

Legal Literacy

SGB24PS101MD



Multi Disciplinary Course
Four Year Undergraduate Programmes

SELF LEARNING MATERIAL



SREENARAYANAGURU
OPEN UNIVERSITY

SREENARAYANAGURU OPEN UNIVERSITY

The State University for Education, Training and Research in Blended Format, Kerala



Vision

To increase access of potential learners of all categories to higher education, research and training, and ensure equity through delivery of high quality processes and outcomes fostering inclusive educational empowerment for social advancement.

Mission

To be benchmarked as a model for conservation and dissemination of knowledge and skill on blended and virtual mode in education, training and research for normal, continuing, and adult learners.

Pathway

Access and Quality define Equity.



Legal Literacy
Course Code: SGB24PS101MD
Semester - I

Multi Disciplinary Course
For FYUG Programmes (Honours)
Self Learning Material



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Semester - I

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Message from Vice Chancellor

Dear Learner,

It is with great pleasure that I welcome you to the Four Year UG Programme offered by Sreenarayanaguru Open University.

Established in September 2020, our University aims to provide high-quality higher education through open and distance learning. Our guiding principle, 'access and quality define equity', shapes our approach to education. We are committed to maintaining the highest standards in our academic offerings. The University proudly bears the name of Sreenarayanaguru, a prominent Renaissance thinker of modern India. His philosophy of social reform and cultural empowerment serves as a constant reminder of our dedication to excellence in all our academic pursuits.

The multi-disciplinary course "Legal Literacy" has been designed to provide a comprehensive understanding of the legal system from both theoretical and practical perspectives. We have crafted this course to blend foundational legal concepts with practical applications, covering various aspects of rights, duties, laws, and their implications in everyday life. This course will equip you with the knowledge and skills needed to navigate legal challenges effectively, understand the significance of laws in shaping society, and promote legal awareness for responsible citizenship.

Our teaching methodology combines three key elements: Self Learning Material, Classroom Counselling, and Virtual modes. This blended approach aims to provide a rich and engaging learning experience, overcoming the limitations often associated with distance education. We are confident that this programme will enhance your understanding of historical tourism, preparing you for various career opportunities in the tourism and heritage sectors.

Our learner support services are always available to address any concerns you may have during your time with us. We encourage you to reach out with any questions or feedback regarding the programme.

We wish you success in your academic journey with Sreenarayanaguru Open University.

Best regards,



Dr. Jagathy Raj V.P.
Vice Chancellor

01-10-2024

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**BLOCK
01**

**Fundamentals of
Legal Literacy in
India**

Unit 1

Constitution - Fundamental Rights

Learning Outcomes

After the successful completion of the unit, the learner will be able to:

- ◇ Explain the significance of Fundamental Rights in the Indian Constitution;
- ◇ Identify and explain the six Fundamental Rights provided under Articles 12 to 35;
- ◇ Examine the limitations and qualifications imposed on these rights;
- ◇ Explain the criticisms and significance of Fundamental Rights; and
- ◇ Apply knowledge of Fundamental Rights in legal and civic contexts.

Prerequisite

In 1973, a case involving a humble seer from Kerala, Kesavananda Bharati, forever changed the course of Indian constitutional law. Kesavananda Bharati was the head of a small Hindu monastery in the state of Kerala. His monastery's lands were threatened by government actions under land reform laws. As a religious leader, he wasn't a politician or an activist, but when his land was about to be taken over by the government, he decided to fight for his rights in the Supreme Court of India.

What started as a local issue quickly escalated into one of the most important constitutional battles in Indian history. This case questioned whether the government had unlimited power to amend the Constitution, even if that meant taking away fundamental rights like the right to property or altering the structure of democracy itself. The Kesavananda Bharati case wasn't just about land; it was about the very essence of the Indian Constitution and whether there were any limits to the government's power.

The Supreme Court, in a landmark judgment, ruled that while Parliament had the power to amend the Constitution, it could not alter its "basic structure." Fundamental Rights, such as the right to equality, freedom of speech, and

protection from arbitrary arrest, formed part of this unchangeable core. The Court's decision safeguarded individual rights and ensured that democracy could not be undermined, even by the government itself.

This case highlighted the immense power and protection that Fundamental Rights offer to every Indian, no matter their social or economic standing. Imagine a world where the government could take away your home, your freedom to speak, or even your right to a fair trial—without any safeguards. The Kesavananda Bharati case stands as a reminder of why the Fundamental Rights enshrined in the Indian Constitution are not just theoretical ideas but crucial safeguards that protect each citizen's dignity and liberty.

Through the study of these rights, you are exploring the very foundation of India's democracy, ensuring that the power of the state is always balanced with the rights of its citizens. This case—and many like it—illustrates how the Constitution is a living document that protects the most vulnerable from injustice and ensures that no authority can take away the freedoms that define us as a democratic nation.

When you read about the Fundamental Rights in the Constitution, remember the Kesavananda Bharati case and how one man's fight for his property became a defining moment for the protection of rights in India. This unit is not just about understanding laws; it's about understanding the core values that keep India a free and democratic nation.

This version uses the real-life case of Kesavananda Bharati to illustrate the importance of Fundamental Rights and how they safeguard democracy. Let me know if this aligns with your expectations or if you'd like further adjustments!

Keywords

Constitution, Fundamental Rights, Equality, Liberty, Justice, Democracy, Protection, Restrictions, Amendment.

Discussion

Constitution-Fundamental Rights

Fundamental Rights refer to a set of essential liberties and entitlements guaranteed to every citizen by the constitution of a country. These rights serve as the bedrock of individual freedom, protecting citizens from arbitrary state actions and ensuring



basic human rights and freedoms. They are integral to upholding democracy, justice, and equality within a nation. They prevent the establishment of an authoritarian and despotic rule in the country. In short, they aim to establish ‘a government of laws and not of men’.

Fundamental Rights, as one of the most significant features of the Indian Constitution, form the cornerstone of Indian democracy. These rights are crucial for fostering justice, equality, and fraternity and safeguarding the individual against the arbitrary actions of the state.

The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land. These rights are considered fundamental because they are essential for the all-round development, dignity, and well-being of individuals. It is because of their innumerable significance that they have been described as the Magna Carta of India.

Articles 12 to 35 in Part III of the Indian Constitution provide for six Fundamental Rights. These rights are mentioned below:

- ◇ Right to Equality (Articles 14–18)
- ◇ Right to Freedom (Articles 19–22)
- ◇ Right against Exploitation (Articles 23–24)
- ◇ Right to Freedom of Religion (Articles 25–28)
- ◇ Cultural and Educational Rights (Articles 29–30)
- ◇ Right to Constitutional Remedies (Article 32)

Originally, the Constitution provided for seven Fundamental Rights, including the six rights mentioned above and the Right to Property. However, the 44th Amendment Act, of 1978 removed the Right to Property from the list of Fundamental Rights. So at present, there are only six Fundamental Rights.

Salient Features of Fundamental Right

The features of Fundamental Rights in the Indian Constitution are as follows:

- ◇ Some of these rights are available only to citizens, while others are available to all persons whether citizens, foreigners, or legal persons like corporations, companies, etc.
- ◇ These rights are not absolute but qualified, which means the state can impose reasonable restrictions on them.
- ◇ All these rights are available against the arbitrary action of the state. However, some of them are also available against the actions of private individuals.
- ◇ Some of these rights are negative in character as they place limitations on the authority of the State, while others are positive in nature as they confer certain

privileges on individuals.

- ◇ These rights are enforceable by the courts, allowing citizens to seek legal remedies if their rights are violated.
- ◇ These rights are protected and safeguarded by the Supreme Court. Hence, the aggrieved person can directly proceed to the Supreme Court without necessarily appealing against the judgment of the high courts.
- ◇ These rights are not considered sacrosanct or permanent. They can be amended by the Parliament through a constitutional amendment process, provided such amendments do not violate the basic structure of the Constitution.
- ◇ During a state of national emergency, certain rights can be suspended by the President, except those guaranteed under Articles 20 and 21.
- ◇ The Parliament can restrict or abrogate the application of these rights on the members of the armed forces, para-military forces, police forces, intelligence agencies, and analogous services (Article 33).
- ◇ During the operation of martial law in any area, the application of these rights can be restricted (Article 34).
- ◇ Most of them are directly enforceable, while others can be enforced based on a law specifically made to give effect to them. Only Parliament can enact laws regarding these rights to ensure uniformity across the nation (Article 35).

The actions of all these agencies can be challenged in court for violating the fundamental rights of Indian Constitution.

- ◇ Article 13 provides that a constitutional amendment is not a law and cannot be challenged on the ground of contravention of any of the Fundamental Rights. However, the Supreme Court in *Kesavananda Bharati* case 1973 held that a Constitutional Amendment can be challenged on the ground that it violates a fundamental right.

Right to Equality (Article 14 to Article 18)

These provisions of the Indian Constitution ensure equal treatment and opportunities for all citizens before the law. This includes the following right

Equality before Law and Equal Protection of Laws (Article 14)

This provision ensures that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It prohibits arbitrary discrimination by the state and guarantees equal treatment under similar circumstances.

Prohibition of Discrimination on Certain Grounds (Article 15)

This provision prohibits discrimination on grounds only of religion, race, caste, sex, or place of birth. It ensures that no citizen shall be subjected to any disability, liability, or restriction only on these grounds.



Equality of Opportunity in Public Employment (Article 16)

This provision guarantees equality of opportunity in matters of public employment or appointment. It prohibits discrimination in these matters only on grounds of religion, race, caste, sex, descent, place of birth, or residence.

Abolition of Untouchability (Article 17)

This provision abolishes untouchability and prohibits its practice in any form. It recognizes untouchability as a social evil and ensures the eradication of this discriminatory practice in Indian society.

Abolition of Titles (Article 18)

This provision prohibits the state from conferring titles, except military and academic distinctions, on individuals. It also makes certain provisions regarding accepting any title, present, emolument, or office from or under any foreign State.

Right to Freedom (Article 19 to Article 22)

These provisions of the Indian Constitution safeguard various individual liberties and freedoms. This right includes the following:

Protection of Six Rights (Article 19)

This article guarantees to all citizens the following six rights:

Freedom of Speech and Expression (Article 19(1)(a))

This provision grants citizens the freedom to express their views, opinions, beliefs, and convictions freely through speech, writing, printing, or any other mode. However, reasonable restrictions can be imposed by the state on grounds such as public order, defamation, incitement to offense, etc.

Freedom of Assembly (Article 19(1)(b))

Citizens have the right to assemble peacefully without arms. It includes the right to hold public meetings, demonstrations, and take-out processions, but does not include the right to strike.

Freedom of Association (Article 19(1)(c))

Individuals have the right to form associations, unions, or cooperative societies, enabling them to collectively pursue common interests or goals. However, reasonable restrictions can be imposed in the interest of public order, morality, or the sovereignty and integrity of India.

Freedom of Movement (Article 19(1)(d))

Every citizen has the right to move freely throughout the territory of India. Reasonable restrictions can be imposed on this right on the grounds of the interests of the general public and the protection of the interests of any scheduled tribe.

Freedom of Residence (Article 19(1)(e))

Citizens have the freedom to reside and settle in any part of India, allowing for geographical mobility and the exercise of individual choice in determining one's place of residence.

Freedom of Profession (Article 19(1)(g))

Individuals have the right to practice any profession or to carry on any occupation, trade, or business of their choice, subject to certain restrictions imposed in the interest of the general public.

Originally, the right to acquire, hold, and dispose of property was one of the fundamental rights enshrined in Article 19(1)(f) of the Indian Constitution. However, the 44th Amendment Act of 1978 removed this right from the list of fundamental rights and placed it under Article 300A as a constitutional right.

Protection in Respect of Conviction for Offences (Article 20)

It grants protection against arbitrary and excessive punishment to an accused person, whether a citizen, a foreigner, or a legal person. It contains three provisions in this regard:

Protection against Retrospective Criminal Legislations (Article 20(1))

Any individual can be convicted only for violation of a law in force at the time of commission of the act. Also, the person cannot be subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.

Protection against Double Jeopardy (Article 20(2))

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

Protection against Self-Incrimination (Article 20(3))

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

Protection of Life and Personal Liberty (Article 21)

This provision guarantees that no person shall be deprived of their life or personal



liberty except according to the procedure established by law. This right is available to both citizens and non-citizens and serves as a cornerstone of individual rights.

Right to Education (Article 21A)

This provision guarantees the right to free and compulsory education for all children aged 6 to 14 years. It mandates the State to provide access to quality education, ensuring that every child has the opportunity to receive education without any discrimination. This provision was added by the 86th Constitutional Amendment Act of 2002.

Protection Against Arrest and Detention (Article 22)

This provision ensures certain protections to persons who are arrested or detained, including the right to be informed of the grounds of arrest, the right to consult and be defended by a legal practitioner, and the right to be produced before a magistrate within 24 hours of arrest. It prevents arbitrary detention and ensures fair treatment of individuals in custody.

Right Against Exploitation (Article 23 to Article 24)

These provisions of the Indian Constitution provide certain safeguards to protect people, especially vulnerable sections, from exploitation. Various rights included under this are:

Prohibition of Traffic in Human Beings and Forced Labour (Article 23)

This provision prohibits human trafficking and forced labor. It makes such acts punishable offences.

Prohibition of Employment of Children in Factories (Article 24)

This provision prohibits the employment of children under the age of fourteen in any factory, mine, or in other hazardous activities. However, it does not prohibit their employment in any harmless or innocent work.

Right to Freedom of Religion (Article 25 to 28)

These provisions of the Indian Constitution guarantee individuals the freedom to profess, practice, and propagate the religion of their choice. It ensures secularism by mandating that the state maintain neutrality and treat all religions equally.

Freedom of Conscience and Free Profession, Practice, and Propagation of Religion (Article 25)

This article says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion. The implications of these are:

Freedom of conscience

Individuals have the freedom to shape their relationship with God and other creatures in whatever way they desire.

Right to Profess

To declare one's religious beliefs and faith openly and freely.

Right to Practice

To perform religious worship, rituals, ceremonies, and exhibition of beliefs and ideas.

Right to Propagate

To transmit or disseminate one's religious beliefs to others. However, it does not include a right to convert another person to one's religion.

Freedom to Manage Religious Affairs (Article 26)

This provision states that every religious denomination or its section shall have the following rights-

- ◇ Right to establish and maintain institutions for religious and charitable purposes,
- ◇ Right to manage its affairs in matters of religion,
- ◇ Right to own and acquire movable and immovable property, and
- ◇ Right to administer such property as per law.

Freedom from Taxation for Promotion of a Religion (Article 27)

This provision prohibits the State from levying taxes for promoting or maintaining any particular religion or religious denomination. It upholds the principle of secularism and ensures that the State remains neutral in matters of religion, fostering equality and religious freedom for all citizens.

Freedom from Attending Religious Instruction (Article 28)

It makes provisions for religious instruction in different categories of educational institutions, as described below:

- ◇ Institutions wholly maintained by the State- religious instruction is completely prohibited.
- ◇ Institutions administered by the State but established under any endowment or trust – religious instruction is permitted.



- ◇ Institutions recognized by the State- religious instruction is permitted on a voluntary basis i.e. with the consent of the person.
- ◇ Institutions receiving aid from the State- religious instruction is permitted on a voluntary basis i.e. with the consent of the person.

Cultural and Educational Rights (Article 29 to Article 30)

These provisions of the Indian Constitution safeguard the rights of minorities to conserve their culture, language, and script.

Protection of Interests of Minorities (Article 29)

It provides that:

- ◇ Any section of citizens having a distinct language, script, or culture of its own, shall have the right to conserve the same.
- ◇ No citizen shall be denied admission into any educational institution maintained by the state or receiving aid out-of-state funds on grounds only of religion, race, caste, or language.

As noted by the Supreme Court, the use of the phrase ‘section of citizens’ in the Article means that it applies to minorities as well as the majority. Thus, the scope of this article is not necessarily restricted to minorities only.

Right of Minorities to Establish and Administer Educational Institutions (Article 30)

This provision grants minorities (both religious as well as linguistic) certain rights, such as the right to establish and administer educational institutions of their choice, the right to impart education to their children in its own language, etc.

It is to be noted that the protection under this provision is confined only to minorities (religious or linguistic) and does not extend to any section of citizens (as under Article 29).

Right to Constitutional Remedies (Article 32)

It confers the right to remedies for the enforcement of the fundamental rights in case of violation of the same. It makes the following provisions regarding the same:

- ◇ The right to move the Supreme Court for the enforcement of the Fundamental Rights is guaranteed.
- ◇ The Supreme Court shall have the power to issue directions, orders, or writs for the enforcement of fundamental rights.
- ◇ The Parliament can empower any other court to issue directions, orders, or writs for the enforcement of fundamental rights.

- ◇ The right to move the Supreme Court shall not be suspended except as otherwise provided for by the Constitution.
- These provisions give the right to get the Fundamental Rights protected, making the Fundamental Rights real.

Exceptions

1, Armed Forces (Article 33)

- ◇ This provision empowers Parliament to enact laws that restrict or modify the application of certain fundamental rights for members of the armed forces, police forces, intelligence agencies, or similar forces tasked with the maintenance of public order.
- ◇ The objective of this provision is to ensure the proper discharge of their duties in the interest of national security and the maintenance of discipline among them.

11, Martial Law (Article 34)

- ◇ This provision provides for restrictions on fundamental rights during the operation of martial law in any area within the territory of India.
- ◇ However, the expression 'martial law' has not been defined anywhere in the Constitution.

Legislation to Give Effect to the Provisions of this Part (Article 35)

This provision specifies that Parliament alone has the authority to enact laws aimed at implementing the fundamental rights. Under clause (3) of article 16, This ensures uniformity across India concerning the nature of these rights and penalties for their violation.

Fundamental Rights represent the essence of Indian democracy, serving as the bulwark against arbitrary state actions and ensuring the protection and empowerment of its citizens. Despite criticisms and limitations, these rights stand as a beacon of justice, equality, and freedom, fostering a society where the dignity and rights of every individual are upheld and respected. As India continues its journey towards progress and development, the preservation and effective implementation of these rights remain imperative, guiding the nation towards a future rooted in democracy, inclusivity, and human rights.

Recap

- ◇ Fundamental Rights ensure basic human freedoms.
- ◇ Articles 12 to 35 provide six Fundamental Rights.
- ◇ Rights include equality, freedom, protection against exploitation, religious freedom, cultural and educational rights, and constitutional remedies.
- ◇ Rights are not absolute and can have reasonable restrictions.
- ◇ They can be challenged and protected in court.
- ◇ Criticisms include excessive limitations, lack of social/economic rights, and potential suspension during emergencies.

Objective Questions

1. Which part of the Indian Constitution deals with Fundamental Rights?
2. How many Fundamental Rights are there currently in the Indian Constitution?
3. Which article deals with the Right to Equality?
4. Which Fundamental Right was removed by the 44th Amendment Act?
5. Which article prohibits discrimination on certain grounds?
6. Which article guarantees the Right to Freedom of Religion?there
7. Which article provides the Right to Constitutional Remedies?
8. Which article abolishes untouchability?
9. Children below which age are prohibited to be employed as between under Article 24 ?
10. Which article guarantees the Right to Education?

Answers

1. Part III
2. Six
3. Article 14
4. Right to Property
5. Article 15
6. Article 25
7. Article 32
8. Article 17
9. Fourteen years
10. Article 21A

Assignments

1. Discuss the significance of Fundamental Rights in maintaining democracy in India.
2. Explain the Right to Equality and its various provisions under the Indian Constitution.
3. Analyze the Right to Freedom, including the six freedoms guaranteed under Article 19.
4. Describe the Right against Exploitation and its importance in protecting vulnerable sections of society.
5. Examine the Right to Freedom of Religion and its impact on secularism in India.
6. Evaluate the Cultural and Educational Rights and their role in safeguarding minority interests.
7. Discuss the Right to Constitutional Remedies and its importance in the protection of Fundamental Rights.

8. Critically analyze the criticisms and limitations of Fundamental Rights in the Indian Constitution.
9. Explore the historical context and significance of the removal of the Right to Property as a Fundamental Right.
10. Assess the role of the judiciary in protecting and enforcing Fundamental Rights in India.

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Unit 2

Fundamental Duties and Directive Principles of State Policy

Learning Outcomes

After the successful completion of the unit, the learner will be able to:

- ◇ Explain the historical context and significance of Fundamental Duties and Directive Principles in the Indian Constitution;
- ◇ Identify and explain the original ten Fundamental Duties and the additional eleventh duty;
- ◇ Describe the classification of Directive Principles into Social and Economic, Gandhian, and Liberal-Intellectual Principles;
- ◇ Apply the importance and impact of Directive Principles on governance and social welfare in India; and
- ◇ Describe the challenges and criticisms associated with the implementation of Fundamental Duties and Directive Principles

Prerequisite

Before exploring the Fundamental Duties and Directive Principles, imagine you're building a house. You focus on the essentials first—walls, roof, foundation. These are your Fundamental Rights—the basic structure that protects you. But what makes a house a home? It's the values you bring in, like respect, responsibility, and community. These are like the Fundamental Duties—they remind us of what we owe to our society and environment.

Now, think of a blueprint, guiding how to make the house more beautiful, comfortable, and fair for everyone who lives there. That's what the Directive Principles of State Policy do—they guide the government in shaping policies that lead to equality, social justice, and a better life for all.

