

CHAPTER III
POWER OF COURTS

Courts by which offences are triable.

21. Subject to the other provisions of this Sanhita,—

- (a) any offence under the Bharatiya Nyaya Sanhita, 2023 may be tried by—
- (i) the High Court; or
 - (ii) the Court of Session; or
 - (iii) any other Court by which such offence is shown in the First Schedule to be triable:

Provided that any offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023 shall be tried as far as practicable by a Court presided over by a woman;

- (b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by—
- (i) the High Court; or
 - (ii) any other Court by which such offence is shown in the First Schedule to be triable.

Corresponding Provision : Section 26 of Cr.PC., 1973

COMMENTS

SECTION NOTES

21.1 Courts by which offences are triable

- ◆ Section 21 relates to Courts by which offences are triable and provides as per the Table below:

Offence	Court by which offence is triable
Any offence under the BNS	<p>General</p> <ul style="list-style-type: none"> ◆ Any offence under BNS may be tried by the High Court, or the Court of Session, or any other Court by which such offence is shown in the First Schedule to be triable. [Section 21(1)] <p>Trial of rape/gang rape cases by Courts presided by a woman</p> <ul style="list-style-type: none"> ◆ Any offence under section 63, section 64, section 68, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023 shall be tried as far as practicable by a Court presided over by a woman. [Proviso to section 21(1)]

Offence	Court by which offence is triable
Any offence under any other law (any law other than BNS)	<ul style="list-style-type: none"> ◆ Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court [Section 21(2)] ◆ When no Court is so mentioned, such offence may be tried by:— <ul style="list-style-type: none"> ■ the High Court; or ■ any other Court by which such offence is shown in the First Schedule to be triable. [Section 21(2)]

RELEVANT CASE LAWS

Court is not only obliged to protect rights of accused but also rights of victim alongwith interest of society at large have to be protected - Though, it is true that “Equality, Justice and Liberty” is trinity of fair trial recognized in administration of justice, it is equally true that such concept of fair trial entails triangulation of interest of accused, victim and society at large. In overzealous approach to protect rights of accused, rights of victim who is most aggrieved should not be either undermined or neglected. Similarly, cases involving heinous crimes, society at large would also be an important stakeholder. Interest of society, which acts through State and prosecuting agencies, should also not be treated with disdain. Therefore, court conducting trial/appeal is not only obliged to protect rights of accused but also rights of victim, and interest of society at large. Judge presiding over criminal trial has not only to see that innocent man is not punished but has also to see that guilty man does not escape. Both are his public duties required to be discharged very diligently to maintain public confidence and uphold majesty of law. [Para 35] - *Mohd. Firoz v. State of Madhya Pradesh* AIR 2022 Supreme Court 1967.

Sentences which High Courts and Sessions Judges may pass.

22. (1) A High Court may pass any sentence authorised by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

Corresponding Provision : Section 28 of Cr.PC., 1973

COMMENTS

SECTION NOTES

22.1 Sentences which High Courts and Session Judges may pass

- ◆ Section 22 relates to sentences High Courts and Sessions Judges may pass.

22.2 High Court

- ◆ A High Court may pass any sentence authorised by law.

22.3 A Sessions Judge or Additional Sessions Judge

- ◆ A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law;
- ◆ But any sentence of death passed by any such Judge shall be subject to confirmation by the High Court. [See sections 407 to 412 of BNSS]

Sentences which Magistrates may pass.

23. (1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding fifty thousand rupees, or of both, or of community service.

(3) The Court of Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding ten thousand rupees, or of both, or of community service.

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

Corresponding Provision : Section 29 of Cr.PC., 1973

COMMENTS

SECTION NOTES

23.1 Sentences which Magistrates may pass.

- ◆ Section 23 provides for sentences which Magistrates may pass, as per Table below:

<i>Sub-section</i>	<i>Court of which Magistrate</i>	<i>Sentence which Court may pass</i>
(1)	The Court of a Chief Judicial Magistrate	Any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding 7 years
(2)	The Court of a Magistrate of the first class	A sentence of imprisonment for a term not exceeding 3 years, or of fine not exceeding ₹ 50,000, or of both, or of community service
(3)	The Court of Magistrate of the second class	A sentence of imprisonment for a term not exceeding 1 year, or of fine not exceeding ₹ 10,000, or of both, or of community service

23.2 Community Service

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

Sentence of imprisonment in default of fine.

24. (1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law:

Provided that the term—

- (a) is not in excess of the powers of the Magistrate under section 23;
 - (b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.
- (2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 23.

Corresponding Provision : Section 30 of Cr.PC., 1973

COMMENTS

SECTION NOTES

24.1 Sentence of imprisonment in default of fine

- ◆ Section 24 relates to power of Court to award sentence of imprisonment in default of fine.
- ◆ The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law.

