punjab*, (1983) 2 SCC 277.
- *Deena v. Union of India*, (1983) 4 SCC 645
- *Kehar Singh v. Union of India*, 1989 (1) SCC 204.
- *Triveniben v. State of Gujarat*, (1988) 4 SCC 574.
- *Swamy Shraddhananda v. State of Karnataka*, (2009) 3 SCC 113.
- *Santosh Kumar Bariyar v. State of Maharashtra*, (2009) 6 SCC 498.
- *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.
- *Mohd. Arif v. Registrar, Supreme Court of India*, (2014) 9 SCC 737.
- *Vasanta Sampat Dupare v. Union of India*, (2025) SCC OnLine SC 1823.

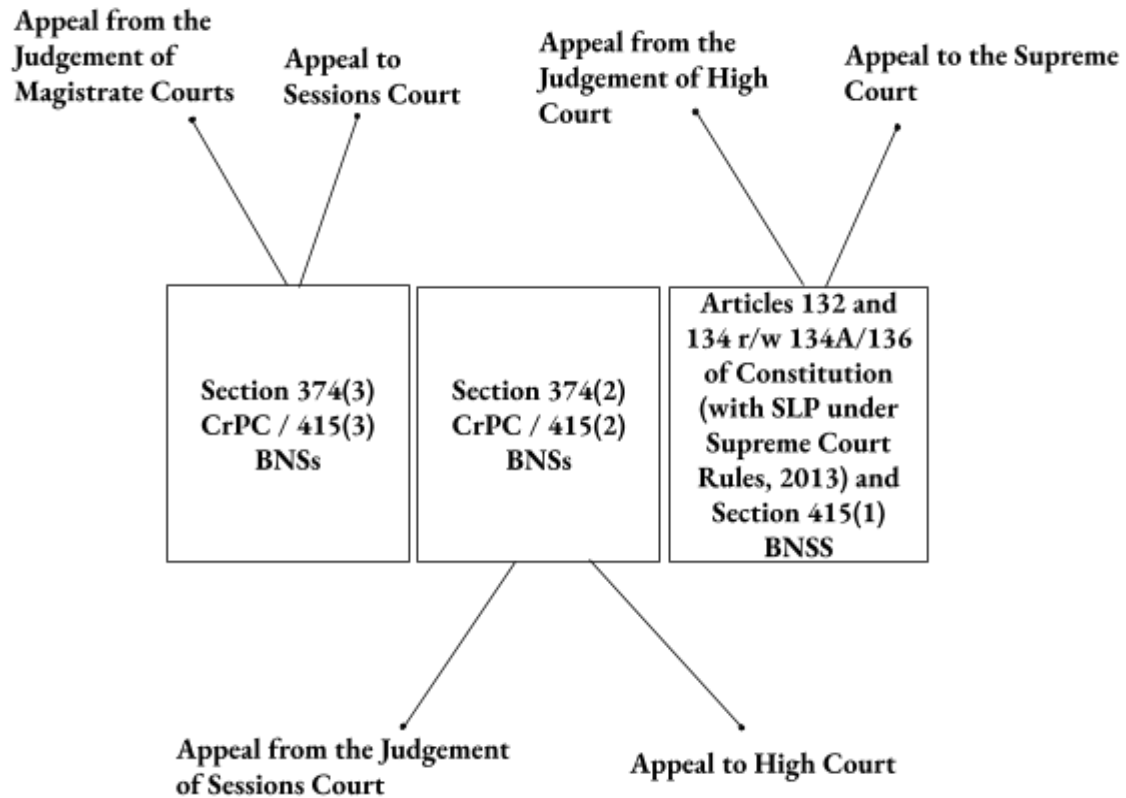
H. Appeal

The right to appeal is implicit in the right to personal liberty under Article 21 of the Constitution of India. Recently, the Supreme Court of India held that the right of an accused person to file an appeal against their conviction is not only a statutory right, but also a constitutional right.²⁵⁷ The Court observed that the right of an accused person to appeal their conviction includes their right not only to challenge a judgement on its merits, namely with respect to conviction and sentence being imposed, but also to question procedural flaws, impropriety and lapses that may have been committed by the trial court in arriving at the judgement of conviction and imposition of sentence in an appeal.²⁵⁸ Therefore, an accused person's right to appeal encompasses all other rights which are ensured to them by the Constitution. Any transgressions in the constitutional safeguards which are guaranteed to accused persons and to prisoners are brought to light of a superior court only when the accused person is able to exercise their right to appeal.

²⁵⁷ *Sachin v. State of Maharashtra*, 2025 INSC 716.

²⁵⁸ *Ibid.*

i. Procedure for appeal



ii. Time limit of filing appeal

<i>Section</i>	<i>Time Limit/period of limitation</i>	<i>Time from which period begins to run.</i>
114. <i>Appeal from an order of acquittal,—</i> <i>(a) under sub-section (1) or</i>	<i>Ninety days.</i>	<i>The date of the order appealed from</i>

<i>sub-</i> <i>section (2) of section 417 of</i> <i>the Code of Criminal</i> <i>Procedure, 1898 (5 of</i> <i>1898);</i> <i>(b) under sub-section (3) of</i> <i>section 417 of that Code</i> <i>(Corresponds to Section 419</i> <i>of the BNSS)</i>	_____ <i>Thirty days</i>	_____ <i>The date of grant of SLP</i>
115. <i>Under the Code of</i> <i>Criminal</i> <i>Procedure, 1898 (5 of</i> <i>1898)—</i> <i>(a) from a sentence of death</i> <i>passed by a court of session</i> <i>or</i> <i>by a High Court in the</i> <i>exercise of its original</i>	<i>Thirty days.</i>	<i>The date of the sentence.</i>

as time barred if there are reasons for delay, particularly in cases concerning the liberty of an individual.²⁵⁹

In *Ankush Maruti Shinde v State of Maharashtra*,²⁶⁰ the Supreme Court acquitted six men from a marginalized nomadic community who had spent 16 years on death row for the 2003 murder and rape of a family of guava pickers in Nashik. Originally convicted and sentenced to death by the trial court in 2006, with the Supreme Court itself upholding the death penalty in 2009 under the “rarest of rare” doctrine, the case was reopened through review petitions in 2014. Upon detailed re-examination, the court found flaws in the testimony of the witness and found it inconsistent and observed that the exonerating forensic evidence including fingerprints and DNA was never presented at trial. Finding reasonable doubt and concluding the accused were likely framed, the Court acquitted all six, directed Rs 5 lakh compensation to each for their wrongful incarceration, and ordered disciplinary action against the erring police officials responsible for this miscarriage of justice.

List of Cases

- *Sachin v. State of Maharashtra*, 2025 INSC 716.
- *Mahesh Singh Banzara v. State of Madhya Pradesh*, SLP (Crl.) No. 18045 of 2024.
- *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528.
- *Rajendra v. State of Rajasthan*, (1982) 3 SCC 382.
- *Madhav Hayawadanrao Hoskot v. State of Maharashtra*, (1978) 3 SCC 544.

²⁵⁹ *Mahesh Singh Banzara v. State of Madhya Pradesh*, SLP (Crl.) No. 18045 of 2024.

²⁶⁰ 2019 INSC 305.

I. Parole

Parole is a provisional release of the convict from confinement but is deemed to be part of the imprisonment. Release on parole is a part of the reformatory process and is expected to provide the convict an opportunity to transform himself. Parole is granted for good behaviour on the condition that the parolee regularly reports to a supervising officer for a specific period.²⁶¹ Historically ‘parole’ is a concept known to military law and denotes the release of a prisoner of war on promise of return. Parole has become an integral part of English and American systems of criminal justice intertwined with the evolution of the changing attitudes of the society towards crime and criminals.²⁶² Release on parole is designed to grant some degree of relief to the prisoner in certain exigencies including death of the family member of the prisoner, marriage of the prisoner, or any other emergent situations.

In India, there exist different state-specific guidelines for the parole and furlough which are formulated in consonance with the Prisoners Act, 1894 and the Prisoners Act, 1900.²⁶³ In *Poonam Lata v. M.L. Wadwan*,²⁶⁴ the Supreme Court held that parole is the grant of partial liberty, or lessening of restrictions to a convict prisoner and the release on parole does not change the status of the prisoner. Furthermore, in *Rohan Dhungat v. State of Goa*,²⁶⁵ the issue was whether the period of parole is to be included in the period of imprisonment. The court held that inclusion of the period of parole in the actual imprisonment will defeat the purpose

²⁶¹ *Asfaq v. State of Rajasthan*, (2017) 15 SCC 55.

²⁶² Anamika Choubey, “Second Chances: Examining Parole in India,” SSRN, (2020) available at: <https://ssrn.com/abstract=4888377> (Last visited on September 25, 2025).

²⁶³ Government of National Capital Territory of Delhi, *Parole/Furlough Guidelines 2010* (February 2010), available at: https://tiharprisons.delhi.gov.in/sites/default/files/circulars-orders/parole_furlough_guidelines_2010.pdf (last visited on September 25, 2025).

²⁶⁴ (1987) 4 SCC 48.

²⁶⁵ (2023) 11 SCC 554.

and object of the actual imprisonment. Hence, while calculating the actual period of imprisonment the period of parole is to be excluded.

Duties of LADC in Parole

- LADCs must understand their role and guide the prisoner and his family regarding the process, eligibility, and the legal requirements for applying for parole, while explaining how good behaviour is also essential for grant of parole.
- The LADCs must know the process of preparing applications, monitoring parole conditions and assisting the prisoner in filing parole applications.²⁶⁶

List of Cases

- *Ashfaq v. State of Rajasthan, (2017) 15 SCC 55*
- *Shor v. State Of Uttar Pradesh, (2021) 14 SCC 820.*
- *Parahlad Kumar alias Raj Kumar v. State of Himachal Pradesh, 2021 SCC OnLine HP 1624*
- *Rohan Dhungat v. State of Goa, (2023) 11 SCC 554*
- *Anil Kumar v. State of Haryana, (2023) 18 SCC 601.*

²⁶⁶ NALSA Standard Operating Procedure on Premature Release, parole and Furlough of prisoners, 2022 Chapter-II.

➤ *Sukhdev Yadav @ Pehalwan v. State (National Capital Territory of Delhi)*, 2025 INSC 969.

➤ *Tabarak Ali v. State of Chhattisgarh*, 2025 SCC OnLine Chh 9101.

J. Furlough

Furlough²⁶⁷ means release of a prisoner for a short period of time after a gap of a certain number of years of incarceration so as to motivate him in maintaining good conduct and behaviour in the prison. Furlough acts as an incentive for good conduct in prison. The period of furlough is to be counted towards the sentence of the convict unlike parole.²⁶⁸

Furlough comes into action when a person is sentenced to 5 years or more rigorous imprisonment and has undergone 3 years of imprisonment excluding remission. The prisoner would be entitled to 7 weeks of furlough in a year, firstly for 3 weeks and and 2 weeks each subsequently. Furlough in India is governed by the Parole/Furlough Guidelines 2010 under the purview of the Prisoners Act, 1894 and the Prisoners Act, 1900.

Parole	Furlough
• Parole is granted in case of short-term imprisonment.	• Granted in case of long-term imprisonment.

²⁶⁷ Government of National Capital Territory of Delhi, “The Delhi Prison Rules, 2018”, (2018) available at: https://tiharprisons.delhi.gov.in/sites/default/files/Tiharprisons/generic_multiple_files/delhi_jail_manual-2018_english.pdf (last visited on September 25, 2025).

²⁶⁸ Government of Odisha, “SOP for automating e-Parole/ e-Furlough release of prisoners (December 2021), available at: https://tiharprisons.delhi.gov.in/sites/default/files/Tiharprisons/generic_multiple_files/delhi_jail_manual-2018_english.pdf (last visited on September 25, 2025).

• Duration can be extended to 1 month. • Granted by divisional commissioner. • Specific reason required. • Term of parole not to be included in term of imprisonment. • Can be granted a number of times.	• Extends to fourteen days maximum. • Granted by the Deputy Inspector General of Prisons. • Furlough is meant for breaking the monotony of imprisonment. • Term of furlough to be included in the term of imprisonment. • There is a limitation in the case of furlough.
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Duties of LADC in Furlough

- Help prepare and submit an application seeking furlough on behalf of the eligible prisoner convicts, co-ordinate with the prison authorities to compile required documents and information in accordance with the state regulations.
- Provide legal advice and representation while ensuring that the convicts/prisoners understand their rights and procedural requirements in the process of applying for furlough.

- Upon approval, LADC shall coordinate with the prison authorities and the prisoner to ensure the smooth release.
- In case the furlough is rejected or delayed, the LADC shall provide assistance to the prisoner in filing appeals against such rejection.
- To keep the prisoner up to date regarding the status of their application.
- LADCs may also engage in counselling prisoners and further raising grievances related to their incarceration before the concerned authorities/institutions.²⁶⁹

²⁶⁹ National Legal Service Authority, “Nalsa Standard Operating Procedures on Access to Legal Aid Services to Prisoners And Functioning of the Prison Legal Aid Clinics, 2022” (2022).

Is Furlough a legal right?

The Supreme Court has held that furlough is discretionary and not the legal right of the convict. Furlough can be denied if the prisoner's release poses threat to the public peace and judicial process.²⁷⁰

Eligibility for furlough²⁷¹

- Good conduct in prison
- Should not be a habitual offender.
- Should be a citizen of India.
- Not be convicted for: dacoity, arson, kidnapping, rape and extortion.
- Not convicted for sedition.
- Release should not be considered dangerous or deterrent to the interest of national security.
- His presence should not be considered as highly dangerous or prejudicial to the public interest

²⁷⁰ *State of Gujarat v. Narayan*, (2021) 20 SCC 304.

²⁷¹ Prisons (Bombay Furlough and Parole) Rules, 1959, r. 3 and 4.

List of Cases

- *Sonu Alias Amar v. State of Haryana*, 2025: PHHC:111391.
- *Shankar Langde v Superintendent, Central Prison*, 2025 SCC OnLine Bom 2744.
- *Nikhil S/O Shivaji Golait v. State Of Mah. Thr. Pso Ps Chikhli*, 2024 SCC Online Bom 2470.

K. Remission

Remission is a reduction of a convict's sentence before the completion of the full term. Remission does not alter the conviction but shortens the duration of imprisonment. The idea behind remission is to reward the inmates for their good behaviour during their stay in the jail. In the case of *State of Haryana v. Mahendra Singh*²⁷², the Supreme Court held that while remitting sentences no discrimination could be made *inter-se* among the life convicts. As to what classes of persons or category of offenders should be granted remission is a matter of policy, particularly when it is also a constituent power conferred upon the constitutional functionary and Head of the State Government.²⁷³

Section 432 of the CrPC and the corresponding Section 473 of BNSS, defines the power to suspend or remit the sentences of a prisoner. Both the Sections are same in essence, the only

²⁷² (2007) 13 SCC 606.

²⁷³ *Mujeebunissa Begum w/o Mohd. Irfan v. Government of Andhra Pradesh*, 2014 SCC OnLine AP 189.

difference is the inclusion of the adherence to the principles of natural justice during revocation or cancellation of remission under Section 473 of the BNSS.

The power of Remission is further embedded in the Constitution of India by virtue of Articles 72 and 161. The President has the power to grant pardons, including suspension, remission or commutation of sentences in certain cases, while the Governor of a state has the power to grant pardons which includes to suspend, remit or commute sentences in certain cases.

i. Types of Remission

- Ordinary Remission: where a prisoner earns based on good conduct, discipline, and participation in institutional activities within the prison.
- Special Remission: is additional reduction in a sentence granted for meritorious acts or extraordinary.

The Supreme Court has held that the powers under 432 of the CrPC and Section 473 of BNSS allows the appropriate government to remit the sentence with or without conditions. It was clarified that remission cannot be granted suo-motu, unless there is a state remission policy mandating automatic consideration. The Court observed that *“Further, the states were put under obligation to consider all the cases of eligible convicts for remission whenever they become eligible, without waiting for applications from their side.”*²⁷⁴ The Supreme Court further directed the States and UTs without remission policies to formulate it within one or two months. The terms and conditions on which the remission is granted should be reasonable and which can only be cancelled on the ground of breach. Furthermore, the prison

²⁷⁴ *In Re: policy strategy for grant of bail with Special Leave Petition*, 2025 INSC 239.

authorities by way of this suo-motu were directed to maintain real-time data and monitor the implementation of remission.

ii. Whether Remission is Illegal.

In the case of *Bilkis Yakub Rasool v. Union Of India*,²⁷⁵ the remission of the convicts granted by the Gujarat Government was challenged. The Supreme Court in the matter dealt with the question of the authority of the Gujarat Government to remit the sentences. The Supreme Court vitiated the order granting remission to the convicts as it was held to be obtained by fraud, suppression and misrepresentation of material facts. The Court held that the Gujarat Government lacked the jurisdiction to entertain the remission applications or pass any remission order in favour of the applicants, deeming it to not be the appropriate Government within the meaning of Section 432(7) of CrPC. Further, the Court observed that the Government of the state, where conviction order was passed, will have the jurisdiction and be competent to pass any remission order u/s 432 of CrPC, even where the trial was transferred from court of competent jurisdiction of one state to a court in another state. The Court clarified that remission under Sections 432 & 433 of the CrPC is not an absolute right and must be exercised judiciously particularly for "heinous crimes" involving gang rape, murder, or communal hatred. And that remission must not be perverse or violative of justice, equity, and fair play. For offences like those involved in the present case remission may risk the public confidence and victims rights.

²⁷⁵ 2024 INSC 24.

Duties of LADC in Remission

- Provide legal representation in Remission applications.
- Advising clients on remission rights (eligibility, rights, and procedure).
- Assisting the prisoners in preparing and filing remission applications, and follow-up with the government authorities.²⁷⁶
- Argue on behalf of prisoners in hearings related to remission, ensure fair procedure is followed.
- Conduct regular jail visits to assess prisoners' cases, identify the inmates eligible for remission, and provide legal aid.
- Coordinate with the prison officials, legal services authorities, to facilitate the remission process for prisoners

List of Cases

- *Tara Singh v. Union of India*, (2016) 11 SCC 335
- *Union of India v. V. Sriharan*, (2016) 7 SCC 1
- *Ram Chander v. State of Chattisgarh*, (2022) 12 SCC 52

²⁷⁶ NALSA Standard Operating Procedures on the Process of Premature Release, Parole and Furlough of Prisoners, 2022 Chapter-II.

➤ *Bilkis Yakub Rasool v. Union Of India*, 2024 INSC 24

➤ *Mohd. Raju @ Raju v. State National Capital Territory of Delhi*, (2025) SCC

OnLine Del 5821

iii. NALSA Standard Operating Procedures on the Process of Premature Release, Parole and Furlough of Prisoners, 2022

The NALSA standard operating procedures (SOP) on the Process of Premature Release, Parole and Furlough of Prisoners, provides a framework for the legal services with respect to premature release, parole, and furlough of the prisoners in India. The framework emphasises reformation, rehabilitation, and reintegration of prisoners into society, while keeping in mind the victim and societal safety.

The procedure provides for timely identification of eligible convicts, preparation and submission of applications, recommendations by designated authority, and the decisions of an appropriate Government. The SOPs mandates co-ordination among the prison authorities, DLSAs, SLSAs, and others to ensure that legal aid is provided to the prisoners efficiently.

The strategies include recording of data, collection of documents, meetings for review, and post-release rehabilitation. Legal assistance in cases of rejection is also provided and the SOP promotes the training awareness and periodic review to enhance the efficacy of the prison system.

vi. Guidelines for Legal Aid Defense Counsels²⁷⁷

LADCs play a crucial role in providing free legal services to convicts in matters related to premature release, parole, furlough. The guidelines are enumerated below:

- The LADC as a part of monthly prison visit, may in collaboration with the prison superintendents and prison legal aid clinics organise awareness sessions on premature release policies, parole and furlough eligibility.
- LADC may use uniform formats issued by the SLSA for recording convict details (like; name, offence, sentence served, remission earned). Ensure all files are indexed and uploaded to the NALSA portal.
- Upon receiving quarterly eligibility lists from prison Superintendents (Shared within 10 days of January, May and September), the LADC may review and assist the eligible convicts (life/other convicts within 4 months of eligibility) in preparing the individual case files. Chief LADC may also depute assistant LADC on site for PLAC support.
- Prepare Roaster within 4 days of receiving the lists and then dividing the duties regarding specific convicts for preparation of applications. The LADC may further notify the convicts personally or through prison Superintendent with a focus on vulnerable groups.
- Coordinate with the prison authorities to gather relevant documents like Police report, Court orders within 2 months of receiving the list and in cases of delay send reminders.

²⁷⁷ NALSA Standard Operating Procedures on the Process of Premature Release, Parole and Furlough of Prisoners, 2022, Legal Aid Defence Counsel Scheme 2022.

- Upon rejection, interact with the convict within 1 week virtually or physically and assess the legal need and explain remedies then collect the relevant documents. And where the convict desires to file an appeal, the LADC must forward the application, the paper-book and any other documents related to the case to the HCLSC within 1 day for High court petition and within 15 days in case of supreme Court petition.

2. *Special Laws*

A. The Bombay Prevention of Begging Act, 1959

In India, there are twenty states and two union territories that enforce anti-begging laws.²⁷⁸ Anti-begging laws in India find roots in the colonial European Vagrancy Act, 1869. The field of legislation for ‘Vagrancy’ is placed in the concurrent list of the seventh schedule of the Constitution of India. Although there is no national law enacted by the union government, the Bombay Prevention of Begging Act, 1959 has been adapted by various states to enforce anti-begging laws within their respective states. These laws criminalise and prohibit the solicitation and receipt of alms, and authorizes the police to arrest any person who is found begging without a warrant.²⁷⁹

i. Types of offences under the Prevention of Begging Act

- Soliciting and receiving alms in a public place (Section 2(1)(i)(a))
- Soliciting and receiving alms under the pretence of singing, dancing, fortune telling, performing or offering any article for sale (Section 2(1)(i)(a))

²⁷⁸ Press Information Bureau, “*No authentic data on beggars*”, (November 2010), *available at*: <https://www.pib.gov.in/newsite/PrintRelease.aspx?relid=67734> (last visited on September 25, 2025).

²⁷⁹ Bombay Prevention of Begging Act, 1959, (Bombay Act X of 1960), s.4.

- Entering any private premises for the purpose of receiving or soliciting alms (Section 2(1)(ii)(b))
- Exposing or exhibiting any sore, wound, injury, deformity or disease of a human or animal with the object of obtaining or extorting alms (Section 2(1)(i)(c))
- Wandering or remaining in a public place in such condition or manner to solicit or receive alms (Section 2(1)(i)(d))
- Allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms (Section 2(1)(i)(e))

ii. Procedure under Prevention of Begging Act

- Any police officer or person authorised by the rules may arrest any person who is found begging without a warrant;
- Such officer or person shall send the arrested person to a court;
- If the person so arrested has been brought before the court for the first time, the court shall make a summary inquiry;
- The court may order that the arrested person be remanded to such place and custody as may be convenient if the inquiry cannot be completed forthwith;
- If the court is satisfied that such a person was found begging, then it shall record a finding that the person is a beggar.

- Such a person shall be detained in a certified institution for a period not less than 1 year but not more than 3 years, provided that the court is satisfied that such person is not likely to beg again. (Section 5)
- If such a person is a child who is not under the age of 5, then the court shall forward them to a juvenile court. (Section 5)
- Whoever has been previously detained under this act shall be punished with further detention for a period not less than 2 years but not more than 3 years (Section 6)
- If the court has ordered for detention of this person under section 5 or section 6, it may make an order for any person who is wholly dependent on such an arrested person to also be detained for a like period. (Section 9).

iii. Case laws and landmark judgements

In the case of *Harsh Mander v. Union of India*,²⁸⁰ the Delhi High Court reiterated the State's responsibility to provide social security to citizens. The Court ruled certain provisions of the Bombay Act as extended to Delhi as violative of Articles 14, 15 and 19 of the Constitution.

Similarly, in the case of *Suhail Rashid Bhatt v. State of Jammu & Kashmir*,²⁸¹ the High Court of Jammu & Kashmir decriminalized begging and struck down the State's anti-beggary laws, holding that, "*The criminalization of begging which makes poverty an offence, is intended to remove poor people from public spaces, deprive them of the Constitutional guarantees of inclusiveness and pluralism and results in further deprivation to them.*"

²⁸⁰ 2018 SCC OnLine Del 10427.

²⁸¹ 2018 SCCOnline J&K 869.

In 2021, the Supreme Court rejected a prayer in a PIL²⁸² seeking the state to “*restrain beggars and vagabonds/homeless from begging on traffic junctions, markets and public places to avoid the spread of Covid- 19 pandemic in all the states and union territories across India and "rehabilitating them" and to further ensure food, shelter and basic medical amenities including covid-19 vaccination to them.*” While issuing notice to the state, the court observed that a large number of people, including children are compelled to be on the streets to beg due to the absence of education and employment, which is a socio-economic issue that cannot be remedied by restraining them from public spaces, and instead directed the state to redress the issue in a manner which accords Part III & IV of the Constitution.

In the case of *M.S. Patter v. State of National Capital Territory of Delhi*,²⁸³ the Supreme Court addressed the state of existing ‘beggar homes’ and ‘welfare homes’ and issued directions to ensure accountability and improvement in the conditions of certified institutions under the Government National Capital Territory of Delhi. Though there were certain welfare homes which were scrutinized under this appeal, the court directed that all homes under the Government of National Capital Territory of Delhi ought to improve their standards. It further held that “*the failure to ensure humane conditions in such homes does not merely amount to maladministration; but it constitutes a constitutional breach of the fundamental right to life with dignity.*”

²⁸² *Kush Kalra v. Union of India*, 2020 INSC 692.

²⁸³ 2023 INSC 1115.

iv. Responsibility of LADCs towards beneficiaries booked under Vagrancy Laws.

- Argue that criminalisation of begging violates Articles 14, 15 and 19 of the Constitution and cite precedents like *Harsh Mander v. Union of India*²⁸⁴ and *Suhail Rashid Bhatt v. State of J&K*²⁸⁵ to substantiate the arguments.
- Highlight that begging is a socio-economic issue stemming from lack of education and employment opportunities, not a criminal matter, as recognized by the Supreme Court in the 2021 PIL case regarding Covid-19 restrictions.
- Challenge Section 9 provisions that allow detention of persons wholly dependent on the accused, as such orders punish individuals who have committed no offense themselves.
- In case of a child, ensure immediate forwarding of child above 5 years to juvenile court as mandated under Section 5, preventing them from being processed under adult criminal procedures.

B. The Protection of Children from Sexual Offences Act, 2012

The Protection of Children from Sexual Offences (POCSO) Act, 2012 deals with sexual offences against persons below 18 years of age, who are deemed as children.²⁸⁶

The Act provides for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through appointment of Special Public Prosecutors and designated Special Courts.