Ask yourself: Would a house be complete with just walls and a roof but no sense of responsibility or vision for improvement? Similarly, a country needs more than just rights; it needs values and goals that everyone contributes to.



This foundational understanding sets the stage for a deeper exploration of how these principles are woven into India's constitutional fabric. They not only guide government actions but also remind citizens of their role in building a just, responsible, and forward-looking society. Ready to explore how these ideals come to life in practice?

Keywords

Patriotism, Unity, Integrity, Welfare State, Non-Justiciable, Governance, Civic Responsibility, Social Justice, Cultural Heritage

Discussion

Fundamental Duties of Indian Citizens

Introduction

The Fundamental Duties of Indian citizens, enshrined in the Constitution of India, represent the ethical obligations of citizens to promote a spirit of patriotism and uphold the unity and integrity of the nation. These duties, outlined in Part IVA (Article 51A) of the Indian Constitution, were incorporated by the 42nd Amendment Act in 1976 on the recommendation of the Swaran Singh Committee. While these duties are non-justiciable, meaning they are not enforceable by law, they serve as moral guidelines for responsible citizenship.

Historical Background

The inclusion of Fundamental Duties was inspired by the Constitution of the erstwhile Soviet Union. The framers of the Indian Constitution initially did not incorporate such duties, focusing instead on Fundamental Rights. However, the need for a balance between rights and responsibilities led to the introduction of Fundamental Duties during the Emergency period (1975-1977).

The Ten Original Fundamental Duties

Article 51A originally enumerated ten Fundamental Duties for every Indian citizen:

1. **To Abide by the Constitution and Respect Its Ideals and Institutions, the National Flag, and the National Anthem:**

- This duty emphasizes the importance of respecting the democratic framework and symbols of national identity.
2. **To Cherish and Follow the Noble Ideals Which Inspired Our National Struggle for Freedom:**
 - Citizens are encouraged to uphold the values and principles that guided the Indian independence movement.
 3. **To Uphold and Protect the Sovereignty, Unity, and Integrity of India:**
 - This duty underlines the significance of maintaining the nation's territorial integrity and sovereignty.
 4. **To Defend the Country and Render National Service When Called Upon to Do So:**
 - It signifies the obligation to participate in national defense and contribute to the country's security.
 5. **To Promote Harmony and the Spirit of Common Brotherhood Amongst All the People of India:**
 - This duty advocates for social cohesion and the elimination of discriminatory practices.
 6. **To Value and Preserve the Rich Heritage of Our Composite Culture:**
 - Citizens are urged to appreciate and safeguard India's diverse cultural heritage.
 7. **To Protect and Improve the Natural Environment:**
 - Emphasizes the responsibility to conserve natural resources and maintain ecological balance.
 8. **To Develop the Scientific Temper, Humanism, and the Spirit of Inquiry and Reform:**
 - Encourages a rational and scientific approach to societal issues and the pursuit of knowledge.
 9. **To Safeguard Public Property and Abjure Violence:**
 - Stresses the importance of protecting public assets and maintaining peace.
 10. **To Strive Towards Excellence in All Spheres of Individual and Collective Activity:**
 - Advocates for the pursuit of excellence to enhance national prestige and productivity.

The Eleventh Duty

The 86th Amendment Act of 2002 added an eleventh duty:

11. To Provide Opportunities for Education to His Child or Ward Between the Age of Six and Fourteen Years:

- This duty aligns with the Right to Education Act, emphasizing the role of citizens in ensuring educational opportunities for children.

Conclusion

The Fundamental Duties of Indian citizens, though non-justiciable, play a vital role in fostering a sense of responsibility, patriotism, and ethical behavior among citizens. They complement the Fundamental Rights, creating a balanced framework for democratic governance and societal harmony. To enhance their impact, there is a need for increased awareness, education, and advocacy, ensuring that every citizen recognizes and fulfills their duties towards the nation. Through collective adherence to these duties, India can achieve greater unity, progress, and national pride.

DIRECTIVE PRINCIPLES OF STATE POLICY

Introduction

The Directive Principles of State Policy (DPSP) are guidelines for the framing of laws by the government. These principles are laid down in Part IV of the Indian Constitution, spanning Articles 36 to 51. The Directive Principles aim to create social and economic conditions under which citizens can lead a good life. They embody the concept of a 'welfare state' and direct the state to strive for economic and social democracy. Although these principles are non-justiciable, meaning they are not enforceable by any court, they are fundamental in the governance of the country.

Historical Background

The idea of Directive Principles was borrowed from the Irish Constitution, which itself was influenced by the Spanish Constitution. The framers of the Indian Constitution were inspired by the Irish model and sought to incorporate similar guidelines to ensure that the state promotes the welfare of the people by securing a social order characterized by social, economic, and political justice.

Classification of Directive Principles

The Directive Principles can be broadly classified into three categories:

1. Social and Economic Principles
2. Gandhian Principles

3. Liberal-Intellectual Principles

1. Social and Economic Principles

These principles aim at providing social and economic justice and set the path towards a welfare state. Key Articles include:

- ◇ **Article 38:** The state shall strive to promote the welfare of the people by securing and protecting a social order in which justice, social, economic, and political, shall inform all the institutions of national life.
- ◇ **Article 39:** The state shall, in particular, direct its policy towards securing:
 - Adequate means of livelihood for all citizens.
 - Equal pay for equal work for both men and women.
 - Prevention of concentration of wealth and means of production.
 - Right to adequate means of livelihood.
 - Equal distribution of material resources to subserve the common good.
 - Health and strength of workers, men and women, and the tender age of children are not abused.
 - Opportunities for healthy development of children.
- ◇ **Article 41:** Right to work, to education, and to public assistance in certain cases.
- ◇ **Article 42:** Provision for just and humane conditions of work and maternity relief.
- ◇ **Article 43:** Living wage, etc., for workers.
- ◇ **Article 43A:** Participation of workers in management of industries.
- ◇ **Article 47:** Duty of the state to raise the level of nutrition and the standard of living and to improve public health.

2. Gandhian Principles

These principles are based on the ideals advocated by Mahatma Gandhi, aiming to implement some of his ideas to build a self-sufficient, self-reliant, and inclusive society.

- ◇ **Article 40:** Organization of village panchayats.
- ◇ **Article 43:** Promotion of cottage industries.
- ◇ **Article 46:** Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections.



- ◇ **Article 47:** Prohibition of intoxicating drinks and drugs that are injurious to health.
- ◇ **Article 48:** Organization of agriculture and animal husbandry on modern and scientific lines, including prohibition of slaughter of cows and calves and other milch and draught cattle.

3. Liberal-Intellectual Principles

These principles reflect the ideology of liberalism and humanism. They aim to create a progressive society based on intellectual and ethical values.

- ◇ **Article 44:** Uniform civil code for the citizens.
- ◇ **Article 45:** Provision for free and compulsory education for children until they complete the age of 14 years.
- ◇ **Article 48:** Organization of agriculture and animal husbandry.
- ◇ **Article 48A:** Protection and improvement of environment and safeguarding of forests and wildlife.
- ◇ **Article 49:** Protection of monuments and places and objects of national importance.
- ◇ **Article 50:** Separation of judiciary from the executive.
- ◇ **Article 51:** Promotion of international peace and security.

Importance and Impact

The Directive Principles play a crucial role in shaping the policies and laws of the country. They serve as a beacon for governance and social transformation. Though non-justiciable, they have a significant impact on the legislative and executive actions of the state.

1. **Guiding Principles for Legislation:** The Directive Principles guide the government in law-making. Many progressive laws in India are a result of the inspiration drawn from these principles.
2. **Social Justice and Economic Welfare:** They promote social justice and economic welfare by ensuring that the state provides an equitable distribution of wealth, resources, and opportunities.
3. **Framework for Welfare State:** They establish a framework for the creation of a welfare state by emphasizing on health, education, and social security measures.
4. **Judicial Interpretation:** Though not enforceable by the courts, the Directive

Principles influence judicial interpretation. Courts often rely on these principles to interpret laws and ensure that legislative and executive actions align with the broader goals of social and economic justice.

Key Judicial Pronouncements

Several landmark judgments have highlighted the significance of the Directive Principles in India's constitutional jurisprudence:

- ◇ **Champakam Dorairajan Case (1951):** The Supreme Court held that Fundamental Rights have supremacy over Directive Principles. However, it also stated that while interpreting laws, courts should ensure that they harmonize with the Directive Principles.
- ◇ **Golaknath Case (1967):** The Supreme Court reiterated the supremacy of Fundamental Rights over the Directive Principles.
- ◇ **Kesavananda Bharati Case (1973):** This landmark judgment held that the Constitution's basic structure could not be altered. The Supreme Court emphasized that the Directive Principles and Fundamental Rights should be harmoniously construed, highlighting the importance of Directive Principles.
- ◇ **Minerva Mills Case (1980):** The Supreme Court asserted the importance of balance between Fundamental Rights and Directive Principles, stating that they are complementary to each other.

Legislative Measures Inspired by Directive Principles

Several legislative measures in India have been inspired by the Directive Principles, including:

- ◇ **The Minimum Wages Act, 1948:** To ensure a living wage and fair remuneration for workers.
- ◇ **The Equal Remuneration Act, 1976:** To provide for equal pay for equal work to men and women.
- ◇ **The Panchayati Raj Act, 1992:** To establish a system of decentralized governance and empower local self-governments.
- ◇ **The Right to Education Act, 2009:** To provide free and compulsory education to children aged 6 to 14 years.
- ◇ **The National Food Security Act, 2013:** To provide subsidized quality food grains to approximately two-thirds of India's population.

Challenges and Criticisms

Despite their significance, the Directive Principles face several challenges and criticisms:



- ◇ **Non-Justiciable Nature:** The non-enforceability of these principles means that there is no legal compulsion on the government to implement them.
- ◇ **Implementation Gaps:** There are significant gaps in the implementation of these principles, often due to financial constraints and lack of political will.
- ◇ **Conflict with Fundamental Rights:** At times, there is a perceived conflict between Fundamental Rights and Directive Principles, leading to challenges in balancing the two.

The Directive Principles of State Policy, though non-justiciable, are fundamental to the governance and legal framework of India. They provide a vision for a just, equitable, and inclusive society. While there are challenges in their implementation, the Directive Principles continue to inspire and guide the Indian state towards achieving social and economic democracy. The balance between Fundamental Rights and Directive Principles remains crucial, ensuring that individual freedoms and social welfare go hand in hand. Through continued legislative, executive, and judicial efforts, the ideals enshrined in the Directive Principles can progressively be realized, contributing to the holistic development of the nation.

Recap

- ◇ Introduction to Fundamental Duties and their incorporation into the Constitution by the 42nd Amendment Act.
- ◇ Historical background and inspiration from the Soviet Constitution.
- ◇ Enumeration of the original ten Fundamental Duties.
- ◇ Addition of the eleventh duty by the 86th Amendment Act.
- ◇ Significance and impact of Fundamental Duties on citizenship and national integration.
- ◇ Introduction to Directive Principles of State Policy and their classification.
- ◇ The role of Directive Principles in shaping laws and promoting social and economic justice.
- ◇ Key judicial pronouncements on the relationship between Fundamental Rights and Directive Principles.
- ◇ Challenges in the implementation and awareness of Fundamental Duties and Directive Principles.
- ◇ Comparative analysis with similar provisions in other countries.

Objective Questions

1. In which part of the Indian Constitution are the Fundamental Duties listed?
2. Which amendment incorporated the Fundamental Duties into the Indian Constitution?
3. How many original Fundamental Duties were listed in Article 51A?
4. Which committee recommended the inclusion of Fundamental Duties?
5. Which amendment added the eleventh Fundamental Duty?
6. In which article are the Directive Principles of State Policy mentioned?
7. From which country did India borrow the idea of Directive Principles?
8. What is the nature of Fundamental Duties and Directive Principles?
9. Which article advocates for the protection of the environment?
10. Which case emphasized the balance between Fundamental Rights and Directive Principles?

Answers

1. IVA
2. 42nd
3. Ten
4. Swaran Singh committee
5. 86th
6. 36-51
7. Ireland
8. Non-Justiciable
9. 48A
10. Minerva Mills VS. Union of India

Assignments

1. Discuss the historical background and significance of the incorporation of Fundamental Duties into the Indian Constitution.
2. Explain the ten original Fundamental Duties and their relevance in contemporary India.
3. Analyze the role of the eleventh Fundamental Duty in promoting educational opportunities for children.
4. Describe the classification of Directive Principles and provide examples of each category.
5. Evaluate the importance of Directive Principles in shaping social and economic policies in India.
6. Discuss the challenges and criticisms associated with the implementation of Fundamental Duties.
7. Compare the Directive Principles of State Policy in India with similar provisions in other countries.
8. Analyze the key judicial pronouncements that highlight the relationship between Fundamental Rights and Directive Principles.
9. Discuss the significance of balancing Fundamental Rights and Directive Principles in the Indian Constitution.
10. Evaluate the impact of legislative measures inspired by Directive Principles on Indian society.

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Unit 3

Introduction To Bharatiya Nyaya Sanhita(IPC), Code Of Civil Procedure (CPC), Bharatiya Nagarik Suraksha Sanhita(CRPC), Bharatiya Sakshya Sanhita (Indian Evidence Act)

Learning Outcomes

After the successful completion of the unit, the learner will be able to:

- ◇ Explain the historical evolution and modern reforms of India's criminal justice system, including the transition from the Indian Penal Code to the Bharatiya Nyaya Sanhita;
- ◇ Analyze the key legal changes introduced by the Bharatiya Nyaya Sanhita, particularly in the areas of human rights, digital crime, and national security;
- ◇ Interpret legal terminologies and principles such as sedition, cybercrime, and due process, within the context of India's legal framework;
- ◇ Apply legal knowledge to evaluate contemporary legal issues, including the balance between law enforcement and individual liberties; and
- ◇ Develop a critical understanding of how legal reforms align with both Indian cultural values and global legal standards.

Prerequisite

Before examining the evolution and modern reforms of India's Criminal Justice System, it is important to first consider the historical foundations and the need for ongoing reform. India's criminal justice system largely derives from its colonial past, with key elements such as the Indian Penal Code (IPC) of 1860 and the Criminal Procedure Code (CrPC) of 1973, which continue to guide legal proceedings today. However, these laws were designed to address the needs of a different era and have increasingly come under scrutiny for their relevance in modern India.

The criminal justice system is responsible not only for maintaining law and order but also for ensuring justice in a society that is rapidly evolving. Delays in trials, overcrowding in prisons, issues with police accountability, and the need for

more victim-centric approaches reflect some of the critical challenges the system faces today. These shortcomings have sparked various reform efforts aimed at updating the system to reflect contemporary values of justice, fairness, and human rights.

Modern reforms, such as the establishment of fast-track courts, improvements in police reforms, and the introduction of alternative dispute resolution mechanisms, highlight the ongoing attempts to address systemic inefficiencies. Understanding the historical evolution of these institutions and the need for reform provides a deeper insight into the complexities of ensuring justice in a diverse and dynamic society.

Keywords

Justice, Rights, Reforms, Cybercrime, Terrorism, Criminal law, Sedition, Due Process, Legal System, Transparency.

Discussion

BHARATIYA NYAYA SANHITA

Introduction

The *Bharatiya Nyaya Sanhita* (BNS) is a comprehensive legal code designed to replace the colonial-era Indian Penal Code (IPC) of 1860. Introduced by the Indian government as part of a broader initiative to modernize the country's criminal justice system, the BNS reflects the evolving societal, political, and cultural values of India. Its aim is to create a more just and efficient legal framework that aligns with contemporary realities, emphasizing human rights, swift justice, and a balance between law enforcement and individual liberties.

Historical Background

India's legal system, largely shaped during the British colonial period, has been governed by the IPC, drafted by Lord Macaulay and enacted in 1860. Despite numerous amendments over the decades, the IPC was seen as outdated, created in a vastly different socio-political context. The need for a new legal framework was long felt, especially with India's independence and the advent of the 21st century, which brought about changes in governance, society, and legal theory.



The BNS, thus, emerges as a response to this need for reform. It reflects India's legal tradition, incorporating its rich historical and philosophical roots while being adaptable to modern democratic principles. The introduction of this code marks a significant shift towards decolonization of Indian law, a move toward developing a legal system based on indigenous values and modern jurisprudential needs.

Objectives and Purpose of the Bharatiya Nyaya Sanhita

- ◇ **Justice for All:** Ensures fair and accessible justice for all citizens, eliminating discriminatory provisions.
- ◇ **Swift Legal Proceedings:** Aims to streamline trials, reduce delays, and enhance judicial efficiency for timely justice.
- ◇ **Human Rights Focus:** Emphasizes individual rights, humane treatment of prisoners, and alternatives to incarceration.
- ◇ **Indian Values:** Integrates Indian cultural values while aligning with global legal standards.
- ◇ **Accountability and Transparency:** Promotes accountability in law enforcement, curbing abuses of power and ensuring transparency.

Key Changes and Revisions in the Bharatiya Nyaya Sanhita

The *Bharatiya Nyaya Sanhita* (BNS) introduces several significant changes aimed at modernizing India's criminal justice system. These revisions reflect the need to address emerging forms of crime, ensure better protection of human rights, and make legal processes more efficient and transparent. Key changes include updates to archaic laws, the introduction of new offences, and revised definitions that align with contemporary social and technological realities.

Revised Definitions in the Bharatiya Nyaya Sanhita

- ◇ **Sedition:** The law on sedition has been redefined or replaced to prevent misuse, focusing on direct incitement to violence rather than criticism of the government.
- ◇ **Blasphemy and Moral Offences:** Outdated colonial-era laws on blasphemy and moral policing have been reformed or repealed to respect modern standards of personal liberty.
- ◇ **Rape and Sexual Assault:** Expanded definitions now cover various forms of sexual violence, including provisions for dealing with marital rape and enhanced protection for minors.
- ◇ **Criminal Defamation:** Revised to balance free speech with reputation protection, preventing misuse to suppress legitimate criticism.

- ◇ **Cyber Offences:** Updated definitions now cover crimes like cyberstalking, hacking, and identity theft with clearer legal provisions.

Focus on Human Rights and Individual Freedoms

1. **Fair Trial and Due Process:** Strengthens the right to a fair and speedy trial, with protections against prolonged detentions and guaranteed legal representation.
2. **Protection from Arbitrary Arrests:** Curtails misuse of preventive detention and arbitrary arrests, ensuring arrests are backed by sufficient evidence.
3. **Prisoner Rights:** Reforms improve prison conditions, promote humane treatment, and introduce alternatives like community service for lesser offences.
4. **Victim-Centered Justice:** Focuses on victim rights, streamlining compensation and allowing victim impact statements during sentencing.

New Offences Introduced

1. **Cybercrime:**
 - **Cyberstalking:** Recognized as a serious offence with defined penalties.
 - **Online Harassment and Abuse:** Strengthened protections against online abuse, especially for vulnerable groups.
 - **Hacking and Data Theft:** Expanded laws to address modern cybercrimes like hacking and data theft.
2. **Terrorism:**
 - **Financing of Terrorism:** Enhanced penalties for funding terrorist activities, with stricter financial tracking.
 - **Training and Recruitment:** Punishes recruitment and training for terrorism.
 - **Use of Technology in Terrorism:** Criminalizes the use of technology and social media for promoting terrorism.
3. **Organized Crime:**
 - **Racketeering and Extortion:** Tougher penalties for organized crime, smuggling, and extortion.
 - **Drug Trafficking:** Stricter sentences for large-scale drug trafficking.
 - **Human Trafficking:** Enhanced penalties and victim protections, particularly for women and children.
4. **Mob Lynching:**



- **Anti-Lynching Laws:** Criminalizes mob lynching, holding participants and instigators accountable with severe penalties.
- **Law Enforcement Accountability:** Holds police responsible for failing to prevent or control lynching, deterring negligence.

Important Sections in the Bharatiya Nyaya Sanhita

1. Section 78: Crimes Related to the Digital Domain

- **Cyberstalking and Online Harassment:** Criminalizes cyberstalking and online harassment, particularly targeting vulnerable groups like women and children. Penalties include imprisonment, fines, and digital access restrictions.
- **Hacking and Unauthorized Access:** Categorizes unauthorized access, hacking, and data tampering as serious crimes, with strict penalties like imprisonment and fines.
- **Identity Theft and Fraud:** Addresses digital identity theft and fraud with penalties, including prison terms and financial restitution.
- **Child Exploitation and Cyber Abuse:** Imposes harsher sentences for those involved in child exploitation and digital media abuse, particularly involving minors.

2. Section 124A: Redefinition of Sedition

- **Narrowed Definition:** Limits sedition to acts directly inciting violence or threatening public order and national integrity, safeguarding the right to dissent.
- **Distinction Between Dissent and Sedition:** Clearly separates lawful criticism from sedition, protecting peaceful protests and free speech.
- **Punishments:** Penalties for sedition are now proportional, with severe punishment for violent sedition and more lenient or non-custodial sentences for minor infractions involving speech.

These sections aim to modernize the legal framework, addressing digital crimes and protecting individual freedoms while maintaining national security.