24.2 Imprisonment in default of fine shall be in addition to substantive sentence of imprisonment for the maximum term

- ◆ The imprisonment awarded under section 24 may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 23.

24.3 Imprisonment awarded under this section shall not be in excess of the powers under section 23

- ◆ The term of imprisonment in default of fine awarded shall not be in excess of the powers of the Magistrate under section 23 of BNSS.

24.4 Imprisonment awarded in default of fine shall not exceed one-fourth of the imprisonment that can be inflicted for the offence otherwise than as imprisonment in default of fine

- ◆ The term of imprisonment in default of fine awarded shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term

of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

Sentence in cases of conviction of several offences at one trial.

25. (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 9 of the Bharatiya Nyaya Sanhita, 2023, sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict and the Court shall, considering the gravity of offences, order such punishments to run concurrently or consecutively.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that—

- (a) in no case shall such person be sentenced to imprisonment for a longer period than twenty years;
- (b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

Corresponding Provision : Section 31 of Cr.PC., 1973

COMMENTS

SECTION NOTES

25.1 Sentence in case of conviction of several offences at one trial

- ◆ Section 25 relates to sentence in cases of conviction of several offences at one trial.

25.2 Sentencing when a person is convicted at one trial of two or more offences

- ◆ Sub-section (1) of section 25 applies to sentencing when a person is convicted at one trial of two or more offences and provides as follows:—
 - In such a case, the Court may, subject to the provisions of section 9 of the Bharatiya Nyaya Sanhita, 2023 (BNS), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict.
 - Further, the court shall, considering the gravity of offences, order such punishments to run concurrently or consecutively.

25.3 In case of consecutive sentences, no need to send the offender for trial before a higher Court by reason only of aggregate punishment for the several offences exceeding punishment which court is competent to inflict on conviction of a single offence

- ◆ In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.
- ◆ But in no case shall such person be sentenced to imprisonment for a longer period than twenty years.
- ◆ Again the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.
- ◆ For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

Mode of conferring powers.

26. (1) In conferring powers under this Sanhita, the High Court or the State Government, as the case may be, may, by order, empower persons specially by name or in virtue of their offices or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

Corresponding Provision : Section 32 of Cr.PC., 1973

COMMENTS

SECTION NOTES

26.1 Mode of conferring powers

- ◆ Section 26 relates to mode of conferring powers.

26.2 Mode of conferring powers under BNSS: By order

- ◆ In conferring powers under BNSS, the High Court or the State Government, as the case may be, may, by order, empower persons specially by name or in virtue of their offices or classes of officials generally by their official titles. [Section 26(1)]

26.3 Date of taking effect of order

- ◆ Every such order shall take effect from the date on which it is communicated to the person so empowered. [Section 26(2)]

Powers of officers appointed.

27. Whenever any person holding an office in the service of Government who has been invested by the High Court or the State Government with any powers under this Sanhita throughout any local area is appointed to an equal or higher office of the same nature, within a like local area under the same State Government, he shall, unless the High Court or the State Government, as the case may be, otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed.

Corresponding Provision : Section 33 of Cr.PC., 1973

COMMENTS

SECTION NOTES

27.1 Powers of officers appointed

- ◆ Section 27 relates to powers of officers appointed.
- ◆ Whenever any person holding an office in the service of Government who has been invested by the High Court or the State Government with any powers under BNSS throughout any local area is appointed to an equal or higher office of the same nature, within a like local area under the same State Government, he shall, unless the High Court or the State Government, as the case may be, otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed.

Withdrawal of powers.

28. (1) The High Court or the State Government, as the case may be, may withdraw all or any of the powers conferred by it under this Sanhita on any person or by any officer subordinate to it.

(2) Any powers conferred by the Chief Judicial Magistrate or by the District Magistrate may be withdrawn by the respective Magistrate by whom such powers were conferred.

Corresponding Provision : Section 34 of Cr.PC., 1973

COMMENTS

SECTION NOTES

28.1 Withdrawal of powers

- ◆ The High Court or the State Government, as the case may be, may withdraw all or any of the powers conferred by it under BNSS on any person or by any officer subordinate to it.

28.2 Withdrawal of powers by CJM or DM

- ◆ Any powers conferred by the Chief Judicial Magistrate or by the District Magistrate may be withdrawn by the respective Magistrate by whom such powers were conferred.

Powers of Judges and Magistrates exercisable by their successors-in-office.

29. (1) Subject to the other provisions of this Sanhita, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor-in-office.

(2) When there is any doubt as to who is the successor-in-office, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Sanhita or of any proceedings or order thereunder, be deemed to be the successor-in-office.

(3) When there is any doubt as to who is the successor-in-office of any Magistrate, the Chief Judicial Magistrate, or the District Magistrate, as the case may be, shall determine by order in writing the Magistrate who shall, for the purpose of this Sanhita or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Magistrate.