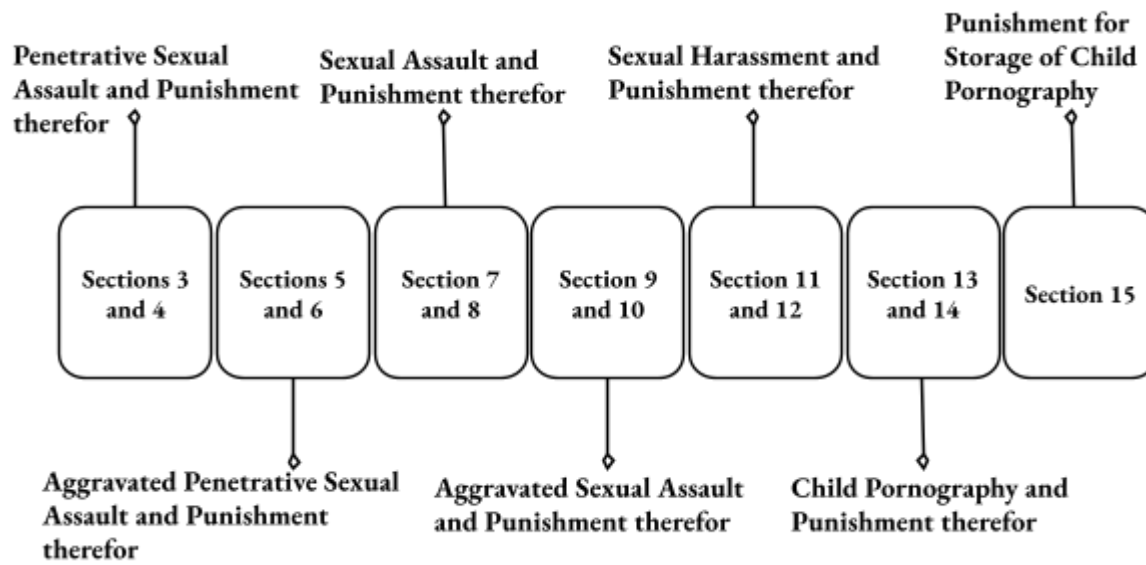
²⁸⁴ 2018 SCC OnLine Del 10427.

²⁸⁵ 2018 SCC OnLine J&K 869.

²⁸⁶ The Protection of Children from Sexual Offences (POCSO) Act, 2012, s. 2(d)

The Act incorporates child friendly procedures for reporting, recording, investigation and trial offences. The Act provides for stringent punishments which have been graded as per the gravity of offence.

i. Types of sexual violence and abuse covered under the POCSO Act



ii. Legal and Statutory Framework

The Act establishes Special Courts & Child-Friendly Procedures, with Section 28 of POCSO Act mandating the establishment of Special Courts for the trial of POCSO offences.

Sections 24 and 26 mandate child-friendly procedures for recording the statement of a child , ensuring it is done in a manner appropriate to their age and understanding. It is the duty of the Special Court to permit frequent breaks to the child during the trial and to create and a child-friendly atmosphere by allowing a family member or a guardian or a friend or relative in whom the child has trust or confidence, to be present in the court The Act puts a timeline on the conclusion of the trial. It is mandatory for the Special court to record the entire

evidence of child within a period of 30 days from the date of taking cognizance of the offence and the entire trial is to be concluded within a period of 1 year from the date of taking cognizance of offence, under section 35 (1) and (2) of the Act.

In addition to this, the court imposes the duty of mandatory reporting on any person aware of a POCSO offence to report it to the police or a Special Juvenile Police Unit. Failure to do so is a punishable offence under Section 21 of the POCSO Act.²⁸⁷

iii. Role of LADCs and Relevant Legal Provisions

In addition to the statutory provisions provided under BNSS and BSA, the POCSO Act lays down additional procedural requirements that are to be observed by the representative of the parties.

PRE-TRIAL STAGE

LADCs Responsibility and Duty

- The burden to prove the innocence is upon the accused. After the burden is discharged by the accused, the prosecution is obliged to lead the rest of the evidence to prove its case and prepare a strategy to discharge this burden of proof.²⁸⁸

²⁸⁷ The Protection of Children from Sexual Offences (POCSO) Act, 2012, s. 19

²⁸⁸ The Protection of Children from Sexual Offences (POCSO) Act, 2012, s. 29

- Prepare a review case to identify if 'the presumption of 'culpable mental state' can be rebutted by the accused, in cases of offences that require a culpable mental state.'²⁸⁹
- Prepare written questions for victim examination in advance.

ARGUMENTS STAGE

Defence Counsel's Obligations & Actions

- Argue on the discharge of 'the burden to prove the innocence is upon the accused' has been discharged

CROSS-EXAMINATION STAGE

Cross-examination must be conducted through written questions submitted to judge, not directly

Note:

- questions should be given in writing to the presiding judge, who shall then in turn put those questions to the victim and who may then eliminate those which he deem to be unnecessary.
- Character based evidence is not allowed.

²⁸⁹ The Protection of Children from Sexual Offences Act, 2012, (Act 32 of 2012), s. 30.

List of Cases

- *Independent Thought v. Union of India*, (2017) 10 SCC 800.
- *Alakh Alok Srivastava v. Union of India*, (2018) 15 SCC 107.
- *Attorney General for India v. Satish*, (2021) SCC OnLine SC 1076.
- *Sachin v. State of Maharashtra*, 2025 INSC 716.
- *X v. Principal Secretary, Health and Family Welfare Department, Govt. of National Capital Territory of Delhi*, (2023) 9 SCC 433.

C. **Rights of Persons with Disabilities Act, 2016**

i. Introduction

Rights of Persons with Disabilities Act, 2016 (RPwD Act), which repealed and replaced the Persons with Disabilities (Equal Opportunities, Protection of Right) Act, 1995 was enacted to expand the scope of the its predecessor by recognising the categories of disability to twenty-one, reflecting a broader and more inclusive approach.²⁹⁰ The Act facilitates the operationalisation of constitutional guarantee of equality, liberty and dignity under Articles 14, 19 and 21 of the Constitution of India and extends those to persons with disabilities.²⁹¹

ii. Rights of accused under RPwD act

²⁹⁰ Rights of Persons with Disabilities Bill, 2014, Statement of Objects and Reasons.

²⁹¹ Constitution of India, art(s) 14, 19, 21.

The Act defined a ‘person with benchmark disability’ as “*an individual with not less than forty per cent of a specified disability, who is entitled to specific rights and entitlements under the Act.*” It provides for certain rights that are available to persons with disability under the act.

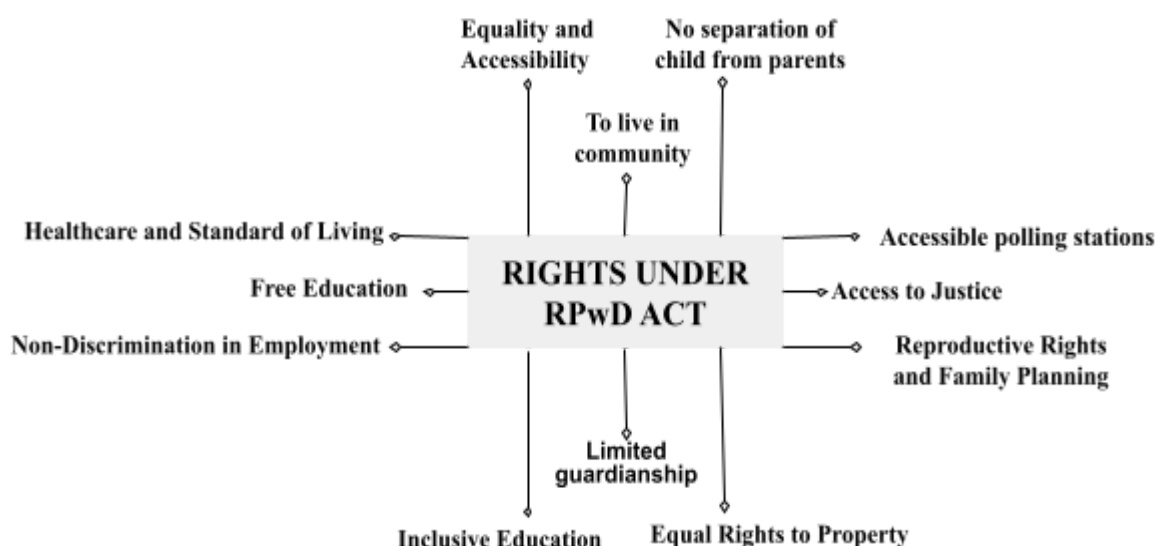


Figure: Rights under RPwD Act

iii. Criminal Procedure and Role of LADCs

The protections of the RPwD Act must be read in conjunction with the new criminal laws: the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and the Bharatiya Sakshya Adhiniyam, 2023 (BSA) to give a full view on the ambit of the criminal provisions and the procedural safeguards available to people with disability

ARREST & REMAND STAGE

LADCs Responsibility

- Ensure that interpreters, special educators, or support persons are provided wherever necessary for the accused with disability
- Verify that the accused's rights under Section 3 RPwD Act, 2016 providing for equal opportunity and non discrimination are being upheld during criminal proceedings.
- Challenge any violation of accessibility and support as a violation of Article 21 and Section 3 of the RPwD Act.
- Ensure reasonable accommodation is provided during arrest and remand proceedings.

INVESTIGATION STAGE

LADCs Responsibility

- Verify compliance with the BNSS and BSA in recording FIRs and statements of persons with disabilities, and seek exclusion of improperly recorded evidence.
- Check if FIR recording complied with procedural safeguards under Section 173(1), BNSS
- Ensure statements were recorded with interpreter or special educator as mandated
- Verify videography was done where required (Section 173(1)(b), BNSS)
- Challenge admissibility of evidence if proper procedure was not followed.

Legal References

- FIR Recording: if information is given by a woman with a temporary or permanent disability in relation to specified sexual offences, it must be recorded at her residence or a convenient place, in the presence of an interpreter or special educator, and must be videographed. (Section 173(1), BNSS)

TRIAL STAGE

LADCs Responsibility

- Demand enforcement of Section 12 of the RPwD Act to guarantee accessible court

premises and interpreters, arguing that failure to provide such accommodations violates the right to a fair trial under Article 21.

- Request interpreter or special educator for accused during trial proceedings
- Argue for reasonable accommodation based on specific disability of accused
- Challenge any discriminatory treatment or denial of accommodation

Legal References

- Competency to Testify: As per Section 124 of the BSA, all persons are competent to testify unless they are unable to understand the questions or give rational answers’
- Evidence of Speech-Impaired Witnesses: As per Section 125 of BSA, a witness unable to speak may give evidence in any manner intelligible, including writing or by signs, with the assistance of an interpreter where necessary, and such evidence must be videotaped’

In the case of *L. Muruganantham v. State of Tamil Nadu*,²⁹² involving a differently abled advocate was falsely implicated and arrested. He was remanded to judicial custody by the Judicial Magistrate. During his incarceration, he was not provided with proper food and

²⁹² 2025 SCC OnLine SC 1444.

medical treatment. He alleged that the prison lacked infrastructure for disabled prisoners and the officials were insensitive. Through the judgement the court laid down certain guidelines that must be followed by Prison authorities and state viz-a-viz prisoners with disability.

- Prison authorities must promptly identify prisoners with disabilities at the time of admission. Each prisoner shall be given an opportunity to declare any disability and provide information about their specific needs.
- All rules, regulations, and essential information about prison life must be provided to such prisoners in accessible and understandable formats such as Braille, large print, sign language, or simplified language.
- All prison premises must be equipped with wheelchair-friendly spaces, accessible toilets, ramps, and sensory-safe environments to ensure universal accessibility.
- All prisons shall designate and maintain dedicated spaces for physiotherapy, psychotherapy, and other necessary therapeutic services.
- A State-level access audit of all prisons in Tamil Nadu must be completed within six months by an expert committee comprising officials from the Social Welfare Department, the Department for the Welfare of Differently Abled Persons, and certified access auditors. Periodic audits shall thereafter be conducted and updated regularly in accordance with the Harmonized Guidelines and Standards for Universal Accessibility in India (2021).

- Prison authorities must ensure complete compliance with Sections 40 and 45 of the Rights of Persons with Disabilities Act, 2016, Rule 15 of the 2017 Rules, and the Harmonized Guidelines, 2021 in all prison infrastructure and services.
- The State must provide healthcare for prisoners with disabilities equivalent to that available in the community, including access to physiotherapy, speech therapy, psychiatric services, and assistive devices such as wheelchairs, hearing aids, and crutches.
- All prison medical officers must be adequately trained and sensitized to address disabling conditions, ensuring provision of appropriate accommodations and treatment without discrimination or bias. Regular awareness and sensitization programmes shall be conducted in all prisons.
- Every prisoner with a disability must be provided a nutritious and medically appropriate diet, tailored to their specific health and dietary needs.
- Lifesaving treatments, including regular and need-based physiotherapy and psychotherapy, must be made available on-site or through linkage with government health facilities.
- All prison staff must undergo comprehensive training on the rights of persons with disabilities. This training shall include awareness of equality and non-discrimination principles, proper handling of disability-related challenges, and use of appropriate language and behaviour as per the UN Handbook on Prisoners

with Special Needs.

- The State Prison Manual must be reviewed and appropriately amended within six months to ensure conformity with the Rights of Persons with Disabilities Act, 2016 and the United Nations Convention on the Rights of Persons with Disabilities. A specific section must be incorporated to prohibit discrimination against prisoners with disabilities and promote equal treatment and reasonable accommodation. The revised Manual shall be prominently displayed in every prison establishment.
- The State must undertake periodic consultations with civil society organisations working in the disability sector to develop inclusive policies and identify accommodations based on real needs.
- The State must constitute a monitoring committee to conduct periodic inspections and submit compliance reports every three months.
- The State must maintain and update disaggregated data on the disability status of prisoners, including records on accessibility, reasonable accommodations, and medical requirements. This is to ensure compliance with Article 31 of the UNCRPD and the Rights of Persons with Disabilities Act, 2016. The data shall be made available in the public domain, subject to privacy safeguards.
- The Director General of Prisons must file a comprehensive compliance report before the State Human Rights Commission within three months from the date of this judgment, detailing all steps taken in furtherance of these directions.

List of Cases

- *Rajive Raturi v. Union of India*, (2018) 2 SCC 41
- *Vikash Kumar v. UPSC*, (2021) 5 SCC 370
- *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761
- *Deaf Employees Welfare Association v. Union of India*, 2013 INSC 828

D. Mental Healthcare Act, 2017 (MHCA)

i. Introduction

The Mental Healthcare Act, 2017 (MHCA) provides for mental healthcare and protects the rights of persons with mental illness. The MHCA came into force on 29th May, 2018 repealing the earlier Mental Health Act, 1987. It was enacted in pursuance of obligations under the United Nations Conventions on Rights of Persons with Disabilities, 2006 (“UNCRPD”)²⁹³ which India ratified in 2007. The MHCA adopts a rights-based approach to mental healthcare and treatment by placing obligations on the government and mental health professionals.

Basic guiding principles of MHCA as defined under the object and scope of the legislation include.²⁹⁴

²⁹³ United Nations Conventions on Rights of Persons with Disabilities, 2006.

²⁹⁴ Mental Healthcare Act, 2017 (MHCA), Scope and Objective.

- All individuals have basic human rights, including the right to equality, liberty and dignity.
- Every person must be given the autonomy to make the choices they consider the best for themselves and this extends to decisions about their mental health care and treatment.
- Everyone has the right to full participation and inclusion in society.
- No person can be discriminated against based on any grounds such as caste, class, ethnicity, sex, gender, sexual orientation, religion, disability, social, political or cultural beliefs.
- Every person has the right to receive any form of support to help them make their own decisions

ii. Definitions and Principles

The MHCA defines mental illness as ‘*a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence.*’²⁹⁵

Unlike earlier laws, under Section 4 of the Act, it presumes that every person has the capacity to make decisions pertaining to mental healthcare and treatment decisions unless proven otherwise. A person is considered to have decision-making capacity if they can:

²⁹⁵ Mental Healthcare Act, 2017, (Act 10 of 2017), s. 2(s).

- Understand the information.
- Appreciate any reasonably foreseeable consequences of a decision or lack of decision of treatment
- Communicate the decision through speech, expression, gesture or any other means.

Mental Illness	Description
Diagnosis	Section 3 of the Act provides that the determination or diagnosis of mental illness can be done only in accordance with nationally and internationally accepted medical standards, such as the World Health Organisation's International Classification of Diseases (ICD).
Mental Illness v. Unsound Mind	The Act clarifies that mental illness is a medical concept, while an unsound mind is a legal concept determined by a competent court.
What is NOT a Mental Illness	Mental illness cannot be determined based on a person's identity, beliefs, non-conformity with moral, social or cultural, work or political values or religious beliefs in a person's community , or a past history of treatment.

	The determination of a person’s mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court
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iii. Rights under MHCA

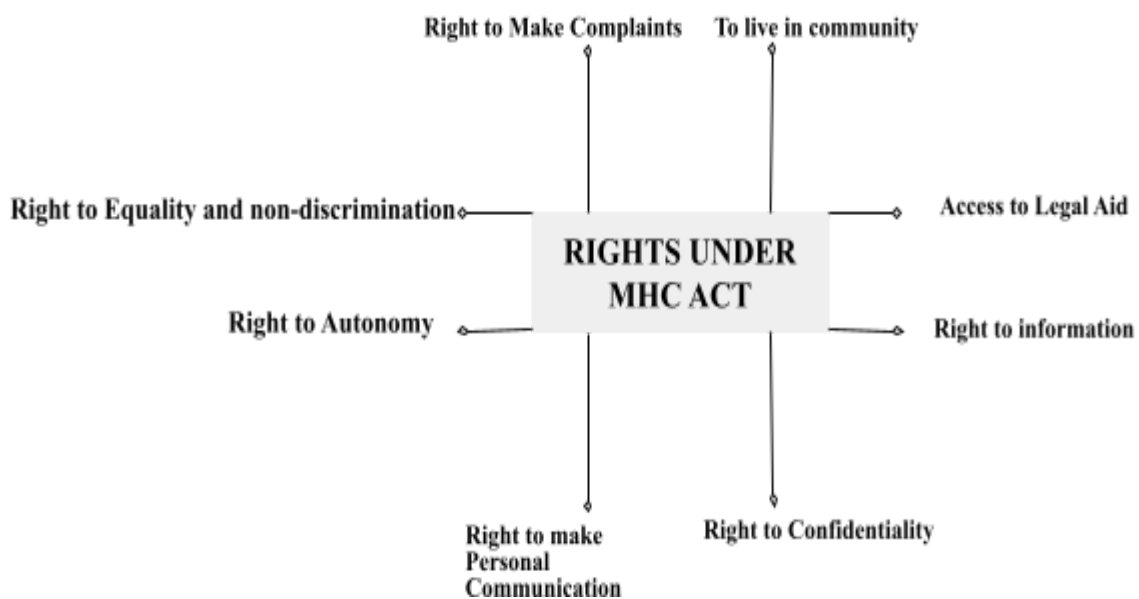


Figure: Rights under MHCA

iv. Procedural Immunity and rights for beneficiaries falling under MHCA Act

Section 22 of BNS provides immunity from punishment if the accused was, at the time of the act, incapable of knowing the nature or wrongfulness of the act due to unsoundness of mind.

Further, under the BNSS, chapter XXVII i.e. from Section 367 onwards, the procedural rights of an accused with mental illness are provided and include:

- Assessment of the mental condition by qualified medical officers.
- Postponement of trial if the accused is incapable of defense.
- Transfer to mental health institutions for treatment.
- Re-evaluation before recommencement of trial.

The MHCA's definition and capacity framework should guide psychiatric evaluations used to prove this defence. In the case of *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*,²⁹⁶ the Supreme Court has held that the burden of proof to establish legal insanity not only lies on the balance of probabilities, but has to be proved beyond reasonable doubts.

²⁹⁶ (1964) SCC OnLine SC 20.

DUTIES TO INVOKE UNDER MENTAL HEALTHCARE ACT, 2017 (AT ANY/ ALL STAGES OF CRIMINAL TRIAL)

Section 100 - Duties of police officers:

- A police officer has a duty to take a person with mental illness into protection and produce them before a medical officer for assessment if they are wandering without support or are found in a dangerous condition.

Section 101 - Report to Magistrate:

- Any police officer, public servant, or person can report to a Magistrate if they believe a person with mental illness is being ill-treated or neglected

Section 102 - Conveying to mental health establishment:

- A Magistrate has the power to convey or admit a person with mental illness to a mental health establishment for care and treatment, based on a report from a police officer or a public servant

Section 103 - Prisoners with mental illness:

- This Section allows for the transfer of a prisoner with mental illness from a prison to a mental health establishment for proper treatment.

Section 104 - Persons in custodial institution:

- It provides for the assessment and treatment of mental illness for people in custodial institutions like prisons, reformatory homes, and rescue homes.

Section 105 - Question of mental illness in judicial process:

- If a question of mental illness arises during a judicial process, the court can refer the matter to the Mental Health Review Board for scrutiny and opinion.

v. Role of LADCs

For LADCs, the following chart containing duties of LADCs at different stages of criminal proceedings may be helpful when dealing with a beneficiary with a mental illness:

INQUIRY STAGE (Section 367 of BNSS)

LADCs Responsibility

- Monitor that proper inquiry into mental illness is conducted
- Ensure accused is referred for examination by qualified medical person
- Verify that civil surgeon refers accused to psychiatrist or clinical psychologist for care, treatment, and prognosis
- Request that the inquiry follows proper procedure under Section 367 of BNSS

- Advocate for discharge if no prima facie case is made out as per provision under S 369 BNSS

NOTE:

If the Magistrate finds no prima facie case is made out, he shall discharge the accused and deal with him as per Section 369 of the BNSS.

If a prima facie case is made out, the proceeding is postponed for a period required for treatment, and the accused is dealt with as per Section 369 of BNSS.

TRIAL STAGE (Section 368 BNSS)

LADCs Responsibility

- Raise issue of mental illness if accused appears incapable of making defence
- Request that court first tries the fact of mental illness
- Ensure accused is referred to psychiatrist or clinical psychologist for care and treatment
- Advocate for postponement of trial for treatment period if prima facie case exists
- Request discharge if no prima facie case is made out

- If accused has intellectual disability and is incapable of defence, argue that trial should not be held

NOTE:

If incapable due to intellectual disability, the trial is not held and the person is dealt with as per Section 369 of BNSS.

RELEASE OR DETENTION STAGE

Responsibility of LADC

- Advocate for release on bail with appropriate conditions.
- If detention is ordered, ensure detention in a public mental health establishment must be in accordance with the Mental Healthcare Act, 2017
- Challenge detention if bail can be granted with proper undertaking

Bail Conditions to Secure:

- A relative or friend undertakes to obtain regular out-patient psychiatric treatment
- The person is prevented from doing injury to himself or to any other person

Legal References:

- Section 369 of BNSS

- Mental Healthcare Act, 2017

RESUMPTION OF PROCEEDINGS STAGE (Section 370 & 371 of BNSS)

Responsibility of LADC

- Monitor the mental health status of accused during treatment period
- Request medical assessment before resumption of proceedings
- Ensure accused is now capable of making defence before trial resumes
- If accused is still incapable, request that court acts according to Section 367 or 368

ACQUITTAL & SUBSEQUENT ACTIONS STAGE (Section 373 & 374 of BNSS)

Responsibility of LADC

- Argue for acquittal if accused was incapable of knowing nature of act due to mental illness
- After acquittal, advocate for delivery to relative or friend rather than detention
- Ensure proper security is provided if delivery to relative/friend is granted
- Monitor that detention, if ordered, is in safe custody with proper care
- Ensure security is provided to guarantee:

- The person is properly taken care of and prevented from causing injury
 - The person is produced for inspection as directed
 - In a postponed trial case, the person is produced before the Magistrate or Court when required
- Follow up with State Government for order of delivery

List of Cases

- *Common Cause v. Union of India*, (2018) 5 SCC 1
- *Accused X v. State of Maharashtra*, 2019 INSC 518
- *Gaurav Kumar Bansal v. State of Uttar Pradesh*, 2017 SCC OnLine SC 1942
- *Ravinder Kumar Dhariwal v. Union of India*, 2021 INSC 916

E. The Wild Life (Protection) Act, 1972

The Wildlife (Protection) Act, 1972 provides a legal framework for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country. The

Act is organised into several chapters covering definitions, authorities, hunting restrictions, trade regulation, and protection of specified plants.²⁹⁷

Under the 42nd Constitutional Amendment Act 1976, the subjects namely, “forests and protection of wild animals and birds” was taken away from the State list and was added to Concurrent list. The Amendment further inserted Section 48A which states that-

“The state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.”

Moreover, Article 51A (g) of the Constitution states that it shall be the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

The Act has been further amended to align with international commitments like CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora), enhancing its scope for conservation and management. This Convention aims to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species. India became a party to the CITES in 1976.²⁹⁸

The offences under the WPA comprises hunting of wild animals, damaging habitat of wild animals, harassing the animals in zoos etc. The inquiry into the offences, search, seizure and prosecution is conducted as per the provisions of CrPC.

²⁹⁷ The Wild Life (Protection) Act, 1972, (Act 53 of 1972).

²⁹⁸ CITES website, available at: <https://cites.org/eng/disc/parties/chronolo.php> (last visited on September 25, 2025).

i. Offences under the Wildlife (Protection) Act, 1972

Section 9 r/w Section 2(16)	prohibits hunting of any wild animal specified in Schedule I,II,III, and IV except as provided under section 11 and Section 12. Section 2(16) provides that hunting includes; i) killing or poisoning of any wild animal or captive animal and every attempt to do so; ii) capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so.
Section 27	Places restriction on entry in sanctuary.
Section 29	Restriction on Destruction etc in a sanctuary without permit.
Section 30	Prohibits causing fire to a sanctuary.
Section 31	Prohibition of entry into sanctuary with weapon except with the previous permission in writing of the Chief Wild Life Warden or the authorised officer.

Section 32	Ban on use of injurious substances within the sanctuary.
Section 33-A	Mandates immunisation of livestock kept within 5 kms of the sanctuary.
Section 34	Mandates Registration of certain persons in possession of arms residing within 10 kilometers of the Sanctuary.
Section 35(6)	Without a permit from the Chief Wildlife Warden, no one is allowed to destroy, remove wildlife or forest products, or change the habitat or water flow in a National Park. This permit will only be given if the State Government and National Board agree that better wildlife management is needed.
Section 35(7)	No grazing of any livestock is allowed in a National Park, and no livestock shall enter except when used as a vehicle by a person authorized to enter the National Park.
Section 39(1)(a)	That the wild Animals other than vermin, that are hunted, caught, or found dead, as well as those that are kept or bred in captivity, are the property of the state.