New Sections on Terrorism and National Security

1. Definition of Terrorism:

- Expands the definition to encompass not only violent acts but also financing, recruitment, training, and the use of digital technologies for terrorist activities. Terrorism is defined as acts that create fear, disrupt public safety, and undermine state sovereignty through violence or intimidation.

2. Terrorist Financing (New Section):

- Establishes strict penalties for individuals involved in financing terrorist activities or money laundering. Banks and financial institutions are mandated to report suspicious transactions, with significant fines for non-compliance.

3. Use of Technology in Terrorism (New Section):

- Criminalizes recruitment via online platforms, use of encrypted communication, and social media propaganda. Law enforcement is empowered to monitor and act against online activities promoting terrorism, subject to judicial oversight.

4. Terrorist Training and Recruitment (New Section):

- Enhances penalties for those involved in training, recruiting, or supporting terrorist organizations. It also criminalizes traveling abroad for terrorist training.

5. Punishments for Acts of Terrorism:

- Punishments vary by severity, including life imprisonment and the death penalty for mass casualties. Enhanced interrogation measures for terrorism suspects are introduced under judicial oversight to ensure due process.

National Security Provisions:

1. Espionage and Treason:

- A separate section addresses espionage, treason, and sabotage against the state, imposing severe penalties for actions against national interests.

2. Anti-Radicalization Measures:

- Provisions for anti-radicalization programs focus on rehabilitating individuals influenced by extremist ideologies, particularly among youth, through education and employment alternatives.

3. Prevention of Cross-Border Terrorism:

- Introduces stringent measures to prevent cross-border terrorism, including enhanced border security and penalties for individuals aiding external terrorists.

The Bharatiya Nyaya Sanhita marks a transformative shift in India's criminal justice approach, addressing modern challenges while safeguarding fundamental rights. New provisions on cybercrime under Section 150, and strict measures against terrorism, the BNS aims to establish a balanced legal framework relevant to contemporary India. The focus is on ensuring swift and just justice while protecting national integrity in a rapidly changing global landscape.

Impact on the Indian Criminal Justice System

The *Bharatiya Nyaya Sanhita* (BNS) is poised to have a transformative impact on the Indian criminal justice system. By addressing the gaps in the 1860 *Indian Penal Code* (IPC) and modernizing the legal framework, the BNS aims to enhance judicial efficiency, focus on victim protection, and shift towards a more rehabilitative approach to justice and national security.

Constitutional and Human Rights Concerns

Potential Abuse of Power:

- ◇ Critics argue that the expanded definitions of sedition and terrorism could be misused by authorities to target dissenters, activists, and political opponents, potentially infringing on constitutional rights.

Rights of the Accused:

- ◇ Concerns arise that the BNS could undermine the rights of the accused, with faster trials and specialized courts potentially compromising thorough investigations and fair trial rights.

Impact on Minority Communities:

- ◇ The focus on national security may disproportionately affect minorities, raising concerns about profiling, discrimination, and social divisions.

CODE OF CIVIL PROCEDURE

Introduction

The *Code of Civil Procedure* (CPC) is a crucial legislative framework in India governing the procedure for civil litigation. Established to provide a systematic approach to civil disputes, the CPC outlines the processes that courts must follow to ensure justice is served fairly and efficiently. It plays a pivotal role in the administration of civil justice, balancing the rights of individuals with the need for an orderly legal system.

Overview of the Code of Civil Procedure

The CPC encompasses various key aspects of civil law, ensuring that civil proceedings are conducted in a structured and coherent manner.

- ◇ **Definition and Nature:** The CPC is a procedural law that lays down the rules governing civil litigation in Indian courts. It is designed to ensure that justice is not only done but also seen to be done.
- ◇ **Key Features:**

- **Jurisdiction of Courts:** It delineates the jurisdiction of different courts in civil matters, specifying which court can hear particular cases based on the nature and value of the dispute.
 - **Parties to Civil Proceedings:** The CPC defines the roles of parties in civil litigation, including the plaintiff, defendant, and third-party interveners.
 - **Pleadings and Documents:** It establishes rules regarding the filing of pleadings, including written statements and counterclaims, as well as the requirement for documentary evidence.
 - **Orders and Rules:** The CPC outlines various types of orders, including interim orders and decrees, providing a framework for how civil cases are managed and resolved.
- ◇ **Types of Civil Cases Covered:** The CPC applies to a wide range of civil disputes, including contractual obligations, property disputes, tort claims, and family law matters.

Historical Background and Development

The CPC has evolved significantly since its inception, reflecting changes in society, legal principles, and judicial interpretations.

- ◇ **Pre-Independence Era:** The first CPC was enacted in 1908 during British rule, based largely on British legal principles. It aimed to unify and simplify civil procedures across different jurisdictions in India.
- ◇ **Post-Independence Reforms:** After independence in 1947, the CPC underwent several amendments to address the changing needs of society. Key reforms aimed at expediting civil litigation, reducing delays, and enhancing the accessibility of justice for all citizens.
- ◇ **Major Judicial Interpretations:** Various landmark Supreme Court judgments have shaped the interpretation and application of the CPC, ensuring that it aligns with the principles of natural justice and constitutional mandates.

Objectives and Purpose of the CPC

The CPC serves several objectives to enhance the civil justice system:

1. **Ensure Fairness and Justice:** The CPC guarantees that all parties have a fair opportunity to present their cases, ensuring justice is delivered without bias or undue delay.
2. **Streamline Civil Litigation:** It establishes clear procedures and timelines to reduce complexity and facilitate quicker dispute resolution.
3. **Promote Accessibility and Efficiency:** The CPC encourages a user-friendly approach, making civil litigation more accessible, even for those without legal



representation.

4. **Establish Clear Guidelines for Procedure:** It provides detailed rules regarding the conduct of civil proceedings, ensuring parties understand their rights and obligations.
5. **Facilitate Speedy Resolution of Disputes:** Provisions for expedited processes, such as summary trials and interim relief, aim to resolve disputes more efficiently.

Definitions and Interpretation

The CPC provides definitions for key terms to ensure clarity and uniform interpretation throughout the code. Important definitions include:

- ◇ **“Court”:** Refers to a civil court in India established under the authority of law.
- ◇ **“Decree”:** A formal expression of the adjudication of a civil court, which conclusively determines the rights of the parties regarding all or any of the matters in controversy.
- ◇ **“Order”:** A formal expression of a decision of a civil court, which does not amount to a decree.
- ◇ **“Plaintiff” and “Defendant”:** The terms refer to the parties involved in a civil suit, where the plaintiff initiates the action, and the defendant responds.
- ◇ **“Party”:** Any person who appears in a civil proceeding, either as a plaintiff or defendant.

These definitions establish a foundational understanding for interpreting the various provisions of the CPC, aiding in the application of the law.

Suits in General

1. Jurisdiction of Civil Courts

- ◇ **Definition:** Jurisdiction refers to a court’s authority to hear and decide cases, defined by the CPC.
- ◇ **Types of Jurisdiction:**
 - **Territorial Jurisdiction:** Based on geographical location, influenced by parties’ residence or the cause of action.
 - **Subject Matter Jurisdiction:** Pertains to specific types of cases a court can hear, like contracts or property disputes.
 - **Pecuniary Jurisdiction:** Relates to monetary limits for adjudicating cases; lower courts handle smaller claims, while higher courts deal with significant claims.

- ◇ **Transfer of Cases:** Provisions exist for transferring cases between courts to ensure appropriate jurisdiction.

2. Institution of Suits

- ◇ **How Suits are Instituted:** A suit is initiated by filing a plaint, which outlines the facts, legal grounds, and relief sought.
- ◇ **Filing Fees and Requirements:** Payment of court fees is typically required, varying by claim nature and value.
- ◇ **Service of Notice:** Upon filing, the court notifies the defendant(s) to ensure they can respond.

3. Summons and Appearance

- ◇ **Issuance of Summons:** A summons is issued to the defendant, compelling their appearance on a specified date.
- ◇ **Mode of Service:** Summons can be served personally, via substituted service, or through publication if the defendant cannot be located.
- ◇ **Appearance of Parties:** The defendant must appear as specified; failure to do so may result in a default judgment.

4. Pleadings: General Rules

- ◇ **Definition of Pleadings:** Formal written statements outlining claims, defenses, and issues.
- ◇ **Types of Pleadings:**
 - **Plaint:** Filed by the plaintiff, detailing the case facts and relief sought.
 - **Written Statement:** Defendant's response to the plaint.
- ◇ **General Rules for Pleadings:** Should be concise, clear, and verified for accuracy.
- ◇ **Amendment of Pleadings:** Amendments are allowed to correct errors or add new facts, subject to court approval.

Special Proceedings

1. Suits by or Against the Government

- **Definition:** Civil actions where the government is either the plaintiff or defendant.
- **Legal Representation:** The government is represented by a public officer or advocate; specific service rules apply.
- **Sovereign Immunity:** Modified to allow the government to be sued in civil matters under specific provisions.



- **Procedure:** Requires adherence to notice requirements, such as prior notice under Section 80 of the CPC.

2. Suits Relating to Public Trusts

- **Definition:** Involves management of public trusts established for community benefit.
- **Parties:** Include trustees, beneficiaries, and interested parties.
- **Jurisdiction:** Heard by designated courts with special laws governing trust administration.
- **Objectives:** Ensure trust administration aligns with its terms, maintaining transparency and accountability.

3. Interpleader Suits

- **Definition:** Arise when multiple parties claim the same property, and the stakeholder seeks the court's help to determine rightful ownership.
- **Purpose:** Prevents exposure to multiple liabilities; the court resolves claims and establishes clear ownership rights.
- **Procedure:** The stakeholder files an application; the court decides based on presented evidence and arguments.
- **Benefits:** Simplifies litigation by resolving claims in a single action, enhancing judicial efficiency.

4. Summary Suits

- **Definition:** Designed for quick resolution of straightforward cases without extensive evidence.
- **Applicability:** Suitable for recovering specific sums based on negotiable instruments or contracts.
- **Procedure:** Expedited filing process; defendants must respond quickly.
- **Court's Discretion:** The court may decide the case based on pleadings and documents, bypassing full trials for faster judgments.
- **Limitations:** Not suitable for complex cases; courts may dismiss if regular proceedings are warranted.

Alternative Dispute Resolution (ADR)

ADR includes various methods for resolving disputes outside traditional court litigation, aiming for more efficient, cost-effective, and flexible solutions. Common forms of ADR are mediation, conciliation, arbitration, and Lok Adalat.

1. Mediation and Conciliation

- ◇ **Mediation:** A voluntary process where a neutral mediator helps parties reach a mutually acceptable resolution.

- ◆ **Characteristics:**

- **Facilitative Role:** The mediator facilitates communication without imposing a solution.
- **Confidentiality:** Sessions are generally confidential, fostering open dialogue.
- **Informality:** The process is less formal than court proceedings.

- ◇ **Conciliation:** Similar to mediation but involves a more active role for the conciliator, who may suggest solutions.

- ◆ **Characteristics:**

- **Advisory Role:** Provides guidance and recommendations.
- **Resolution Focused:** Aims for amicable resolution and restoration of relationships.

- ◇ **Legal Framework:** Both processes are encouraged under the Code of Civil Procedure and the Arbitration and Conciliation Act, 1996.

2. Arbitration Provisions

- ◇ **Definition:** A formal process where parties submit their conflict to arbitrators for a binding decision.

- ◇ **Key Features:**

- **Binding Decision:** Enforceable like a court judgment.
- **Choice of Arbitrator:** Parties select arbitrators based on expertise.
- **Flexibility:** Tailored to suit party needs, including rules and timelines.

- ◇ **Arbitration Process:**

- **Initiation:** Starts with a request for arbitration.
- **Hearing:** Both parties present evidence and arguments.
- **Award:** The arbitrator issues an enforceable award.

- ◇ **Legal Framework:** Governed by the Arbitration and Conciliation Act, 1996, which includes provisions for international arbitration and grounds for challenging awards.

3. Lok Adalat

◇ **Definition:** Informal forums that facilitate quick and amicable dispute resolution, meaning “people’s court.”

◇ **Key Features:**

- **Informal Setting:** Encourages compromise without formal litigation complexities.
- **No Court Fees:** Accessible to all without fees.
- **Quick Resolution:** Cases are resolved faster than in traditional courts.

◇ **Process:**

- **Referral:** Cases can be referred by courts or mutual consent.
- **Hearing:** Conducted by a panel of legal experts and community representatives.
- **Settlement:** Agreements are recorded with the same status as court decrees.

◇ **Legal Framework:** Governed by the Legal Services Authorities Act, 1987, establishing the framework for Lok Adalats in India.

BHARATIYA NAGARIK SURAKSHA SANHITA

Basic Principles of Justice

Justice is a fundamental concept that ensures fairness, equity, and impartiality within the legal system. Key principles include:

- ◇ **Fairness:** All individuals must be treated equally and justly under the law, without favoritism or bias.
- ◇ **Equality:** Equal access to opportunities, protection, and legal resources must be provided to all citizens to foster a just society.
- ◇ **Proportionality:** The severity of punishments should be commensurate with the gravity of the crime committed, ensuring that justice is served without excessive penalties.
- ◇ **Due Process:** Legal proceedings must adhere to established rules and procedures, safeguarding individuals’ rights and ensuring that justice is administered fairly.
- ◇ **Restorative Justice:** This approach emphasizes repairing harm caused by criminal behavior through reconciliation and dialogue between offenders, victims, and the community, focusing on healing rather than punishment.

Introduction and Scope of Bharatiya Nagarik Suraksha Sanhita (BNSS)

The **Bharatiya Nagarika Suraksha Sanhita (BNSS)** is a comprehensive legislative framework aimed at enhancing public safety and maintaining law and order in India. It seeks to modernize and replace certain existing laws, providing a proactive approach to address a wide array of criminal activities, security concerns, and the protection of citizen rights. With the evolving nature of crime in the digital age, the BNSS aims to ensure that legal structures are robust and adaptable, fostering transparency and accountability in law enforcement.

Scope of BNSS

The scope of the BNSS encompasses all individuals and legal entities within India, covering a broad spectrum of areas:

- ◇ **Criminal Offences:** The BNSS addresses a variety of criminal activities, from traditional crimes (like theft and assault) to emerging threats (including cybercrime and economic offences).
- ◇ **Law Enforcement:** It provides guidelines regarding the powers, duties, and responsibilities of police and law enforcement agencies to effectively maintain public order.
- ◇ **Judicial Procedures:** The BNSS outlines detailed provisions for investigation, arrest, trial, and sentencing, ensuring that judicial processes are standardized and fair.
- ◇ **Citizen Protection:** The framework emphasizes the respect for citizens' rights throughout the criminal process, ensuring fair treatment and due process.

Purpose and Applicability

Purpose

The primary goals of the BNSS are:

1. **Protection of citizens:** To safeguard individuals from criminal activities and ensure justice for victims.
2. **Efficient Law Enforcement:** To enhance the capabilities of law enforcement agencies in effectively combating crime.
3. **Fair Trial and Justice:** To ensure that legal processes are transparent, fair, and timely while protecting the rights of both the accused and victims.
4. **Technological Adaptation:** To address new types of crimes, particularly in the



digital realm, by incorporating modern technological tools in crime prevention and investigation.

5. **Simplification of Procedures:** To reduce legal complexities and delays within the judicial process, making it more accessible to all.

Applicability

The BNSS is applicable to all individuals and entities operating within the territory of India:

- ◇ **Indian Citizens:** The provisions of the BNSS apply universally to all citizens, regardless of their geographical location within India.
- ◇ **Foreign Nationals:** Foreign nationals committing offences on Indian soil can be prosecuted under the BNSS.
- ◇ **Corporate and Legal Entities:** The BNSS also applies to businesses, organizations, and corporate bodies that may engage in criminal activities, such as corporate fraud or money laundering.
- ◇ **Extra jurisdictional Offences:** The law may apply to offences committed outside Indian territory if they involve Indian nationals or threaten the security of India.

Definitions and General Provisions

Definitions

The BNSS likely provides a detailed glossary of terms to clarify the scope and interpretation of its provisions. Some of the key definitions could include:

- ◇ **Offence:** Any act or omission that is punishable under the BNSS.
- ◇ **Public Servant:** Any government official or employee who is responsible for the enforcement of laws or protection of the public.
- ◇ **Investigation:** The process by which law enforcement agencies collect evidence and build a case against the accused.
- ◇ **Accused:** An individual or entity charged with committing an offence under the BNSS.
- ◇ **Arrest:** The act of detaining an individual suspected of committing a crime in accordance with the legal process.
- ◇ **Evidence:** Any material or testimony presented to prove or disprove a fact in a criminal case.

General Provisions

The general provisions of the BNSS lay down fundamental rules and guidelines for how the law should be interpreted and applied. These provisions ensure consistency and clarity in legal proceedings. Common general provisions may include:

1. **Territorial Jurisdiction:** Specifies the areas where the law applies and outlines the jurisdiction of courts to hear cases.
2. **Presumption of Innocence:** Establishes that every accused person is presumed innocent until proven guilty by a competent court.
3. **Right to Legal Representation:** Ensures that every individual accused of a crime has the right to legal counsel during the investigation and trial.
4. **Double Jeopardy:** A person cannot be prosecuted for the same offence more than once.
5. **Limitation of Actions:** Specifies the time limits within which certain offences must be prosecuted.
6. **Powers of Law Enforcement:** Outlines the rights and powers of police and investigating agencies in matters such as arrest, search, and seizure.

Offences Against National Security

1. Sedition

- ◇ **Definition:** Sedition refers to acts or speech that incite rebellion against the government.
- ◇ **Examples:** This includes writings, speeches, or other forms of expression that promote disaffection towards the state. Engaging in such acts can lead to severe legal repercussions, as they threaten the stability and authority of the government.

2. Espionage

- ◇ **Definition:** Espionage involves the unlawful gathering, transmission, or sharing of sensitive national security information, particularly with foreign governments or entities that pose a threat to national interests.
- ◇ **Implications:** Such activities can undermine national security and have severe consequences for the safety and integrity of the state.

3. Treason

- ◇ **Definition:** Treason includes acts that constitute a betrayal of the country. This can involve waging war against India or providing aid to enemies during times of conflict.
- ◇ **Legal Consequences:** Treason is considered one of the most serious offences against national security, carrying harsh penalties, including life imprisonment or the death penalty in extreme cases.

Acts Undermining Sovereignty

1. Secessionist Movements



- ◇ **Definition:** Engaging in activities that advocate for the separation of a region from India, challenging the country's sovereignty and unity.
- ◇ **Consequences:** Such movements are considered detrimental to the nation's integrity and may attract legal action under the BNSS.

2. Insurgency and Rebellion

- ◇ **Definition:** Armed or violent attempts to undermine government authority, challenge territorial integrity, or disrupt national stability.
- ◇ **Consequences:** These acts are treated as serious threats to national security and public order, leading to stringent measures by law enforcement agencies.

Public Order and Tranquility

1. Unlawful Assembly and Rioting

◇ Unlawful Assembly:

- **Definition:** A gathering of five or more individuals with the intent to disturb the peace or commit illegal acts. Law enforcement authorities are empowered to disperse such gatherings to maintain public order.

◇ Rioting:

- **Definition:** When an unlawful assembly turns violent and uses force, it is classified as rioting, which is a punishable offence under the BNSS.

2. Public Nuisance and Disturbances

◇ Public Nuisance:

- **Definition:** Acts that cause harm, danger, or discomfort to the public, such as obstructing public pathways, creating environmental hazards, or disrupting essential public services.

◇ Disturbances:

- **Definition:** Engaging in behaviors that create loud disturbances, disorderly conduct, or actions that disrupt public tranquility can be prosecuted under the BNSS.

Offences Against Human Life and Body

1. Murder, Culpable Homicide, and Assault

- ◇ **Murder:** Intentional killing with premeditation, punishable by death or life imprisonment.
- ◇ **Culpable Homicide:** Unintentional killing without premeditation, with knowledge that the act is likely to cause death.
- ◇ **Assault:** Physical attack or threatening behavior that causes harm or creates fear of imminent harm.

2. Kidnapping, Abduction, and Sexual Offences

- ◇ **Kidnapping:** Forcibly taking or luring someone away from their legal guardian, especially minors.
- ◇ **Abduction:** Taking someone away from their lawful position using force or deceit.
- ◇ **Sexual Offences:** Includes rape, molestation, and sexual harassment, with stringent punishments for crimes against women and children.

Crimes Against Property

1. Theft, Robbery, and Extortion

- ◇ **Theft:** Taking someone's property without consent with the intent to permanently deprive them.
- ◇ **Robbery:** Theft accompanied by violence or the threat of violence.
- ◇ **Extortion:** Forcing someone to give up property or money through coercion or intimidation.

2. Criminal Trespass and Damage to Property

- ◇ **Criminal Trespass:** Entering another's property without permission with intent to commit an offence.
- ◇ **Damage to Property:** Intentionally damaging someone's property through acts like vandalism or arson.

Cyber and Digital Crimes

1. Identity Theft, Hacking, and Fraud

- ◇ **Identity Theft:** Stealing personal information to impersonate someone or commit fraud.
- ◇ **Hacking:** Unauthorized access to computer systems or networks, particularly sensitive information.
- ◇ **Fraud:** Deceptive practices aimed at unlawfully obtaining financial gain or personal information.