Corresponding Provision : Section 35 of Cr.PC., 1973

COMMENTS
SECTION NOTES**29.1 Powers of Judges and Magistrates exercisable by their successors-in-office**

- ◆ Subject to the other provisions of BNSS, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor-in-office. [Section 29(1)]

29.2 When there is any doubt as to who is the successor-in-office, Sessions Judge to determine the Judge who shall be deemed to be the successor-in-office

- ◆ When there is any doubt as to who is the successor-in-office (of the Sessions Judge), the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of BNSS or of any proceedings or order thereunder, be deemed to be the successor-in-office. [Section 29(2)]

29.3 When there is any doubt as to who is the successor-in-office of any Magistrate

- ◆ When there is any doubt as to who is the successor-in-office of any Magistrate, the Chief Judicial Magistrate, or the District Magistrate, as the case may be, shall determine by order in writing the Magistrate who shall, for the purpose of BNSS or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Magistrate.

CHAPTER IV**POWERS OF SUPERIOR OFFICERS OF POLICE AND AID TO THE
MAGISTRATES AND THE POLICE****Powers of superior officers of police.**

30. Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Corresponding Provision : Section 36 of Cr.PC., 1973

COMMENTS**SECTION NOTES****30.1 Powers of superior officers of police**

- ◆ Section 30 relates to powers of Police officers superior in rank to an officer in charge of a police station.
- ◆ Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Public when to assist Magistrates and police.

31. Every person is bound to assist a Magistrate or police officer reasonably demanding his aid—

- (a) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorised to arrest; or
- (b) in the prevention or suppression of a breach of the peace; or
- (c) in the prevention of any injury attempted to be committed to any public property.

Corresponding Provision : Section 37 of Cr.PC., 1973

COMMENTS**SECTION NOTES****31.1 Public when to assist Magistrates and police**

- ◆ Section 31 relates to Public when to assist Magistrates and police.
- ◆ Section 31 provides that every person be bound to assist a Magistrate or police officer reasonably demanding his aid for arrest, prevent breach of peace or to prevent damages to public property.

31.2 Every person bound to assist a Magistrate or police officer reasonably demanding his aid for specified purposes

- ◆ Every person is bound to assist a Magistrate or police officer reasonably demanding his aid—
 - (a) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorised to arrest; or
 - (b) in the prevention or suppression of a breach of the peace; or
 - (c) in the prevention of any injury attempted to be committed to any public property.

Aid to person, other than police officer, executing warrant.

32. When a warrant is directed to a person other than a police officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Corresponding Provision : Section 38 of Cr.PC., 1973

COMMENTS

SECTION NOTES

32.1 Aid to person, other than police officer, executing warrant

- ◆ Section 32 relates to Aid to person, other than police officer, executing warrant.
- ◆ When a warrant is directed to a person other than a police officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Public to give information of certain offences.

33. (1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Bharatiya Nyaya Sanhita, 2023, namely:—

- (i) sections 103 to 105 (both inclusive);
- (ii) sections 111 to 113 (both inclusive);
- (iii) sections 140 to 144 (both inclusive);
- (iv) sections 147 to 154 (both inclusive) and section 158;
- (v) sections 178 to 182 (both inclusive);
- (vi) sections 189 and 191;
- (vii) sections 274 to 280 (both inclusive);
- (viii) section 307;

- (ix) sections 309 to 312 (both inclusive);
- (x) sub-section (5) of section 316;
- (xi) sections 326 to 328 (both inclusive); and
- (xii) sections 331 and 332,

shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

(2) For the purposes of this section, the term “offence” includes any act committed at any place out of India which would constitute an offence if committed in India.

Corresponding Provision : Section 39 of Cr.PC., 1973

COMMENTS

SECTION NOTES

33.1 Public to give information of certain offences

- ◆ Section 33 relates to duty of Public to give information of certain offences punishable under BNS.

33.2 Definition of “offence” for the purposes of this section [Sub-section (2) of section 33]

- ◆ For the purposes of section 33, the term “offence” includes any act committed at any place out of India which if committed in India would constitute an offence punishable under specified sections of BNS.

33.3 Duty of public to give information of offences punishable under specified sections BNS [Sub-section (1) of section 33]

- ◆ Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the specified sections of BNS, shall, forthwith give information to the nearest Magistrate or police officer of such commission or intention.
- ◆ Specified sections of BNS are as under:
 - sections 103 to 105 (both inclusive);
 - sections 111 to 113 (both inclusive);
 - sections 140 to 144 (both inclusive);
 - sections 147 to 154 (both inclusive) and section 158;
 - sections 178 to 182 (both inclusive);
 - sections 189 and 191;
 - sections 274 to 280 (both inclusive);
 - section 307;
 - sections 309 to 312 (both inclusive);
 - sub-section (5) of section 316;
 - sections 326 to 328 (both inclusive); and
 - sections 331 and 332,