Section 40	Requires persons to declare within 30 days from the date of commencement of this act if they are in possession of captive animals or related articles specified in Schedule I or Part II of Schedule II. And without the permission of the Chief Wildlife Warden, No one can Acquire, Possess, sell, or transport such animals or articles.
Section 43	No person possessing a Captive animal, animal article, trophy, or uncured trophy for which he has a certificate of ownership shall within 30 days of the transport or transfer report the transfer or transport to the Chief Wildlife Warden or any other authorised officer. Exceptions include; Tail feathers of peacock, and transfers between the recognised zoos and museums.
Section 44	Prohibits carrying on business as a manufacturer, dealer, taxidermist or dealer in trophies, uncured trophies, captive animals, or meat without a license.
Section 48	No licensee shall keep or possess any animal, animal article, trophy, or uncured trophy without declaring such

	custody or possession. Or capture any animal or trade in captive animals falling under Schedule I or Part II Schedule II. Transfer across states of such articles or animals will only be granted with prior permission.
Section 48A	Places restriction on transportation of Wild Life also places restriction on transportation of or any animal article, or any specified plant or part or derivative thereof. Additionally, vermins are excluded from the purview of this section.
Section 49	Places restriction on purchase of captive animals,wild animals, other than vermin, or any animal article, trophy, uncured trophy or meat derived therefrom otherwise than from a dealer or from a person authorised to sell or otherwise transfer the same under this Act" by a person other than the licensee. And restriction on purchase of any animal article, or any specified plant or part or derivative.

Chapter V-A (Section 49A, 49B, 49C)	Prohibits trade or commerce in trophies, Animal articles, etc. derived from certain animals.
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In *Tilak Bahadur Rai v. State of Arunachal Pradesh*,²⁹⁹ the accused was charged with killing a tiger that had attacked him. The Court held that the accused had shot the tiger in good faith and solely to protect him. It was observed that his act was covered within the meaning of self defense as mentioned under Section 11 of the Wildlife Protection Act, 1972. Furthermore, the Court clarified that if any animal is wounded or killed by an individual then such animal is the property of the State and the individual has no claim over it. In another case, the Supreme Court has held that since the elephant falls under the scope and list of animals provided under Schedule I (Animals which are prohibited from hunting) of the WPA, it can be assumed that hunting of elephants is prohibited. Further, the court was of the opinion that the offence of hunting under WPA is not the same as contained in Section 429 IPC, as the ingredients of the offence as provided in WPA is different from those mentioned under the IPC.³⁰⁰

The WPA plays an important role towards wildlife conservation. However, its strict regulation has an unintended negative impact on people belonging to marginalised groups, especially the Denotified Tribes.³⁰¹ Historically, they have relied on biodiversity for their livelihoods.

²⁹⁹ (1979) SCC OnLine Gau 27.

³⁰⁰ *State of Bihar v. Murad Ali Khan*, (1988) 4 SCC 655.

³⁰¹ Ranjan Chatterjee and Saumya Seal, “Empowering or Encumbering? An insight into the impact of the Wildlife (Protection) Act of 1972 on Denotified, Nomadic, and Semi-Nomadic Tribes of India” 3 Impact and Policy Research Review p.no. 62-68 (2024).

ii. Bail under Wildlife Protection Act

Under the WPA, the conditions of bail are governed by the provisions laid down under Section 51A of the Act. When a person is arrested under the WPA for commission of any offence relating to Schedule I or Part II of Schedule II or offences relating to hunting inside the boundaries of National Park or Wildlife Sanctuary or altering the boundaries of such parks and sanctuaries, the person will be released on bail by the court only after the Public Prosecutor has been given an opportunity of opposing the release on bail and the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

List of Cases

- *Tarun Bharat Sangh, Alwar v. Union of India*, (1992) Supp (2) SCC 448
- *Naveen Raheja v. Union of India*, (2001) 9 SCC 762.
- *Ivory Traders and Manufacturers Association v. Union of India*, 1997 SCC OnLine Del 323
- *Rajendra Kumar v. Union of India*, AIR 1998 Raj. 165
- *Animal Welfare of India v. A Nagaraja*, (2014) 7 SCC 595.
- *Central Bureau Of Investigation v. Md. Yaseen Wani*, (2025) SCC OnLine Del 1352

F. The Indian Forest Act, 1927

The Indian Forest Act, 1927 was enacted to consolidate and make uniform the laws related to forests, forest produce transit, and the duties leviable on timber and other forest produce. Its scope extends to various types of forests such as reserved forests, protected forests, and village forests. The Act confers powers on state governments to declare land as forest, regulate forest produce, and protect the forests from unlawful activities, including illegal logging, grazing, and encroachment. It aims to protect forest resources while allowing sustainable use and control over forest produce.

i. Offences and punishment under Indian Forest Act, 1972

Section 26	This section lists various acts considered offences within reserved forests, such as felling or damaging trees (including girdling, lopping, burning), quarrying stone or burning lime or charcoal, clearing land for cultivation, setting or leaving fires carelessly, damaging trees or forest produce, permitting cattle to damage trees, illegal hunting or fishing, and catching elephants contravening rules. For these offences, the law prescribes imprisonment for a term which may extend to six months, or a fine which may extend to five hundred rupees, or both. Additionally, courts can order compensation for damage done to the forest
Section 52	empowers forest or police officers to seize forest produce and all

	tools, vehicles, or cattle used to commit a forest offence, marking the seized property and reporting to the magistrate.
Section 53:	authorizes officers to release seized property under certain conditions.
Section 54	outlines the magistrate's procedure upon receiving the seizure report, including arrest and trial of the offender.
Section 55	declares confiscation liability of forest produce or tools involved in offences following conviction
Section 56	prescribes disposal methods for such produce post-trial.
Section 57	allows procedures when the offender is unknown or absconds. Further, Section 62 prescribes penalties for wrongful seizure of property.
Section 63	Punishment for counterfeiting or defacing boundary marks.

Section 64	authorizes forest officers to arrest without warrant. Section 65 allows release on bond of arrested persons.
Sections 66 and 67	provide powers to prevent offences and to try offences summarily, respectively.
Section 68	empowers the compounding of offences by forest officers under state government notification.
Section 69	defines the presumption that forest produce belongs to the government unless proved otherwise.

List of Cases

- *Union of India v. Abdul Jalil*, 1964 SCC OnLine SC 287.
- *State of Madhya Pradesh v. Harsh Gupta*, (1998) 8 SCC 630.
- *Gyan Singh v. State of Uttar Pradesh*, 1995 Supp (4) SCC 658.

G. Unlawful Activities (Prevention) Act, 1976

The Unlawful Activities (Prevention) Act, 1967 was formulated with the objective of providing a more effective prevention of certain unlawful activities of individuals and associations.

i. Introduction

The Act aims at the prevention of any “act done with the intention to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country.”

Alongside the prevention of terrorist activities, the Act also penalises persons engaged in such activities. ‘Persons’ as defined under Section 2(ec) that includes:

(i) an individual,

(ii) a company,

(iii) a firm,

(iv) an organisation or an association of persons or a body of individuals, whether incorporated or not,

(v) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vi) any agency, office or branch owned or controlled by any person falling within any of the preceding sub-clauses.

ii. Unlawful Associations

The Act covers both persons as well unlawful associations under its ambit of restriction and penalisation. The act defines unlawful association as

“ any association, (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under section 153A (45 of 1860) or section 153B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity”

The Act, through its provisions, gives the power to the National Investigation Agency (NIA) to investigate and prosecute cases under UAPA. The process that is to be undertaken with respect to unlawful associations that the government is suspicious of engaging in terrorist activity, is initiation by the declaration of such association as unlawful, thereafter, the procedure that is followed is provided herein under:

Section	Offence	Details
Section 3	Declaration of an association as unlawful	Central Government declares an association unlawful by notification in Official Gazette
	Grounds for declaration	Notification specifies grounds and other particulars
	Effect of notification	Notification has no effect until Tribunal confirms declaration
	Publication and service	Notification published in Official Gazette, daily newspaper, and served on association
Section 4	Reference to Tribunal	Central Government refers notification to Tribunal for adjudication

	Notice to association	Tribunal calls upon association to show cause why it should not be declared unlawful
	Inquiry and decision	Tribunal holds inquiry, decides whether sufficient cause for declaring association unlawful
Section 5	Constitution of Tribunal	Central Government constitutes Unlawful Activities (Prevention) Tribunal
	Powers of Tribunal	The tribunal has powers of civil court for summoning witnesses, production of documents, etc.
Section 6	Period of operation	Notification remains in force for 5 years if declaration confirmed by Tribunal
	Cancellation of notification	Central Government can cancel notification at any time

Section 7	Prohibition on use of funds	Central Government can prohibit use of funds of unlawful association
	Application to District Judge	Person aggrieved can apply to District Judge to establish that funds not used for unlawful association
Section 8	Notification of places	Central Government can notify places used for purpose of unlawful association
	List of movable properties	District Magistrate makes list of movable properties found in notified place
	Prohibition on use of articles	District Magistrate can prohibit use of articles for purpose of unlawful association

	Application to District Judge	Person aggrieved can apply to District Judge for declaration or setting aside of order
Section 9	Procedure to be followed in the disposal of applications under this act	Procedure to be followed by Tribunal and Court of District Judge shall be as per Code of Civil Procedure, 1908

iii. Offences and Punishments under UAPA

Upon the declaration and the determination of an unlawful association, individuals suspected of being members are also tried and based on their conviction, are penalised accordingly. Chapter 3 deals with the offences and the punishment under the act for both members of unlawful associations and individuals engaged in unlawful activities. The offences under the act are cognizable offences.

The Act was also amended in 2019, to include provisions related to terrorist financing, cyber-terrorism, individual designation, and seizure of property.

Section	Offence	Punishment
10(a)	Being a member of an unlawful association	Imprisonment up to 2 years, fine
10(b)	Being a member of an unlawful association with unlicensed firearms	Death or imprisonment for life, fine (if such act resulted into death of any person) otherwise minimum of 5 years and up to life imprisonment
11	Dealing with funds of an unlawful association	Imprisonment up to three years, or with fine, or with both,.
12(1)	Contravention of prohibitory order on notified place	Imprisonment up to 1 year, fine
12(2)	Entering or attempting to enter a notified place	Imprisonment up to 1 year, fine

13(1) and (2)	Committing or advocating unlawful activity	Imprisonment up to 7 years, fine
	Assisting unlawful activity	Imprisonment up to 5 years, fine
15	Committing a terrorist act	Death or imprisonment for life, fine
17	Raising funds for terrorist act	Imprisonment for 5 years to life, fine
18	Conspiracy, attempt, or advocacy of terrorist act	Imprisonment for 5 years to life, fine
18A	Organising terrorist camps	Imprisonment for 5 years to life, fine
18B	Recruiting for terrorist act	Imprisonment for 5 years to life, fine

19	Harbouring or concealing terrorists	Imprisonment for 3 years to life, fine. To the exception of the spouse of the offender as the section does not apply to any case in which the harbour or concealment is by the spouse of the offender
20	Being a member of terrorist gang or organisation	Imprisonment for life, fine
21	Holding proceeds of terrorism	Imprisonment for life, fine
22	Threatening witnesses	Imprisonment up to 3 years, fine
23	Contravention of laws related to explosives, arms, etc.	Imprisonment for 5 years to life, fine
	Attempting or abetting contravention	Imprisonment for 10 years

iv. Terrorist Acts under UAPA

The Act, along with unlawful activities also covers terrorist acts and penalises persons and associations also engaged in them. The Act defines terrorist act as

“ [(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security 4[, economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,--

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause--

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

4[(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

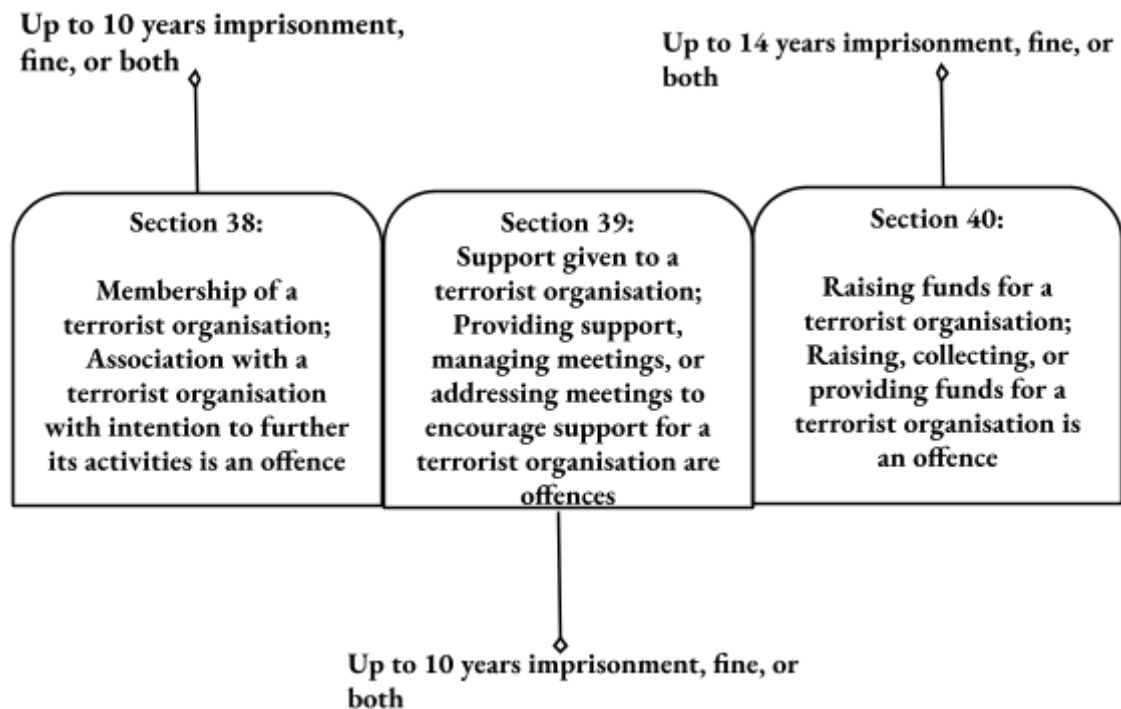
(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

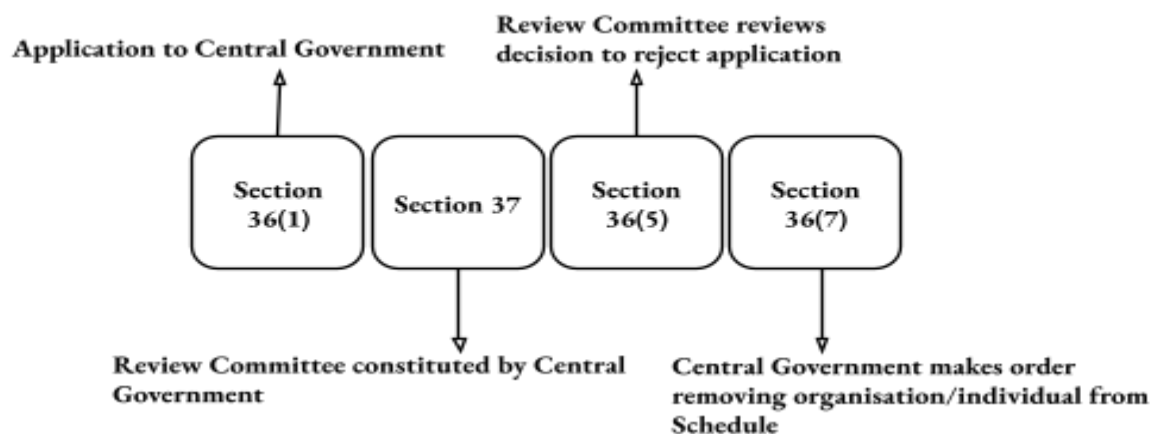
(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or 5[an international or inter-governmental organisation or any other person to do or abstain from doing any act; or] commits a terrorist act.”³⁰²

³⁰² Unlawful Activities Prevention Act, 1976 (Act 37 of 1967), s.15.

v. Offences Related to Terrorist Organisations



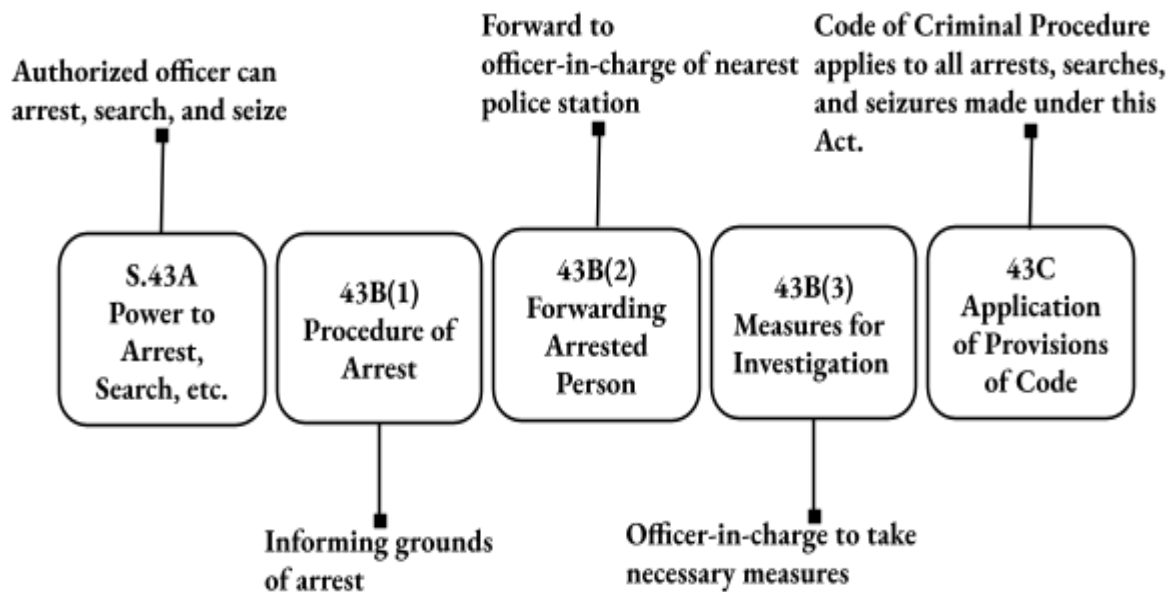
vi. Process for Denotification of a terrorist organisation



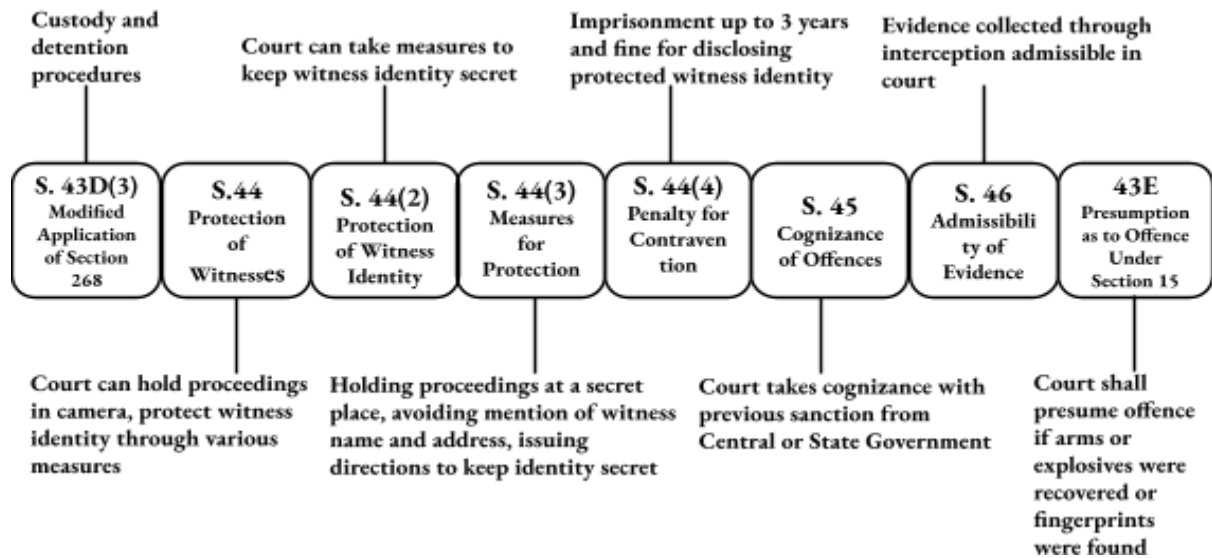
vii. Pre-trial, Trial and Bail under UAPA

Chapter VII, titled ‘Miscellaneous’ under the UAPA Act deals with different aspects of pre-trial and trial procedure for persons/ associations charged with offences under the UAPA Act.

Pre-trial Procedure (UAPA)



Trial Procedure (UAPA)



Restrictions on Granting Bail (Section 43D of UAPA)

- Section 43D(5) deals with the right for Public Prosecutor to be heard on the bail application for an accused person: No person accused of an offence punishable under Chapters IV and VI shall be released on bail or on their own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release .
- Section 43D(5) of the Act deals with bail in the case of Prima Facie True Accusation: The accused person shall not be released on bail or on their own bond if the Court, on perusing the case diary or the report made under section 193 BNSS (173 CrPC) is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true .

- There are restrictions on granting bail specified in sub-section (5) that are in addition to the restrictions under the Code or any other law for the time being in force on granting of bail (Section 43D(6)).
- Section 43D(7) of the UAPA Act deals with restrictions on granting bails for foreign nationals: No bail shall be granted to a person accused of an offence punishable under this Act, if they are not an Indian citizen and have entered the country unauthorisedly or illegally, except in very exceptional circumstances and for reasons to be recorded in writing .

Bail Application Procedure

- The court shall consider the report of the Public Prosecutor and the case diary or report made under section 192 BNSS (earlier 172 of the CrPC).
- The court shall record its opinion on the prima facie truth of the accusation.
- The court may grant bail only if it is satisfied that the accusation is not prima facie true or there are exceptional circumstances.

In the case of *Athar Parwez v. Union of India*,³⁰³ the appellant was charged under UAPA for allegedly being an active member of the Popular Front of India (PFI). The Supreme Court set aside the order of the High Court and granted bail to the appellant observing that statutory bar on grant of bail could not be an impediment if the court on appreciation of totality of evidence is satisfied that the accusations are prima facie not true.³⁰⁴

³⁰³ 2024 SCC OnLine SC 3762.

³⁰⁴ *NIA v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1.

The court further observed that in granting bail, the court is required to consider and examine not only the FIR but the case diary and chargesheet and to examine them on broad probabilities regarding involvement of the accused in the crime to determine whether the accusations are prima facie true as compared to holding the accused not guilty. If the court after examining is satisfied that there is no reasonable ground to believe in the accusation against the accused, then bail can be granted.

Similarly, for granting bail, in the case of *Union of India v. K.A. Najeeb*,³⁰⁵ bail was granted to the respondent-accused by the SC on the contentions that bail should be granted where the accused had been in jail for an extended period of time with little possibility of early completion of trial.³⁰⁶ The court cited *State of Bihar v. Rajballav Prasad*,³⁰⁷ whereby it was held that deference must be given to the discretion exercised by Superior Courts in matters of bail, save for exceptional circumstances. “*There have to be very cogent and overwhelming circumstances that are necessary to interfere with the discretion in granting the bail such as:*

- *whether the accused would be readily available for his trial,*
- *whether he is likely to abuse the discretion granted in his favour by tampering with the evidence,*
- *gravity of the offence,*
- *influencing the witnesses or chance of the accused evading trial by abscond etc.”*

In a case dealing with the accused charged under Section 38 and Section 39 of the UAPA Act, the court held that mere association with a terrorist organization is not sufficient to attract

³⁰⁵ (2021) 3 SCC 713.

³⁰⁶ (2017) 2 SCC 731.

³⁰⁷ (2017) 2 SCC 178.

Section 38 and mere support given to a terrorist organization is not sufficient to attract Section 39. The association and the support have to be with the intention of furthering the activities of a terrorist organization.³⁰⁸

viii. Acquittal under UAPA

In *State of Maharashtra v. Kamal Ahmed Mohd. Vakil Ansari*,³⁰⁹ the Division Bench of Bombay High Court while revisiting the judgment of the Special Court, set aside the convictions and sentences awarded to the accused persons and acquitted them, holding that the prosecution failed to establish their offence beyond reasonable doubt. In the instant case, on 11-7-2006, seven high-intensity bomb blasts occurred in the first-class compartments of the Mumbai local trains killing 187 people and injuring 824. Separate FIRs were filed in seven police stations, but they were later consolidated for investigation by the Maharashtra Anti-Terrorism Squad ('ATS'). Thirteen accused, along with fifteen absconding accused and two deceased, were charged under multiple provisions of the IPC, UAPA, the Explosive Substances Act, 1908, the Explosives Act, 1884, the MCOCA, the Railways Act, 1989, and the Prevention of Damage to Public Property Act, 1984.

The Special Court on 30-9-2015, convicted 12 out of 13 accused, sentencing five to death (Accused 1, 3, 4, 12 and 13) and the rest to imprisonment of varied terms. The death penalties initiated the mandatory reference to the High Court and the remaining accused filed criminal appeals challenging their convictions. The Bombay High Court quashed and set aside the impugned judgment and order of conviction and answered the present confirmation case in

³⁰⁸ *Thwaha Fasal v. Union of India*, (2022) 14 SCC 766.

³⁰⁹ 2025 SCC OnLine Bom 2714.

the negative and allowed all the criminal appeals. The Court directed the release of the accused from their respective jail upon executing a PR bond in the sum of Rs 25,000 each.

Similarly, in *National Investigation Agency v. Vinay Talekar*,³¹⁰ the appeal preferred by the NIA was dismissed and the order of acquittal of the accused was upheld by the Bombay High Court. It was held that the prosecution was unable to establish its case beyond reasonable doubt against any of the accused persons who were charged under the provisions of the UAPA, the Explosive Substances Act, 1908 and the Explosive Act, 1884 and also held that the proved circumstances, are not at all sufficient to convict the accused persons. Suspicion, however grave, can never take the place of proof which is required in such matters to convict the accused persons.

List of Cases

- *Union of India v. K. A. Najeed*, 2021 INSC 50.
- *Asif Iqbal Tanha v. State of National Capital Territory of Delhi*, (2021) SCC OnLine Del 3253.
- *Gautam Navlakha v. NIA*, 2021 INSC 295.
- *Bikramjit Singh v. State of Punjab*, 2020 INSC 589.
- *Thwaha Fasal v. Union of India*, 2021 INSC 688.
- *NIA v. Zahoor Ahmad Shah Watali*, 2019 INSC 456.

³¹⁰ 2020 SCC OnLine Bom 933.

H. Narcotic Drugs and Psychotropic Substances Act, 1985

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) was enacted with the objective to consolidate and amend the law relating to narcotic drugs as well as make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. The Act also provides for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances and implements the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances.