2. Cyberbullying and Digital Harassment

- ◇ **Cyberbullying:** Online harassment targeting vulnerable individuals, especially children and women.
- ◇ **Digital Harassment:** Threats, stalking, or defamatory content online that leads to distress or harm.

Women and Child Protection

1. Domestic Violence and Sexual Harassment



Domestic Violence: Physical, emotional, or psychological abuse within the

household, including spousal abuse, covered under the Domestic Violence Act.

- ◇ **Sexual Harassment:** Unwanted sexual advances or conduct, particularly in workplaces, educational settings, or public spaces.

2. Child Abuse and Juvenile Justice

- ◇ **Child Abuse:** Physical, emotional, or sexual abuse of children, covered under the Protection of Children from Sexual Offences (POCSO) Act.
- ◇ **Juvenile Justice:** Legal provisions for handling crimes committed by minors, focusing on reform and rehabilitation rather than punishment.

Powers of Law Enforcement

Arrest, Search, and Seizure

- ◇ **Arrest:** Law enforcement officials are granted the power to arrest individuals based on suspicion of committing a crime, with procedural safeguards in place.
- ◇ **Search and Seizure:** Authorities can search premises or individuals and seize property related to criminal activities, but they must follow legal procedures, such as obtaining warrants in certain situations.

Police Responsibilities and Limitations

- ◇ **Responsibilities:** The police are tasked with maintaining law and order, preventing crime, and protecting citizens. Their duties include investigations, arrests, and ensuring public safety.
- ◇ **Limitations:** Law enforcement agencies are bound by rules that prevent abuse of power, such as prohibitions on unlawful detention, torture, or excessive use of force. The BNSS may emphasize accountability mechanisms to ensure police conduct is in line with human rights.

This structure of the **BNSS** aims to comprehensively address various aspects of criminal law, public safety, and citizen protection. It ensures that the law is responsive to modern challenges, such as cybercrimes and digital harassment, while maintaining robust protections for human rights and individual freedoms.

Judicial Process and Fair Trials

1. Rights of the Accused and Legal Aid

Rights of the Accused: The BNSS guarantees certain rights to individuals accused of crimes to ensure fairness and protect against wrongful convictions:

- ◇ **Presumption of Innocence:** Individuals are presumed innocent until proven guilty.
- ◇ **Right to Silence:** Accused persons cannot be compelled to testify against themselves.

- ◇ **Right to Legal Representation:** Accused have the right to a lawyer, and if they cannot afford one, the court provides legal aid.
- ◇ **Right to Be Informed of Charges:** Accused must be promptly informed of the charges against them in understandable terms.
- ◇ **Right to a Fair and Speedy Trial:** Trials must be conducted without undue delay.
- ◇ **Right to Appeal:** Convicted individuals can appeal the decision in a higher court.

Legal Aid: Legal aid ensures access to justice for those unable to afford legal representation:

- ◇ **Free Legal Aid Services:** Under the Legal Services Authorities Act, 1987, individuals, especially from marginalized communities, can receive free legal representation.
- ◇ **Duty of the Court:** Courts must inform defendants of their right to legal aid and appoint public defenders when necessary.

2. Court Procedures and Sentencing

Court Procedures: The BNSS follows standard criminal procedures outlined in the Code of Criminal Procedure (CRPC):

- ◇ **Investigation and Charges:** After a crime is reported, police investigate and file a charge sheet if sufficient evidence is found.
- ◇ **Pre-Trial Procedures:**
 - **Bail:** Accused can apply for bail, which is granted based on the nature of the crime and flight risk.
 - **Framing of Charges:** The court frames formal charges against the accused.
- ◇ **Trial:**
 - **Presentation of Evidence:** Both sides present evidence, including witness testimonies and documents.
 - **Examination and Cross-Examination:** Witnesses are examined and cross-examined to test the reliability of their statements.
 - **Arguments:** Prosecution and defense present their arguments based on the evidence.

Fair Trial Standards:

- ◇ **Impartial Judge:** Judges must act impartially.
- ◇ **Public Trial:** Trials are generally open to the public, with exceptions for sensitive cases.



- ◇ **Right to Confront Witnesses:** The accused can confront and cross-examine witnesses against them.
- ◇ **Judgment:** The judge delivers a verdict based on the trial evidence. If guilty, sentencing follows.

Sentencing: After conviction, the court determines the appropriate punishment:

- ◇ **Types of Sentences:**
 - **Imprisonment:** Ranges from months to life imprisonment; in serious cases, the death penalty may be imposed.
 - **Fines:** Monetary penalties can be standalone or combined with imprisonment.
 - **Community Service or Probation:** Alternatives to incarceration may be imposed for minor offences.

Appeals and Review

- ◇ **Right to Appeal:** Both defence and prosecution can appeal a verdict or sentence to a higher court.
- ◇ **Judicial Review:** Convicted individuals may seek a judicial review to ensure no miscarriage of justice occurred.

Penalties and Sentencing Guidelines of Bharatiya Nagarika Suraksha Sanhita (BNSS)

The **Bharatiya Nagarik Suraksha Sanhita (BNSS)** establishes a comprehensive framework for penalties and sentencing for criminal offences, focusing on proportionality and fairness.

THE BHARATIYA SAKSHYA ADHINIYAM, 2023

Bharatiya Sakshya Adhinyam (Indian Evidence Act) outlines the framework for the law of evidence in India. The preliminary part includes sections on its title, extent, commencement, and definitions, which provide the foundation for understanding and interpreting the act. Below is a breakdown of these sections:

Short Title, Extent, and Commencement

1. Short Title

- ◇ The act is known as the “**Bharatiya Sakshya Adhinyam**,” commonly referred to as the **Indian Evidence Act**.

2. Extent

- ◇ The act extends to the **whole of India**, with certain exceptions or modifications that may be applicable to specific regions or subjects as specified by law.

3. Commencement

- ◇ The act specifies its commencement date. The original **Indian Evidence Act of 1872** was stated to commence from **September 1, 1872**. For any amendments

or revisions made to the act, specific commencement dates will be provided in those enactments.

Interpretation Clause (Definitions)

This section defines key terms essential for understanding the scope and application of the Bharatiya Sakshya Adhiniyam :

- ◇ **Court:** Refers to all judges and magistrates, as well as any others legally authorized to take evidence.
- ◇ **Fact:** Includes anything capable of being perceived by the senses, including states of things or relations, as well as any mental conditions of which a person is conscious.
- ◇ **Relevant:** Describes the relationship between two facts in a way that either proves or disproves one another.
- ◇ **Evidence:** Encompasses all statements that the court permits or requires from witnesses regarding matters of fact under inquiry (oral evidence), along with all documents produced for court inspection (documentary evidence).
- ◇ **Document:** Any matter expressed or described upon any substance using letters, figures, or marks intended for recording that matter.
- ◇ **Proved, Disproved, and Not Proved:** These terms relate to how facts are established, refuted, or left unproven in court based on the evidence presented.
- ◇ **May Presume, Shall Presume, and Conclusive Proof:** These terms indicate how certain facts may be presumed in the absence of contrary evidence, while others are regarded as conclusively proven based on legal stipulations.

Relevancy of Facts

1. Evidence may be given of facts in issue and relevant facts

- ◇ **Facts in Issue:** These are facts that directly relate to the matters being contested in a trial or legal inquiry. Evidence can be provided to prove or disprove these facts. Facts in issue are those that need to be determined by the court to reach a conclusion in the case. These include facts that are explicitly disputed between the parties.
- ◇ **Relevant Facts:** Relevant facts are those connected to the facts in issue in such a way that they help prove or disprove the facts in issue. These are the facts that bear a logical or legal relationship to the facts in issue. Relevant facts may not be directly in dispute but are important because they have a bearing on the case.

2. Relevancy of facts forming part of the same transaction (Section 6)

- ◇ This is also known as the **doctrine of res gestae**. The facts which are part of the same transaction as the facts in issue are considered relevant, regardless of whether they occurred before or after the fact in question. These facts are admissible in court because they help provide a complete picture of the event or



transaction in question.

- ◇ **Same Transaction:** The term “transaction” refers to a series of events that are so closely connected in time, place, or purpose that they can be considered part of the same chain of events. These may include acts, declarations, or circumstances surrounding the principal event.
- ◇ The relevance here stems from the fact that these accompanying or related facts help explain or clarify the primary fact in issue. For instance, in cases of accidents, statements or actions made by witnesses immediately after the accident could be considered relevant as they form part of the same transaction.

ADMISSIONS

Definition and Significance (Section 17)

1. Admission Defined:

- ◇ An admission is any statement, whether oral or written, suggesting an inference about a fact in issue or a **relevant fact**. It can be made by a party to the proceedings or someone connected to that party.
- ◇ Admissions are **not conclusive proof** but may operate as a **waiver of proof**, indicating that a fact admitted by a party does not need further evidence.
- ◇ Admissions can be made in several ways:
 - **Orally:** Spoken statements.
 - **In writing:** Documents, letters, signed statements.
 - **By conduct:** Actions that imply acceptance of a fact.

Example: If a person admits in conversation or in writing that they owe money to another person, this admission can be used as evidence in a related legal proceeding.

Admissions by Parties to Proceedings or Their Representatives (Sections 18-20)

1. Section 18: Admissions by Parties to Proceedings:

- ◇ Admissions can be made by:
 - **The parties to the proceeding:** Any statement made that suggests an inference about a fact in issue.
 - **An authorized agent:** Statements made by an agent within the scope of their authority are treated as admissions of the party.
 - **Persons with a proprietary or pecuniary interest:** Individuals who share an interest in the subject matter can make admissions relevant to the case.
 - **Persons from whom parties derive their interest:** Statements made

by predecessors or those in possession of disputed property can be relevant.

2. Section 19: Admissions by Persons Whose Position Must Be Proved as Against Party to Suit:

- ◇ Admissions can also be made by a third party if their position is in question in the legal dispute. For example, if a third party claims ownership of property for a party, their admissions regarding that ownership can be relevant.

3. Section 20: Admissions by Persons Expressly Referred to by Party to Suit:

- ◇ If a party refers to a third person as a knowledgeable source regarding a matter in dispute, any statement made by that third person can be treated as an admission by the party. For instance, if a party cites an accountant as an expert on financial matters, that accountant's statements can be admissible as an admission.

Key Points about Admissions

- ◇ **Not Conclusive Proof:** Admissions can be retracted or explained, and their weight is determined by the court based on surrounding circumstances.
- ◇ **Importance as Evidence:** Admissions are significant pieces of evidence, serving as shortcuts to proving facts, but they can also be challenged.
- ◇ **Who Can Make Admissions:** Not only parties but also their representatives, agents, and those with an interest in the case can make admissible admissions.

Examples:

- ◇ **Party Admission:** In a contract dispute, if one party admits in an email that they did not fulfill a specific part of the contract, this can serve as evidence of non-compliance.
- ◇ **Admission by Agent:** If an authorized employee of a company admits that the company was negligent in a transaction, this can be treated as an admission by the company itself.

Admissions are powerful tools in legal proceedings, significantly influencing the direction of a case by reducing the need for additional proof regarding specific facts. Understanding their definition, types, and implications is crucial for effective legal practice.

Confessions in Criminal Proceedings

Confessions can be critical in establishing guilt in criminal cases, but their admissibility is strictly regulated to protect the rights of the accused and maintain the integrity of the judicial process.

Key Legal Principles

1. Voluntariness of Confessions

- ◇ **Definition:** For a confession to be admissible, it must be made voluntarily, free from coercion, undue influence, or improper pressure.
- ◇ **Exclusion of Coerced Confessions:** Any confession extracted through threats, inducements, or coercion is deemed inadmissible. The courts prioritize the voluntary nature of the confession to ensure that it reflects the true will of the accused.

2. Inducement

- ◇ **Definition:** Confessions obtained by promising benefits (e.g., lighter sentences or dropped charges) are considered unreliable.
- ◇ **Court Perspective:** Such confessions are viewed as influenced by improper motivation, which undermines their integrity and can lead to exclusion from evidence.

3. Threat

- ◇ **Definition:** Confessions made under intimidation or the threat of harm (physical or psychological) are inadmissible.
- ◇ **Reliability Issues:** Confessions obtained under duress do not reflect the accused's free will and are therefore not trustworthy.

4. Promise

- ◇ **Definition:** Promises of favorable treatment (e.g., reduced charges or punishments) made by law enforcement to induce a confession render it unreliable.
- ◇ **Impact on Admission of Guilt:** If an accused confesses in hopes of receiving a benefit from the promise rather than out of genuine admission of guilt, the confession is likely to be considered invalid.

Thus, The legal framework surrounding confessions aims to ensure that only those made voluntarily and truthfully are considered in court. By excluding confessions that result from coercion, inducement, threats, or promises, the law seeks to protect the rights of the accused and uphold the integrity of the judicial process. This is crucial in preventing wrongful convictions and ensuring that justice is served fairly.

Legal Precedents and Tests for Confessions

Voluntariness Test

- ◇ Courts apply the **voluntariness test** to determine if a confession was made freely and without coercion.
- ◇ **Totality of the Circumstances:** Evaluates various factors, including:
 - **Environment:** The setting where the confession occurred.

- **Behavior of Law Enforcement:** Conduct of officers during interrogation.
- **State of the Defendant:** The mental and emotional condition of the accused at the time of the confession.

Relevance in Criminal Proceedings

- ◇ Confessions obtained through **inducement, threat, or promise** are deemed irrelevant and cannot be used as evidence.
- ◇ **Rationale:**
 - To maintain fairness within the justice system.
 - To avoid wrongful convictions.
 - To prevent abuse of power by law enforcement.

Conclusion

- ◇ Confessions acquired through improper means are inadmissible in court due to failure to meet the legal standard of voluntariness, which preserves the integrity of the legal process.

Statements by Persons Who Cannot Be Called as Witnesses

In both criminal and civil proceedings, statements made by individuals who are now deceased or unavailable may still be relevant and admissible under specific conditions.

Key Legal Concepts

1. **Hearsay Rule:**
 - ◇ Out-of-court statements are generally inadmissible if offered to prove the truth of the matter asserted, primarily because the declarant is not available for cross-examination.
 - ◇ Several exceptions exist to this rule.
2. **Relevance of Statements by Unavailable Persons:**
 - ◇ If a declarant is unavailable due to:
 - Death
 - Disappearance
 - Illness
 - ◇ The court may admit their statement if it meets certain criteria of **reliability** and **necessity**.
 - ◇ The admissibility often depends on the context in which the statement was made and the circumstances of the person's unavailability.

Situations Where Statements by Unavailable Persons Are Relevant

1. Dying Declarations

- ◇ **Definition:** A statement made by an individual who believes they are about to die, regarding the cause or circumstances of their impending death.
- ◇ **Relevance:** Admissible in homicide or serious injury cases when the declarant cannot testify due to death.
- ◇ **Rationale:** The belief in imminent death motivates the declarant to speak the truth.

2. Statements Against Interest

- ◇ **Definition:** A statement made by an individual that goes against their own interest (financial, criminal, etc.) at the time it was made.
- ◇ **Relevance:** Applies when the person is dead or unavailable. It's assumed that individuals don't make statements against their own interests unless they believe them to be true.

3. Statements Made in the Course of Duty (Business or Public Records)

- ◇ **Definition:** Statements made in the regular course of business or duty by an individual.
- ◇ **Relevance:** Business or official records created by a now-deceased or unavailable person are admitted due to their reliability and the absence of anticipation of litigation (e.g., financial records, medical records, logs).

4. Declarations of Pedigree

- ◇ **Definition:** Statements regarding family relationships, marriage, or facts about a person's lineage.
- ◇ **Relevance:** Admissible if the declarant is deceased, particularly in disputes over inheritance or familial rights.

5. Statements Made in Contemplation of Death (Testamentary Statements)

- ◇ **Definition:** Statements made concerning the individual's own will, property, or testamentary dispositions.
- ◇ **Relevance:** Relevant in disputes involving the deceased's intentions regarding their estate.

6. Res Gestae (Spontaneous Statements)

- ◇ **Definition:** Statements made spontaneously or contemporaneously with an event, regarded as trustworthy due to their immediacy.
- ◇ **Relevance:** Such statements are often admitted even if the declarant

cannot testify, as they are closely linked to the event in question and made without time for reflection or fabrication.

Thus, these exceptions to the hearsay rule allow for the inclusion of significant statements in legal proceedings, ensuring that relevant evidence can be considered even when the declarant is not available to testify. This framework promotes fairness and thoroughness in the pursuit of justice.

Conditions for Admissibility

- ◇ **Necessity:** The person must be truly unavailable (e.g., deceased, missing, or otherwise unable to testify).
- ◇ **Reliability:** Courts examine the circumstances under which the statement was made to determine whether it is trustworthy.

Legal Precedents and Rules

Many jurisdictions, including under **common law** and modern legal systems, provide specific rules for when and how such statements can be admitted, such as the **Federal Rules of Evidence** in the U.S. or similar statutory frameworks in other countries.

DOCUMENTARY EVIDENCE

In legal proceedings, documentary evidence refers to documents presented to support or prove facts in a case. The rules regarding the admissibility and use of documentary evidence vary by jurisdiction but are generally grounded in principles designed to ensure reliability and authenticity.

Key Concepts in Documentary Evidence

1. Proof of Contents of Documents:

- ◇ The contents of a document must typically be proven by producing the document itself, known as the **best evidence rule**.
- ◇ The **original document** is preferred as evidence of its contents unless exceptions apply.

2. Types of Documentary Evidence:

- ◇ **Primary Evidence:** The original document itself (e.g., a signed contract, official letter).
- ◇ **Secondary Evidence:** Copies of the original document or representations of its contents (e.g., printed digital records, photographs).

Cases in Which Secondary Evidence May Be Given

Secondary evidence may be admitted in several circumstances, typically when the original document is unavailable. Here are common situations where secondary evidence can be used:

1. Original Document Lost or Destroyed:

- ◇ If the original has been lost or destroyed without the fault of the party seeking to introduce it, secondary evidence may be admissible. Proof of the loss or destruction circumstances is usually required.

2. Original Document Not Obtainable:

- ◇ When the original is not obtainable (e.g., it's in the possession of a non-cooperating third party), secondary evidence can be used, provided reasonable efforts to obtain the original have been demonstrated.

3. Original Document in Possession of Opposing Party:

- ◇ If the original is held by the opposing party and they refuse to produce it, secondary evidence may be admitted. The requesting party must show the document's relevance and that it is within the opposing party's control.

4. Public Records and Official Documents:

- ◇ Certain public records or official documents may be proved by **certified copies** rather than the original (e.g., court records, birth/marriage certificates).

5. Documents Made in the Ordinary Course of Business:

- ◇ Business records maintained as part of regular business operations can often be admitted as secondary evidence if they meet criteria such as regularity in preparation and the creator's involvement.

6. Partial Documents:

- ◇ If a document is partially lost, secondary evidence may be admissible to prove the accessible parts, provided that the missing parts do not significantly alter the document's meaning.

7. Authentication of Secondary Evidence:

- ◇ The party presenting secondary evidence must authenticate it, showing it accurately reflects the content of the original. This can be accomplished through witness testimony or other means establishing reliability.

BURDEN OF PROOF

The **burden of proof** is a fundamental principle in legal proceedings that determines who is responsible for proving the facts in dispute. This concept is critical in both civil and criminal cases, as it guides the allocation of responsibilities among parties and influences the outcome of cases.

ESTOPPEL

Estoppel by conduct is a legal doctrine that prevents a party from taking a position in a legal proceeding that is inconsistent with their previous conduct or representations, especially when that conduct has induced another party to rely on it. This form of

estoppel is designed to uphold fairness and prevent unjust outcomes in legal context.

WITNESSES

In legal proceedings, the rules governing who may testify and the order of witness production and examination are crucial for ensuring a fair trial and effective presentation of relevant evidence.

Who May Testify

1. Competency of Witnesses:

- ◇ Generally, any person who is competent can testify in a legal proceeding. Competency refers to the ability to understand the duty to tell the truth and to recall and communicate relevant facts.
- ◇ Common requirements for competency include:
 - **Age:** Minimum age requirements may apply. Children can testify, but their understanding of the importance of truth-telling is often assessed.
 - **Mental Capacity:** Witnesses must have the mental ability to perceive, remember, and communicate relevant facts.
 - **Personal Knowledge:** Witnesses must have firsthand knowledge of the facts they are testifying about.

The rules regarding witnesses are fundamental in ensuring that trials are conducted fairly and that relevant evidence is effectively presented. Understanding the competency, types, and disqualifications of witnesses is essential for legal practitioners and those involved in legal proceedings.

Recap

- ◇ **Bharatiya Nyaya Sanhita (BNS):** Aims to replace the Indian Penal Code, modernizing India's legal system to align with current societal values.
- ◇ **Objectives of BNS:** Ensures justice for all, swift legal proceedings, focuses on human rights, incorporates Indian cultural values.
- ◇ **Key Changes:** Revised definitions of sedition, blasphemy, cyber offences, and stronger protection of individual freedoms.
- ◇ **Cybercrime Focus:** New laws addressing cyberstalking, hacking, and data theft.
- ◇ **Terrorism Laws:** Stricter penalties for financing, recruitment, and use of technology in terrorism.
- ◇ **Organized Crime and Human Trafficking:** Strengthened penalties and

victim protections, especially for vulnerable groups.