The Act deals with both narcotics drugs as well as psychotropic substances and defines and distinguishes both under the provisions of the act.

Under section 2 of the NDPS Act, narcotics is defined to

“mean coca leaf, cannabis (hemp) opium straw and includes all manufactured drugs.”

while psychotropic substance is defined to mean

“any substance , natural or synthetic or any Its Implications, natural materials or any salt or preparation of such substance or material included in the schedule of this act.”

i. Prohibition, Control and Regulation

The Act prohibits, controls and in some cases regulates certain operations related to these substances. Section 8 of the NDPS Act prohibits the certain operations with respect to the narcotic drugs and psychotropic substances. It prohibits the cultivation of any coca plant or

gathering any portion of coca plant; or cultivation of the opium poppy or any cannabis plant. The act prohibits the production, manufacturing, possession and sale, purchase, transportation and warehousing, using, consumption, import inter-state, export inter-state, import into India, export from India or transship any narcotic drug or psychotropic substance except for medical or scientific purpose and in the permitted manner (under license and in accordance with the terms and conditions of such license, permit or authorization).

Possession under the act also requires two elements: (a) physical control or ability to exercise physical control; and (b) knowledge that a thing is in one's custody or under one's physical control. Thus the physical element (custody or control) as well as the mental element (Knowledge), have to be proved against an accused before he can be punished under this section.

ii. Offences and Punishment under the NDPS Act

Chapter IV under the NDPS Act enlists the offences related to narcotics and psychotropic substances along with the punishments.

Sections and Offence	Punishment
15 Poppy straw (production, possession, transportation, sale, etc.)	Rigorous imprisonment: 10-20 years; Fine: Rs1-2 lakhs (up to Rs2 lakhs more) (over 10 years, in case of possession of Commercial; quantities)

16 Coca plant and coca leaves (cultivation, gathering, production, etc.)	Rigorous imprisonment: up to 10 years; Fine: Rs1-2 lakhs (up to Rs 2 lakhs more)
17 Prepared opium (production, possession, sale, etc.)	Rigorous imprisonment: 10-20 years; Fine: Rs1-2 lakhs (up to Rs 2 lakhs more) (over 10-20 years, in case of possession of Commercial; quantities, and up-to 1 year in case of small quantity)
18 Opium poppy and opium (cultivation, production, sale, etc.)	Rigorous imprisonment: 10-20 years (with over 10 years, in case of possession of Commercial; quantities) ; Fine: Rs 1-2 lakhs (up to Rs 2 lakhs more)
20 Cannabis plant and cannabis (cultivation, production, sale, etc.)	(i) Ganja or cannabis plant: Rigorous imprisonment up to 5 years; Fine up to Rs 50,000 (ii) Cannabis other than ganja: Rigorous imprisonment: 10-20 years; Fine: Rs1-2 lakhs (up to Rs2 lakhs more)

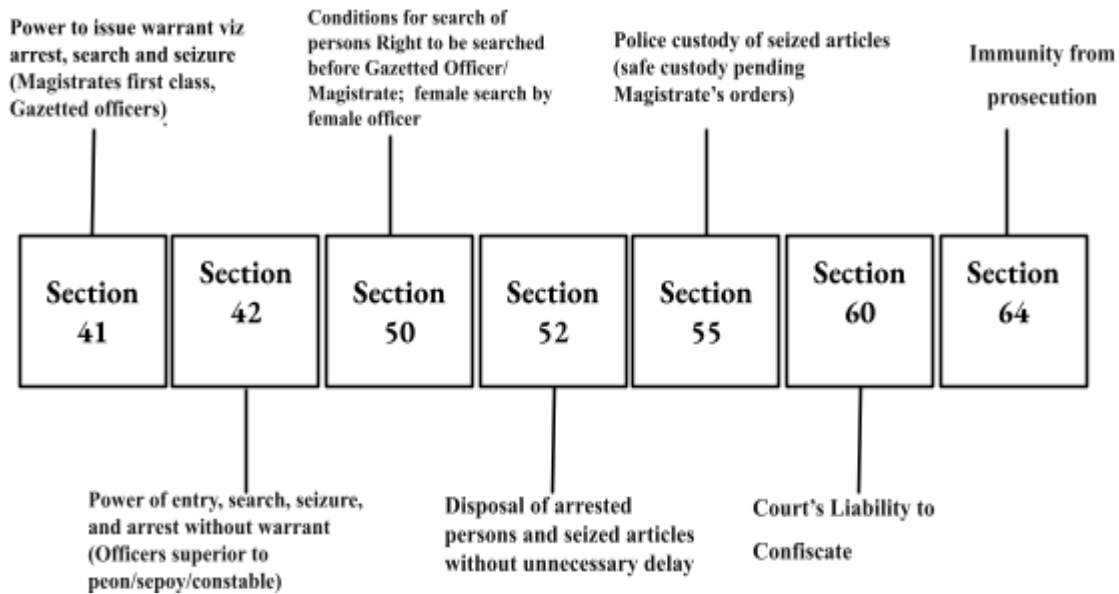
22	Rigorous imprisonment: 10-20 years; Fine: Rs1-2 lakhs (up to Rs 2 lakhs more)
Psychotropic substances (manufacture, sale, transportation, etc.)	
23	Rigorous imprisonment: 10-20 years; Fine: Rs 1-2 lakhs (up to Rs 2 lakhs more)
Import/export/transshipment of narcotic drugs and psychotropic substances	
25	Rigorous imprisonment: 10-20 years; Fine: Rs 1-2 lakhs (up to Rs 2 lakhs more)
Allowing premises to be used for commission of an offence	
29	Punishment for the offence abetted/conspired
Abetment and criminal conspiracy	
31	Increased punishment for repeat offenders

Enhanced punishment for certain offences after previous conviction	
31-A Death penalty for certain offences after previous conviction	Death sentence (subject to constitutional challenge)

iii. Procedure under the NDPS Act

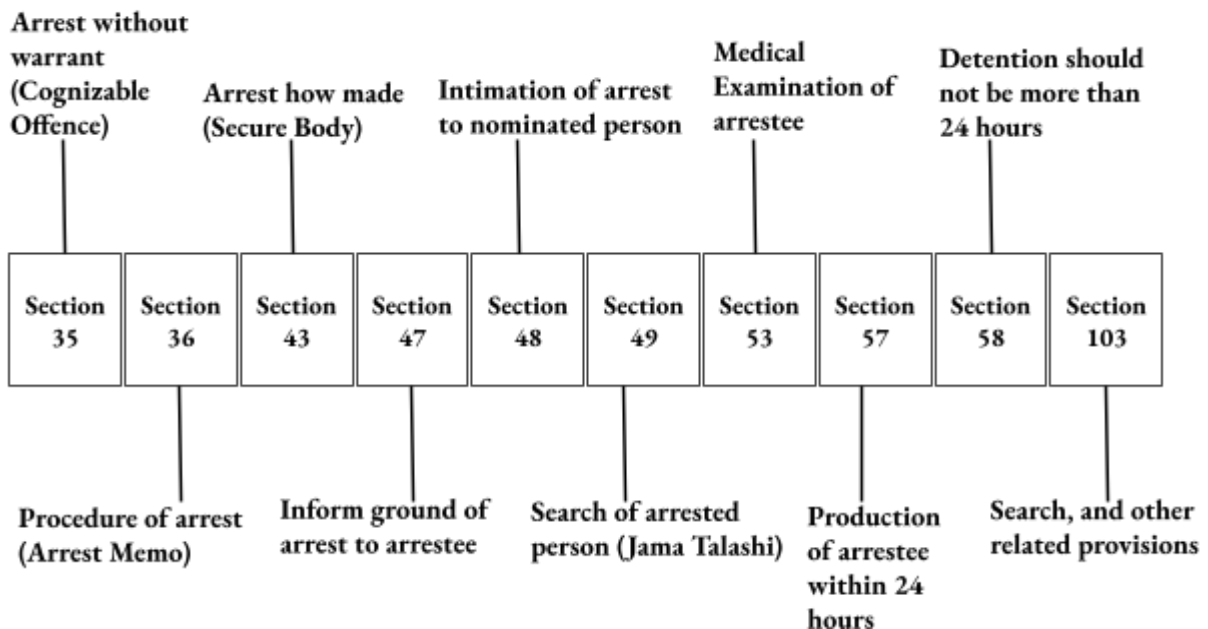
Chapter V of the NDPS Act deals with the procedure that is to be undertaken with respect to warrants, arrests, search and seizure when dealing with offences under the NDPS Act.

Immunity from prosecution



With respect to warrants, arrests, search and seizure, under Section 51 of the NDPS Act, it is stipulated that provisions of the code of criminal procedure, 1973 to (now changed to BNSS) apply insofar as they are not inconsistent with the provisions of the NDPS Act.

These provisions are:



iv. Bail Under the NDPS Act

The Narcotic Drugs and Psychotropic Substances (NDPS) Act stipulates strict rules regarding bail. The Supreme Court has emphasized that a liberal approach to bail is not suitable for NDPS cases, given the Act's purpose of combating drug trafficking and its impact on society.³¹¹

Section 37 deals with the provision of bail under the NDPS Act. The Act stipulates that the courts cannot grant bail in offences under section 19, 24 or 27A of the NDPS Act and in offences involving commercial quantities.

Provision	Details
Cognizable and Non-Bailable Offences	Every offence under the NDPS Act is cognizable and non-bailable.
Conditions for Granting Bail	Two conditions must be met: (1) reasonable grounds for believing the accused is not guilty, and (2) the accused is not likely to commit any offence while on bail.
Opportunity to Oppose	The prosecution must be given an opportunity to oppose the bail application.

³¹¹ *State of Kerala v Rajesh*, (2020) 12 SCC 122.

- Limitations on Granting Bail: The limitations on granting bail under Section 37 come into play only when the question of granting bail arises on merits.
- Twin Conditions: The two conditions for granting bail (reasonable grounds for believing the accused is not guilty and the accused is not likely to commit any offence while on bail) are cumulative and not alternative.
- Standard of Proof: The satisfaction contemplated regarding the accused being not guilty has to be more than prima facie grounds.
- Prevalence of Section 37: In case of inconsistency, Section 37 of the NDPS Act prevails over Section 439 of the CrPC.

Bail Application Considerations

- Reasonable Grounds: The Court must be satisfied that there are reasonable grounds for believing the accused is not guilty.
- Likely to Commit Offence: The Court must also be satisfied that the accused is not likely to commit any offence while on bail.
- Stringent Conditions: Bail must be subject to stringent conditions.

The prosecution is given an opportunity to oppose the bail application, and the Court must be satisfied that there are reasonable grounds for believing the accused is not guilty and is not likely to commit any offence while on bail.

For bail under the NDPS Act, in *Narcotic Control Bureau vs. Kishan Lal*,³¹² the Court held that the NDPS Act being a special statute, its provisions prevail over those of Cr.P.C. and therefore, the power to grant bail under the Cr.P.C. is subject to the conditions laid down in Section 37 of the NDPS Act.

For bail under NDPS, the concept of ‘reasonable grounds’ has been interpreted by courts with the Supreme Court in *State of Kerala v. Rajesh*,³¹³ holding that ‘reasonable grounds’ contemplates substantial probable cause and reasons to believe that the accused will not be guilty of any offence under the Act, clarifying that facts must be clear in determining whether the accused committed the offence. Similarly the Court emphasized the principles of individualized assessment in bail matters through *Sami Ullah v. Superintendent, NCB*.³¹⁴

List of Cases

- *State of Kerala v. Rajesh*, (2020) 12 SCC 122.
- *Union of India v. Ram Samujh*, (1999) 9 SCC 429.
- *Collector of Customs, New Delhi v. Ahmadalieva Nodira*, (2004) 3 SCC 549.
- *Babua v. State of Orissa*, (2001) 2 SCC 566.
- *Union of India v. Rattan Mallik @ Habul*, (2009) 2 SCC 624.
- *Union of India v. Shiv Shanker Kesari*, (2007) 7 SCC 798.

³¹² (1991) 1 SCC 705.

³¹³ (2020) 12 SCC 122.

³¹⁴ SCC OnLine SC 1659.

- *Sujit Tiwari v. State of Gujarat*, 2020 SCC Online SC 84.
- *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172.
- *S.K. Raju @ Abdul Haque @ Jagga v. State of West Bengal*, (2018) 9 SCC 708.
- *State of Rajasthan v. Bheru Lal*, (2013) 11 SCC 730.
- *State of Rajasthan v. Jag Raj Singh @ Hansa*, (2016) 11 SCC 687.
- *Mohan Lal v. State of Rajasthan*, (2015) 6 SCC 222.
- *Union of India v. Mohanlal*, (2012) 7 SCC 712.
- *Arif Khan @ Agha Khan v. State of Uttarakhand*, (2018) 18 SCC 380.
- *Abdul Rashid Ibrahim Mansuri v. State of Gujarat*, (2000) 2 SCC 513.
- *State of Punjab v. Balbir Singh*, 1994 (3) SCC 299.

I. Offences Against State

i. Introduction

Article 19(1) of the Constitution of India guarantees every citizen the right to freedom of speech and expression, assemble peacefully, form associations, unions and cooperative societies, move freely throughout the territory of India, reside and settle in any part of India and practice any profession, trade or business. However, Article 19(2) allows the government to impose reasonable restrictions to safeguard issues such as in the interests of India's

sovereignty and integrity, the state's security, cordial relations with foreign states, public order, decency or morality, or in cases of contempt of court, defamation, or incitement to an offence. Sedition laws are also one of the many restrictions that can be used to limit free expression in the name of public safety or order. Sedition refers to any act intended to incite hatred, contempt, or disaffection towards the government's sovereign, such as inspiring dissatisfaction, stirring up opposition, inciting insurrection, causing public commotion, fostering disloyalty, or causing public unrest.

With the introduction of the new criminal code, the offence of sedition (Section 124A of the IPC) has been omitted. However, BNS introduces new provisions to penalize activities like inciting secession, armed rebellion, or subversive activities, and encouraging feelings of separatist activities, which could potentially cover similar acts punished under sedition. Chapter VII of the Bharatiya Nyaya Sanhita, 2023 (BNS) deals with the offences against state and comprises 12 sections from Section 147 to 151 of BNS.

ii. Provisions under BNS

- S 147 BNS: Waging, or attempting to wage war, or abetting waging of war, against the Government of India. (IPC: S. 121)

The term 'war' as understood here does not take the normative phenomenon of war but includes insurrection or a civilian uprising which is not to be mistaken to be the conventional war between nations or sovereign entities. The most important ingredient under this offence, that is a general principle to apply is examining the intention and the purpose behind the defiance and raging against the government, however the expression 'waging war' should not

be extended far to hold all acts of disruptive public order and peace irrespective of their magnitude and repercussion as acts of waging war against the Government.

In the case of *Yakud Abdul Razak Menon v State of Maharashtra through Central Bureau of Investigation, Bombay*,³¹⁵ the court observed the person fell within the purview of Section 121 of IPC because the undoubted objective and the determination of the offenders was to impinge on the sovereign authority of the nation and its Government.

Chapter IV of the UAPA Act, 1967 is not to be viewed as a repeal of section 147 of the BNS, as a ‘terrorist act’ and an ‘act of waging war’ may have some overlapping features but a terrorist act may not be waging war and vice versa.³¹⁶

The essential ingredients to constitute an offence under the act entails the accused to wage a war, attempt to wage a war or abetted the waging of a war against the Government of India.

The Act will constitute a cognizable, non-bailable, non-compoundable offence, triable in the Court of Sessions, punishable with death imprisonment for life and fine.

List of Cases

- *Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra*, (2012) 9 SCC 1.
- *Shaukat Hussain Guru v. State of (National Capital Territory) of Delhi*, (2008) 6 SCC 776.

³¹⁵ (2013) 13 SCC 1.

³¹⁶ *State (National Capital Territory of Delhi) v. Navjot Sandhu @ Afsan Guru*, (2005) 11 SCC 600.

- *Kehar Singh v. State (Delhi Admn.)*, (1988) 3 SCC 609.
- *Shaukat Hussain Guru v. State of (National Capital Territory) of Delhi*, (2008) 6 SCC 776.
- *Girdhari Parmanand Vadhava v. State of Maharashtra*, (1996) 11 SCC 179.
- *Mohd. Khalid v. State of West Bengal*, (2002) 7 SCC 334.
- *Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra*, (2012) 9 SCC 1.
- *Mohd. Arif v. State of National Capital Territory of Delhi*, (2011) 13 SCC 621 relied on *Kehar Singh v. State (Delhi Admn.)*, (1988) 3 SCC 609.
- *Maganlal v. Emperor*, 1945 SCC OnLine MP 43.
- *Jitendra Nath Gupta v. Emperor*, AIR 1937 Cal 99
- *Pulin Bihari Das v. Emperor*, 13 CrL.J 609
- *Maganlal Bagdi v. Emperor*, AIR 1934 Nag 71
- *Purnananda Das Gupta v. Emperor*, 1938 SCC OnLine Cal 318

➤ S 148 BNS: Conspiracy to commit offences punishable by section 147.

(Corresponding Section 121A of the IPC)

The offence of conspiring to wage war against the Government of India is covered under this section. The section comprises two kinds of conspiracies:

a. Conspiring within or without and beyond India to commit any of the offences punishable under Section 147 of the BNS;

b. Conspiring to overawe by means of criminal force or show of criminal forces, where the word ‘overawe’ is meant to convey more than just the creation of apprehension and alarm in the person.

The proviso to the Section also states that in order to constitute an offence under the section, the act or omission taking place in pursuance of the conspiracy is not necessary. The criminality of conspiracy is independent of the criminality of the overt act. So where direct evidence is given on the existence of a conspiracy, it is not necessary to establish by direct evidence that the accused persons did not enter into an agreement to conspire.³¹⁷

The act or omission under this section will constitute a cognizable, non-bailable, non-compoundable offence, triable in the Court of Sessions, punishable with death imprisonment for life and imprisonment up to 10 years and fine.

➤ S 149 BNS: Collecting arms, etc., with intention of waging war against Government of India. (corresponding Section 122 of the IPC)

³¹⁷ *Jitendra Nath Gupta v Emperor*, AIR 1937 Cal 99.

Collecting arms, ammunition etc., with the intention of waging war against the Government of India is made punishable under this section. Essentially, this provision criminalises the preparatory step (the collection and preparation) for the much graver offence of actually waging war against the state. The severe punishment for this act of preparation is either imprisonment for life or imprisonment for a term not exceeding ten years, in addition to a fine. This offence is classified as Cognizable, Non-Bailable, and is triable by a Court of Session. A bare conspiracy or consultation with a view to a levying of war is not a levying of war. To constitute a levying of war, it is not, however, necessary that there should be an engagement; it is sufficient if there is arming, enlisting and marching, or if large numbers assemble with warlike intent, or if a small number use sufficiently violent means in carrying out their treasonable intent.³¹⁸

In *Javed alias Java Ahmad Mohammed Akbar Bhatt v. State*,³¹⁹ it was held that prosecution in a charge under section 122 of the IPC (presently Section 149 BNS) could not prove that the accused were arrested from an area which was a disturbed area and that the arrested persons had used firearms against persons who were maintaining the law and order. Presumption under Section 111A of the Evidence Act, 1872 could not therefore be drawn. Print material and other things found in the room of the accused were neither proactive nor objectionable. It was held that charges under Section 122 of the IPC were not proved.

- Section 150 of the BNS : Concealing with intent to facilitate design to wage war.
(corresponding Section 123 of the IPC))

³¹⁸ Halsbury Laws of England, 4th Edn, vol 11, Para. 814, p 479.

³¹⁹ 2007 CrLJ 1386 (Bom).

Section 150 of BNS makes it an offence to conceal, whether by act or omission, the existence of a design to "wage war" against the Government of India, when intending by such concealment to facilitate, or knowing it to be likely that such concealing will facilitate, the waging of such war.³²⁰

The practice and procedure for a charge of Concealing with intent to facilitate design to wage war centers on proving three essential ingredients. Firstly, the prosecution must establish the existence of a design to wage war against the Government of India. Secondly, the core element is the knowing concealment of this design by the accused. Finally, this concealment must be done with the intention to facilitate the waging of war against the Government of India. If the prosecution successfully proves all three elements, the offence stands, classifying the crime as a severe act against the state, tried by a Court of Session, and punishable by up to ten years imprisonment along with a fine.

In the Parliament attack incident, the accused had full information of the conspiracy and plans of the terrorists to attack the Parliament House. His illegal omission to apprise the police or magistrate of the design of conspirators will render him liable for an offence under Section 123 of the IPC (corresponding to Section 150 of the BNS).³²¹

iii. Role of Legal Aid Defence Counsels (LADCs) in these cases:

- Ensure the accused's fundamental rights under Article 19(1) of the Constitution of India and other constitutional guarantees are fully protected.

³²⁰ *Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra*, (2012) 9 SCC 1.

³²¹ *State (National Capital Territory of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600.

- Carefully examine whether the alleged conduct meets the constitutional threshold for sedition, incitement to violence or public disorder, as clarified by landmark judgments like *Kedarnath Singh v. State of Bihar*.
- Argue that mere criticism or dissent does not constitute the offence, relying on Supreme Court precedents to protect legitimate free speech.
- Scrutinize police investigation and arrest procedures for any rights violations, including arbitrary detention or use of law as a tool of harassment.
- Advocate for bail, highlighting the presumption of innocence and the undue hardship from otherwise non-bailable status.
- Maintain vigilance on case proceedings to ensure the accused receives a fair trial and protection against prosecutorial misuse.
- Conduct prison visits when clients are in custody to monitor their welfare and legal rights.
- Uphold professional diligence in mounting a robust, constitutionally grounded defence aligned with the principles of justice and democracy.

This approach safeguards the balance between public order interests and the constitutional right to dissent, preventing arbitrary use of sedition laws against marginalised and vulnerable individuals.

J. Negotiable Instruments Act, 1881

Negotiable Instruments Act, 1881 is a statute which governs instruments like promissory notes, bills of exchange, and cheques etc. Chapter XVII of the NI Act criminalises the dishonor of cheques caused by insufficient funds or exceeding agreed arrangements, thereby

strengthening the credibility of commercial transactions. It is both punitive as also compensatory and restitutive.

The object of Section 138 of the NI Act is to infuse credibility to negotiable instruments including cheques and to encourage and promote the use of negotiable instruments including cheques in financial transactions.³²² The essential ingredients constituting an offence under Section 138 of the NI Act are as follows:³²³

- Cheque drawn on an account maintained by the drawer;
- Issued for discharge of legally enforceable debt/liability;
- Dishonoured due to insufficient funds/exceeding arrangement;
- Presented within validity period;
- Demand notice within 30 days of dishonour info;
- No payment within 15 days of notice;
- Debt legally enforceable

The Supreme Court, in the case of *R. Vijayan v. Baby*³²⁴ observed that some Magistrates went by the traditional view that the criminal proceedings were for imposing punishment and did not exercise discretion to direct payment of compensation, causing considerable difficulty to the complainant, as invariably the limitation for filing civil cases would expire by the time the criminal case was decided. The penal provision of Section 138 of the NI Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of the same.

³²² *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197.

³²³ *Kusum Ingots and Alloys Ltd. v. Pennar Peterson Securities Ltd.*, (2000) 2 SCC 745; *Goa Plast (P) Ltd. v. Chico Ursula D'Souza*, (2004) 2 SCC 235.

³²⁴ (2012) 1 SCC 260.

Both Section 138 and 139 of the NI Act require that the court presume the liability of the drawer of the cheques for the amounts for which the cheques are drawn.³²⁵ The initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque.³²⁶ Section 139 raises a presumption in favour of the complainant that the cheque was issued for the discharge of a legally enforceable debt or liability. However, the accused may rebut this presumption by establishing, on preponderance of probabilities, that no such debt or liability existed.³²⁷ Thus, there is a presumption that every negotiable instrument duly executed, is for the discharge of a debt or other liability but the presumption could be rebutted by adducing. However the burden of proof would be on the person who wanted to rebut the presumption.³²⁸

³²⁵ *Hiten P. Dalal v. Bratindranath Banerjee*, (2001) 6 SCC 16.

³²⁶ *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197.

³²⁷ *Uttam Ram v. Devinder Singh Hudan*, (2019) 10 SCC 287.

³²⁸ *Laxmi Dyechem v. State of Gujarat*, (2012) 13 SCC 375; *Kumar Exports v. Sharma Carpets*, (2009) 2 SCC 513.

PART IV: LAW OF EVIDENCE

Understanding Key Provisions of the Indian Evidence Act, 1872/Bharatiya Sakshya Adhiniyam, 2023.

Topics covered in this chapter:

Topic 1: Evolution of Evidence Act in India

Topic 2: IEA, 1872 and the Bharatiya Sakshya Adhiniyam, 2023.

Topic 3: Importance Concepts under Bharatiya Sakshya Adhiniyam, 2023.

Objective:

- To develop a comprehensive understanding of aspects of the Indian Evidence Act, 1872/Bharatiya Sakshya Adhiniyam, 2023.
- To familiarise the LADCs with concepts under Indian Evidence Act, and effectively handle evidentiary challenges in legal aid cases, examine and cross-examine witnesses, appropriately object to inadmissible evidence and present cogent arguments on evidentiary matters before courts while maintaining professional ethics and competence.

Expected Learning Outcomes

- The Legal Aid Defence Counsels will develop a comprehensive understanding of the evolution, structure and key provisions of the Indian Evidence Act, 1872 and the Bharatiya Sakshya Adhiniyam, 2023.

- LADCs will demonstrate proficiency in applying important concepts including the Doctrine of Res Gestae, Dying Declarations, Expert Opinions, Examination of Witnesses, Privileged Communication, Burden of Proof, Confessions, and Electronic Evidence under BSA, 2023, understanding their legal principles, admissibility requirements, and evidentiary value in court proceedings.

Training Methods

1. Lecture
2. Power Point Presentation
3. Case study analysis
4. Mock court exercises

Session Plan

- I. Introduction, ice-breaking and interactive lecture by Resource Person/Facilitator.
- II. Topic I: Evolution of Evidence Act in India
- III. Topic II: IEA, 1872 and the Bharatiya Sakshya Adhiniyam, 2023.
- IV. Topic III: Concepts under BSA:
 - a) **Doctrine of Res Gestae**
 - b) **Dying Declaration**
 - c) **Expert Opinions**
 - d) **Examination Of Witness**
 - e) **Privileged Communication**
 - f) **Burden of Proof**
 - g) **Confessions**
 - h) **Electronic Evidence**

Q & A, and Concluding Remarks

Note: In the preparation of the training module, in addition to the note and the module given herein, assistance can be taken from resources listed under the Reading List.

Reading list

- NALSA, “Training Module for Legal Services Lawyers, Part-1”, (2015).
- NALSA, “Training Module for Legal Services Lawyers, Part-2”, (2016).
- NALSA, “Training Module for Legal Services Lawyers, Part-3”, (2018).

1. Evolution of the Evidence Act in India

The Indian Evidence Act, 1872, was drafted by Sir James Fitzjames Stephen. The Act provides detailed rules regarding relevancy, admissibility and proof. It provides concepts such as judicial notice, burden of proof, estoppel, and witness competency.³²⁹ However, the Act was not intended to accommodate technological advancements such as computers, the internet, or DNA analysis, despite its effectiveness at the time. Judicial interpretation gradually supplemented the Act. For instance, Section 65B was inserted in 2000 as an amendment in the Indian Evidence Act to deal with the admissibility of electronic records. Modern technological & forensic challenges demanded reforms in the Evidence law.

The Bhartiya Sakshya Adhiniyam, 2023 (BSA) was enacted, replacing the IEA. Section 45 of the IEA, which dealt with expert opinions, is now restructured as Section 39 of the BSA, whereas Section 65A and Section 65B of the IEA are replaced by Sections 62 and 63 of the BSA respectively. The BSA provides the admissibility of electronic and digital records, shortening procedures and clarifying certificates and chain of custody.³³⁰

2. IEA, 1872 and Bhartiya Sakshya Adhiniyam, 2023

Section 3, Paragraph 6 of the IEA which is now Section 2(1)(e) of the BSA defines evidence, and includes all oral and documentary evidence. BSA further added electronic and digital records in the definition. BSA has elaborated on the existing provisions of IEA by incorporating technology and jurisdictional updates to make evidence law more contextually relevant.

³²⁹ Indian Evidence Act, 1872 (Act 1 of 1872), Preamble.

³³⁰ Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), ss. 61, 62 & 63.

3. *Important Concepts under the Bhartiya Sakshya Adhiniyam, 2023*

A. Doctrine of Res Gestae

The doctrine of *Res Gestae*, a Latin term, is a well-established exception to the rule against hearsay evidence provided under Section 4 of the BSA. According to Black's Law Dictionary, *res gestae* means "things done".³³¹ The doctrine finds its conception in the case of *Thompson v. Trevanion*,³³² where the court ruled that statements made simultaneously with an act are admissible as they help in explaining the event.

In India, this provision allows for the admissibility of evidence that may not be direct but is so inherently linked to the event that it provides clarity about the principal fact. Section 4 of the BSA states that:

"Facts which, though not in issue, are so connected with a fact in issue or a relevant fact as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places. Illustration: A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact."

Therefore, *Res-gestae* may be broadly defined as matter incidental to the main fact and explanatory of it, including acts and words which are so closely connected therewith as to constitute a part of the same transaction and without a knowledge of which the main fact, are contemporaneous with it and serve to illustrate its character.

³³¹ Bryan A. Garner (ed.), *Black's Law Dictionary* (Thomson Reuters, St. Paul, 11th edn., 2019).

³³² 1693 Skin L.R. 402.

Conditions for facts to be categorised as *Res Gestae*

Under the Indian Evidence Act, of 1872, statements are subject to specific conditions to ensure their authenticity and reliability and once these conditions are met, the statement qualifies as *Res Gestae* evidence.

- Proximity to the Event: The statement must be closely connected in time and circumstances to the event it describes.
- Spontaneity: Res Gestae statements must be made spontaneously, without any premeditation or the opportunity for the person to reflect and concoct (mixup) a false account.
- No Opportunity for Deliberation: The person making the statement should not have had a reasonable opportunity to deliberate or fabricate the statement.
- Relevance to the Event: The statement must be relevant to the event in question/fact in issue.
- Absence of External Influence: The statement should not be the result of external influence, coercion, or undue pressure.
- Hearsay Exception: Res Gestae statements are generally considered an exception to the hearsay rule, which is the rule against admitting out-of-court statements for the truth of their content. However, for a statement to qualify as *Res Gestae*, it should meet the conditions mentioned above.

Res Gestae proves to be an important concept in criminal cases. It can help corroborate the testimonies of witnesses.

List of Cases

- *State of Andhra Pradesh v. Panna Satyanarayan*, (2000) 6 SCC 286.
- *Sukhar v. State of Uttar Pradesh*, (1999) 9 SCC 507.
- *Rattan Singh v. State of Himachal Pradesh*, (1997) 4 SCC 161.
- *Gentela Vijayavardhan Rao v. State of Andhra Pradesh*, (1996) 6 SCC 241.
- *Babulal Choukhani v. Western India Theatres Ltd*, 1956 SCC OnLine Cal 97.

B. Dying Declaration

A 'Dying declaration' means the statement of a person who has died explaining the circumstances of his death. Such a statement can be proved when it 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. It is admitted as evidence because the impending death is believed to ensure the truthfulness of the statement, and it can be used to prove the cause of death even if the person is unavailable to testify. The Dying Declaration is based on the latin maxim '*nemo moriturus prae-sumitur mentire*' which means a man will not meet his maker with a lie in his mouth.

In India, the BSA governs dying declarations under Section 26(1) of the BSA, which corresponds to Section 32(1) of the Indian Evidence Act, 1872, states that-

“26. 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;

Dying declaration is an exception to the general rule of excluding hearsay evidence. The burden of proving the dying declaration is always on the prosecution.³³³ Since an accused can be convicted solely on the basis of dying declaration, the court is careful in scrutinising the same.

i. Condition for Admissibility

Dying declaration will be admissible in evidence only when:

- The person making the statement dies.

³³³ Justice A.V. Chandrashekar, "Dying Declaration: Its applicability in Criminal Cases," *Karnataka Judicial Academy Journal*, available at https://judiciary.karnataka.gov.in/kjablr/assets/articles/Dying_Declaration_Its_applicability_in_Criminal_Cases.pdf (last visited on September 25, 2025).

- The cause of the person's death comes into question.
- If the person who made a dying declaration survives, such a statement will not fall within the purview of Section 26 (1) of the BSA.

In order to determine the condition of the declarant at the time of making the statement, the court peruses the medical records, but the same is not strictly followed and is not the only way for courts to determine the condition of the statement. If the person who records the statement or the witness to the declaration tenders satisfactory evidence as to the fit mental condition, the dying declaration will be accepted. In the judgment of *Laxman v State of Maharashtra*,³³⁴ the Supreme Court has explained that medical certification is not a sine qua non for accepting the dying declaration.

In case, there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.³³⁵

If there are contradictions between any of them on the material part, then the court should try to resolve such contradictions. If no premise could explain such contradictions, then such a

³³⁴ (2002) 6 SCC 710.

³³⁵ (2010) 8 SCC 514.

dying declaration might be rejected by the court. In a circumstance, where there is a reasonable justification, then such a statement can be equated with an omission.³³⁶

ii. Dying Declaration as the sole basis for conviction

In the case of *Naeem v. State of Uttar Pradesh*,³³⁷ it was held that dying declaration can be the sole basis of conviction if it satisfies the Court that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. Additionally the Court was of the opinion that there cannot be an absolute rule of law which promulgates that dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

In *Irfan v. State of Uttar Pradesh*,³³⁸ it was held that it is unsafe to record conviction solely on the basis of dying declaration since neither of the two dying declarations inspired any confidence, nor the oral evidence of the witnesses. It was observed that, had the dying declarations stood corroborated by the oral evidence of the witnesses, then probably, it would have been altogether a different scenario. However, the two dying declarations are not consistent and are rather contradictory to the oral evidence on record and was therefore held inadmissible.

The Court reproduced certain factors to determine the same, however, clarified that these factors will only affect the weight of the dying declaration and not its admissibility. They are:

- “Whether the person making the statement was in expectation of death?”

³³⁶ *Mohanlal Gangaram Gehani v. State of Maharashtra*, 1982 INSC 22.

³³⁷ 2024 INSC 169.

³³⁸ 2023 SCC OnLine SC 1060.

- *Whether the dying declaration was made at the earliest opportunity? “Rule of First Opportunity”*
- *Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?*
- *Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?*
- *Whether the statement was not recorded properly?*
- *Whether the dying declarant had an opportunity to clearly observe the incident?*
Whether the dying declaration has been consistent throughout?
- *Whether the dying declaration is a manifestation / fiction of the dying person's imagination of what he thinks transpired?*
- *Whether the dying declaration was itself voluntary?*
- *In case of multiple dying declarations, whether the first one inspires truth and is consistent with the other dying declaration?*
- *Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?”*

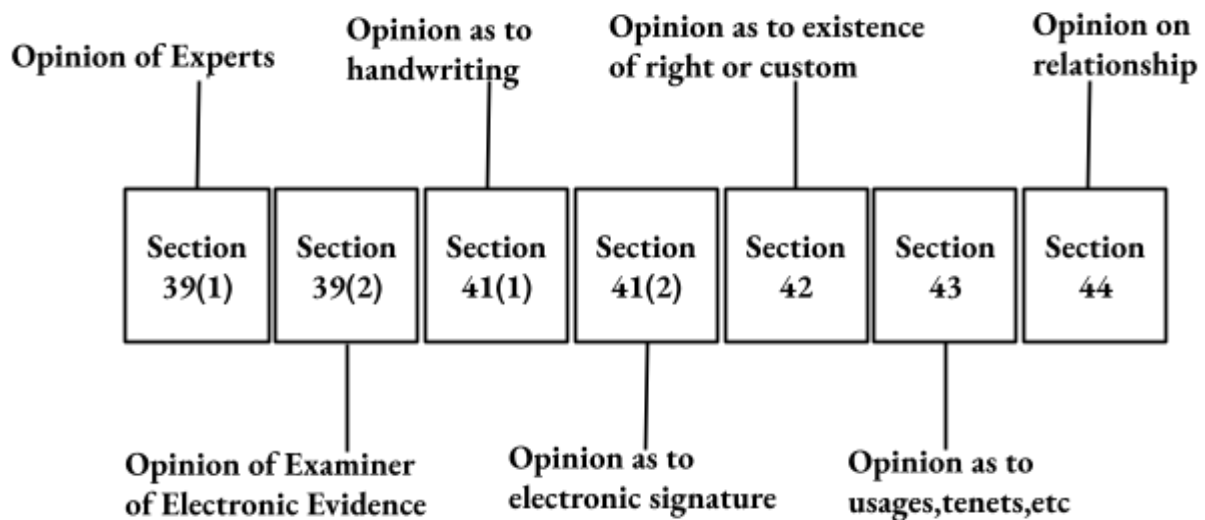
List of Cases

- *Pakala Narayana Swami v. Emperor*, (1939) SCC OnLine PC 1.
- *Laxman v. State of Maharashtra*, (2002) 6 SCC 710.
- *Khushal Rao v. State of Bombay*, (1957) SCC OnLine SC 20.
- *Satish Chandra v. State of Madhya Pradesh*, 2014 INSC 364.
- *Atbir v. Govt. (National Capital Territory of Delhi)*, (2010) 9 SCC 1.
- *State of Uttar Pradesh. v. Krishagopal*, (1988) INSC 222.

C. Expert Opinions

Section 39(1) of BSA defines experts as 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.

Expert opinions are admissible under Section 39(1) and (2) of BSA. 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 the identity of handwriting or finger impressions. Additionally, 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 (21 of 2000) may be relied on.



An Expert Opinion depends on two things. First, it depends on the facts upon which it is based. If the dispute relates to whether A is the father of B, a DNA report by a medical expert is sufficient to settle the dispute. Second, expert opinion also depends on the 'validity of the process' to reach the conclusion.

i. Expert Witnesses in Evidence Law in India

➤ Forensic and Scientific Evidence

Scientific evidence has become increasingly central to criminal trials. The evidence which is obtained through some Scientific observations or experiments is known as forensic evidence.

The courts rely on forensic experts to establish facts that cannot be proved by ordinary witnesses, but such evidence must comply with evidentiary rules.

Procedure under FSL

Section 176 (3) of the BNSS makes the visit of the forensic expert at the crime scene mandatory where the offence committed is punishable for 7 years or more. It imposes the

duty on the officer in charge of the police station to cause the forensic expert to visit the crime scene to collect forensic evidence within a period of 5 years from the date of offence and also videograph the process on mobile phone or any other electronic device. The proviso to the Section provides where forensic facility is not available in respect of such offence, the State Government shall notify the utilisation of such facility of any other State until the facility in respect of that matter is developed or made in the said State.

In *Karandeep Sharma @ Razia @ Raju v. State of Uttarakhand*,³³⁹ the Supreme Court set aside the conviction of the accused citing two principles, i.e., non-examination of the scientific expert and the failure of the prosecution to establish the unbroken chain of custody of forensic evidence.

The procedure for collecting the forensic evidence is that the investigating officer must secure the crime scene to prevent contamination, meticulously document and photograph the scene, and systematically collect evidence using sterile tools and proper packaging materials. Each piece of evidence must be individually labeled, sealed, and recorded with case details and chain of custody documentation to maintain its integrity. Biological samples like blood and tissue require special handling, including air drying, storage in EDTA vials, and transport under controlled temperature. The evidence, along with requisite forms including the FIR, medical reports, and consent documents, is then forwarded to the forensic lab. The lab analyzes the samples and submits a report to the magistrate, who relies on the scientifically validated evidence within due legal process.³⁴⁰

³³⁹ 2025 INSC 444.

³⁴⁰ Guidelines for collection, storage and transportation of Crime Scene Biological samples, available at: <http://dfs.nic.in/pdfs/IO-Forensicevidence-Guidelinesfor20IO.pdf> (Last visited on October 10, 2025).

In *Rahul v. State of Delhi*,³⁴¹ the Supreme Court reiterated that DNA profiling reports do not automatically fall within the purview of section 293 CrPC, which corresponds to Section 329 of the BNSS), it is the duty of the prosecution to prove the scientific process and the reliability of the same through expert testimony.

In *P. Gopalkrishnan @ Dileep v. State of Kerala*,³⁴² the question before the Supreme Court was whether electronic storage media, such as memory cards or pen-drives containing electronic records (like images or sound), qualify as “documents” within the meaning of Section 3 of IEA and for the purpose of mandatory disclosure under Section 207 of the CrPC. The Court held that the contents of a memory card/ pen drive being an electronic record must be regarded as a document.

In *Nadeem Ahmad v. State Of West Bengal*,³⁴³ the Supreme Court observed that FSL reports lost significance and cannot be read as evidence on account of flawed sampling procedure undertaken by the seizure officer, and a total failure on behalf of the officer-in-charge to comply with the procedure as provided in Section 52A of NDPS Act.

➤ Ballistics Evidence

Ballistics refers to the examination of bullets, firearms, and cartridges to determine whether a weapon was used in the commission of a crime.³⁴⁴ Section 45 of the IEA, and now Section 39 of the BSA, permits expert opinions on matters relating to science and arts.

³⁴¹ (2023) 1 SCC 83.

³⁴² (2020) 9 SCC 161.

³⁴³ 2025 INSC 993.

³⁴⁴ Dwight G.Smith,, “Ballistics in crime scene investigation” EBSCO Research, available at: <https://www.ebsco.com/research-starters/applied-sciences/ballistics-crime-scene-investigation> (last visited on September 25, 2025).

As a general rule, the opinion of the third party is irrelevant and inadmissible in court. Section 45 of the erstwhile IEA, acted as an exception to this rule, allowing the testimony of the expert on specific points. The new law, i.e., BSA under Section 39 reflects a broader and more adaptable approach to govern expert opinion.

In the case of *Surat Singh v. State*,³⁴⁵ the ballistic and cartridge comparison was discussed in detail. It was held that ballistic experts' testimony is prone to bias because their eagerness to identify crimes may cause them to stretch the evidence, confuse "*family markings*" with individual marks, and form opinions based on preconceived notions. Additionally, ballistic evidence, at best, only demonstrates that a bullet was fired from a weapon, not when or by whom, and conviction cannot be based solely on such opinion evidence without other reliable proof. Further, it was held that the Court must not abdicate its role and must be satisfied of guilt itself, but it is held that the Evidence Act does not always require expert testimony to be corroborated; reliance depends on the expert's knowledge, tests conducted, and reasons documented. It was held that ballistics are not as reliable as fingerprints. Experts must distinguish between "family" and "individual" markings. Error can be decreased by using more test cartridges. The prosecution must provide evidence that goes beyond the defence's shortcomings. In this case the court upheld the conviction of the accused while relying on ballistic experts' testimony along with other corroborative evidence.

In *State of Himachal Pradesh v. Mast Ram*,³⁴⁶ the Supreme Court held that the ballistic report is signed under the hand of the government scientific expert and the same is admissible under Section 293(4) of the CrPC which corresponds to Section 329 of the BNSS. The fact that the

³⁴⁵ Criminal Appeal No. 278 of 1969.

³⁴⁶ 2004 INSC 509.

pellets were not sent for examination was held to be irrelevant and was not a necessary requirement of law. The recovery of pellets from the body of the deceased was considered enough to establish that the deceased died of gunshot injuries.

The Supreme Court in the case of *Pritinder Singh @ Lovely v. The State Of Punjab*,³⁴⁷ was of the opinion that as the case is based on circumstantial evidence, the failure to examine the ballistic expert would be a glaring defect in the prosecution case. The court thus set aside the conviction of the accused.

To sum up, ballistic evidence plays a critical role in criminal trials involving firearms, as it helps establish whether a particular weapon was used in the commission of the crime.

List of Cases

- *Gulab v. State of Uttar Pradesh, 2021 SCCOnline SC 1211.*
- *State of Punjab v. Jugraj Singh, (2002) 3 SCC 234.*
- *Mohinder Singh v. State, 1950 SCC 673 .*
- *Gurucharan Singh v. State of Punjab, 1962 SCCOnLine SC 42.*
- *Ajay Singh v. State of Bihar, (2000) 9 SCC 730.*

³⁴⁷ 2023 INSC 614.

➤ Serological and DNA Evidence

Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profiles have also shown a tremendous impact on forensic investigation. Generally, when the DNA profile of a sample found at the scene of crime matches with the DNA profile of the suspect, it can generally be concluded that both samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory.³⁴⁸

Serological evidence includes analysis of blood, semen, and other bodily fluids, while DNA profiling has emerged as the most reliable tool for identification by matching fluids to a specific person.³⁴⁹ Section 112 of IEA which served as a heart for the maternity disputes, is now Section 116 of the BSA. This provision embodies the principle of the child's legitimacy. It establishes a "conclusive proof" of legitimacy for a child born during the subsistence of the marriage or within 280 days from the date of separation, provided that the mother remains unmarried.³⁵⁰ The only way to rebut this presumption is to prove "non-access" at the time when the child was begotten.

In the case of *Goutam Kundu v. State of West Bengal*,³⁵¹ the Supreme Court, while refusing to allow blood tests, held that there should be a strong prima facie case to believe that there was

"No Access."

³⁴⁸ (2006) 12 SCC 148.

³⁴⁹ P.L. Marshall, "An Introduction to Forensic Serology, Biological Evidence Evaluation, and Time Since Intercourse Intervals." in *Advances in Forensic Biology and Genetics* (Springer, Singapore 2005).

³⁵⁰ Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s.116.

³⁵¹ (1993) 3 SCC 418.

In *Nandlal Wasudeo Badwaik v. Lata Badwaik*,³⁵² the Court held that DNA evidence is more reliable than statutory presumptions of legitimacy under Section 112 of the IEA. Under the BSA, such scientific opinions continue to fall under Section 39. The courts, however, balance the use of DNA with privacy rights, as highlighted in *Dipanwita Roy v. Ronobroto Roy*,³⁵³ where a DNA test was ordered only after considering the woman's dignity. The court was of the opinion that the DNA test as directed by the High Court was justified in the present case, as it was the only way for the husband to substantiate his allegations of infidelity. And in cases where the wife would refuse to comply with a DNA test, it may be presumed adversely under Section 114(h) of the IEA which corresponds to Section 119 of the BSA, against her.

Furthermore, in criminal cases, serological and DNA profiling plays a crucial role in identifying the perpetrator. A definitive match between a sample of the accused furnishes a powerful and corroborative piece of circumstantial evidence. In cases of sexual assault, the retrieval of elements like semen, saliva, skin cells from the victims body or clothing or presence of these at the scene of crime is crucial. A match serves as a scientific indicator of the accused persons presence and involvement, thus materially assisting the prosecution in their case.³⁵⁴

The evidentiary value of the serological and DNA evidence goes beyond the cases of sexual assault and serves as a tool in investigating of other criminal matters. Like in cases of murder, grievous hurt etc, DNA helps in identifying the victim, especially in cases where the victim's body is mutilated or decomposed, it further helps in linking the accused to the victim or crime scene through traces of blood, hair or tissue found on weapons, clothing, or under the

³⁵² (2014) 2 SCC 576.

³⁵³ (2015) 1 SCC 365.

³⁵⁴ *Kattavellai @ Devakar v. State of Tamilnadu* 2025 INSC 845.

fingernails of the deceased or of the accused.³⁵⁵ Similarly in cases of theft the traces of DNA left on the objects like, windows, or forced entry points can help in connecting the accused with the scene of crime.³⁵⁶

Section 53-A of the CrPC which corresponds to Section 52 of the BNSS deals with the examination of the person accused of rape by medical practitioner. In the case of *Dharam Deo Yadav v. State of UP*,³⁵⁷ the Supreme Court while discussing the reliability of DNA evidence in criminal trial held as follows:

“The DNA stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made-up of a double standard structure consisting of a deoxyribose sugar and phosphate backbone, cross-linked with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines.....DNA usually can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones, etc. The question as to whether DNA tests are virtually infallible may be a moot question, but the fact remains that such test has come to stay and is being used extensively in the investigation of crimes and the Court often accepts the views of the experts, especially when cases rest on circumstantial evidence. More than half a century, samples of human DNA began to be used in the

³⁵⁵ *Sushil Kumar v. State (N.C.T of Delhi)*, (2014) 4 SCC 317; *Surendra Koli v. State of Uttar Pradesh*, 2025 INSC 80.

³⁵⁶ *Kattavellai @ Devakar v. State of Tamilnadu*, 2025 INSC 845

³⁵⁷ (2014) 5 SCC 509.

criminal justice system. Of course, debate lingers over the safeguards that should be required in testing samples and in presenting the evidence in Court. DNA profile, however, is consistently held to be valid and reliable, but of course, it depends on the quality control and quality assurance procedures in the laboratory.”

Furthermore, the Supreme Court in a series of cases like *Pantangi Balarama Venkata Ganesh v. State of Andhra Pradesh*,³⁵⁸ *Santosh Kumar Singh v. State Through Central Bureau of Investigation*,³⁵⁹ *Inspector of Police, Tamil Nadu v. John David*,³⁶⁰ *Krishan Kumar Malik v. State of Haryana*,³⁶¹ *Surendra Koli v. State of Uttar Pradesh*,³⁶² *Sandeep v. State of Uttar Pradesh*,³⁶³ *Rajkumar v. State of Madhya Pradesh*³⁶⁴ and *Mukesh v. State for National Capital Territory of Delhi*,³⁶⁵ have dealt with the increasing importance of DNA evidence. The Supreme Court has also emphasized the need for assuring quality control, about the samples, as well as the technique for testing in *Anil v. State of Maharashtra*.³⁶⁶

In the judgement of the Supreme Court in the case of *Kattavellai@ Devakar v. State of Tamil Nadu*,³⁶⁷ the Supreme Court acquitted a man sentenced to death for the murder of a couple and the rape of the victim, citing grave procedural lapses in the handling of DNA. The Court

³⁵⁸ (2009) 14 SCC 607.

³⁵⁹ 2010 INSC 679.

³⁶⁰ (2011) 2 SCC(CRI) 647.

³⁶¹ (2011) 7 SCC 130.

³⁶² (2011) 4 SCC 80.

³⁶³ (2012) 6 SCC 107

³⁶⁴ (2014) 5 SCC 353.

³⁶⁵ (2017) 6 SCC 1.

³⁶⁶ (2006) 12 SCC 148.

³⁶⁷ 2025 INSC 1167.

further laid down some guidelines to ensure preservation, processing of DNA and other biological materials in criminal proceedings which are as follows:

“DNA samples once made after due care and compliance of all necessary procedure including swift packaging including -

- a. FIR number and date;*
- b. section and statute involved;*
- c. details of Investigating Officer (I.O.), police station; and*
- d. serial number shall be duly documented. Document recording selection shall have signatures and designations of medical professional, I.O. and independent witness - Absence of medical witness shall not be taken to be compromising to the collection of evidence*

I.O. shall be responsible for transportation of DNA evidence to police station or hospital or forensic laboratory not later than 48 hours. If in any case 48-hour timeline cannot be complied with then reason for delay shall be duly recorded in the case diary

DNA samples are stored pending trial, appeal etc, no package shall be opened, altered or resealed without authorization of Trial Court.

From the point of collection to the logical end i.e. conviction or acquittal of the accused, a Chain of Custody Register shall necessarily be annexed as part of Trial Court record- failure to do the same, I.O. shall be responsible for lapse. Directed

Director General of Police of all states to prepare sample forms of Chain of Custody Register.”

List of Cases

- *Selvi v. State of Karnataka, (2010) 7 SCC 263.*
- *Sandeep v. State of Uttar Pradesh, (2012) 6 SCC 107.*
- *John Anthonisamy v. State, (2023) 3 SCC 536.*
- *Anil v. State of Maharashtra, (2014) 4 SCC 69.*
- *Banarsi Dass v. Teeku Dutta, (2005) 4 SCC 449.*

➤ *Hand writing and fingerprint Evidence:*

Handwriting and fingerprint experts are recognised under Section 45 of the IEA which corresponds to Section 39 of the BSA. Courts routinely rely on handwriting experts to resolve disputes over wills, contracts, and cheques. In *Murari Lal v. State of Madhya Pradesh*,³⁶⁸ the Supreme Court was of the opinion that since the expert is not an accomplice, his opinion should not be treated with suspicion but as scientific assistance to the Court and held that expert evidence on handwriting should be corroborated with other material to ensure reliability³⁶⁹ where it may form the basis of conviction of the accused. Furthermore, fingerprint analysis, often considered more accurate, has long been admissible in Indian Courts.

³⁶⁸ (1980) 1 SCC 704.

³⁶⁹ *Ibid.*

In the case of *C. Kamalakkannan v. State Of Tamil Nadu*,³⁷⁰ the Supreme Court held that reliance on handwriting expert opinion under Section 45 of IEA is permissible, but at the same time it must be approached with due care and caution due to its imperfect scientific nature in comparison with the fingerprints. In the present case the Court was of the opinion that, as the original postal cover allegedly bearing the handwriting of the accused was not presented or exhibited, the expert opinion on handwriting thus held no value, and thus the conviction of the accused was set aside. Therefore, it is the duty of the Courts to rigorously scrutinize handwriting evidence, seek corroboration, and require production of the original evidence.