- ◇ **New Sections on National Security:** Redefinition of sedition and expansion of laws around terrorism.
- ◇ **Victim-Centered Justice:** Focuses on compensation, victim impact statements, and protections from arbitrary arrests.
- ◇ **Rights and Safeguards:** Fair trials, humane treatment of prisoners, and emphasis on rehabilitation over punitive measures.
- ◇ **Code of Civil Procedure (CPC):** Regulates civil litigation, focusing on fairness, efficiency, and access to justice.

Objective Questions

1. What does BNS stand for?
2. What legal code is BNS replacing?
3. What is one objective of BNS?
4. How has the definition of sedition changed in BNS?
5. What new offences are introduced in BNS related to cybercrime?
6. What does the BNS aim to promote within law enforcement?
7. What protections are strengthened under the BNS for terrorism-related crimes?
8. What area of crime does the BNS address with anti-lynching laws?
9. What is a key feature of the CPC?
10. What is one focus of victim-centered justice in BNS?

Answers

1. Bharatiya Nyaya Sanhita.
2. The Indian Penal Code (IPC) of 1860.
3. Ensuring justice for all.
4. It is redefined to focus on incitement to violence rather than criticism of the government.
5. Cyberstalking, online harassment, hacking, and data theft.
6. Accountability and transparency.
7. Enhanced penalties for financing and recruitment, and use of technology in terrorism.
8. Criminalizes mob lynching with severe penalties for participants and instigators.
9. Ensures civil proceedings are conducted fairly and efficiently.
10. Streamlining compensation and allowing victim impact statements during sentencing.

Assignments

1. Discuss the historical reasons behind the introduction of the Bharatiya Nyaya Sanhita.
2. Analyze the impact of BNS on India's legal system, specifically its decolonization efforts.
3. How does the BNS balance between law enforcement and individual liberties?
4. Evaluate the changes in the definitions of sedition and blasphemy under the BNS.
5. Explain how the BNS addresses modern forms of crime, such as cyber offences and terrorism.

6. Discuss the significance of accountability and transparency in law enforcement under the BNS.
7. How do the new anti-lynching laws under BNS aim to prevent mob violence?
8. Compare the approaches of the Indian Penal Code and the Bharatiya Nyaya Sanhita towards human rights protection.
9. What are the key features of the Code of Civil Procedure, and how do they ensure fairness in civil litigation?
10. Analyze the role of alternative dispute resolution methods (like mediation and arbitration) in the CPC.

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BLOCK 02

Specific Sections and Specific Laws

Unit 1

Women and Children-Protection of Women From Domestic Violence Act, 2005 and The Juvenile Justice (Care and Protection of Children) Act, 2015

Learning Outcomes

After the successful completion of the unit, the learner will be able to:

- ◇ Explain the key provisions and objectives of the Protection of Women from Domestic Violence Act, 2005.
- ◇ Comprehend the historical context and the need for the Juvenile Justice (Care and Protection of Children) Act, 2015.
- ◇ Identify the roles and responsibilities of various stakeholders in implementing these acts.
- ◇ Analyze the challenges and criticisms associated with the enforcement of these acts.
- ◇ Evaluate the impact and significance of these acts on the protection and rehabilitation of women and juveniles in India.

Prerequisite

Imagine a woman living in fear within her own home, enduring emotional, psychological, or physical abuse without a clear way to seek help. Now, think of a child, vulnerable and alone, navigating life after being caught in the criminal justice system. Both situations highlight the stark reality of what many women and children face, and both underscore the need for strong legal protections.

The Protection of Women from Domestic Violence Act, 2005, offers a lifeline to women in abusive situations. It allows them to reclaim safety and dignity within their homes, addressing not just physical harm but emotional and economic abuse as well. Picture a woman, once trapped, now empowered to stand up against the violence she has silently endured, with legal provisions to protect her.

Similarly, the Juvenile Justice (Care and Protection of Children) Act, 2015, reimagines how society should respond to children in conflict with the law. Rather than being treated as criminals, imagine a system where young offenders are given

the opportunity to reform, to be nurtured back into society rather than punished harshly. This act also safeguards vulnerable children, ensuring their right to care and protection.

By studying these laws, you will explore how legal frameworks serve as more than just rules—they are instruments of transformation. How do these laws change lives? What impact do they have on society at large? This exploration will provide insight into the intersection of law, society, and justice for the most vulnerable.

Keywords

Domestic violence, Juvenile justice, Rehabilitation, Protection orders, Child welfare, Legal remedies, Implementation, Social reintegration, Support services.

Discussion

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Introduction

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) is a significant piece of legislation in India designed to address and prevent domestic violence against women. Enacted on October 26, 2006, the Act is a crucial step towards safeguarding women's rights and ensuring their protection from abuse within the domestic sphere. This legislation aims to provide a legal framework to protect women from various forms of domestic violence and offer them legal remedies and support.

Historical Context

Before the enactment of the PWDVA, domestic violence was addressed through various fragmented laws and provisions. The Indian Penal Code (IPC) and other laws did not specifically address the issue of domestic violence in a comprehensive manner. There were significant gaps in legal protections, and the prevailing social norms often perpetuated a culture of silence around domestic abuse. Recognizing these limitations, the Indian government introduced the PWDVA to create a more structured and holistic approach to tackling domestic violence.



Objectives of the Act

The primary objectives of the PWDVA are:

1. **Protection and Safety:** To provide immediate protection and safety to women who are victims of domestic violence.
2. **Legal Remedies:** To offer a legal framework for women to seek justice and remedies through the court system.
3. **Support Services:** To establish mechanisms for support services, including shelters, medical care, and counseling for victims.
4. **Preventive Measures:** To promote preventive measures and awareness to combat domestic violence.
5. **Legal Definition:** To provide a clear and comprehensive definition of domestic violence and outline the various forms it can take.

Key Provisions

1. **Definition of Domestic Violence (Section 3):** The Act defines domestic violence broadly to include physical, emotional, sexual, and economic abuse. It covers any harm or threat of harm by a family member or partner that results in physical injury, emotional trauma, or economic deprivation.
2. **Protection Orders (Section 18):** Victims of domestic violence can seek protection orders from the court. These orders may include prohibiting the abuser from contacting or coming near the victim, and can also provide for temporary custody of children and residence rights.
3. **Residence Orders (Section 19):** The Act ensures that the victim has the right to reside in the shared household and prevents the abuser from dispossessing her from the house. It can include orders for the provision of alternative accommodation if necessary.
4. **Monetary Relief (Section 20):** Victims can seek monetary relief from the court for damages or compensation, including medical expenses, loss of earnings, and maintenance. This provision aims to address the financial impact of domestic violence on women.
5. **Custody Orders (Section 21):** The Act allows the court to issue orders related to the custody of children, ensuring that the welfare of children is considered in cases of domestic violence.
6. **Counseling and Support (Section 14):** The Act mandates the provision of counseling services for both victims and perpetrators to facilitate rehabilitation and reconciliation, where appropriate.

7. **Breach of Protection Orders (Section 31):** Breach of any protection order is considered a criminal offence under the Act, and the abuser can be punished accordingly. This provision ensures that the protection orders are enforceable and taken seriously.
8. **Role of Protection Officers (Sections 8 and 9):** The Act provides for the appointment of Protection Officers to assist women in obtaining legal remedies and support services. These officers are responsible for ensuring the implementation of the Act's provisions and providing assistance to victims.

Implementation and Enforcement

The effective implementation of the PWDVA relies on a coordinated approach involving various stakeholders:

1. **Legal System:** Courts play a central role in adjudicating cases and issuing protection and residence orders. The judiciary is responsible for ensuring that justice is served in cases of domestic violence.
2. **Law Enforcement Agencies:** Police are tasked with enforcing protection orders and addressing complaints of domestic violence. They must be trained to handle such cases sensitively and professionally.
3. **Protection Officers:** Designated by the state, these officers provide support and assistance to victims, facilitate their access to legal remedies, and coordinate with other agencies to ensure comprehensive care.
4. **Support Services:** Shelters, counseling centers, and medical facilities provide essential services to victims. Their effective functioning is crucial for the holistic support of survivors of domestic violence.

Challenges and Criticisms

Despite its progressive nature, the PWDVA has faced several challenges:

1. **Awareness and Implementation:** Many victims are unaware of their rights under the Act, and there are gaps in the implementation of the law, particularly in rural and remote areas.
2. **Enforcement Issues:** Enforcement of protection orders can be inconsistent, and victims often face difficulties in accessing timely legal remedies.
3. **Cultural and Social Barriers:** Deep-rooted social norms and stigmas surrounding domestic violence can impede the reporting of abuse and seeking of legal redress.
4. **Resource Constraints:** Limited resources and inadequate infrastructure for support services can affect the effectiveness of the Act's provisions.



Recent Developments

In recent years, there have been efforts to strengthen the implementation of the PWDVA through various measures:

1. **Awareness Campaigns:** Increased awareness campaigns aim to educate women about their rights and available support services.
2. **Training Programs:** Training programs for law enforcement, judiciary, and Protection Officers are being conducted to improve the handling of domestic violence cases.
3. **Judicial Reforms:** Courts are increasingly adopting victim-centered approaches to ensure that the rights and safety of victims are prioritized.

In short, the Protection of Women from Domestic Violence Act, 2005 represents a landmark in India's legal framework for addressing domestic violence. By providing a comprehensive definition of domestic violence, offering legal remedies and support, and establishing mechanisms for implementation, the Act seeks to protect and empower women who are victims of abuse. While challenges remain, ongoing efforts to improve awareness, enforcement, and support services are crucial for realizing the Act's objectives and ensuring that domestic violence is effectively addressed in India.

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015, is a significant piece of legislation in India aimed at addressing the legal treatment and protection of juveniles. It replaced the Juvenile Justice Act, 1986, to align with international conventions, particularly the United Nations Convention on the Rights of the Child (UNCRC). The Act's primary objectives are to provide care, protection, treatment, development, and rehabilitation of children in conflict with the law and children in need of care and protection.

Overview of the Act

The Juvenile Justice (Care and Protection of Children) Act, 2015, is structured into several chapters, each addressing different aspects of juvenile justice. The major chapters include:

1. **Preliminary:** This chapter defines the key terms used in the Act, including 'juvenile,' 'child in conflict with the law,' 'child in need of care and protection,' and 'juvenile home.'
2. **General Principles of Care and Protection of Children:** It outlines the fundamental principles to be followed while dealing with children, such as the principle of presumption of innocence, the principle of best interest, the principle of participation, and the principle of non-stigmatizing semantics
3. **Juvenile Justice Board:** This chapter discusses the establishment, composition, and functions of the Juvenile Justice Board (JJB). The JJB is responsible for

adjudicating cases involving juveniles in conflict with the law. It consists of a judicial magistrate and two social workers, one of whom should be a woman.

4. **Procedure for Juveniles in Conflict with Law:** This chapter outlines the procedures to be followed when dealing with juveniles accused of crimes. It emphasizes a non-punitive, reformatory approach, focusing on rehabilitation and reintegration rather than punishment.
5. **Child Welfare Committee:** The Act mandates the formation of Child Welfare Committees (CWC) to address issues related to children in need of care and protection. The CWC comprises a chairperson and four other members, including at least one woman and an expert on child matters.
6. **Rehabilitation and Social Reintegration:** It details the measures for the rehabilitation and social reintegration of juveniles, including adoption, foster care, sponsorship, and aftercare organizations.
7. **Adoption:** This chapter lays down the procedures for the adoption of orphaned, abandoned, or surrendered children. It ensures that the process is transparent and in the best interests of the child.
8. **Offences Against Children:** The Act lists various offences committed against children and the corresponding penalties, emphasizing strict measures to protect children from abuse, exploitation, and neglect.

Key Provisions

1. **Definition of Juvenile and Child:** The Act defines a 'juvenile' or 'child' as a person who has not completed the age of 18 years. This is in line with international standards and the UNCRC, which India ratified.
2. **Juvenile Justice Board (JJB):** The JJB is empowered to deal with matters concerning children in conflict with the law. The Board ensures that juveniles are dealt with in a child-friendly manner, focusing on rehabilitation rather than retribution. The proceedings before the JJB are conducted in an informal manner, avoiding stigmatization of the child.
3. **Child Welfare Committee (CWC):** The CWC is responsible for addressing the needs of children in need of care and protection. This includes children who are orphaned, abandoned, surrendered, or those subjected to abuse, exploitation, or neglect. The CWC ensures that these children receive proper care, protection, and rehabilitation.
4. **Special Homes and Observation Homes:** The Act mandates the establishment of Special Homes and Observation Homes for the temporary reception, care, and rehabilitation of juveniles in conflict with the law. These homes provide a safe and conducive environment for the physical, emotional, and psychological well-being of the juveniles.



5. **Rehabilitation and Social Reintegration:** The Act emphasizes the importance of rehabilitating juveniles and reintegrating them into society. This is achieved through various measures, including:
- ◇ **Adoption:** A legal process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of the adoptive parents.
 - ◇ **Foster Care:** Placement of a child by CWC in a family for a temporary period till the child is restored to his biological family or placed in adoption.
 - ◇ **Sponsorship:** Providing supplementary support to families, children's homes, or special homes to meet medical, educational, and developmental needs of the child.
 - ◇ **Aftercare Programs:** Supporting juveniles after they turn 18 to facilitate their reintegration into society. This includes vocational training, financial assistance, and other support services.
6. **Adoption Procedures:** The Act outlines a detailed procedure for the adoption of children to ensure that the process is ethical, transparent, and in the best interests of the child. It recognizes two types of adoption: in-country and inter-country adoption. The Central Adoption Resource Authority (CARA) regulates and monitors the adoption process.
7. **Offences and Penalties:** The Act lists specific offences against children, such as cruelty, exploitation, and abuse, and prescribes stringent penalties for the perpetrators. This includes offences like employing a child for begging, giving intoxicating liquor or narcotic drugs to a child, and exploiting a child employee.

Amendments and Impact

The Juvenile Justice (Care and Protection of Children) Act, 2005, has undergone several amendments to address emerging challenges and gaps in the legislation. One of the significant amendments was in 2015, which introduced a more nuanced approach to handling juveniles involved in heinous offences. This amendment allowed for juveniles aged 16-18 to be tried as adults for heinous crimes, subject to an assessment of their mental and physical capacity to commit the offence.

The Act has had a profound impact on the juvenile justice system in India. It has shifted the focus from punitive measures to a more child-friendly approach, emphasizing rehabilitation, care, and protection. The establishment of JJBs and CWCs across the country has provided a structured framework for addressing issues related to juveniles and children in need of care and protection. The emphasis on adoption, foster care, and aftercare programs has also ensured better rehabilitation and social reintegration of children.

Conclusion

The Juvenile Justice (Care and Protection of Children) Act, 2005, represents a significant step towards a more humane and child-centric approach to juvenile justice in India. By focusing on rehabilitation, care, and protection, the Act aims to ensure that children in conflict with the law and those in need of care and protection are given the opportunity to reintegrate into society as responsible and productive citizens.

However, to realize the full potential of the Act, it is essential to address the challenges in its implementation. This includes enhancing infrastructure, training personnel, ensuring mental health support, and increasing public awareness. With sustained efforts and a commitment to the principles of juvenile justice, the Act can significantly contribute to the well-being and development of children in India.

Recap

- ◇ Introduction to the Protection of Women from Domestic Violence Act, 2005.
- ◇ Historical context and need for the Juvenile Justice (Care and Protection of Children) Act, 2005.
- ◇ Key provisions of both acts.
- ◇ Roles of various stakeholders in implementing these acts.
- ◇ Challenges and criticisms in the enforcement of these laws.
- ◇ Impact and significance of the acts on the protection and rehabilitation of women and juveniles.

Objective Questions

1. When was the Protection of Women from Domestic Violence Act enacted?
2. What are the primary objectives of the PWDVA?
3. What forms of abuse are covered under the PWDVA?
4. What is the role of Protection Officers under the PWDVA?
5. Which section of the PWDVA defines domestic violence?
6. What year did the Juvenile Justice (Care and Protection of Children) Act replace the Juvenile Justice Act, 1986?
7. Who comprises the Juvenile Justice Board (JJB)?

8. What is the focus of the Child Welfare Committee (CWC)?
9. Which act mandates the establishment of Special Homes and Observation Homes for juveniles?
10. What are the types of adoption recognized by the Juvenile Justice Act?

Answers

1. October 26, 2006
2. Protection and safety of women, legal remedies, support services, preventive measures, legal definition of domestic violence.
3. Physical, emotional, sexual, and economic abuse.
4. Assist women in obtaining legal remedies and support services.
5. Section 3.
6. 2005
7. A judicial magistrate and two social workers, one of whom should be a woman.
8. Addressing the needs of children in need of care and protection.
9. Juvenile Justice (Care and Protection of Children) Act, 2005.
10. In-country and inter-country adoption.

Assignments

1. Discuss the historical context that led to the enactment of the Protection of Women from Domestic Violence Act, 2005.
2. Explain the key provisions of the PWDVA and their significance in protecting women from domestic violence.
3. Analyze the role and responsibilities of Protection Officers under the PWDVA.

4. Describe the challenges faced in the implementation and enforcement of the PWDVA.
5. Evaluate the impact of the Juvenile Justice (Care and Protection of Children) Act, 2005, on the juvenile justice system in India.
6. Compare and contrast the objectives and provisions of the Juvenile Justice Act, 1986, and the Juvenile Justice (Care and Protection of Children) Act, 2005.
7. Discuss the role of the Juvenile Justice Board (JJB) and the Child Welfare Committee (CWC) in the context of the Juvenile Justice Act.
8. Explain the procedures for the adoption of children under the Juvenile Justice Act.
9. Identify and analyze the major challenges in the implementation of the Juvenile Justice Act across different states in India.
10. Discuss the amendments made to the Juvenile Justice Act in 2015 and their implications for handling juveniles involved in heinous offences.

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Unit 2

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989

Learning Outcomes

After the successful completion of the unit, the learner will be able to:

- ◇ Explain the historical context and legislative intent behind the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- ◇ Identify key provisions of the Act and their implications for the protection of Scheduled Castes and Scheduled Tribes.
- ◇ Describe the role of law enforcement and judicial authorities in the enforcement of the Act.
- ◇ Evaluate the impact of the Act on the socio-economic conditions of Scheduled Castes and Scheduled Tribes.
- ◇ Develop strategies for improving the implementation and effectiveness of the Act in contemporary settings.

Prerequisite

Imagine a rural village where the simple act of drawing water from a well can spark violence, or where entering a temple leads to public humiliation. These are not just relics of a distant past but reflect ongoing realities faced by many from the Scheduled Castes (SCs) and Scheduled Tribes (STs) in India.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was introduced to combat precisely these kinds of systemic abuses and ensure that the dignity of these communities is protected. Think about the significance of a law that empowers the most marginalized people in society to fight back against centuries of oppression, creating a legal shield against discrimination, violence, and social exclusion.

Now, picture a scenario where someone from an SC or ST background faces a public boycott, or is denied access to education or employment due to their caste identity. The act provides not just punishment for the perpetrators but also protection and rehabilitation for the victims. How does a society begin to heal



from deep-rooted injustice when the law actively defends those who have been historically voiceless?

As you study this act, consider how it serves as a tool not only for legal recourse but for social transformation. Does it fully achieve its purpose, or are there still gaps in its enforcement? Through this lens, you'll explore how legal frameworks can be both powerful and limited in the quest for equality and justice.

Keywords

Scheduled Castes, Scheduled Tribes, Atrocities, Legal Protection, Socio-Economic Impact, Legislation, Judicial Authorities, Enforcement, Affirmative Action

Discussion

Introduction

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (commonly known as the SC/ST Act) is a landmark piece of legislation in India aimed at protecting marginalized communities, specifically Scheduled Castes (SCs) and Scheduled Tribes (STs), from discrimination and violence. Enacted on January 30, 1990, the Act was a response to the persistent violence and discrimination faced by these communities, which had been inadequately addressed by existing laws. The SC/ST Act provides a legal framework to prevent atrocities, ensure justice for victims, and promote the socio-economic development of SCs and STs.

Historical Context

Before the SC/ST Act, there were various laws aimed at safeguarding the rights of SCs and STs, such as the Protection of Civil Rights Act, 1955, and the Indian Penal Code, 1860. However, these laws were often ineffective in preventing or addressing the systemic violence and discrimination experienced by these communities. The need for a specific law arose from the realization that atrocities against SCs and STs were not only a violation of their rights but also a reflection of deep-seated social prejudices. The Act was therefore introduced to provide a comprehensive legal mechanism for tackling these issues.

Objectives of the Act

The SC/ST Act is designed to achieve several key objectives:

1. **Prevention of Atrocities:** To prevent and prohibit acts of violence and discrimination against SCs and STs.
2. **Legal Remedies:** To provide a legal framework for the prosecution and punishment of perpetrators of atrocities.
3. **Protection and Relief:** To ensure the protection of victims and provide relief and rehabilitation services.
4. **Awareness and Education:** To promote awareness and educate people about the rights of SCs and STs.