The Training Module for Legal Services Lawyers³⁷¹ highlights how lawyers must understand the process of proving signatures, sale deeds, and bank records, emphasising that technicalities such as attestation and certification are crucial to admissibility.³⁷²

List of Cases

- *Murari Lal v. State of Madhya Pradesh*, (1979) INSC 248.
- *Magan Bihari Lal v. State of Punjab*, (1977) 2 SCC 210.
- *Ishwari Prasad v. Md. Isa*, 1962 SCC OnLine SC 88.

³⁷⁰ 2025 INSC 309.

³⁷¹ National Legal Services Authority, *Training Module for Legal Services Lawyers, Part II*, (NALSA, 2016) available at: <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/20250409938886385.pdf> (last visited on September 25, 2025).

³⁷² National Legal Services Authority Module, *supra* note 3, at 10–12. Available at: <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/20250409938886385.pdf> (last visited on September 25, 2025).

- *Fakhruddin v. State of Madhya Pradesh*, 1966 SCC OnLine SC 55.
- *Bhagwan Kaur v. Maharaj Krishan Sharma*, (1973) 4 SCC 46.

➤ Cyber- Forensics and Electronic Evidence

The explosion of cybercrime has made digital forensics a central concern. Section 65B of the IEA which corresponds to Section 63 of the BSA requires a certificate for electronic evidence, which the Supreme Court in *Anvar P.V.* held mandatory.³⁷³ Subsequently, in the case *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*,³⁷⁴ the Court reiterated this requirement, emphasising that electronic records lacking proper certification are inadmissible³⁷⁵ and the certificate under Section 65B(4) is a sine qua non (essential condition) for admitting electronic evidence. The Court was of the opinion that in case the original document is produced, such as laptop, tablet or any other device containing the data, then no certificate under Section 65(B) is required. The owner can testify regarding the device and the information that it may contain. The Court further suggested framing appropriate rules under the Information Technology Act, 2000, regarding the chain of custody, metadata preservation, and secure maintenance of electronic records during the entire trial. The BSA carries forward these provisions, simplifying procedures while retaining safeguards like the signing of the electronic record by the person in charge of the computer and communication device, and an expert shall be evidence of any matter stated in the certificate. Thus, BSA also signifies the importance of the certificate, and the same is contained in Section 63(4) of the BSA.

³⁷³*Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473.

³⁷⁴ (2020) 7 SCC 1.

³⁷⁵*Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1.

In the case of *Kailash S/o Bajirao Pawar v. State of Maharashtra*³⁷⁶ the admissibility of electronic record, procedure of handling video evidence and the examination of scientific reports were assessed. The Court held that a video recording is admissible evidence once authenticated with a certificate under Section 65B of the Indian Evidence Act. The Court found the High Court's reasoning, that the video must be played for each witness and its contents transcribed to be admissible, "strange and unacceptable". The Court stated that a video is an electronic record, and after certification, its contents can be directly viewed by the court to draw inferences. A re-trial to merely explain the video is baseless and unnecessary.

List of Cases

- *Anvar P.V v. P K Basheer*, (2014) 10 SCC 473.
- *Arjun Panditrao Khotkar v. Kailash Kushanrao Goraytyal*, (2020) 7 SCC 1.
- *Ravinder Singh v. State of Punjab*, (2022) 7 SCC 581.
- *Harpal Singh v. State of Punjab*, (2017) 1 SCC 734.
- *Vikram Singh v. State of Punjab*, (2017) 8 SCC 518.
- *Union of India v. Ravindra V Desai*, (2018) 16 SCC 273.

ii. Cross-Examination of Expert Witnesses

A fact differs from an opinion. According to Black's Law Dictionary, an opinion in the law of evidence is "an inference or conclusion drawn by a witness from facts some of which are

³⁷⁶ 2025 INSC 1117.

known to him and others assumed.”³⁷⁷ Expert testimony plays an important role in assisting courts in areas requiring specialised and niche knowledge on a specific topic which may or may not be related to law. Sections 39 to 45 of the BSA, governs the admissibility and relevance of expert opinions in judicial proceedings. These provisions ensure that expert testimony is relevant, reliable, and used effectively to assist the court in forming opinions on technical, scientific, or specialised matters.

Experts are permitted to offer opinions on matters that require their expertise, which would otherwise be beyond the ordinary knowledge of the court. Examples of expert witnesses include forensic analysts, medical professionals, handwriting specialists, and engineers. Expert witnesses provide opinions on scientific or technical matters beyond ordinary judicial knowledge. Section 45 of the IEA, as mirrored in Section 39 of the BSA, recognises experts in science, handwriting, and fingerprints. In *Ramesh Chandra Agrawal v. Regency Hospital*,³⁷⁸ the Supreme Court held that expert evidence is only a piece of evidence and cannot override the court’s own judgment and that the court may or may not accept the expert's opinion depending on the facts and other evidence in the case.

By Section 39 of the BSA, words like “or any other field” were added, thereby expanding the scope greatly.

The Module for Training of Legal Services Lawyers emphasises that lawyers must not blindly accept expert testimony. Effective cross-examination is necessary to expose methodological flaws or bias.³⁷⁹ For example, ballistic experts may be questioned on

³⁷⁷ Bryan A. Garner (ed.), *Black's Law Dictionary* (Thomson Reuters, St. Paul, 11th edn., 2019).

³⁷⁸ *Ramesh Chandra Agrawal v. Regency Hospital Ltd.*, (2009) 9 SCC 709.

³⁷⁹ National Legal Services Authority, *Module For Training of Legal Services Lawyers Part-2*, (NALSA, 2016), available at:

laboratory procedures, serologists on contamination risks, or cyber-experts on whether proper certification under Section 65B of the IEA, now Section 63(4)(c) of the BSA was followed. Cross-examination ensures that expert evidence does not become a substitute for judicial reasoning.

iii. Duties of LADCs Towards witnesses during Cross-examination

- Do not harass, insult, or intimidate the witness directly or indirectly.³⁸⁰
- Protect the vulnerable witnesses, such as children, women, persons with disability, while testing their reliability.³⁸¹
- Maintain decorum of the court and ensure the dignity of the witness is not put at risk during cross-examination.³⁸²
- Explain the importance of the cross-examination to the accused and also how it aims to protect their rights.
- Protect the witness from being forced to give self incriminating evidence, as contained in Article 20(3) of the Constitution of India, by way of legal awareness.

<https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/20250409938886385.pdf> (last visited on September 25, 2025).

³⁸⁰ Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), ss. 154 and 155.

³⁸¹ Guidelines for recording of evidence of vulnerable witnesses in criminal matters, *available at*: <https://delhicourts.nic.in/public/Circulars/2024/10/25aa.pdf> (last visited on October 30, 2025)

³⁸² Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s. 151.

List of Cases

- *Fakhruddin v. State of Madhya Pradesh*, (1966) SCC OnLine SC 55.
- *State (Central Bureau of Investigation) v. S.J. Choudhary*, (1996) 2 SCC 428.
- *Magan Bihari Lal v. State of Punjab*, (1977) 2 SCC 210.
- *State of Himachal Pradesh v. Jai Lal*, (1999) 7 SCC 280.
- *Ramesh Chandra Agarwal v. Regency Hospital Ltd.*, (2009) 9 SCC 709.
- *State of Maharashtra v. Damu*, (2000) 6 SCC 269.
- *Darbara Singh v. State of Punjab*, (2012) 10 SCC 476.
- *State of Uttar Pradesh v. Hari Mohan*, (2000) 8 SCC 598.
- *T.P. Divetia v. State of Gujarat*, (1997) 7 SCC 156.

D. Examination Of Witness

When a party offers evidence regarding a case that is subjudice before the court of law, the judge under Section 135 of the IEA and now under Section 140 of the BSA will order the production of the witness for examination. The judge shall accept the evidence if he finds it would have been relevant if it would have been proved, and not otherwise. The witness is examined in three stages viz; examination-in-chief, cross-examination, and re-examination.

Stages of Examination of witness:

- Examination in chief: it refers to the examination of the witness by the party who calls the witness for deposition.
- Cross-examination: it refers to the examination of the witness by the adverse party against whom he is in the court to depose.
- Re-examination: it refers to the examination of the witness, subsequent to the cross examination by the party who called him, by permission of the Court.

The witness shall be first called for examination in chief then cross-examination and then for Re-examination. Re-examination of a witness shall be directed to the explanation of matters referred to in cross examination: and in case a new matter is introduced in re-examination by the permission of the court, the adverse party may further cross-examine that matter.

[Note: a person summoned to produce a document, does not become a witness by the mere fact that he produced such a document, unless he is called as a witness.]

The basis of the criminal trial is evidence. The evidence may be gathered from two chief sources, i.e., documents and witnesses.

A witness is a person who testifies or produces evidence before the court. In the words of English jurist, Jeremy Bentham, '*Witness are the eyes and ears of Justice*'. Section 118 of the IEA which corresponds to Section 124 of the BSA, contains a general rule as to the competency of the witnesses. It states:

Section 118 (who may testify): all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them, or from giving a rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation - A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Section 118 of the IEA now replaced by Section 124 of the BSA has replaced the word ‘lunatic’ with ‘the person of unsound mind’. The Supreme Court in the case of *Dattu Ramrao Sakhare v. State of Maharashtra*,³⁸³ held that a child can be a competent witness if he is capable of understanding the questions and giving rational answers, as required by Section 118 of IEA. The court emphasised that even in absence of oath such evidence can be admitted if the child witness is found to be reliable with no indication of tutoring or coaching. Furthermore, the court held that conviction can be solely based on the testimony of the child witness.

List of Cases

- *Smitha v. Anil Kumar*, (2024) SCC OnLine Ker 3196.
- *Mahesh Trivedi v. State of Bihar*, (2024) SCC OnLine Pat 4698.
- *State of Karnataka v. Chandravathi*, (2022) SCC OnLine Kar 1696.
- *P. Ramesh v. State*, (2019) 20 SCC 593.

³⁸³ (1997) 5 SCC 341.

- *Mirajul Islam Sheik v. State of Kerala*, (2017) SCC OnLine Ker 24107.
- *Akram Khan v. State of West Bengal*, (2010) SCC OnLine Cal 1787.
- *Nivrutti Pandurang Kokate v. State Of Maharashtra*, (2008) 12 SCC 565.
- *Sadashiv Tukaram Dipake v. State of Maharashtra*, (1999) SCC OnLine Bom 494.
- *L. Choraria v. State of Maharashtra*, (1967) SCC OnLine SC 30.
- *Puma Chand v. State*, AIR 1959 Cal 306.
- *Rameshwar v. State of Rajasthan*, (1951) SCC 1213.

E. Privileged Communication

The IEA provides for marriage communication privilege, also known as spousal privilege, under Section 122, which corresponds to Section 128 of the BSA. It states that a married person cannot be compelled to make public any communication that has happened between the person and their spouse, and also disallows the person from revealing such communication. The objective behind framing this provision and preventing disclosure of communications without reservations between married persons is to protect the family peace, prevent domestic broils and maintain the mutual trust between married couples, which is considered most important to lead a harmonious married life.³⁸⁴

There are a few exceptions to this privilege:

³⁸⁴ M. Monir, Law of Evidence, Vol. 2, 333 (Universal Law Publisher, Delhi, 2018).

- Such communications can be admissible when the spouse who had made the communication in question gives their consent to let the communication be disclosed. However, if the spouse is dead, and there is no representative-in-interest appointed for that spouse, consent cannot be possibly obtained, and thus, the communication cannot be admissible. In the case of *Nawab Howaldar v. Emperor*,³⁸⁵ it was held that the communication made by the husband before dying to his wife could not be held admissible.
- If the spouses are in a suit against each other, with the word 'suit' referring to any legal proceedings between the spouses, as clarified by the 185th Report on the Indian Evidence Act of the Law Commission of India.³⁸⁶
- If one of the spouses is involved in a criminal charge, including bigamy.

Other exceptions include acts committed by a spouse that are not termed as communications. For instance, a wife seeing her husband hide a murder weapon after coming from the scene of crime is not private communication, and is admissible as per *Ram Bharosey v. State of Uttar Pradesh*.³⁸⁷ If a person intercepts a letter containing a communication between two spouses, the person is not restricted by the said section from disclosing its contents. In *M.C. Verghese v. T.J. Ponnon*,³⁸⁸ letters that had been written by the respondent to his wife were admissible as evidence by the appellant, who had come into possession of those letters.

In *Vibhor Garg v. Neha*,³⁸⁹ the Supreme Court held that Section 122 of the IEA does not infringe on privacy when either of the spouses covertly records the voice of the other. The

³⁸⁵ 1913 SCC OnLine Cal 447.

³⁸⁶ 185th Report on Review of the Indian Evidence Act 1872, Law Commission of India (2003), available at: <https://lawcommissionofindia.nic.in/reports/185threport-parti.pdf> (last visited on October 30, 2025).

³⁸⁷ (1954) 1 SCC 284.

³⁸⁸ (1969) 1 SCC 37.

³⁸⁹ 2025 SCC OnLine SC 1421.

issue before the Supreme Court in this case was whether a conversation recorded by one party to a matrimonial dispute without the knowledge or consent of the opposite party could be admitted as evidence in a matrimonial proceeding between them. Though the Court was of the opinion that Article 21 did recognise the enforceability of the right of privacy both horizontally (against individuals) and vertically (against State and non-State actors), it held that in this case, the horizontal applicability is not an aspect to be considered when interpreting this section. The Court held that Section 122 of the IEA does not recognise such a right at all. On the other hand, the said section carves out an exception to the right to privacy between spouses and therefore cannot be applied horizontally at all.

It can also be inferred from the case of *S.J. Chaudhury v. State*³⁹⁰ where a widow married the accused, but, due to some disturbance, left the accused and married another man. Thereafter, she also got divorced from the accused. However, the accused killed the other man in a blast, and the woman was examined, where she revealed some of the communications made to her by the accused. But those disclosures were not admitted by the court as they were made before the divorce was granted to them.

Sections 126 to 129 of the IEA, which correspond to Sections 132 to 134 of the BSA, are the foundation of legal professional privilege and collectively protect the confidentiality of communications between a client and their legal professional. These provisions establish that confidential communications between a lawyer and client, including those involving interpreters and clerks, assisting the lawyer, are protected from disclosure in court. This privilege prevents any party from being compelled to reveal such communications unless the client voluntarily chooses to disclose them or questions the lawyer about those

³⁹⁰ 1984 SCC OnLine Del 185.

communications in court. These provisions aim to promote honesty and trust in legal advice, ensuring that clients can speak without fear of disclosure, except in exceptional circumstances where justice requires revealing such information, like when the communication relates to an ongoing crime or fraud.

Neither the BSA nor the IEA explicitly provides the same statutory privilege to professions such as doctors, psychiatrists and psychologists. However, the Mental Healthcare Act, 2017, provides the statutory foundation for doctor-patient confidentiality in psychiatry. Section 23 of the Mental Healthcare Act, 2017 states that every person with a mental illness has the right to confidentiality in respect of their mental health, care, treatment, and physical healthcare. Health professionals must keep patient information obtained during care or treatment confidential, with exceptions only in the following circumstances:

- Disclosure to a nominated representative for necessary duties.
- Disclosure to other healthcare providers for continuing care.
- Disclosure necessary to protect another person from harm or violence; only essential details can be shared to address the identified harm.
- Disclosure required to prevent threats to life.
- Disclosure upon order of a competent statutory authority (e.g., Board, High Court, Supreme Court).
- Disclosure in the interests of public safety and security

Also, Section 24 of the said Act states that neither photographs nor any other information that could identify a person with mental illness shall be released to the media or public without the person's consent.

Therefore, upon a joint reading of these provisions, it is evident that disclosure of confidential information by doctors, especially psychiatrists and psychologists, comes with serious restrictions. In *Mr 'X' v. Hospital 'Z'*,³⁹¹ the Supreme Court dealt with the question of whether a hospital was justified in disclosing a patient's HIV status to his fiancée's family. The Court held that the right to privacy, including medical confidentiality, is fundamental, but can be outweighed by a higher public interest, which was, in that case, the right of the fiancée to know about a life-threatening condition before marriage. The Court concluded that:

"It is true that in the doctor-patient relationship, the most important aspect is the doctor's duty of maintaining secrecy. A doctor cannot disclose to a person any information regarding his patient which he has gathered in the course of treatment nor can the doctor disclose to anyone else the mode of treatment or the advice given by him to the patient. It is the basic principle of jurisprudence that every right has a correlative duty and every duty has a correlative right. But the rule is not absolute. It is subject to certain exceptions in the sense that a person may have a right but there may not be a correlative duty. The instant case falls within the exceptions."

Therefore, confidentiality is a fundamental principle, but it must sometimes give way when there is a compelling need to protect public safety or ensure justice is served.

In *Re: Summoning Advocates Who Give Legal Opinion or Represent Parties During Investigation of Cases and Related Issues*,³⁹² the Supreme Court while setting aside the summons issued to the advocates held that no summons shall be issued to any advocate without prior approval from the Director of ED, thereby reinforcing the protection accorded

³⁹¹ (1998) 8 SCC 296.

³⁹² 2025 INSC 1275.

to legal professionals under section 132 of the BSA. The Court issued certain directions which are reproduced below:

1. *“Section 132 is a privilege conferred on the client, obliging an Advocate not to disclose any professional communications, made in confidence, which privilege, in the absence of the client can be invoked by the Advocate on behalf of the client.*

1.1 The Investigating Officers in a criminal case or a Station House Officer conducting a preliminary inquiry in a cognizable offence shall not issue a summons to an Advocate who represents the accused to know the details of the case, unless it is covered under any of the exceptions under Section 132.

1.2 When a summons is so issued to an Advocate, under any of the exceptions, it shall explicitly specify the facts on which the exception is sought to be relied upon, which shall also be with the consent of the superior Officer not below the rank of a Superintendent of Police who shall record his satisfaction as to the exception in writing, before the summons is issued.

1.3 A summons so issued shall be subject to judicial review at the instance of the Advocate or the client under Section 528 of the BNSS.

1.4 The Advocate on whom there is an obligation of non-disclosure as per Section 132 of the BSA shall be one who is engaged in a litigation or in a non-litigious or a pre-litigation matter.

2. *Production of documents in the possession of the Advocate or the client will not be covered under the privilege conferred by Section 132, either in a civil case or a criminal case.*

2.1 In a criminal case, the production of a document directed by a Court or an Officer shall be complied with by production before the Court under Section 94 of the BNSS; being regulated also by Section 165 of the BSA.

2.2 In a civil case, the production of a document shall be regulated by Section 165 of BSA and Order XVI Rule 7 of the Civil Procedure Code.

2.3 On production of such document, it shall be upon the Court to decide on any objection filed with respect to the order to produce, and the admissibility of the document, after hearing the Advocate and the party whom the Advocate represents.

3. *The production of a digital device under Section 94 of the BNSS if directed by an Investigating Officer, the direction shall only be to produce it before the Jurisdictional Court.*

3.1 On production of the digital device by the Advocate before the Court; the Court shall issue notice to the party with respect to whom the details are sought to be discovered from the digital device and hear the party and the Advocate on any objection regarding the production of the digital device, discovery from it and the admissibility of that discovered.

3.2 If the objections are overruled by the Court, then the digital device shall be opened only in the presence of the party and the Advocate, who will be enabled due assistance of a person with expertise in digital technology, of their choice.

3.3 While examining the digital device, care shall be taken by the Court not to impair the confidentiality with respect to the other clients of the Advocate and the discovery shall be confined to that sought by the Investigating Officer, if it is found to be permissible and admissible.

4. In-house counsel will not be entitled to the privilege under Section 132 since they are not Advocates practicing in Courts as spoken of in the BSA.

4.1 The In-house counsel, however, would be entitled to the protection under Section 134 insofar as any communication made to the legal advisor of his employer, which however, cannot be claimed for the communications between the employer and the In-house counsel.”

List of Cases

- *Vibhor Garg v. Neha*, (2025) SCC OnLine SC 1421.
- *Challa Venkateswarlu v. Collector*, (2025) SCC OnLine AP 1605.
- *Central Bureau of Investigation v. Mahesh Agarwalla*, (2024) SCC OnLine Del 7201.

- *Anil Vishnu Anturkar v. Chandrakumar Popatlal Baldota*, (2022) SCC OnLine Bom 11947.
- *Bapusaheb Chimasaheb v. Mahesh Vijaysinha Rajebhosale*, (2008) SCC OnLine Bom 1614.
- *Vijay Kumar Gupta v. Naresh Kumar Gupta*, (2016) SCC OnLine Bom 8659.
- *C v. C (Privilege: Criminal Communications)*, (2001) 3 WLR 446.
- *Balabel v. Air India*, (1988) Ch 317.
- *Narayan Chandra Ganguli v. Harish Chandra Saha*, (1932) SCC OnLine Cal 148.

F. Burden of Proof

‘Burden of proof’ determines which party has the obligation to prove a particular fact to establish their legal claim in a proceeding. In criminal cases, the general rule is for the prosecution to bear the burden of proving the guilt of the accused beyond all reasonable doubt.³⁹³ Once the prosecution discharges this burden, the onus is on the accused to prove their innocence.

³⁹³ ‘Review of the Indian Evidence Act’, The Law Commission of India, 185th Report (March 2003), at 455, available at: <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081076-1.pdf> (Last visited on September 25, 2025).

i. Burden of Proving Fact specially within Knowledge

Section 106 IEA

Corresponding provision - Section 109 BSA

Section 106 of the IEA is applied in situations where the prosecution has discharged its initial burden of proving the existence of the ingredients of the offence but is unable to establish the facts which are “especially within the knowledge” of the accused. In these cases, the onus shifts to the accused to prove that particular fact, such as of last seen together. Section 109 of BSA is a verbatim reproduction and corresponds to Section 106 of IEA.

Several cases have reiterated that this provision does not allow the prosecution to dispense with its initial burden of proof. In *Shambu Nath Mehra v. State of Ajmer*,³⁹⁴ it was held that Section 106 does not relieve the prosecution of its burden of proving the existence of ingredients of the concerned offence. However, the bench contemplated exceptional cases where it is impossible or disproportionately difficult for the prosecution to establish facts which are especially within the knowledge of the accused. In such cases, the bench held, once the prosecution has established the ingredients of the offence, the burden shifts to the accused to prove particular facts which are within their special knowledge. Following this reversal of burden, as held in *State of Orissa v. Prafulla Kumar Santra*,³⁹⁵ if any explanation given by the accused introduces reasonable doubt on the prosecution story, the accused would be entitled to an acquittal because the prosecution has failed to discharge its initial burden of proving the case beyond reasonable doubt. In line with this, in *Anil v. State of U.P.*, it was held that there

³⁹⁴ (1956) 1 SCC 337.

³⁹⁵ 1962 SCC OnLine Ori 67.

is a corresponding and reverse burden in view of Section 106 on the accused to give cogent explanation as to how the crime was committed.³⁹⁶

List of Cases -

- *Shambu Nath Mehra v. State of Ajmer*, (1956) 1 SCC 337.
- *Anil v. State of U.P.*, (2022) SCC OnLine All 812.
- *State of Orissa v. Prafulla Kumar Santra*, (1962) SCC OnLine Ori 67.

ii. Presumption as to Dowry Death

Section 113B IEA

Corresponding provision - Section 118 BSA

Once the prosecution is able to establish the existence of all the ingredients of “dowry death” provided in Section 304-B IPC, the court is required to draw a mandatory presumption of dowry death and consequently, the onus of proof shifts to the accused to prove their innocence. Section 118 of the BSA corresponds to Section 113B of the IEA, except for the Explanation to Section 118 wherein the provision relating to dowry death i.e. Section 304B IPC, has been substituted by the corresponding provision of Section 80 BNS.

The initial burden of proof on the prosecution has been discussed in *Bajinath v. State of M.P.*,³⁹⁷ wherein it was categorically held that the prosecution cannot avail the presumption in Section 113B without first discharging its burden of proving the existence of the ingredients of the offence in Section 304B. If the prosecution has failed to discharge this burden, there cannot be reliance solely on the presumption in Section 113B to hold the accused guilty. The

³⁹⁶ 2022 SCC OnLine All 812.

³⁹⁷ (2017) 1 SCC 101.

bench held in *Gurdip Singh v. State of Punjab* that once all the ingredients are present, the presumption of innocence fades away.³⁹⁸ Regarding the burden on the accused to disprove this compulsory presumption, in *Mustafa Shahadal Shaikh v. State of Maharashtra*, it was held that, the accused can adduce evidence by getting an answer through cross examination of prosecution witnesses or by adducing evidence on the defence side.³⁹⁹

List of Cases

- *Baijnath v. State of M.P.*, (2017) 1 SCC 101.
- *Mustafa Shahadal Shaikh v. State of Maharashtra*, (2012) 11 SCC 397.
- *Gurdip Singh v. State of Punjab*, (2013) 10 SCC 395.

iii. Presumption as to Absence of Consent in Rape Prosecution

Section 114A IEA

Corresponding provision - Section 120 BSA

In cases where the court has to decide whether the woman alleged to have been raped had consented to the act of intercourse and she has stated in her evidence that she had not consented, then the court shall presume that it was non-consensual. The burden thereafter shifts to the accused to prove their innocence. Section 120 of the BSA corresponds to Section 114A of the IEA, except for the Explanation to Section 120 wherein the provision laying down the acts constitutive of sexual intercourse in the erstwhile IPC i.e. Section 375 IPC, has been substituted by the corresponding provision of Section 63 of the BNS.

³⁹⁸ (2013) 10 SCC 395.

³⁹⁹ (2012) 11 SCC 397.

In the context of the burden of proof in this Section, it was observed in *Nawabkhan v. State* that in cases of rape, the prosecution has to discharge the initial burden of establishing the fact of the sexual intercourse. If the prosecutrix states in her evidence that she did not consent to the sexual intercourse, the onus to prove consent will lie on the accused.⁴⁰⁰

List of Cases

- *Nawabkhan v. State*, (1989) SCC OnLine MP 247.

G. Confessions

The word confession has nowhere been defined. However, in the case of *Pakala Narayana Swami v. King Emperor*,⁴⁰¹ the Privy Council defined confession as “a confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence.” In *Indra Dalal v. State of Haryana*,⁴⁰² confession was defined to mean a direct acknowledgement of guilt and not the admission of any incriminating facts, however grave or conclusive. It is trite to say that every confession must necessarily be an admission, but every admission does not necessarily amount to confession. The substantive law of confession is contained in sections 22-24 of the BSA, which corresponds to Sections 24-30 of the IEA.

A confession must be voluntary. It must be the outcome of his own free will, inspired by the sound mind of his own conscience to speak nothing but the truth. In *Abdulahab Abdulmajid Shaikh v. State of Gujarat*,⁴⁰³ it was held that merely because the confession was retracted

⁴⁰⁰ *Nawabkhan v. State*, 1989 SCC OnLine MP 247.

⁴⁰¹ 1939 SCC OnLine PC 1.

⁴⁰² (2015) 11 SCC 31.

⁴⁰³ (2007) 4 SCC 257.

later, that does not mean the confession was not voluntary in nature. Whether the accused was willing to give a confession voluntarily or not is to be determined from his mental state at the time when he gave the confession.

Section 22 of the BSA states that any confession made under inducement, threat, coercion or promise is considered irrelevant. But this section is subject to two provisos mentioned thereunder. Proviso I states that if such a threat, inducement, coercion or promise is removed, then such a confession would be considered relevant. The second proviso states that confession is also relevant, even if it was made under: (a) Promise of secrecy, (b) In consequence of a deception practised on the accused person, (c) When the accused was drunk, (d) If it were done in a question-answer form or (e) when the accused was not warned that he was bound to make such a confession.

The section is mainly intended to safeguard the interests of the accused, on the grounds of public policy and for the proper administration of justice.

List of Cases

- *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600.
- *Aloke Nath Dutta v. State of West Bengal*, (2007) 12 SCC 230.
- *Raju v. State of Tamil Nadu*, (2020) 5 SCC 118.

i. Confession Made To A Police Officer

The principle and scope of Section 23(1) and (2), as well as the proviso, are the same as Sections 25-27 of the IEA. Section 25 of the IEA speaks of a confession made to a police officer, which shall not be proved as against a person accused of any offence, Section 26 of the IEA, also speaks that no confession made by the person whilst he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate shall be proved as against such person. Therefore, these two sections put a complete bar on the admissibility of a confessional statement made to a police officer or a confession made in absentia of a Magistrate while in custody.

The object of Sections 25 and 26 of the IEA is to prevent the practice of torture by the police for the purpose of extracting confessions from accused persons. Under this section, no confession made to a police officer is admissible against the accused. Section 27 of the IEA is to be pressed into service only to make admissible a statement to police, which is otherwise inadmissible, leading to a certain discovery relating to the offence.⁴⁰⁴ This section is applicable only where the confessional statement leads to the discovery of some new fact. When facts are revealed as a result of information provided by an accused person in police custody, only the specific portion of that information directly related to the discovered facts may be admitted as evidence, regardless of whether it constitutes a confession.

List of Cases

➤ *Pandurang Kalu Patil v. State of Maharashtra*, (2002) 2 SCC 490.

⁴⁰⁴ *Arab Ali v. State of Tripura*, 2007 SCC OnLine Gua 58.

- *Commr. of Police v. Narender Singh*, (2006) 4 SCC 265.
- *State v. NMT Joy Immaculate*, (2004) 5 SCC 729.

ii. Section 24 of the BSA

When more persons than one are being tried together for the same offence, and one of the persons gives a confession that implicates both himself and other co-accused, the court may consider such a confession as evidence against all implicated parties, including those who did not make the confession. This section, however, leaves the discretion to the court to decide the admissibility of the confession of the co-accused on the basis of facts and circumstances of the case.

This section applies only to confessions and not to statements that do not admit the guilt of the confessing party. In *Balbir Singh v. State of Punjab*,⁴⁰⁵ it was held that one of the conditions under the section is that the confession must implicate the author substantially to the same extent as the other accused person against whom it is sought to be taken into consideration. But, on reading the confession as a whole, if it appears that he was really trying to throw the main blame on the other accused, such a confession cannot be used against the other accused. Where there is a difference between the confessions of the two accused, such confessional statements cannot be condemned out of hand or *in limine* as untrue, where some of the differences are immaterial and some others are due to desire of the accused to throw the blame on the other, and the rest of the part stand clearly resolved by other evidence in the case.

⁴⁰⁵ *Balbir Singh v. State of Punjab*, (1956) 2 SCC 269.

List of Cases

- *Pancho v. State of Haryana*, (2011) 10 SCC 165.
- *Prem Prakash v. Enforcement Directorate*, (2024) 9 SCC 787.
- *Kashmira Singh v. State of Madhya Pradesh*, (1952) 1 SCC 275.

H. Electronic Evidence

The word electronic record is defined under Section 2(t) of the Information Technology Act, 2000. It means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche. Before the BSA came into force, Section 3 of the IEA did not include statements given electronically.

In *State of Maharashtra v. Dr. Praful Desai*,⁴⁰⁶ the Court held that recording of evidence through video conferencing is permissible where the accused or his pleader is present when the evidence is recorded. The recording of evidence was held as per procedure established by law and in accordance with the requirements under Section 273 of the CrPC.

iv. Admissibility of Electronic Records

Section 62 of the BSA provides that the contents of the electronic record may be proved in accordance with the procedure established by Section 63 of BSA. Section 63 of BSA, provides for the admissibility of electronic records. According to this provision, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory, produced by a computer,

⁴⁰⁶ (2003) 4 SCC 601.

communication device or in any electronic form (referred to as “computer output”) is a document. These electronic documents are admissible in any proceedings, without further proof, if the conditions mentioned under Section 63 of the BSA are satisfied.

The conditions contained in Section 63(2) of BSA are as follows:

“(a) the computer output containing the information was produced by the computer or communication device during the period over which the computer or Communication device was used regularly to create, store or process information for the purposes of any activity regularly carried on over that period by the person having lawful control over the use of the computer or communication device;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer or Communication device in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer or communication device was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer or Communication device in the ordinary course of the said activities.”

Moreover, Section 63 of the BSA also provides for the submission of a certificate along with electronic record for its identification, giving particulars of any device involved in production of such electronic evidence dealing with any of the matters to which the conditions mentioned in sub-section (2) relate. The certificate shall be signed by the person in charge of the computer device and an expert shall also be the evidence of any matter stated in the certificate. The Schedule of BSA provides the certificate form to be submitted along with the electronic record which is as follows:

THE SCHEDULE

[See section 63(4)(c)]

CERTIFICATE**PART A**

(To be filled by the Party)

I, _____ (Name), Son/daughter/spouse of _____
residing/employed at _____ do hereby solemnly affirm and
sincerely state and submit as follows:—

I have produced electronic record/output of the digital record taken from the following
device/digital record source (tick mark):—

Computer / Storage Media ☐ DVR ☐ Mobile ☐ Flash Drive ☐

CD/DVD ☐ Server ☐ Cloud ☐ Other ☐

Other: _____

Make & Model: _____ Color: _____

Serial Number: _____

IMEI/UIN/UID/MAC/Cloud ID _____ (as applicable)

and any other relevant information, if any, about the device/digital record _____ (specify).

The digital device or the digital record source was under the lawful control for regularly
creating, storing or processing information for the purposes of carrying out regular
activities and during this period, the computer or the communication device was working
properly and the relevant information was regularly fed into the computer during the
ordinary course of business. If the computer/digital device at any point of time was not
working properly or out of operation, then it has not affected the electronic/digital
record or its accuracy. The digital device or the source of the digital record is:—

Owned ☐ Maintained ☐ Managed ☐ Operated ☐

by me (select as applicable).

I state that the HASH value/s of the electronic/digital record/s is _____,
obtained through the following algorithm:—

☐ SHA1:

☐ SHA256:

☐ MD5:

☐ Other _____ (Legally acceptable standard)

(Hash report to be enclosed with the certificate)

(Name and signature)

Date (DD/MM/YYYY): _____

Time (IST): _____ hours (In 24 hours format)

Place: _____

PART B

(To be filled by the Expert)

I, _____ (Name), Son/daughter/spouse of _____
residing/employed at _____ do hereby solemnly affirm and
sincerely state and submit as follows:—

The produced electronic record/output of the digital record are obtained from the following
device/digital record source (tick mark):—

Computer / Storage Media ☐ DVR ☐ Mobile ☐ Flash Drive ☐

CD/DVD ☐ Server ☐ Cloud ☐ Other ☐

Other: _____

Make & Model: _____ Color: _____

Serial Number: _____

IMEI/UIN/UID/MAC/Cloud ID _____ (as applicable)

and any other relevant information, if any, about the device/digital record _____ (specify).

I state that the HASH value/s of the electronic/digital record/s is _____,
obtained through the following algorithm:—

☐ SHA1:

☐ SHA256:

☐ MD5:

☐ Other _____ (Legally acceptable standard)

(Hash report to be enclosed with the certificate)

(Name, designation and signature)

Date (DD/MM/YYYY): _____

Time (IST): _____ hours (In 24 hours format)

Place: _____

Further, Section 66 of the BSA provides for the proof of electronic signature. It says that an electronic signature which is alleged to have been affixed by any subscriber needs to be proved. Moreover, Section 73 of the BSA provides for the proof as to verification of digital signature: it says that in order to ascertain the genuineness of the electronic signature the court may direct the production of the digital signature certificate by that person or controller

or the certifying authority. Further, the court may direct any other person to apply the public key listed in the digital signature certificate and verify the same.

Section 87 of the BSA, provides for the presumption as to electronic signature certificate. It says that the Court shall presume that the details in an Electronic Signature Certificate are correct, unless someone can prove otherwise. This assumption does not apply to a subscriber's personal information if it was not verified at the time the certificate was accepted.

Section 92 of the BSA, provides for the presumption of documents thirty years old. It says that the court may assume that the signature and every other part of the document regarding the handwriting of a particular person which is at least 30 years old is authentic, as long as it comes from a proper custody. If the authenticity of the document is challenged, the opposing party would need to present evidence to disprove the court's presumption.

Section 93 of the BSA, provides for the presumption as to electronic records five years old. It says that the court may presume that any electronic signature of a particular person produced from proper custody and proved to be five years old was so affixed by him or any person authorised by him on his behalf.

v. BNSS and Electronic Evidence:

Section 173(1) of the BNSS provides that information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed, may be given orally and by electronic communication to an officer in charge of a police station. The electronic information so provided shall be taken on record by the officer incharge on being signed within three days by the person giving it.

Section 105 of the BNSS provides for the procedure recording of search and seizure through audio- video electronic means. It requires the process of conducting search of a place or taking possession of a property, article or a thing under this section or under Section 185, including the preparation of the list of all things seized in the course of the search be recorded through any audio-video electronic means preferably cell phones. The same is required to be forwarded to the District Magistrate, Sub Divisional Magistrate or Judicial Magistrate First Class without any delay.

List of Cases

- *State (N.C.T. Of Delhi) v. Navjot Sandhu@ Afsan Guru*, (2005) 11 SCC 600.
- *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473.
- *Shafhi Mohammad v. The State Of Himachal Pradesh*, (2018) 2 SCC 801.
- *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1.

PART V: USE OF TECHNOLOGY

Topic 1: Access to e-filing for District Courts.

Topic 2: Case management, documentation and reporting

Topic 3: Office Management

Learning Objectives

- Effectively use e-filing systems for electronic submission of legal documents.
- Implement efficient case management systems using digital tools for documentation and reporting.

Learning Outcomes

- Skills in digital electronic submission and case management using digital tools on official court websites.

Training Methods

1. Lecture
2. PowerPoint Presentation
3. Exercises on developing habit to use the tools properly

Session Plan

- I. Introduction, Ice-breaking and interactive lecture by Resource Person/Facilitator
- II. Topic 1: Access to e-filing

III. Topic 2: Case management, documentation and reporting

IV. Concluding Remarks and Q&A

1. Access To e-filing

A. Introduction

The e-filing system was developed for online filing of plaints, written statements, replies and various applications related to cases. Both Civil and Criminal cases can be filed before any High Court or District Court of the country.

Benefits of e-filing:

- Saves time, money, travel of advocates and clients;
- Obviate the need to physically visit the court;
- Reduce the need of meetings between clients and advocates;
- Automatic digitization of case records;
- Positive impact on environment by reducing paper footprint;

B. Accessing e-filing Portal

The e-filing shall be made at web portal <<https://filing.ecourts.gov.in/pdedev/>> Any party to litigation may opt for e-filing through a web portal at any stage of the case.⁴⁰⁷

An Advocate or a litigant may e-file the case at a web portal by creating user accounts and using the e-filing facility. For a better understanding of e-filing the advocates or the litigants may refer to the video available at: <<https://www.youtube.com/watch?v=otaHvBrAutU>>

⁴⁰⁷e-Committee, Supreme Court of India, e-Filing Services, available at: <https://filing.ecourts.gov.in/pdedev/>



eFiling Services

Electronic filing of cases in the court

 Readymade Templates Editable ready-made templates for various pleadings	 Online Submission of Vakalat Online creation and submission of Vakalat	 e-Signing e-Signing of uploaded document by multiple parties
 Online Payment Online payment of court fee	 Online Video Recording of Oath Administer the oath by online video recording	 Application Filing Filing of several applications for different cases simultaneously
 Portfolio Management Portfolio and planner for managing cases	 My Partners Add colleagues, juniors etc as partners	 Dashboard Status of all the completed/pending case related activities

i. User Registration

- Select option “Advocate”
- Enter the Bar Council Enrolment Number, Date of Enrolment and the Ordinary place of practice.
- Enter Your Personal Information.
- Upload a self attested copy of Bar Council ID/ Bar Council Certificate.
- Set up the password.
- Enter Valid Captcha.
- Click Register Button to register your profile.

NOTE: For registration, a valid Email Id and Mobile Number are to be provided.

The login ID will be allotted on the next working day, only if, the application is found complete in all respect



eFiling Services Online Application for case filing

Registration Form

☒ Advocate ☐ Litigant ☐ Clerk

Bar Registration Detail

*** State** Select State
-- Select State --

*** Bar Registration Number** State C Bar Co Bar Ye: **Verify** *** Advocate Name** Enter Advocate Name

Gender ☒ Male ☐ Female ☐ Other *** Date of Birth** Enter Date of Birth

Ordinary Place of Practice

☒ District Court *** State** Select State
☐ High Court -- Select State --

*** District** Select District
-- Select District --

Contact Details

*** Mobile Number (+91)** Enter Mobile Number *** Email** Enter Email

Choose Password

*** Password** Enter Password *** Confirm Password** Enter Confirm Password

OTP Verification

Mobile Number **Get OTP** *** Enter OTP** Enter O **Verify OTP**

Preview

ii. How to e-file

Once the registration is complete and the login ID is provided, filing can be done at the web portal⁴⁰⁸ <<https://filing.ecourts.gov.in/pdedev/>>

- Choose the State in which court the matter is to be filed
- Fill the Login ID and the Password



eFiling Services

Electronic filing of cases in the court

Sign In

Select State

Select State ▾

☒ Advocate ☐ Litigant ☐ Govt. Pleader ☐ Clerk

Username (Username is not case sensitive)

Bar Code/Email/Mobile/Unique Code

Password (Password is case sensitive)

Enter Password

☐ Show Password

ryyF2T Enter Captcha

- After filling in the details for login, this page will appear.

⁴⁰⁸ e-Committee, Supreme Court of India, e-Filing Services, available at: <https://filing.ecourts.gov.in/pdedev/>

eFiling Services | My Partners | Case Filing | Vakalat | Pleadings | ePayments | Applications | Portfolio | Jammu and Kashmir | Shaista Q... | Help

Draft Pleadings 0

Completed Pleadings 6

Draft IAs 0

Completed IAs 0

Objections 0

My Cases 6

Calendar

Su	Mo	Tu	We	Th	Fr	Sa
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	1	2	3	4

Cases Listed Today - 20-09-2025

No Cases

Help

- Click on case filing

eFiling Services | My Partners | Case Filing | Vakalat | Pleadings | ePayments | Applications | Portfolio | Jammu and Kashmir | Shaista Q... | Help

Draft Pleadings 0

Completed Pleadings 6

Draft IAs 0

Completed IAs 0

Objections 0

My Cases 6

Calendar

Su	Mo	Tu	We	Th	Fr	Sa
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	1	2	3	4

Cases Listed Today - 20-09-2025

No Cases

Help

- Click new case filing

A- A+ A A-
eFiling Services
 My Partners Case Filing Vakalat Pleadings ePayments Applications Portfolio
 Jammu and Kashmir Shaista Q...

★ Initial Inputs Litigant Fact Details Case Details e-File

District/Establishment *Note: Following fields are Compulsar*
 * Select District * Select Establishment

Case Types *Note: Following fields are Compulsar*
 * Nature ☒ Civil ☐ Criminal
 * Relief Sought * Case Type

Party Details *Note: Following fields are Compulsar*
 * Plaintiff * Mobile Number

Submit Reset

? Help

- Fill in the details of the petitioner and the respondent.

(e-Committee, Supreme Court of India, e-Filing Services, available at: <https://filing.ecourts.gov.in/pdedev/>)

eFiling Services
My Partners
Case Filing
Vakalat
Pleadings
ePayments
Applications
Portfolio
Jammu and Kashmir
Shaista Q...

Initial Inputs
Litigant
Fact Details
Police Station
Case Details
e-File
Help

District/Establishment
Note: Following fields are Compulsar

Select District
Srinagar
Select Establishment
Principal District Judge, Srinagar

Case Types
Note: Following fields are Compulsar

Nature
Civil
Criminal
Relief Sought
Bail
Case Type
BA

Main Case Detail

Registerd
Unregisterd
Case Type
Select Case Type
Case No.
Case No. Year Year

Party Details
Note: Following fields are Compulsar

Petitioner/Respondent
John Smith
Mobile Number
0987654321

Submit
Reset

(Portal:e-Committee, Supreme Court of India, e-Filing Services, available at:
<https://filing.ecourts.gov.in/pdedev/>)

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(Portal:e-Committee, Supreme Court of India, e-Filing Services, available at:
<https://filing.ecourts.gov.in/pdedev/>)

eFiling Services
My Partners
Case Filing
Vakalat
Pleadings
ePayments
Applications
Portfolio
Jammu and Kashmir
Shalita Q...

Initial Inputs
Litigant
Fact Details
Police Station
Case Details
e-File
Help

Principal District Judge, Srinagar
E-Filing Number: **AJK20240000051C202500006** - John Smith Vs - Relief Sought: Bail - Case Type: BA
John Smith Vs

Note: This tab is compulsory
Please fill Petitioner entry
Litigant
View Previous Parties (1)

Type
Petitioner
Respondent

Organisation Details

Personal Details

Petitioner/Respondent
Select
Type min 3 Characters
Gender
Male
Female
Other

Relation
Select
Name
Name

Date of Birth
DD-MM-YYYY
Age
Differently Abled

Caste
Select
Extra Petitioner Count
Extra P

Contact Details

Email
Email
Mobile No.
Mobile No.

Occupation
Occupation
Pin code
Pin code

Address
Address

State Information

State
Select State
District
Select District

Taluka
Select Taluka
Hobli
Select Hobli

Other Information

Other Information
Add Legal Heir

Add to favourite
Update
Next

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(Portal:e-Committee, Supreme Court of India, e-Filing Services, available at:
<https://filing.ecourts.gov.in/pdedev/>)

eFiling Services
My Partners
Case Filing
Vakalat
Pleadings
ePayments
Applications
Portfolio
Jammu and Kashmir
Shaista Q...

Initial Inputs
Litigant
Fact Details
Police Station
Case Details
e-File
+
Help

Principal District Judge, Srinagar
E-Filing Number: **AJK20240000051C202500006** - John Smith Vs - Relief Sought: **Bail** - Case Type: **BA**
John Smith Vs

Litigant

Main Petitioner
:
Email:
Address:
Organisation Type:
Mobile No.:
Pin code:

Fact Details
Case Details
138-Complainant-Form

eFile Case

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(Portal: e-Committee, Supreme Court of India, e-Filing Services, available at: <https://filing.ecourts.gov.in/pdedev/>)

Interlocutory Applications

The screenshot displays the eFiling Services dashboard. The top navigation bar includes links for My Partners, Case Filing, Vakalat, Pleadings, ePayments, Applications, and Portfolio. The user is logged in as Shaista Q... from Jammu and Kashmir. The dashboard features several status tiles: Draft Pleadings (0), Completed Pleadings (6), Submitted Applications (0), Completed IAs (0), Objections (0), and My Cases (6). A calendar for September 2025 is shown on the left, with the 20th highlighted. The main area displays 'Cases Listed Today - 20-09-2025' with a 'No Cases' message. The footer indicates the version is 3.0 and is © 2025 eFiling Services eCommittee Supreme Court of India.

2. Case Management, Documentation And Reporting

As the world turned digital across the globe with COVID-19, Information and Communication Technology enablement aided the judiciary to simultaneously make progress alongside the emerging trends. These include Electronic Case Management Tools.

Electronic Case Management Tools (eCMT) are digitally available applications that enable a lawyer to efficiently manage case information, document assembly, calendaring, time-tracking of case status, accessing judicial decisions, compliance requirements, among

other things. eCMT are available 24 x 7 with no geographical boundaries and easy access on a no-cost basis.

Key eCMT Tools for Advocates

- digitally track the case status;
- digitally obtain the cause list of the courts;
- digitally download the Court orders/ judgements;
- digitally search Judgements for citations;
- digitally access statutes, laws, and regulations ;
- digitally access forms to be submitted to the court;
- receive e-mail and SMS notifications of the case status ;
- appear/argue and conduct cases through video conferencing.
- make online payment of fine/ court fees/ e-payments etc.

A. Digitally track the case status

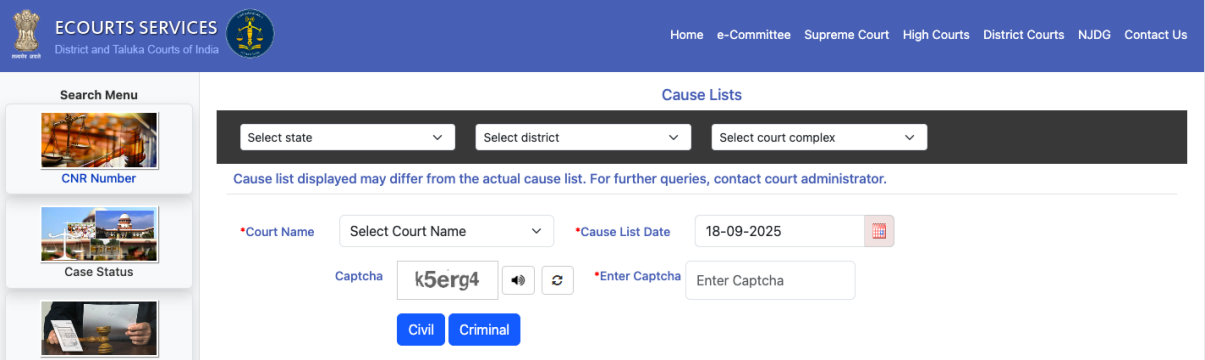
The screenshot displays the E-COURTS SERVICES portal for District and Taluka Courts of India. The header includes navigation links: Home, e-Committee, Supreme Court, High Courts, District Courts, NJDG, and Contact Us. A left sidebar contains a 'Search Menu' with icons for CNR Number, Case Status, and Court Orders. The main content area is titled 'Case Status' and features a search form. At the top of the form are three dropdown menus for 'Select state', 'Select district', and 'Select court complex'. Below these are tabs for 'Party Name', 'Case Number', 'Filing Number', 'Advocate', 'FIR Number', 'Act', and 'Case Type'. The 'Party Name' tab is selected, and the search criteria section is titled 'Case Status : Search by Petitioner/Respondent'. It includes input fields for 'Petitioner/Respondent', 'Registration Year', and a 'Year' field. There are radio buttons for 'Pending' (selected), 'Disposed', and 'Both'. A 'Captcha' field shows the text 'h7ez7b' with a refresh icon, and an 'Enter Captcha' field. 'Go' and 'Reset' buttons are at the bottom of the form.

- Go to the portal⁴⁰⁹
<https://services.ecourts.gov.in/ecourtindia_v6/?p=casestatus/index&app_token=d538221cfd4fb6a7e6d51e5be5858bf3a775fd137d7ca720a531ce3a86d27c8f>
- Enter at least 3 characters.
- Party Name may be the name of the Petitioner, Plaintiff, Complainant, Respondent, Defendant, Appellant, Accused or Extra Party.
- In the Year box, enter the Case Registration Year.
- Select the Pending or Disposed option button according to the status of the case.
- Click on Both options if case status is not known.

⁴⁰⁹e-Committee, Supreme Court of India, E-Courts Services for District and Taluka Courts of India, available at: https://services.ecourts.gov.in/ecourtindia_v6/?p=home&app_token=ee36174bb70ecebbc471ad50942f6779667aa2a5fcf7f8a40f7bed987c49ae19

- Enter the Captcha (the 5 alphanumeric characters shown on the screen) in the text box provided.
- Click on the Go button to view the case details for the given FIR Number.
- Click on the Go button, to get the list of cases matching the given party name.

B. Digitally obtain the cause list of the courts



The screenshot displays the E-COURTS SERVICES portal for District and Taluka Courts of India. The header includes the logo and navigation links: Home, e-Committee, Supreme Court, High Courts, District Courts, NJDG, and Contact Us. On the left, a 'Search Menu' sidebar contains icons for 'CNR Number', 'Case Status', and a third icon. The main area is titled 'Cause Lists' and features a search form with three dropdown menus: 'Select state', 'Select district', and 'Select court complex'. Below these, a disclaimer states: 'Cause list displayed may differ from the actual cause list. For further queries, contact court administrator.' The form also includes fields for 'Court Name' (a dropdown), 'Cause List Date' (set to 18-09-2025), and a 'Captcha' section with the text 'k5erg4' and a 'Enter Captcha' input field. At the bottom of the form are two buttons: 'Civil' and 'Criminal'.

- Go to the portal of the respective district courts website of the said state.⁴¹⁰ For instance, for an LADC in a district in Jharkhand, the website, can be accessed if the website is functional
- Navigate the website, and click on the tab titled, ‘Cause List’

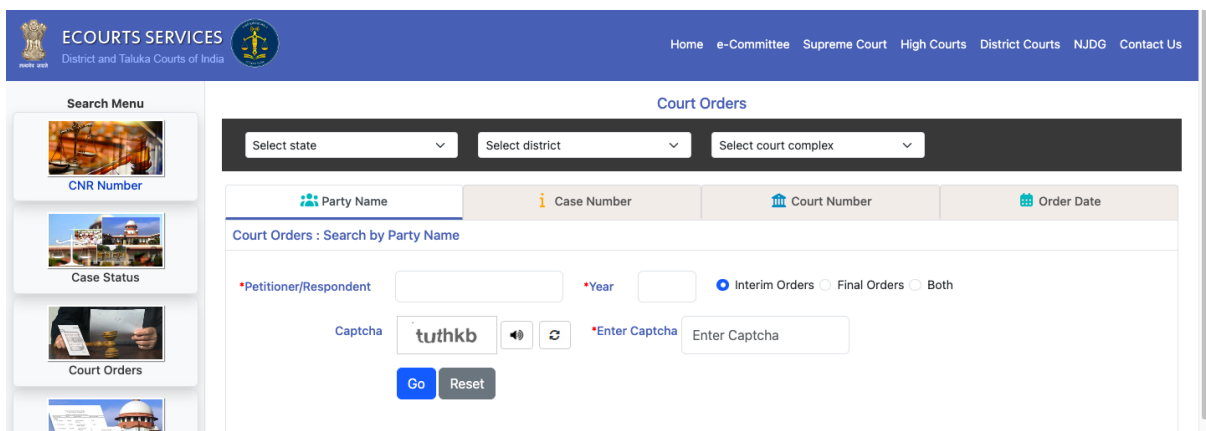
Alternatively,

- Go to the portal < https://services.ecourts.gov.in/ecourtindia_v6/?p=cause_list/index>

⁴¹⁰ e-Committee, Supreme Court of India, E-Courts Services for District and Taluka Courts of India, available at: https://services.ecourts.gov.in/ecourtindia_v6/?p=home&app_token=ee36174bb70ecebba471ad50942f6779667aa2a5fcf7f8a40f7bed987c49ae19

- Select state, district and court complex to display the cause list
- Select the entry from the Court Name select box which shows the court number, the judge name and the designation of the judge for displaying the Cause list Select the Cause list Date from the calendar control.
- Enter the Captcha (the 5 alphanumeric characters shown on the screen) in the text box provided.
- Click on the Civil or Criminal button, to accordingly display the Civil or Criminal Cause list of the selected Court and Date.