Key Provisions

1. **Definition of Atrocities (Section 3):** The Act defines a range of acts as atrocities against SCs and STs. These include:
 - ◇ **Physical Violence:** Such as assault, murder, or any form of physical harm.
 - ◇ **Mental Harassment:** Includes humiliation, intimidation, or threats.
 - ◇ **Economic Exploitation:** Any act that deprives SCs and STs of their livelihood or economic resources.
 - ◇ **Social Exclusion:** Actions that segregate or discriminate against SCs and STs in social settings.
2. **Special Courts (Section 14):** The Act provides for the establishment of Special Courts for the trial of offences under the Act. These courts are designed to ensure speedy and effective justice.
3. **Role of the State (Section 21):** The State Government is responsible for implementing the provisions of the Act. This includes appointing Special Public Prosecutors and ensuring the proper functioning of Special Courts.
4. **Rights of Victims (Section 15):** Victims of atrocities are entitled to various rights, including:
 - ◇ **Legal Assistance:** Access to legal aid and representation.
 - ◇ **Compensation:** Financial assistance and compensation for damages suffered.
 - ◇ **Protection:** Measures to ensure the safety and security of victims and witnesses.
5. **Prevention Measures (Section 17):** The Act mandates the implementation of preventive measures, such as awareness programs and community outreach initiatives, to reduce the occurrence of atrocities.

6. **Investigation and Prosecution (Section 18):** The Act outlines procedures for



the investigation and prosecution of offences, including:

- ◇ **Investigation by Designated Officers:** The appointment of officers responsible for investigating offences under the Act.
- ◇ **Timely Investigation:** Ensuring that investigations are conducted promptly and efficiently.

Implementation and Enforcement

The effective implementation of the SC/ST Act requires coordination among various stakeholders:

1. **Law Enforcement:** Police and other law enforcement agencies are responsible for investigating complaints, arresting perpetrators, and ensuring that cases are processed through the judicial system.
2. **Judiciary:** Special Courts and judges play a crucial role in adjudicating cases and ensuring justice for victims.
3. **Government Agencies:** State and central government agencies are responsible for the implementation of preventive measures, providing relief to victims, and ensuring that the provisions of the Act are enforced.

Challenges and Criticisms

Despite its progressive nature, the SC/ST Act faces several challenges:

1. **Implementation Gaps:** There are significant gaps in the implementation of the Act, particularly in rural and remote areas. Inadequate infrastructure, lack of awareness, and resistance from local authorities can impede the effective enforcement of the law.
2. **Delayed Justice:** Delays in the judicial process and the slow pace of investigations can undermine the effectiveness of the Act and contribute to the continued suffering of victims.
3. **Social Resistance:** Deep-rooted social prejudices and resistance from dominant communities can hinder the reporting of atrocities and the pursuit of justice.
4. **Corruption and Bias:** Instances of corruption and bias within the legal and administrative systems can affect the impartiality and effectiveness of the enforcement of the Act.

In recent years, there have been several developments aimed at strengthening the SC/ST Act:

1. **Amendments:** The Act has been amended to address emerging issues and incorporate best practices. Notably, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, introduced provisions to

enhance the effectiveness of the law and address challenges in implementation.

2. **Awareness Campaigns:** Efforts have been made to increase awareness about the Act and educate people about the rights of SCs and STs.
3. **Training Programs:** Training programs for law enforcement officials, judiciary members, and other stakeholders have been conducted to improve their understanding and application of the Act.
4. **Monitoring Mechanisms:** Mechanisms for monitoring and reviewing the implementation of the Act have been established to ensure compliance with legal standards and address issues in enforcement.

Conclusion

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, represents a crucial step in India's legal framework for protecting marginalized communities from violence and discrimination. By providing a comprehensive legal mechanism for addressing atrocities, ensuring justice for victims, and promoting preventive measures, the Act aims to uphold the rights and dignity of SCs and STs. While challenges remain in the effective implementation of the Act, ongoing efforts to address these challenges and enhance the effectiveness of the law are essential for achieving its objectives and promoting social justice.

Recap

- ◇ The SC/ST (Prevention of Atrocities) Act, 1989, was enacted to combat caste-based discrimination and violence against Scheduled Castes and Scheduled Tribes.
- ◇ The Act defines various forms of atrocities and provides legal remedies for victims.
- ◇ It outlines the responsibilities of law enforcement and judicial authorities in addressing and preventing atrocities.
- ◇ The Act aims to improve the socio-economic conditions of SCs and STs by providing legal protection and promoting social justice.
- ◇ Challenges in implementing the Act include enforcement issues, socio-economic barriers, and the need for greater awareness and training.

Objective Questions

1. What is the primary purpose of the SC/ST (Prevention of Atrocities) Act, 1989?
2. Which element is NOT covered under the SC/ST (Prevention of Atrocities) Act, 1989?
3. What does the Act mandate regarding the role of law enforcement agencies?
4. Which section of the SC/ST Act deals with the responsibilities of judicial authorities?
5. The Act provides for special courts to address cases of atrocities. True or False?
6. What are the major challenge in implementing the SC/ST (Prevention of Atrocities) Act?
7. How does the SC/ST (Prevention of Atrocities) Act impact socio-economic conditions?
8. What role do Protection Officers play under the SC/ST Act?
9. Which element is NOT a form of atrocity covered by the Act?
10. What is one of the primary objectives of the SC/ST (Prevention of Atrocities) Act?

Answers

1. To prevent atrocities and discrimination against SCs and STs
2. Academic performance
3. Provide protection and ensure implementation of the Act
4. Section 12
5. True
6. Lack of awareness and training
7. It improves access to resources and opportunities

8. Assist victims and ensure implementation of the Act
9. Employment promotion
10. To protect and provide remedies for victims of atrocities

Assignments

1. Discuss the historical context leading to the enactment of the SC/ST (Prevention of Atrocities) Act, 1989, and its significance in addressing caste-based discrimination.
2. Analyze the key provisions of the SC/ST (Prevention of Atrocities) Act, 1989, and their impact on the protection of Scheduled Castes and Scheduled Tribes.
3. Evaluate the role of law enforcement agencies in the implementation of the SC/ST (Prevention of Atrocities) Act and the challenges they face.
4. Assess the socio-economic impact of the SC/ST (Prevention of Atrocities) Act on the lives of Scheduled Castes and Scheduled Tribes.
5. Examine the effectiveness of special courts established under the SC/ST (Prevention of Atrocities) Act in addressing cases of atrocities.
6. Identify and discuss the major challenges in the implementation of the SC/ST (Prevention of Atrocities) Act and propose solutions to address them.
7. Explore the role of Protection Officers under the SC/ST (Prevention of Atrocities) Act and their contribution to the protection of victims.
8. Compare the SC/ST (Prevention of Atrocities) Act, 1989, with similar legislation in other countries aimed at protecting marginalized communities.
9. Discuss the impact of awareness and training programs on the effectiveness of the SC/ST (Prevention of Atrocities) Act.
10. Analyze recent amendments to the SC/ST (Prevention of Atrocities) Act and their implications for the protection of Scheduled Castes and Scheduled Tribes.

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Unit 3

Consumer Protection Act, 2019 and Right to Information Act, 2005

Learning Outcomes

After the successful completion of the unit, the learner will be able to:

- ◇ Describe the key provisions and objectives of the Consumer Protection Act, 2019.
- ◇ Explain the role and functions of the Central Consumer Protection Authority (CCPA).
- ◇ Identify the key features and procedural aspects of the Right to Information Act, 2005.
- ◇ Assess the impact of the Consumer Protection Act, 2019 on consumer rights and fair trade practices.
- ◇ Analyze the effectiveness of the RTI Act in promoting transparency and accountability in public administration.

Prerequisite

Imagine a situation where a consumer buys a defective product but receives no response from the company, or where an individual seeks information on public spending but is stonewalled by government officials. Both scenarios highlight the importance of having strong legal frameworks to protect consumers and ensure transparency in governance.

The Consumer Protection Act, 2019, is designed to safeguard the rights of consumers against unfair trade practices, faulty products, and services. It empowers ordinary citizens to hold corporations accountable through consumer courts and online dispute resolution mechanisms. Consider landmark cases like *Abhiram Prakash vs. Maruti Suzuki*, where the court ruled in favor of a consumer receiving a defective vehicle, showcasing the act's ability to deliver justice.

Similarly, the Right to Information (RTI) Act, 2005, is a powerful tool for citizens to demand transparency and accountability from government bodies. Think of the

Association for Democratic Reforms (ADR) vs. Election Commission of India, where the Supreme Court upheld the right to information about the criminal records of election candidates, shaping how transparency functions in India's democracy.

Both acts empower ordinary citizens—whether by ensuring product quality or by enabling access to information about public institutions. As you explore these laws, consider how they have transformed the relationship between individuals, corporations, and the state. Are these laws as effective in practice as they are on paper? How do they shape citizens' participation in a democratic and consumer-driven society?

Keywords

Consumer Protection Act, 2019, Central Consumer Protection Authority (CCPA), Right to Information Act, 2005, Transparency, Accountability, Consumer Rights, Product Liability, E-Commerce Regulation, Misleading Advertisements, Information Commissions

Discussion

CONSUMER PROTECTION ACT, 2019

The Consumer Protection Act, 2019, is a significant piece of legislation enacted by the Indian government to replace the Consumer Protection Act, 1986. It aims to provide enhanced protection to consumers in the digital age and addresses various issues that were not adequately covered under the previous law. This Act seeks to protect consumer rights, ensure fair trade practices, and establish effective mechanisms for redressal of consumer grievances.

Key Provisions

1. Central Consumer Protection Authority (CCPA)

The Act establishes the Central Consumer Protection Authority (CCPA) to promote, protect, and enforce the rights of consumers. The CCPA has the power to:

- ◇ Conduct investigations into violations of consumer rights.
- ◇ Order the recall of unsafe goods and services.
- ◇ Order discontinuation of unfair trade practices.

- ◇ Impose penalties on manufacturers and endorsers for misleading advertisements.

2. Consumer Rights

The Act delineates various consumer rights, including:

- ◇ The right to be protected against marketing of goods and services which are hazardous to life and property.
- ◇ The right to be informed about the quality, quantity, potency, purity, standard, and price of goods or services.
- ◇ The right to be assured of access to a variety of goods or services at competitive prices.
- ◇ The right to be heard and to be assured that consumer interests will receive due consideration.
- ◇ The right to seek redressal against unfair or restrictive trade practices.
- ◇ The right to consumer awareness.

3. Consumer Disputes Redressal Commission

The Act provides for the establishment of Consumer Disputes Redressal Commissions at the District, State, and National levels. These commissions have the jurisdiction to entertain complaints depending on the value of the goods or services and the compensation claimed:

- ◇ District Commission: Complaints where the value does not exceed ₹1 crore.
- ◇ State Commission: Complaints where the value exceeds ₹1 crore but does not exceed ₹10 crores.
- ◇ National Commission: Complaints where the value exceeds ₹10 crores.

4. Simplified Dispute Resolution Process

The Act introduces a simplified dispute resolution process, which includes:

- ◇ E-filing of complaints.
- ◇ Video conferencing for hearings.
- ◇ No fee for filing cases up to ₹5 lakh.

5. Product Liability

The Act introduces the concept of product liability and holds manufacturers, service providers, and sellers accountable for any harm caused by defective products or deficient services. This provision includes:

- ◇ Manufacturing defects.



- ◇ Design defects.
- ◇ Deviation from manufacturing specifications.
- ◇ Inadequate instructions or warnings regarding the use of the product.

6. Misleading Advertisements

The Act addresses the issue of misleading advertisements and holds celebrities, endorsers, and publishers accountable for false claims. The CCPA has the authority to:

- ◇ Impose penalties on endorsers up to ₹10 lakh for the first offence and up to ₹50 lakh for subsequent offences.
- ◇ Prohibit the endorser of a misleading advertisement from making any endorsement for up to one year, which can extend up to three years for subsequent offences.

7. E-Commerce

Recognizing the growing importance of e-commerce, the Act includes specific provisions to regulate e-commerce entities. It mandates:

- ◇ Transparency in the disclosure of information by e-commerce platforms.
- ◇ Liability of e-commerce companies for the delivery of defective goods and deficient services.
- ◇ Establishment of a grievance redressal mechanism by e-commerce entities.

Significance and Impact

1. Enhanced Consumer Protection

The Act significantly strengthens the protection framework for consumers by providing for stricter penalties for violations, introducing product liability, and addressing issues related to misleading advertisements and unfair trade practices.

2. Consumer Empowerment

By delineating specific rights for consumers and simplifying the dispute resolution process, the Act empowers consumers to seek redressal for their grievances more effectively and efficiently.

3. Regulation of E-Commerce

Incorporating specific provisions for e-commerce is a notable advancement, as it addresses the unique challenges posed by digital transactions and ensures accountability of online platforms.

4. Accountability of Endorsers

Holding celebrities and endorsers accountable for misleading advertisements ensures that consumers are not misled by false claims and promotes ethical advertising practices.

5. Ease of Access to Justice

The provisions for e-filing of complaints and video conferencing for hearings make the dispute resolution process more accessible, especially for consumers in remote areas.

Challenges and Criticisms

Despite its comprehensive provisions, the Consumer Protection Act, 2019, faces certain challenges and criticisms:

1. Implementation

Effective implementation of the Act's provisions, especially at the grassroots level, remains a challenge. Ensuring that District and State Commissions are adequately staffed and resourced is crucial for the success of the Act.

2. Awareness

Consumer awareness about their rights and the mechanisms available for redressal is essential. The government and consumer organizations need to undertake extensive awareness campaigns to educate consumers about the new provisions.

3. Regulation of E-Commerce

While the Act includes provisions for regulating e-commerce, the rapid evolution of technology and business models may require continuous updates to the regulatory framework to address emerging challenges.

4. Penalties for Misleading Advertisements

While the Act imposes penalties on endorsers of misleading advertisements, the actual deterrent effect of these penalties may be limited for high-profile celebrities with substantial financial resources.

The Consumer Protection Act, 2019, represents a significant step forward in protecting consumer rights in India. By addressing contemporary issues such as e-commerce, product liability, and misleading advertisements, the Act provides a robust framework for consumer protection. However, its success will depend on effective implementation, consumer awareness, and continuous adaptation to emerging challenges in the marketplace. The Act marks a progressive shift towards a more consumer-centric approach, ensuring that the interests of consumers are safeguarded in an increasingly complex and dynamic market environment.

THE RIGHT TO INFORMATION ACT, 2005

Introduction

The Right to Information Act, 2005 (RTI Act) is a landmark legislation in India aimed at promoting transparency and accountability in government institutions. Enacted on June 15, 2005, and implemented from October 12, 2005, this Act empowers citizens to seek information from public authorities and has significantly impacted the



functioning of government agencies. By facilitating access to information, the RTI Act reinforces the principles of democracy, ensuring that government actions are open to public scrutiny.

Historical Context

Before the RTI Act, India lacked a comprehensive legal framework for ensuring transparency and accountability in government operations. Although some measures existed, such as the Official Secrets Act, 1923, which restricted access to information, there was no specific legislation that guaranteed the right to information. The increasing demands for greater transparency and the need for effective mechanisms to combat corruption led to the formulation and enactment of the RTI Act. This legislative change marked a significant shift towards an open government model and aligned India with international standards of governance.

Objectives of the Act

1. **Promote Transparency:** The Act aims to ensure that public authorities operate transparently and are accountable to the public. By making information accessible, the RTI Act helps reduce corruption and misuse of power.
2. **Empower Citizens:** It empowers individuals by granting them the right to access information held by public authorities, thereby enabling them to participate more effectively in democratic processes.
3. **Ensure Accountability:** The Act seeks to hold public officials accountable for their actions by providing a mechanism for citizens to inquire about and challenge administrative decisions and actions.
4. **Encourage Good Governance:** By improving the flow of information, the Act encourages better governance practices and enhances the efficiency of public administration.

Key Provisions

1. **Definition of Information (Section 2(f)):** The Act defines “information” as any material that is recorded in any form, including documents, records, emails, or photographs, which is held by or under the control of a public authority.
2. **Public Authorities (Section 2(h)):** The RTI Act applies to all public authorities, including government departments, state-owned enterprises, and other bodies funded or controlled by the government.
3. **Right to Information (Section 3):** All Citizens shall have the right to seek information from any public authority, and the Act provides a framework for requesting and obtaining such information.
4. **Application Procedure (Section 6):** Individuals can file an application to request information. Public authorities are required to respond within 30 days of receiving the application.

5. **Exemptions (Section 8):** The Act outlines specific exemptions where information may not be disclosed, such as national security, personal privacy, and privileged information.
6. **Appeal Mechanism (Sections 19 and 20):** If a request for information is denied or inadequately addressed, the applicant can appeal to the First Appellate Authority and, if necessary, to the Central or State Information Commission.
7. **Central and State Information Commissions (Section 12 and 15):** These commissions oversee the implementation of the RTI Act, address appeals, and ensure compliance with the Act's provisions.
8. **Penalties (Section 20):** The Act provides for penalties against public officials who refuse to provide information or delay its delivery without reasonable cause.

Implementation and Impact

The effective implementation of the RTI Act relies on several factors:

1. **Awareness:** Public awareness about the RTI Act and its provisions is crucial for its success. Efforts to educate citizens and officials about their rights and responsibilities under the Act have been ongoing.
2. **Training:** Training programs for public officials and RTI activists help ensure proper implementation and adherence to the Act's requirements.
3. **Transparency:** The Act has led to greater transparency in government operations, with many public authorities adopting practices to make information more accessible.
4. **Empowerment:** The RTI Act has empowered citizens by giving them a tool to demand accountability and seek redressal for grievances related to government functions.
5. **Corruption Reduction:** By exposing irregularities and encouraging open governance, the RTI Act has contributed to reducing corruption and improving administrative efficiency.

Challenges and Criticisms

Despite its positive impact, the RTI Act faces several challenges:

1. **Implementation Issues:** Inconsistent implementation across different states and public authorities can undermine the effectiveness of the Act. There are instances where public officials resist or delay providing information.
2. **Lack of Awareness:** Many citizens are still unaware of their rights under the RTI Act, limiting its potential impact.



3. **Exemptions and Misuse:** The broad exemptions provided under the Act can sometimes be misused to withhold information that should be disclosed.
4. **Resource Constraints:** The Central and State Information Commissions often face resource constraints, affecting their ability to handle the volume of appeals and ensure timely resolution.
5. **Threats to Activists:** RTI activists, who play a crucial role in promoting transparency, sometimes face threats and harassment, which can deter their efforts and undermine the Act's effectiveness.

Recent Developments

In recent years, there have been efforts to strengthen the RTI Act and address its challenges:

1. **Amendments:** Amendments to the Act have been proposed to address emerging issues and improve its implementation. However, some of these amendments have sparked debates regarding their impact on transparency.
2. **Awareness Campaigns:** Increased efforts to raise awareness about the RTI Act and its benefits aim to encourage greater public participation.
3. **Training Initiatives:** Enhanced training programs for public officials and RTI practitioners focus on improving the handling of information requests and appeals.
4. **Technology Integration:** The use of technology, such as online portals for filing RTI applications, has made it easier for citizens to access information and track their requests.

Conclusion

The Right to Information Act, 2005 represents a significant advancement in India's commitment to transparency and accountability in governance. By granting citizens the right to access information held by public authorities, the Act strengthens democratic processes and promotes good governance. While challenges remain, ongoing efforts to improve awareness, implementation, and resources are crucial for maximizing the Act's potential and ensuring that it continues to serve as a powerful tool for transparency and citizen empowerment.

Recap

- ◇ **Consumer Protection Act, 2019:** A comprehensive law to replace the 1986 Act, enhancing consumer rights, addressing digital age issues, and providing mechanisms for grievance redressal.
- ◇ **Key Provisions:** Establishment of CCPA, consumer rights, simplified dispute resolution, product liability, regulation of e-commerce, penalties for misleading advertisements.
- ◇ **Right to Information Act, 2005:** Aims to promote transparency and accountability in public governance by allowing citizens to request information from public authorities.
- ◇ **Key Provisions:** Definition of information, rights of citizens, procedure for requesting information, exemptions, appeals and complaints, penalties for non-compliance.
- ◇ **Impact:** Enhanced consumer protection, empowered citizens, improved transparency, and accountability in governance.

Objective Questions

1. What is the primary purpose of the Consumer Protection Act, 2019?
2. Who is responsible for handling RTI requests in public authorities?
3. What is the compensation value for complaints addressed by the National Consumer Disputes Redressal Commission?
4. What is the timeframe for providing information under the RTI Act in cases related to life and liberty?
5. Which body is established under the Consumer Protection Act, 2019, to investigate consumer rights violations?
6. Under the RTI Act, which is exempt from disclosure?
7. What is the maximum penalty for endorsers of misleading advertisements under the Consumer Protection Act, 2019?
8. What is the role of the Central Information Commission (CIC)?
9. What is the right provided to citizens under the RTI Act, 2005?
10. What new provision for e-commerce is included in the Consumer Protection Act, 2019?

Answers

1. To enhance consumer protection and address issues not covered by the previous Act.
2. Public Information Officer (PIO).
3. Complaints where the value exceeds ₹10 crores.
4. Within 48 hours.
5. Central Consumer Protection Authority (CCPA).
6. Information affecting national security.
7. Up to ₹50 lakh for subsequent offenses.
8. To handle appeals and ensure compliance with the RTI Act.
9. To request information from public authorities.
10. Transparency in the disclosure of information and establishment of grievance redressal mechanisms.

Assignments

1. Discuss the key provisions of the Consumer Protection Act, 2019, and their significance for consumer protection.
2. Explain the role and functions of the Central Consumer Protection Authority (CCPA) under the Consumer Protection Act, 2019.
3. Describe the process of filing a complaint under the Consumer Protection Act, 2019, and the role of the Consumer Disputes Redressal Commissions.
4. Analyze the impact of the Consumer Protection Act, 2019, on e-commerce and digital transactions.
5. Outline the key features of the Right to Information Act, 2005, and their importance in promoting transparency.
6. Discuss the exemptions under the RTI Act and their implications for transparency in public administration.

7. Evaluate the effectiveness of the RTI Act in curbing corruption and promoting accountability.
8. Examine the challenges faced in the implementation of the RTI Act and suggest measures to address them.
9. Compare the provisions of the Consumer Protection Act, 2019, with those of the Consumer Protection Act, 1986.
10. Assess the role of Information Commissions in the implementation of the RTI Act and their impact on public governance.

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**BLOCK
03**

**Basic Understanding
Of Criminal Procedure**

Unit 1

Offences and their Categories

Learning Outcomes

A careful study of this chapter will enable learner to:

- ◇ Familiarise with the different types of offences like cognizable, non-cognizable offenses, bailable and non-bailable offences, and compoundable and non-compoundable offences.
- ◇ Understand the procedural differences in handling various categories of offences, including the role of police, courts, and accused persons.
- ◇ Analyse the various legal principles of offences.
- ◇ Explore alternatives for punishments relating to offences.

Prerequisite

Imagine a bustling city where Inspector of Police Sharma patrols the streets. One day, he encounters three distinct situations: a pickpocket in action, a heated argument turning violent, and a car accident. Each scenario represents a different type of offence, challenging Sharma to apply his knowledge of the law. As he navigates these cases, he must consider whether he can make an immediate arrest, if the accused can be granted bail, and whether the parties involved can settle the matter privately.

These decisions hinge on understanding the categories of offences: cognizable versus non-cognizable, bailable versus non-bailable, and compoundable versus non-compoundable. Join Detective Sharma as he unravels the complexities of these legal classifications, learning how they shape the course of justice in our society.

Keywords

Offences Cognizable offence, Non-Cognizable offence, Bailable offence, Non-Bailable offence, Compoundable offence, Non-Compoundable Offence, Punishment,



3.1.1 Introduction

The main goal of law and order is to keep society safe by punishing people who break the law. However, this must be done fairly and justly. That's why we have trials. A trial is a process set up to figure out if the person accused of a crime is really guilty or not. It's designed to be fair and reasonable, giving everyone involved a chance to present their side of the story.

3.1.2 Definition of Offence

The word "offence" comes from the Latin word "offendere," which means to strike against.

Offence is an infraction of a law. Offence is a violation of any rule, law or code. A serious offence which is punishable by law is a crime.

According to Section 2(1) (q) of the BNSS, "offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act, 1871.

3.1.3 Categories of Offences under Cr.PC

Offences under the CrPC are categorized based on their nature, severity, and procedural aspects. The main categories are:

1. Cognizable Offences: These are serious offences where the police have the authority to arrest without a warrant and start an investigation without the magistrate's permission. Examples include murder, rape, and robbery.

2. Non-Cognizable Offences: These are less severe offences where police cannot arrest without a warrant and need the magistrate's permission to investigate. Examples include forgery, cheating, and public nuisance.

3. Bailable Offences: In these cases, the accused has the right to obtain bail. Examples include simple theft and public servants disobeying the law.

4. Non-Bailable Offences: Bail is not a right in these cases, and it is granted at the discretion of the court. Examples include murder, rape, and kidnapping.

5. Compoundable Offences: These are offences where the complainant can agree to a settlement with the accused, and the case can be dismissed. Examples include assault and criminal trespass.

6. Non-Compoundable Offences: These offences cannot be settled privately and must go through the full judicial trial process. Examples include serious offences like murder and rape.

3.1.4 Cognizable Offence

3.1.4.1 Meaning

A cognizable offence is one for which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a magistrate. These offences are generally of a more serious nature compared to non-cognizable offences.

According to Section 2(1(g)) of the BNSS, a cognizable offence is defined as follows:

“Cognizable offence means an offence for which, and ‘cognizable case’ means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.”

3.1.4.2 Characteristics of Cognizable Offences

Cognizable offences are usually serious crimes that pose a significant threat to public safety and order, such as murder, rape, robbery, and kidnapping. Due to their severity, these offences necessitate immediate police intervention. The police are empowered to investigate and make arrests promptly to prevent further harm or escape of the offender.

Police officers can arrest individuals accused of cognizable offenses without obtaining a warrant from a magistrate. Police have the right to initiate an investigation into cognizable offenses without prior permission from a magistrate. This allows for swift action and evidence collection. Example of cognizable offences include:

- ◇ Murder (Section 103, BNS)
- ◇ Rape (Section 63, 64, BNS)
- ◇ Theft (Section 303(2), BNS)
- ◇ Kidnapping (Section 137(2), BNS)
- ◇ Dowry Death (Section 80, BNS)

3.1.4.3 Procedure for Handling Cognizable Offences

The process begins with the filing of a First Information Report (**FIR**) under Section 173 of the BNSS. Any person can report a cognizable offense to the police, who are obliged to register it. Upon registering the FIR, the police commence an investigation. This involves gathering evidence, interviewing witnesses, and arresting the accused if necessary. In cognizable cases, the police have the authority to arrest the accused without a warrant.

The arrested individual must be produced before a magistrate within 24 hours. After the investigation, if sufficient evidence is found, the police file a charge sheet under Section 193 (3)(i) outlining the case against the accused. The case then proceeds to trial, where the court examines the evidence and determines the guilt or innocence of the accused. The punishment in such offences is usually more than 3 years and may extend up to life imprisonment or death.



3.1.4.4 Rights of the Accused

The accused has the right to be informed of the grounds of arrest. The accused has the right to consult and be defended by a legal practitioner of their choice. The accused must be presented before a magistrate within 24 hours to ensure their rights are protected. Depending on whether the offence is bailable or non-bailable, the accused may have the right to seek bail. Although the police can arrest without a warrant and initiate investigations, these actions are subject to judicial review to prevent abuse of power.

3.1.5 Non-Cognisable Offences

3.1.5.1 Meaning

A non-cognizable offence is one where a police officer does not have the authority to arrest without a warrant and cannot initiate an investigation without the magistrate's permission. These offences are considered less serious compared to cognizable offences.

Section 2(o) of the BNSS defines a non-cognizable offence as :

“Non-cognizable offence means an offence for which, and ‘non-cognizable case’ means a case in which, a police officer has no authority to arrest without warrant.”

3.1.5.2 Characteristics of Non-Cognizable Offences

Non-cognizable offences are generally less severe and pose a lower threat to public safety compared to cognizable offences. Police officers cannot arrest without a warrant and need the magistrate's permission to start an investigation. Greater judicial oversight is required for these offences, ensuring that the rights of individuals are protected. Examples of Non-Cognizable Offences include:

Public Nuisance (Section 270, BNS)

- ◇ **Assault (Section 131, BNS)**
- ◇ **Cheating (Section 318(2), BNS)**
- ◇ **Forgery (Section 336(2), BNS)**

3.1.5.3 Procedure for Handling Non-Cognizable Offences

A complaint can be lodged with the police, but the police cannot register an FIR for non-cognizable offences. Instead, a non-cognizable report (NCR) is recorded. To begin an investigation, the police must seek the permission of a magistrate under Section 155(2) of the CrPC.

The police cannot arrest an individual without a warrant for non-cognizable offences. Once the magistrate grants permission, the police can investigate the offence, gather evidence, and question witnesses. If sufficient evidence is found, the police can file a charge sheet with the magistrate, who will then decide whether to proceed with a trial. The case is tried in a court of law, where the evidence is examined, and a verdict is reached.

3.1.5.4 Rights of the Accused

The accused has the right to be informed of the charges against them. The accused has the right to consult and be defended by a legal practitioner of their choice. Since arrest without a warrant is not permitted, the accused is protected against arbitrary detention. For non-cognizable offences, the magistrate plays a crucial role in overseeing the actions of the police, ensuring that investigations are justified and conducted fairly. The necessity of obtaining a warrant for arrest ensures that there is judicial scrutiny before depriving an individual of their liberty.

3.1.5.5 Comparison with Cognizable Offences

Non-cognizable offences are less severe than cognizable offences. Police powers are limited in non-cognizable offences, requiring warrants and magistrate's permission for actions like arrest and investigation. No immediate action shall be taken without judicial oversight in non-cognizable offences, unlike in cognizable offences where police can act swiftly.

3.1.6 Bailable Offence

3.1.6.1 Meaning

A bailable offence is one where the accused has the right to be released on bail. The granting of bail is considered a matter of right, and the accused can demand it from the police or the court.

Section 2 (c) of the BNSS defines a bailable offence as:

“Bailable offence means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and ‘non-bailable offence’ means any other offence.”

3.1.6.2 Characteristics of Bailable Offences

In bailable offences, the accused has the right to be released on bail. The bail can be granted by the police officer or by the court. These offences are generally less severe and do not pose a significant threat to public safety or order. Since the right to bail is automatic, the accused can be released quickly after arrest, ensuring minimal disruption to their life. Examples of Bailable Offences include:

- ◇ Simple Assault (Section 131, BNS)
- ◇ Public Nuisance (Section 292, BNS)
- ◇ Forgery (Section 336(2), BNS)
- ◇ Cheating (Section 318(2), BNS)

3.1.6.3 Procedure for Handling Bailable Offences

In case of a bailable offence, the police can arrest the accused but must inform them



of their right to bail. The accused can apply for bail either with the police officer in charge of the police station or in court. The police or the court must grant bail, as it is the accused's right. Bail can be granted on a personal bond or with sureties. The conditions for bail are generally minimal and may include appearing before the police or court as required, not committing any further offences, and not leaving the jurisdiction without permission.

3.1.6.4 Rights of the Accused

The accused must be informed of their right to bail immediately upon arrest. He has the right to consult and be defended by a legal practitioner of their choice. He has the right to be released on bail quickly, without unnecessary delay. Both the police and the magistrate have the authority to grant bail in bailable offences. The court ensures that the conditions imposed for bail are reasonable and do not infringe upon the rights of the accused.

3.1.7 Non-Bailable Offence

3.1.7.1 Meaning

A non-bailable offence is one where the granting of bail is not a matter of right for the accused. Instead, it is at the discretion of the court. These offences are generally more serious in nature and pose a greater threat to public safety and order.

Section 2(c) of the BNSS defines a non-bailable offence as:

“Non-bailable offence means any other offence other than a bailable offence.”

3.1.7.2 Characteristics of Non-Bailable Offences

Non-bailable offences are typically grave and pose a significant threat to society. **Here**, bail is not a matter of right. It is granted at the discretion of the court based on various factors. Accused individuals may be detained for longer periods during the investigation and trial. Examples of Non-Bailable Offences include:

- ◇ **Murder**(Section 103,BNS)
- ◇ **Rape** (Section 63&64,BNS)
- ◇ **Kidnapping** (Section 137(2),BNS)
- ◇ **Robbery** (Section 309(4),BNS)

3.1.7.3 Procedure for Handling Non-Bailable Offences

Police can arrest individuals suspected of committing a non-bailable offence without a warrant. An FIR is filed under Section 173 of the BNSS to officially record the complaint. The police investigate the offence, gather evidence, and question witnesses. The accused may be held in police custody during the investigation.

They must be presented before a magistrate within 24 hours. The accused can apply for bail, but it is at the discretion of the court to grant it. The court considers the nature

and seriousness of the offense, evidence, and the accused's history before deciding on bail. If sufficient evidence is found, the police file a charge sheet under Section 213 of the BNSS. The case proceeds to trial, where the evidence is examined, and a verdict is reached.

3.1.7.4 Factors Considered for Granting Bail in Non-Bailable Offences

1. **Nature and Gravity of the Offence:** Seriousness of the crime and its impact on society.
2. **Evidence:** Availability and strength of evidence against the accused.
3. **Flight Risk:** Likelihood of the accused fleeing to avoid trial.
4. **Previous Criminal Record:** The accused's past criminal history.
5. **Likelihood of Tampering with Evidence:** Potential to interfere with the investigation.
6. **Threat to Witnesses:** Possibility of the accused threatening or influencing witnesses.

3.1.7.5 Rights of the Accused

The accused must be informed of the grounds for arrest. The accused has the right to consult and be defended by a legal practitioner of their choice. The accused is entitled to a fair and public trial within a reasonable time. The court exercises discretion in granting bail, ensuring that justice is served while protecting society. The court periodically reviews the detention of the accused to ensure it is justified.

3.1.7.6 Comparison with Bailable Offences

Non-bailable offences are more severe compared to bailable offences. Bail is not a matter of right in non-bailable offences, whereas it is a right in bailable offences. Greater judicial discretion is exercised in non-bailable offences.

3.1.8 Compoundable Offence

3.1.8.1 Meaning

A compoundable offence is one where the complainant (the victim) can enter into a compromise with the accused to have the charges dropped. The compounding of an offence means that the parties agree to settle the matter, often resulting in the withdrawal of the complaint.

Section 359 of the BNSS deals with the compounding of offences. It specifies which offences are compoundable and the procedures for compounding them.

3.1.8.2 Characteristics of Compoundable Offences

The law permits the parties involved to settle the matter out of court. It requires the voluntary and mutual consent of both the complainant and the accused. In certain cases, the compounding requires the permission of the court. Examples of Compoundable



Offences include:

- ◇ **Hurt (Section 115(2),BNS)**
- ◇ **Defamation (Section 356(2),BNS)**
- ◇ **Criminal Trespass (Section 329(3),BNS)**

3.1.8.3 Procedure for Compounding Offences

Initially, a complaint is filed by the complainant against the accused. The parties involved negotiate and agree to settle the matter. An application for compounding is submitted to the court if required. The court evaluates the application to ensure that the compromise is voluntary and not coerced. If the court approves, an order is passed to compound the offence, effectively closing the case.

3.1.8.4 Legal Implications of Compounding

The charges against the accused are withdrawn, and the accused is acquitted. Once compounded, the case cannot be reopened or used against the accused in the future. It reduces the burden on the judicial system by resolving matters out of court. It promotes reconciliation and restitution between the parties. Compounding provides a quicker resolution compared to a prolonged court trial. Only specific offences listed in Section 359 of the BNSS can be compounded. In cases requiring court permission, the court has the discretion to reject the compounding if it suspects any foul play. Courts ensure that the compounding of an offence is voluntary and not influenced by any form of coercion or undue pressure. The court considers the fairness of the compromise and its impact on both parties before granting permission for compounding.

3.1.9 Non-Compoundable Offence

3.1.9.1 Meaning

A non-compoundable offence is one where the complainant cannot enter into a compromise with the accused to have the charges dropped. Such offences are considered too serious to be resolved privately and must go through the full judicial process.

Non-compoundable offences are those not listed under Section 359 of the BNSS. The BNSS specifically outlines which offences can be compounded and excludes non-compoundable offences from this list.

3.1.9.2 Characteristics of Non-Compoundable Offences

These offences are considered grave and have significant implications for public safety and order. Legal provisions do not allow for the compromise or settlement of these offences between the complainant and the accused. Cases involving non-compoundable offences must go through the complete judicial process, including investigation, trial, and sentencing. Examples of Non-Compoundable Offences include:

- ◇ **Murder (Section 103,BNS)**
- ◇ **Rape (Section 63,BNS)**

- ◇ Kidnapping for Ransom (Section 140(2),BNS)
- ◇ Dacoity (Section 310(2),BNS)
- ◇ Terrorism

3.1.9.3 Procedure for Handling Non-Compoundable Offences

The process begins with the filing of a First Information Report (FIR) under Section 173 of the BNSS. The police conduct a detailed investigation, gathering evidence, interviewing witnesses, and compiling a charge sheet. The accused may be arrested and held in custody during the investigation. The accused must be presented before a magistrate within 24 hours if arrested. Upon completing the investigation, the police file a charge sheet under Section 193 of the BNSS. The case proceeds to trial, where evidence is presented, witnesses are examined, and legal arguments are made. The court delivers a verdict based on the evidence and arguments. If the accused is found guilty, the court imposes an appropriate sentence.

3.1.9.4 Rights of the Accused

The accused is entitled to a fair and impartial trial. He has the right to be represented by a lawyer of their choice. If convicted, the accused has the right to appeal the decision to a higher court. The court conducts a thorough examination of the evidence and ensures that due process is followed. The judiciary ensures that the rights of both the accused and the victim are protected throughout the legal process. The court delivers an impartial judgment based on the merits of the case.

3.1.9.5 Comparison with Compoundable Offences

Non-compoundable offences are more severe and have greater societal impact compared to compoundable offenses. These require full judicial resolution, whereas compoundable offences can be settled out of court. Unlike Compoundable offences, the Non-compoundable offences undergo greater judicial scrutiny due to their serious nature.

Recap

- ◇ **Cognizable Offences** are serious crimes where police can arrest without a warrant, such as murder or theft.
- ◇ **Non-Cognizable Offences** are less severe crimes where police cannot arrest without a warrant, like defamation or public nuisance.
- ◇ **In Bailable Offence**, the accused has the right to obtain bail, such as minor theft or public obstruction.
- ◇ **In Non-Bailable Offences** bail is not a matter of right and is at the court's discretion, especially for serious crimes like murder or rape.

- ◇ **Compoundable Offences** are offences that can be settled between the parties involved, like assault or defamation, often resulting in withdrawal of charges.
- ◇ **Non-Compoundable Offences** are serious crimes that cannot be settled privately and must go through the legal process, such as kidnapping or murder.
- ◇ Police have the authority to investigate and arrest without prior approval from a court.
- ◇ Police need permission from the court to investigate and make arrests in non-cognizable cases.
- ◇ **Significance of Bailable vs. Non-Bailable** is that it affects the freedom of the accused while awaiting trial, with bailable offences allowing more leniency.

Objective Questions

1. What type of offence allows police to arrest without a warrant?
2. Which category of offence requires a warrant for arrest?
3. In which category of offence does the accused have a right to bail?
4. Which type of offence does not guarantee bail and is decided by the court?
5. What is the term for offences that can be privately settled between parties?
6. Which type of offence cannot be settled outside of court?
7. Which authority needs to approve the investigation of a non-cognizable offence?
8. What type of offence includes serious crimes like murder or kidnapping?
9. What is the legal action called when an offence is resolved through mutual settlement?
10. Which type of offence does not involve police intervention without court permission?

Answers

1. Cognizable
2. Non-Cognizable
3. Bailable
4. Non-Bailable
5. Compoundable
6. Non-Compoundable
7. Court
8. Non-Bailable
9. Compounding
10. Non-Cognizable

Assignments

1. Discuss the differences between cognizable and non-cognizable offences, providing relevant examples. How do these categories impact the role of the police in the criminal justice system?
2. Analyze the significance of classifying offences as bailable and non-bailable under the BNSS. How does this classification affect the rights of the accused and the discretion of the judiciary?
3. Examine the concept of compoundable and non-compoundable offences in the Indian legal system. Discuss the rationale behind allowing certain offences to be compounded, and the implications for victims, offenders, and the legal process.

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Unit 2

First Information Report (FIR), Investigation and Charge sheet

Learning Outcomes

A careful study of this chapter will enable the learner to:

- ◇ Understand the Role of FIR
- ◇ Analyse the Investigation Process
- ◇ Explore the concept of Charge Sheet
- ◇ Assess the legal procedure involved in various offences

Prerequisite

Imagine a scenario where a crime has occurred, and the first step in the legal process is to set things in motion. This is where the First Information Report (FIR) comes in—it's like the starting line in a marathon. As the name suggests, it's the first information about a crime / offence that is reported and hence it's called First Information Report.

When someone reports a crime, the FIR acts as the official record of the incident. Following this, an investigation begins, where police gather evidence and piece together what happened. Once the investigation is complete, they compile their findings into a charge sheet, which details the evidence and proposed charges against the accused. This sequence ensures that justice is pursued systematically, from reporting to prosecution.

Keywords

FIR (First Information Report), Investigation, Charge Sheet, Criminal Procedure, Police Report, Evidence Collection, Case Registration, Preliminary Inquiry, Accused, Judicial Proceedings



3.2.1 First Information Report

3.2.1.1 Meaning

An FIR is the initial report made to the police by the complainant or any other person with knowledge of a cognizable offense. It sets the criminal law into motion and forms the basis for the police to begin their investigation.

Section 173 of the BNSS governs the lodging of an FIR. It outlines the procedure for recording information related to cognizable offenses.

3.2.1.2 Characteristics of an FIR

It is the first piece of information received by the police about the commission of a cognizable offence. An FIR is typically lodged in cases of cognizable offences, where the police have the authority to arrest without a warrant and start an investigation without the magistrate's order. The FIR must be written down, and if given orally, it must be recorded by the officer in charge of the police station. The FIR must be signed by the person giving the information (the complainant), and a copy must be given to the complainant without charge. The FIR becomes an official record of the police, serving as the foundation for the subsequent investigation.

3.2.1.3 Purpose of an FIR

The FIR is the document that officially sets the investigative machinery of the police in motion. It provides an official record of the information received and the action taken by the police. The FIR can be used as evidence in court to corroborate the prosecution's case, although it is not considered substantive evidence on its own.