C. Digitally download the Court orders/ judgements



The screenshot displays the ECOURTS SERVICES website interface. The header includes the logo, "ECOURTS SERVICES", and navigation links: Home, e-Committee, Supreme Court, High Courts, District Courts, NJDG, and Contact Us. A left sidebar contains a "Search Menu" with options: CNR Number, Case Status, Court Orders, and a fourth option with a court icon. The main content area is titled "Court Orders" and features a search form. At the top of the form are three dropdown menus: "Select state", "Select district", and "Select court complex". Below these are four tabs: "Party Name", "Case Number", "Court Number", and "Order Date". The "Party Name" tab is active, showing the text "Court Orders : Search by Party Name". The search form includes fields for "Petitioner/Respondent" and "Year", with radio buttons for "Interim Orders", "Final Orders", and "Both". A "Captcha" section shows the text "tuthkb" and a "Go" button. A "Reset" button is also present.

- Go to the portal⁴¹¹<https://services.ecourts.gov.in/ecourtindia_v6/?p=courtorder/index&app_token=4fae4cc5cfda6245ba38d3817197784f123bb32ee90494cea3dd8b1843d87d3e>
- Party Name may be the name of the Petitioner, Plaintiff, Complainant, Respondent, Defendant, Appellant, Accused or Extra Party. In the Year box, enter the Case Registration Year.
- Enter the Captcha (the 5 alphanumeric characters shown on the screen) in the text box provided.
- Click on the Go button, to get the Orders/Judgements of the cases satisfying the search criteria.
- Click on the Order on Exhibit or Copy of Judgement to view the Orders/Judgements in PDF format.
- Digitally search Judgements for citations

Alternatively,

- In order to download judgement of Specific High Courts, the website of the respective High Court can also be accessed.
- Navigate the website, and click on ‘Court Orders’

⁴¹¹ e-Committee, Supreme Court of India, E-Courts Services for District and Taluka Courts of India, *available at*:https://services.ecourts.gov.in/ecourtindia_v6/?p=home&app_token=ee36174bb70ecebbc471ad50942f6779667aa2a5fc7f8a40f7bed987c49ae19

Additionally, under Chapter 5, in heading titled, 'Finding Case Laws', information is provided for culling out the judgments from SCR portal and the relevance of using precedence in legal research and drafting.

D. Digitally access statutes, laws, and regulations

- Go to the website, <<https://www.indiacode.nic.in/>>
- Select the category from Act, Sections, Subordinate Legislations, among other categories.
- Type the name of the Legislation in the Search Box and enter Go.



The screenshot displays the E-Courts Services website. The header includes the logo of India, the text 'ECOURTS SERVICES District and Taluka Courts of India', and navigation links: Home, e-Committee, Supreme Court, High Courts, District Courts, NJDG, and Contact Us. A 'Search Menu' on the left lists 'CNR Number', 'Case Status', 'Court Orders', and another icon. A banner at the top promotes the 'Download eCourts Services App' with links to Google Play and the App Store, and a warning: 'Do not use browser toolbar reload or back button'. The main content area features a search form titled 'Search by CNR number' with instructions to 'Enter CNR Number, for example MHAU019999992015'. It includes a text input field for the '16 digit CNR number', a captcha image showing 'tt2ykw', a 'Enter Captcha' button, and 'Search' and 'Reset' buttons. A note at the bottom states: 'Note : If you don't have CNR Number then use other options from Search Menu section'.

E. Receive e-mail and SMS notifications of the case status⁴¹²

- Enter the 16 digit alphanumeric CNR Number without any hyphen or space.
- Click the Search button to view the current status and history of the case.
- If you don't know the CNR number of the case, click on the Case Status icon on the left menu to search the case with other options like case registration number, party name, advocate name etc.

⁴¹² e-Committee, Supreme Court of India, E-Courts Services for District and Taluka Courts of India, available at: https://services.ecourts.gov.in/ecourtindia_v6/?p=home&app_token=ee36174bb70ecebba471ad50942f6779667aa2a5fcf7f8a40f7bed987c49ae19

F. Make online payment of fine/ court fees/ e-payments etc

The screenshot shows the 'ePay' portal for 'eCourts Digital Payment'. At the top, there are logos for the Government of India and the eCourts system, along with a '₹' icon. Below the header, there are five buttons: 'Court Fee' (selected), 'Judicial Deposit', 'Fine', 'Penalty', and 'Others'. The main content area is titled 'Online Payment - Court Fee'. It has two tabs: 'District Court' (selected) and 'High Court'. Below the tabs, there are two radio buttons: 'New Case' (selected) and 'Existing Case'. The form includes several fields: 'State' (dropdown), 'District' (dropdown), 'Establishment' (dropdown), 'Party Name' (text), 'Court Fee' (text), 'Remark' (text), and 'Mobile No' (text). A red box highlights the 'Terms and Conditions' section, which states: 'The web site pay.ecourts.gov.in is designed and developed by National Informatics Centre under eCourts'. Below this, there is a checkbox for 'I agree to above Terms and Conditions'.

- Go to the portal⁴¹³ <<https://pay.ecourts.gov.in/epay/>>
- Select from the kind of payment from the categories provided: Court fee, judicial deposit, fine, penalty, or any other payment.
- Select 'District Court' on the pop up menu
- Select 'New Case' in case the payment has to be made for a new case, or 'existing case' if the payment has to be made for an ongoing case.

⁴¹³ e-Committee, Supreme Court of India, E-Courts Services for District and Taluka Courts of India, available at: https://services.ecourts.gov.in/ecourtindia_v6/?p=home&app_token=ee36174bb70eceb471ad50942f6779667aa2a5fcf7f8a40f7bed987c49ae19

- Fill in the details like State, District, Establishment, the name of the party, and the amount of money to be paid, and remarks, if any.
- Enter the mobile number and check the box agreeing to terms and conditions upon perusal.
- Enter Submit.

PART VI: LEGAL RESEARCH

Objective:

- Develop a comprehensive understanding of legal research methodology and its application in legal practice.
- To familiarise LADCs with the doctrine of precedent and stare decisis as foundational principles of legal research and understand the distinction between primary and secondary sources of law and their effective utilization in legal argumentation.

Expected Learning Outcomes

- LADCs will be able to understand the nature, purpose and principles of legal research and effectively utilize it in their legal practice.
- LADCs would comprehend the different ways of legal research and its practical application in case law analysis.

Training Methods

1. Lecture
2. Power Point Presentation

Session Plan

- I. Introduction, ice-breaking and interactive lecture by Resource Person/Facilitator
- II. Topic 1: Legal Research
- III. Topic 2: Purpose of Legal Research

- IV. Topic 3: Doctrine of Precedent
- V. Topic 4: Principles of Legal Research
- VI. Topic 5: Primary Sources of Law
- VII. Topic 6: Secondary Sources of Law
- Q & A, and Concluding Remarks

1. *What is Legal Research*

The word research is derived from the french word '*recherch*' which means to search or seek again.⁴¹⁴ Research comprises the concepts or symbols with the objective of generalising to extend, correct or verify knowledge.⁴¹⁵ Research is a systematic investigation into existing facts and knowledge undertaken with the aim of discovering truth or reality.⁴¹⁶ Legal research involves the inquiry of statutes, rules, case laws and other secondary sources to answer a legal question which helps in strengthening arguments to further advise clients and argue before court of law.⁴¹⁷

2. *Purpose of Legal Research*

Research is helpful for legal professionals to comprehend the law in a better manner.⁴¹⁸ As a LADC, legal research on judgments, statutes and persuasive authorities strengthens submissions and helps in rebutting the prosecution's arguments. It also aids in rendering efficient legal advice to the beneficiaries.

3. *Doctrine of Precedent and Stare Decisis*

The Principle of binding force of precedent is an established norm in common law i.e. a judge is bound to adhere to the decision of any court recognised as competent to bind him and it is the obligation of the judge to pronounce the law as declared by such a court. Since India shares the common law heritage, the law of precedents is followed in the Indian judicial system as well. Article 141 of the Constitution of India provides that the law declared by the

⁴¹⁴ Rattan Singh, *Legal Research Methodology* (Lexis Nexis, Noida, 1st edn., 2013).

⁴¹⁵ Arvind Kumar, *Research Methodology in Social Sciences* (Swarup and Sons, New Delhi, 2002).

⁴¹⁶ Anuwarul Yaquin, *Legal Research and Writing Methods* (Lexis Nexis Butterworth Wadhwa, Nagpur, 2008).

⁴¹⁷ Reetika Bansal and Vikram Singh Jaswal, *Legal Research Methodology and Jurisprudence: Novelties and Genesis* (Regal Publications, New Delhi, 2016).

⁴¹⁸ *Ibid.*

Supreme Court shall be binding on all courts within the territory of India. Therefore, the judgments delivered by the superior court including Supreme Court and the High Courts are as much law as a legislation, which is to be followed by the different courts, tribunals and other authorities of the country. A decision of the Supreme Court or a High Court is authoritative in nature.

A. Ratio decidendi v. Obiter Dicta

The binding part of a decision is the *ratio decidendi* and it is different from *obiter dica* which does not have a binding value.⁴¹⁹ The ratio decidendi is the legal reasoning which led to the decision. It is that principle of law which decides the dispute in the facts of the case.⁴²⁰ Being aware of the relevant case laws is indispensable to the practice of law. The essence of good lawyering is acquainting oneself with the relevant case law, on the subject at hand.⁴²¹

4. *Primary Sources of Law*

In the context of legal research, primary sources are the documents which establish the law on a certain issue, including a statute, rules, regulations, notifications, judgments and orders of the court of law. They hold an authoritative value.

5. *Finding Case Laws*

The first step in any legal research exercise is to begin with the most authoritative materials available. If the citation of a case is already known, the lawyer should directly access the Supreme Court Reports (SCR), which is freely available and provides the official version of

⁴¹⁹ Paton, *A textbook of Jurisprudence* (David Derham, Ed., 3rd edn., 1964), p. 180.

⁴²⁰ *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.*, (2005) 7 SCC 234; *Union of India v. Dhanwati Devi*, (1996) 6 SCC 44; *Regional Manager v. Pawan Kumar Dubey*, (1976) 3 SCC 334.

⁴²¹ Fali S. Nariman, *Before Memory Fades: An Autobiography* (Hay House Publishers, Delhi, 2012).

the judgment. Parallel citations such as AIR or SCC can also be noted for cross-reference, but SCR remains the authentic record. Each entry should include the paragraph numbers and bench strength to understand the binding nature of the decision.

The most other methods of finding case law on a particular subject are through digests and commentaries. The subject indexes provided at the end of commentaries are particularly useful in finding case law on a specific topic. In the absence of a commentary on a given enactment, the AIR Manual serves as a highly valuable resource for identifying case law on Central Statutes. Apart from the offline sources, the online legal databases have become highly useful tools for finding specific case law or identifying them on a particular topic of law.

A. Verification of Authority and Status of Case Law

Once a lawyer has found a relevant judgment, it is important to test its authority. Not all reported cases are binding in nature. It is a prerequisite that any case law relied upon must still be considered “good law” by the court. Judgments that have been overruled cannot be cited as they lack precedential value. The judgment being cited is the final and authoritative pronouncement in the case, and not merely an interim or interlocutory order. Accordingly, during the process of legal research, it is essential to ascertain whether a case has been overruled, reaffirmed, questioned, or subsequently cited in later decisions.

Another critical aspect of legal research is to verify that the case retrieved is indeed the one a lawyer is looking for, especially when the parties’ names are identical or similar. Many judgments carry the same or nearly identical titles (eg., MC Mehta v. Union of India), but deal with entirely different legal issues, arising in distinct factual or statutory contexts.

Therefore, merely relying on the case title is insufficient. Lawyers must cross-check the year of decision, citation, bench composition, and the subject matter to confirm they have located the correct judgment. Referring to the wrong one could distort the legal position and weaken the credibility of your argument. It is also good practice to consult subsequent judgments on the same issue to understand the current legal position and ensure that the principle being cited is still operative.

B. Citations

Lawyers in their pleadings and judges in their judgments often use structured abbreviations when referring to the sources from which a report of a case can be found. For example- the judgement in the case of *Suhas Chakma v. Union of India, Writ Petition (C) No. 1082, 2020* passed on 24 October 2024 by Justice B.R. Gavai and Justice K.V. Viswanathan, is referenced or cited as-

“Suhas Chakma v. Union of India, (2024) 10 S.C.R. 1769 or 2024 INSC 813”

The purpose is manifold: firstly to help someone find a case in a printed volume of a law report; Secondly, it helps in finding a case online. With respect to the abovementioned citation, it refers to a case in volume 10 and page 1769 of the SCR for the year 2024. Although in e-SCR, the cases could be found using the party names, by putting the full citations in the search tab of e-SCR will narrow down the search and avoid searching for cases which have similar party names.

In February 2023, the Neutral Citation System (“neutral citation”) was implemented which was a uniform, reliable and secure methodology for identifying and citing judgment and orders rendered by the Hon’ble Supreme Court and the respective High Courts. Neutral

Citation is a court's approved system of citation, which would be independent of the series of the Law Reports or other publications.

If a lawyer does not know either the citation or the exact case title, the best approach would be to frame a question of law and use it as a search string. For instance, one might search for “whether dying declaration be a sole basis for conviction”. Adding the name of a relevant statute or constitutional article, such as “Section 482 Bharatiya Nagarik Suraksha Sanhita 2023”, sharpens the focus and avoids unrelated results. Also, keyword based search could also be useful. Lawyers should start broad, read the first few relevant judgments, and then refine their search using terms and expressions found within those judgments.

6. *Using Open Sources and Google Search Safely*

In today's practice, the information is available on the internet in abundance. Utilising search engines such as Google to access legal information is prevalent amongst legal professionals. Search engines can help us research recent cases and legislation, which often becomes gratifying and comprehensive.⁴²² Yet, reliance on web search engines alone risks missing authoritative texts and the official versions required for accurate citation. While Google Search may serve as an initial tool for gathering general legal information, it seldom provides specific or authoritative sources. Its content frequently raises issues of credibility, rendering it unsuitable for use in legal citations.⁴²³

Hence, it is important to make use of the legal database services such as the SCR for authenticated Supreme Court reports, along with the High Court websites and databases like

⁴²² John Knowels, *Effective Legal Research* (Sweet & Maxwell, London, 2nd edn., 2009).

⁴²³ *Ibid.*

India Code. Search engines can be used only as a secondary aid to discover leads that are then verified against official sources. They provide free access to primary sources of law and their use should not be ignored. Thus, results obtained through Google must be cross-checked with authentic sources like SCR or SCC Online.

7. *Supreme Court's Database*

The Supreme Court's official website i.e. www.sci.gov.in provides cause lists, case status, daily orders, judgments, e-filing, display boards, and live streaming, establishing the public database for case monitoring and research. It further links to the SCR portal, the Constitution text and webpages/sections of other centres such as Judges' Library, Centre for Research and Planning that consists of research initiatives, legal resources that strengthens jurisprudence and institutions.

It is important to learn to utilise the printed sources of law along with the online sources of law. It is not true that online sources are better than the printed ones; rather they both are to be utilised for the purpose of legal research which will result in better time management and an effective practice.

A. SCR Portal



Supreme Court of India

Supreme Court Reports (SCR)

☒ Phrase(s) ☐ Any Words ☐ All Words

SCR

Year

Vol

OR

Supl

Page

Neutral Citation

Enter Year

INSC

Enter Number

zEEyzs

Enter captcha

Search

Enter keywords, acts or any free text and find specific judgments and orders

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The SCR portal is the integrated official Supreme Court law-reporter platform replacing e-SCR and Digi-SCR which provides head-noted, reportable Supreme Court judgments with advanced search and is accessible via the Supreme Court website's e-Services head. Earlier e-SCR advances included elastic-search features such as free text, search-within-search, judge

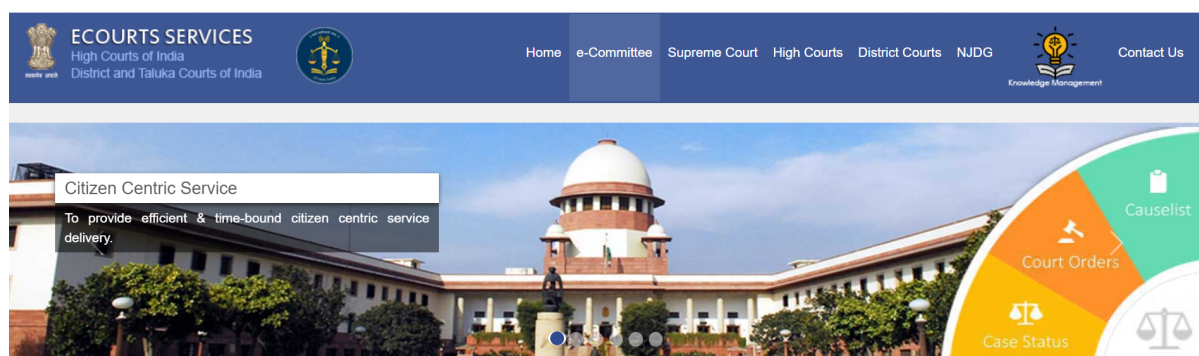
⁴²⁴ Available at www.scr.sci.gov.in (last visited on September 25, 2025).

search, year/volume search, and bench strength filters; the SCR portal continues this emphasis on comprehensive, free of cost access to reportable judgments along with headnotes/case summaries, including translated judgments.

To find a case using the SCR is to simply type the name of the case, if you already know either or both the parties, in the search tab which will show the results of all the cases featuring the names. From the list of the cases in the result Section, you will have to ensure that you are looking at the right case. If the name of the case is known but the citation is not, it can be found by typing the party names in the search tab. Using both variations “v.” and “vs.” between party names ensure more accurate results. Filters for court, subject matter, and time period can further refine the search. It is always useful to remember that even small spelling differences may block the correct result. Hence, using shorter or approximate tokens like *TMA Pai*, *Olga Tellis*, or *Puttaswamy* often yields better results.

For legal professionals like the LADCs, the SCR portal serves as the source for authoritative text for quoting and referring to the passages of the Supreme Court’s judgment with both SCR & neutral citation. Search can be initiated by typing a free-text or provision/judge/bench/year based query then the headnote could be relied upon to frame issues and verifying the ratio before extracting the paragraphs from the judgments.

B. Websites of the High Courts & e-Courts Portal



Every High Court in India has its official websites for accessing cause lists, case status, judgments. LADCs may use these websites to access the details of cases and get the copies of the orders and judgments. The national Judgment & Order Search portal under e-Courts integrates High Court judgments with filters including bench, case type/number, party, judge, Act/Section, date range, and full-text search, which allows users for cross-court retrieval and keyword-based discovery for legal topics spanning multiple jurisdictions.

8. Conducting Statutory Research

Parallel to case-law research runs the process of statutory research. The first step should be to consult the Bare Act in its most updated form, going through all amendments, provisos, explanations, and definitions. One must be careful with words such as “shall,” “may,” and “notwithstanding,” as these often determine the nature of obligation or discretion. After examining the Act, one should review the rules, regulations, and notifications issued under it, since many judicial outcomes turn on subordinate legislation. Legislative history, including the Statement of Objects and Reasons or committee reports, can be valuable when interpreting an ambiguous provision.

A. India Code

India Code is the Government of India's official, and up to date database of all central and state primary legislation in force, linked to subordinate legislations. It is maintained by the Legislative Department, Ministry of Law & Justice, and serves as the authoritative public source for Acts, Ordinances, and subordinate legislations, rendering a court-focused research on judgments with authentic statutory texts and updates.



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Users can search through a free text search Section available in the website or by mentioning the short title, Act number/year, enactment date, concerned ministry or department.

9. *Subscription based legal database*

Several subscription based legal research databases are available that provide more advanced features for searching case laws, statutory materials, research articles, and commentaries.

⁴²⁵ Screenshot of the webpage of India Code website, available at: www.indiacode.nic.in (Last visited on September 25, 2025)..

Advanced databases such as SCC Online, Manupatra, and others offer built-in research tools that go beyond simple search results. Features like “Cited By” indicate whether a case has been followed, distinguished, or overruled. This is crucial to verify the continuing authority of a precedent. The search-within-search function, provision-based searches. The Ratio decidendi of a judgment can only be grasped by reading the actual judgment. Relying solely on editorial headnotes/comments/summary is risky, since they may not capture the nuance or the context of the reasoning.

The Chief LADC may coordinate with the Secretary of the concerned DLSA to obtain subscriptions to such paid databases.

10. Secondary Sources of Law

Secondary sources are materials that interpret or analyze the law, such as journals, law reviews, scholarly articles, and other academic writings. While such sources are frequently relied upon by lawyers to persuade the court toward a favorable decision in a case, they do not carry binding authority, and the court is under no obligation to follow them.

A. Journals

Journals are significant to the practice of law, they keep lawyers up to date with the latest developments in the law and provide comments of the law.⁴²⁶ They keep us abreast with latest cases, legislations, gazette notifications, amendments etc. Articles on topics of law and case notes are found in the journals which provide commentary on cases and discussion on legal issues which helps in comprehending a legal topic in a better manner. Journals are published regularly either monthly, quarterly, bi-annually or annually, hence they are also known as

⁴²⁶ John Knowels, *Effective Legal Research* (Sweet & Maxwell, London, 2nd edn., 2009).

periodicals. Similar to the Law Reports, the journals are also found in shelves of a library or can be accessed online.

B. Legal Dictionary

Law lexicons or legal dictionaries are very helpful for interpretation of a particular word, especially when the parties are in dispute regarding the interpretation of that word. Legal dictionaries help in locating if in what case and how that term has been interpreted by the court.

Some of the widely known lexicons are:

- P. Ramanatha Aiyar's Advanced Law Lexicon Third Edition, Lexis Nexis.
- Bryan A. Garner (ed.), Black's Law Dictionary (Thomson Reuters, St. Paul, 11th edn., 2019).

C. Commentaries

Commentaries are one of the sources of finding the case laws on a particular subject. Subject indexes mentioned at the end of the commentaries can be utilised to trace the desired decision on a particular topic. If a Commentary on a particular statute is unavailable then the 'AIR Manual' can be referred to for finding a case law.

Some popular Commentaries are:

CONSTITUTIONAL LAW	● Seervai H.M., Constitutional Law of India : A Critical Commentary
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	● D.D. Basu, Shorter Constitution of India ● M.P. Jain, Indian Constitutional Law ● Arvind P. Datar, Commentary on the Constitution of India
INDIAN PENAL CODE, 1860	● Ratanlal & Dhirajlal, Law of Crime: A Commentary on Indian Penal Code, 1860 ● Batuk Law & Nakvi S.K.A., Commentary on Indian Penal Code ● Gour Hari Singh, Commentaries on the Indian Penal Code
BHARATIYA NYAYA SANHITA, 2023	● Sarkar's Commentary on the Bharatiya Nyaya Sanhita, 2023 ● Ratanlal & Dhirajlal, The Bharatiya Nyaya Sanhita, 2023 ● Taxman, Law Relating To Bharatiya Nyaya Sanhita 2023
CODE OF CRIMINAL PROCEDURE	● B.B. Mitra, Code of Criminal Procedure

	● Ratanlal & Dhirajlal, Code of Criminal Procedure ● S.C. Sarkar & Ors., Law of Criminal Procedure
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023	● Mulla, Commentary on Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS) ● Namit Saxena, Concise Commentary on the Bharatiya Nagarik Suraksha Sanhita, 2023 ● J.K. Verma, Bharatiya Nagarik Suraksha Sanhita, 2023 (Criminal Procedure):A Commentary
INDIAN EVIDENCE ACT, 1860	● Monir M., Law of Evidence, Edn. 15, Vols. 2. Delhi: Universal Law Pub. Co. 2012. ● M.C. Sarkar & Ors., Law of Evidence, Edn. 17, Vols. 2. Nagpur; Wadhwa & Co., 2011.

11. Synthesising Research Findings

After gathering material, the task is to synthesize and organize it. This involves mapping the doctrine: identifying the legal tests, their constituent elements, exceptions, and the burden of proof in each situation. The law must then be applied to the factual context at hand, noting which elements are satisfied and which are debatable.

It is also wise to identify counter-authorities that may go the other way, and prepare distinctions or reconciliations. The final research note or memo should quote judgments precisely with paragraph numbers. This level of specificity gives credibility to the argument and allows others to verify the reference easily.

12. Preparing Drafting-Ready Outputs

A well-conducted research exercise culminates in outputs ready for drafting pleadings, briefs, or policy notes. An issue-wise case table should be prepared, listing the court, bench, citation, relevant paragraph, and the holding of each case. A concise one-page “position memo” can then summarize the issue, governing test, leading cases, applicable paragraphs, and counter-arguments.

When citing, use standard formats with parallel citations if available, and always mention paragraph numbers instead of page references. This ensures accuracy and clarity when the material is used in court submissions or academic writing.

13. Avoiding Common Pitfalls

Several errors recur in legal research and must be consciously avoided. A common pitfall is relying on famous cases that have since been narrowed or overruled. Another frequent mistake is treating headnotes as if they were binding. These are editorial summaries and not part of the judicial reasoning.

Lawyers must also beware of conflating pre- and post-amendment positions of the same statute. Aligning the dates of cases with the relevant amendment is vital. Finally, every case must be read in light of its factual matrix. Without comparing facts, even the correct legal proposition can be misapplied. A short fact-comparison chart for each authority helps prevent such missteps.

14. Conclusion

Law is a dynamic and an evolving discipline, and it is imperative for legal professionals to be abreast of the recent developments in law. Beyond studying and analyzing judicial decisions, it is equally important to engage with law reviews, journals, and authoritative commentaries, as they facilitate a comprehensive understanding of legal concepts. Effective legal research combines precision, verification, and analytical synthesis. It is not merely about finding judgments but about understanding the evolution of law, its textual basis, and its judicial application. In an age of information overload and AI-assisted tools, disciplined research practices remain the hallmark of sound legal reasoning.

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