3.2.1.4 Procedure for Filing an FIR

The complainant or any person with knowledge of the crime approaches the police station to report a cognizable offence. The officer in charge records the information in writing, as required under Section 173 of the BNSS. The recorded information is read back to the informant, who then signs the FIR. If the informant refuses to sign, the fact is noted. The FIR is assigned a unique number, and a copy is provided to the informant free of cost. The police then proceed to investigate the offence based on the information recorded in the FIR.

3.2.1.5 Rights of the Complainant

The complainant has the right to receive a free copy of the FIR. If the police refuse to file an FIR for a cognizable offence, the complainant can approach higher authorities or the magistrate under Section 173(4) or Section 175(3) of the BNSS. The complainant has the right to be informed about the progress of the investigation. Courts may supervise the investigation process to ensure it is conducted fairly and without bias.

3.2.1.6 Types of FIRs

Generally, FIR are of two types:

1. **Zero FIR:** which can be filed at any police station, regardless of jurisdiction. It

is later transferred to the appropriate police station. This is particularly useful in cases of urgency. It is called zero FIR, because the number of such FIR's start with '0' instead of regular numbering. This is given statutory recognition in BNSS under Section 173. Earlier, this was a practice but was not mandated under CrPC; but now is a statutory mandate under BNSS.

2. **Regular FIR:** which can be filed at the police station within whose jurisdiction the offence occurred.

Importance of FIR

The FIR serves as the starting point for the police investigation. It creates a formal legal record of the crime and the initial information received by the police. The requirement to file an FIR ensures that the police are accountable for investigating cognizable offences brought to their attention. The Supreme Court of India has emphasized the mandatory nature of registering an FIR for cognizable offences, as established in the landmark case of **Lalita Kumari v. Govt. of Uttar Pradesh (2013)**.

The Court held that the police must register an FIR upon receiving information about a cognizable offense. Delays in filing an FIR can weaken the case, as it may lead to loss of evidence or witness memory. There is a risk of false FIRs being filed to harass or settle personal scores. Hence, filing and registering of FIR must be done with utmost vigil.

3.2.2 Investigation

3.2.2.1 Meaning

Investigation, as defined under **Section 2(1)(l) of the BNSS**, refers to all the proceedings under the CrPC conducted by a police officer or any person (other than a magistrate) authorized by a magistrate, for the collection of evidence. It is a fact-finding process that helps in establishing whether a crime has been committed and, if so, by whom.

3.2.2.2 Objectives of Investigation

- ◇ To gather relevant evidence that establishes the facts and circumstances of the crime.
- ◇ To identify the person(s) responsible for committing the crime.
- ◇ To determine the motive behind the offence.
- ◇ To present a comprehensive case file before the court, aiding in the prosecution and trial of the accused.

3.2.2.3 Legal Provisions Governing Investigation

- ◇ **Section 173:** Initiates the investigation process with the registration of the First Information Report (FIR).
- ◇ **Section 175:** Provides the police with the authority to investigate cognizable offenses.



- ◇ **Section176:** Details the procedure to be followed after the registration of the FIR, including sending a report to the magistrate.
- ◇ **Section179:** Empowers the police to summon witnesses and suspects for questioning.
- ◇ **Section180:** Authorizes the police to record statements made by witnesses during the investigation.
- ◇ **Section181:** Governs the use of statements recorded during the investigation in judicial proceedings.
- ◇ **Section183:** Deals with the recording of confessions and statements before a magistrate.
- ◇ **Section193:** Requires the police to submit a final report or charge sheet to the magistrate upon the completion of the investigation.

3.2.2.4 Stages of Investigation

The investigation formally begins with the registration of an FIR under Section173 of the BNSS. The FIR provides the police with the basis to start the investigation. The investigating officer visits the crime scene to collect physical evidence, take photographs, and make observations. The police examine and record the statements of witnesses under Section180 of the BNSS. These statements help in corroborating the facts of the case. Suspects are questioned by the police to obtain information about their involvement in the crime.

The investigating officer collects all relevant evidence, including physical objects, forensic samples, documents, and electronic data. Under Sections 96 to 108 of the BNSS, the police may conduct searches and seize property or items related to the crime. If sufficient evidence is found, the police can arrest the accused under Section35 of the BNSS.

If the accused is willing to confess, the confession is recorded before a magistrate under Section183 of the BNSS. Once the investigation is complete, the police prepare a charge sheet under Section193 of the BNSS, detailing the evidence and charges against the accused. The charge sheet or final report is submitted to the magistrate, who will then proceed with the trial based on the findings of the investigation.

3.2.2.5 Rights of the Accused During Investigation

The accused has the right to remain silent during interrogation. The accused is entitled to consult with a lawyer during the investigation. The accused cannot be forced to provide evidence against themselves. Depending on the nature of the offense, the accused may apply for bail during the investigation.

3.2.2.6 Role of Magistrate in Investigation

The magistrate supervises the investigation process, ensuring that it is conducted lawfully and without bias. He may issue orders related to search warrants, remand of the accused, and recording of statements or confessions. The magistrate monitors the

progress of the investigation and may order further investigation if necessary.

Under Section 173(4), the magistrate may allow the complainant to approach him if the police refuse to investigate. The magistrate can review the investigation process to ensure it is conducted in accordance with the law and principles of justice.

3.2.2.7 Challenges in Investigation

A thorough investigation forms the foundation for a successful prosecution and ensures that justice is served. Fair and impartial investigation protects the rights of both the victim and the accused. The investigation helps establish the facts and circumstances surrounding the crime, which are crucial for the court's decision-making.

On the contrary, Prolonged investigations can lead to loss of evidence and witnesses becoming untraceable. There is a risk of evidence being tampered with or destroyed during the investigation. Misuse of the investigation process can lead to false allegations and wrongful prosecution. Instances of police misconduct, such as coercion or torture during interrogation can undermine the integrity of the investigation.

3.2.3 Charge Sheet

3.2.3.1 Definition

A charge sheet is a written document filed by the police in a criminal court, stating that sufficient evidence exists to charge a person with a crime. It is the outcome of a thorough investigation, where the investigating officer concludes that there is a prima facie case against the accused.

Section 193 of the BNSS governs the submission of a charge sheet. It mandates the completion of the investigation and the forwarding of a report (charge sheet) to the magistrate, detailing the findings and evidence gathered.

3.2.3.2 Purpose of a Charge Sheet

The charge sheet officially brings the accused before the court, initiating the judicial process. It provides a summary of the evidence collected during the investigation, supporting the charges against the accused. The charge sheet informs the accused of the charges and evidence against them, enabling them to prepare their defence. It forms the basis for the trial, guiding the court in framing charges and proceeding with the case.

3.2.3.3 Contents of a Charge Sheet

A charge sheet typically includes the following details:

- ◇ **Factual Summary:** A summary of the facts and circumstances surrounding the offense.
- ◇ **Details of the Accused:** Names, addresses, and other identification details of the accused.
- ◇ **Charges Framed:** Specific sections of the law under which the accused are charged.
- ◇ **List of Witnesses:** Names and details of witnesses who will testify in the case.
- ◇ **List of Evidence:** A detailed account of the evidence collected, including



physical evidence, documents, and forensic reports.

- ◇ **Statements Recorded:** Statements of witnesses and the accused recorded during the investigation.
- ◇ **Investigation Findings:** The conclusions drawn by the investigating officer, indicating that there is sufficient evidence to proceed with the prosecution.

3.2.3.4 Procedure for Filing a Charge Sheet

After the investigation is completed, the police compile all the evidence and prepare the charge sheet. The charge sheet is submitted to the magistrate having jurisdiction over the case. Upon receiving the charge sheet, the magistrate examines it and frames formal charges against the accused if a prima facie case is established.

A copy of the charge sheet is provided to the accused, ensuring their right to a fair trial by informing them of the charges and evidence. After the charges are framed, the trial begins, with the prosecution presenting the evidence outlined in the charge sheet.

3.2.3.5 Time Frame for Filing a Charge Sheet

Section 193 of the BNSS specifies the time limits for completing an investigation and filing a charge sheet.

- ◇ **60 Days:** For offences punishable with imprisonment of less than 10 years.
- ◇ **90 Days:** For offences punishable with death, life imprisonment, or imprisonment for 10 years or more.

If the charge sheet is not filed within these time limits, the accused may be entitled to bail.

3.2.3.6 Supplementary Charge Sheet

If additional evidence is discovered after the filing of the charge sheet, the police may submit a supplementary charge sheet. This is allowed under Section 193(9) of the BNSS and includes any further evidence or information gathered after the initial charge sheet was filed.

3.2.3.7 Distinction between FIR and Charge Sheet

An FIR is the initial report made to the police by the complainant about the commission of a cognizable offense, which sets the investigation in motion.

A charge sheet is the final report prepared by the police after the investigation, concluding that there is sufficient evidence to charge the accused.

3.2.3.8 Importance of a Charge Sheet

The charge sheet ensures that the investigation is conducted thoroughly and that the findings are documented for judicial scrutiny. By providing detailed information about the charges and evidence, the charge sheet helps ensure that the accused receives a fair trial. The charge sheet guides the court in framing charges and conducting the trial, ensuring that justice is served. The judiciary exercises oversight over the filing of charge sheets to prevent misuse of power by law enforcement agencies. Courts may

quash a charge sheet if it is found to be baseless, frivolous, or malicious.

3.2.3.9 Challenges and Issues

Delay in filing the charge sheet can affect the rights of the accused and the effectiveness of the judicial process. Errors or omissions in the charge sheet can lead to challenges during the trial, potentially weakening the prosecution's case. There is a risk of charge sheets being filed based on false or fabricated evidence, leading to wrongful prosecution.

Recap

- ◇ An FIR is a written document prepared by the police when they receive information about the commission of a cognizable offence. It marks the formal initiation of a criminal investigation.
- ◇ The primary purpose of the FIR is to set the criminal justice process in motion, ensuring that the allegations are formally recorded and investigated.
- ◇ It must be registered immediately by the police at the relevant police station and can be filed by the victim, a witness, or any person aware of the offence.
- ◇ An FIR typically includes details such as the nature of the offence, date, time, and place of the occurrence, names of involved parties, and a brief description of the incident.
- ◇ Following the FIR, the police conduct an investigation to gather evidence, interrogate suspects and witnesses, and compile information to determine the facts of the case.
- ◇ Investigations may involve different methods, including site visits, forensic analysis, witness interviews, and document reviews, depending on the nature of the crime.
- ◇ After completing the investigation, the police prepare a charge sheet, which outlines the evidence against the accused and the charges they face.
- ◇ A charge sheet generally includes a summary of the investigation, the evidence collected, statements of witnesses, and the specific charges leveled against the accused.
- ◇ The charge sheet is crucial for initiating the trial process. It provides the court with the necessary details to assess the case and decide on the further legal proceedings.
- ◇ The FIR and charge sheet play essential roles in ensuring transparency and accountability in the criminal justice system, helping to safeguard the rights of both the accused and the victim.

Objective Questions

1. What is the document called that records the first information about a crime?
2. Who typically initiates the investigation process in a criminal case?
3. What term is used for a detailed report filed by the police after completing the investigation?
4. What is the term for the procedure where evidence is gathered and examined by the police?

Answers

1. FIR
2. Police
3. Charge Sheet
4. Investigation

Assignments

1. Analyze the role and importance of the First Information Report (FIR) in the criminal justice process. Discuss how an FIR influences subsequent stages of the investigation and legal proceedings.
2. Explain the key steps involved in a criminal investigation after an FIR is lodged. How do these steps contribute to the gathering of evidence and preparation of a charge sheet? Provide examples of procedures that ensure thorough and unbiased investigations.
3. Evaluate the significance of the charge sheet in the prosecution process. How does the charge sheet assist in ensuring that the accused is brought to trial? Discuss the contents typically included in a charge sheet and their relevance to the trial.

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Unit 3

Warrant, Arrest and Bail

Learning Outcomes

A careful study of this chapter will enable the learner to:

- ◇ Understand the Legal Framework
- ◇ Explore different Types of Warrants
- ◇ Analyze the Arrest Process
- ◇ Evaluate various conditions of Bail

Prerequisite

Imagine you're reading a crime novel. A suspect is on the run, and the police need to bring them in. First, they need a warrant – a legal order issued by the court allowing them to arrest the suspect. With the warrant in hand, the police can now make the arrest. But being arrested doesn't always mean the person stays behind bars.

They may apply for bail, a temporary release while their trial is pending. Whether or not bail is granted depends on various factors like the nature of the crime, evidence, and the risk of the suspect fleeing. Understanding this trio—warrant, arrest, and bail—sets the stage for identifying how criminal law balances individual rights with justice.

Keywords

Warrant, Arrest, Bail, Judicial Authority, Custody

Discussion

3.3.1 Warrant: Introduction

A warrant is a legal document issued by a competent authority, usually a magistrate, authorizing law enforcement agencies to carry out specific actions such as arresting a

person, searching premises, or seizing property. Warrants are an essential tool in the criminal justice system, ensuring that such actions are conducted lawfully and with judicial oversight.

3.3.1.1 Meaning

A warrant is a formal written order issued by a magistrate or a judge, directing law enforcement officials to perform an act that would otherwise be illegal, such as arresting an individual or searching a location. Warrants are intended to balance the need for law enforcement with the protection of individual rights.

3.3.1.2 Types of Warrants

1. Arrest Warrant

An arrest warrant authorizes the police to arrest a specific individual accused of committing a crime. Under Section 72 of the BNSS, an arrest warrant is issued by a magistrate when there is sufficient reason to believe that a person has committed an offence and should be taken into custody. An arrest warrant must include the name and description of the accused, the offense charged, and the magistrate's signature and seal. The arrest warrant must be executed by a police officer, who must inform the accused of the warrant and the charges against them.

2. Search Warrant

A search warrant authorizes law enforcement to search a specific place or person for evidence related to a crime. Sections 96 to 101 of the BNSS cover the issuance of search warrants. These are issued when the court believes that evidence of a crime may be found in a specific location. A search warrant must specify the place to be searched, the items or persons to be seized, and the reasons for the search. The search must be conducted in the presence of witnesses, and a list of seized items must be prepared and signed by the officer conducting the search.

3. Warrant of Seizure

A warrant of seizure authorizes law enforcement to seize specific property or assets connected to a crime. Issued under various sections depending on the context, such as Section 85 of the BNSS for attachment of property. The police officer executes the seizure by taking possession of the property or assets and reporting back to the magistrate.

4. Proclamation and Attachment Warrant

Issued when a person absconds or avoids arrest, allowing law enforcement to attach the property of the accused and publicly declare them as an absconder. Sections 84 and 85 of the BNSS provide for the issuance of such warrants when an accused person evades arrest. The proclamation is read publicly, and the property is attached to compel the accused to surrender.

3.3.1.3 Legal Provisions Governing Warrants

Section 72 of the BNSS details the form, content, and manner of execution of warrants of arrest. **Section 81 of the BNSS** allows for the issuance of a warrant for arrest in any district, directing the officer to bring the accused before the court.



Section 76 of the BNSS requires that an arrest warrant be executed without unnecessary delay, with the officer notifying the accused of the substance of the warrant. **Section 98 of the BNSS** governs the issuance of search warrants when the court believes that evidence of a crime is likely to be found. **Section 101 of the BNSS** provides for search warrants in cases involving wrongful confinement.

3.3.1.4 Execution of Warrants

Arrest Warrants must be executed by a police officer or any person to whom the magistrate directs the warrant. The accused must be informed of the warrant and the reasons for the arrest. Search Warrants must be executed in the presence of two or more respectable inhabitants of the locality.

A list of seized items must be prepared and signed by the officer. Seizure Warrants must be executed by seizing the property and taken into custody, with a report submitted to the court. In Proclamation Warrants, the proclamation must be published in a local newspaper or posted in a conspicuous place, and the property must be attached.

3.3.1.5 Safeguards and Rights of Individuals

Warrants are issued by a magistrate, ensuring that actions like arrests and searches are conducted with proper legal authorization. Individuals cannot be arrested without a valid warrant unless in exceptional circumstances as provided by law.

The person being arrested or whose premises are being searched has the right to be informed about the warrant and the reasons for the action. The accused has the right to consult a lawyer upon arrest, even if arrested under a warrant. The legality of a warrant can be challenged in higher courts, particularly if it is believed to have been issued on insufficient grounds.

3.3.1.6 Importance of Warrants

Warrants provide legal authorization for actions that would otherwise be illegal, ensuring that law enforcement operates within the bounds of the law. Warrants protect individuals from arbitrary actions by the police, ensuring that arrests, searches, and seizures are conducted only when authorized by law. Warrants facilitate the administration of justice by ensuring that accused persons are brought before the court and that evidence is lawfully obtained.

3.3.2 Arrest

3.3.2.1 Meaning

Arrest is the act of apprehending a person and restraining their liberty, typically in response to an accusation of a criminal offence. It is a significant measure, as it directly impacts the personal freedom of an individual.

3.3.2.2 Legal Provisions Governing Arrest

Section 35 of the BNSS authorizes the police to arrest without a warrant in specific situations, such as when a person is caught committing a cognizable offence, or there is reasonable suspicion that they have committed a crime. **Section 39 of the BNSS** allows

police to arrest a person who, in the presence of a police officer, has committed a non-cognizable offense and refuses to give their name and address.

Section 40 of the BNSS permits a private person to arrest a person committing a cognizable offense in their presence, and then hand over the arrested person to the police. **Section 41 of the BNSS** empowers a magistrate to arrest a person in their presence for any offense committed within their view. **Section 43 of the BNSS** describes how an arrest is to be made, emphasizing that the person must be informed of the grounds of arrest and, if necessary, the use of force can be employed. **Section 47 of the BNSS** mandates that every person arrested be informed of the grounds for their arrest and their right to bail if the offense is bailable. **Section 49 of the BNSS** provides for the search of the arrested person and the seizure of any articles found. **Section 58 of the BNSS** ensures that no person can be detained in custody beyond 24 hours without being produced before a magistrate.

3.3.2.3 Types of Arrest

1. Arrest Without a Warrant

The arrest is made by police without prior authorization from a magistrate, typically in cases involving cognizable offenses where immediate action is necessary. Section 35 of the BNSS outlines the circumstances under which such arrests can be made. Arrest can also be made during the commission of a crime, or on credible information about a person's involvement in a crime, or of a person being arrested, is a habitual offender.

2. Arrest with a Warrant

The arrest is made by police with prior authorization from a magistrate, usually in non-emergency situations where the court has determined that an arrest is necessary. Section 72 of the BNSS outlines the requirements for a valid warrant of arrest. The police execute the warrant by apprehending the person named in the warrant and presenting them before the court.

3. Private Arrest

When a private citizen arrests a person who has committed a cognizable offense in their presence, it is called Private Arrest. Section 40 of the BNSS allows private citizens to make arrests, but they must immediately hand over the arrested person to the police.

3.3.2.4 Procedure of Arrest

As per Section 47 of the BNSS, the arresting officer must inform the person being arrested of the reasons for their arrest and, if applicable, their right to bail. If necessary, reasonable force can be used to effect the arrest, but the force must be proportional to the resistance offered (Section 43).

The arresting officer is authorized to search the person being arrested and seize any articles that may be used as evidence (Section 49). When any person is arrested, he shall be examined by a medical officer in the service of the Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made (Section 53).

The arrested person must be produced before a magistrate within 24 hours of arrest,

excluding the time necessary for the journey from the place of arrest to the court (Section 58). The arresting officer must prepare an arrest memo, detailing the time, place, and reasons for the arrest, along with the names of the witnesses present during the arrest.

3.3.2.5 Rights of the Arrested Person

The arrested person must be informed of the reason for their arrest and the charges against them, as guaranteed by Article 22(1) of the Indian Constitution and Section 47 of the BNSS. If the offence is bailable, the arrested person has the right to be released on bail (Section 47(2)).

The arrested person has the right to consult and be defended by a lawyer of their choice (Article 22(1) of the Indian Constitution). The arrested person must be produced before a magistrate within 24 hours of arrest, as mandated by Article 22(2) of the Indian Constitution and Section 58 of the BNSS. The arrested person cannot be compelled to testify against themselves, as per Article 20(3) of the Indian Constitution. The arrested person has the right to a fair and impartial trial, which includes the right to be presumed innocent until proven guilty.

3.3.2.6 Distinction Between Arrest and Detention

- ◇ **Arrest** involves taking a person into custody based on an accusation of a crime, with the intention of producing them before the court. It is a formal action with legal consequences.
- ◇ **Detention** refers to the temporary restraint of a person's freedom, typically for questioning or investigation, without formal charges being filed. Detention may or may not lead to arrest.

3.3.2.7 Importance of Arrest

Arrest ensures that the accused is available to face legal proceedings and does not evade justice. Arrest can prevent the accused from committing additional offenses or tampering with evidence. It is a tool for maintaining law and order by removing potentially dangerous individuals from society.

Courts play a crucial role in reviewing the legality of arrests, ensuring that arrests are made in accordance with the law and that the rights of the arrested person are protected. The writ of habeas corpus can be filed to challenge unlawful detention or arrest, compelling the authorities to justify the detention before the court. The Supreme Court of India has laid down guidelines to prevent arbitrary arrests, emphasizing the need for proper documentation, transparency, and adherence to legal procedures.

3.3.3 Bail

Bail is a legal mechanism that allows a person accused of a crime to be released from custody, typically under specific conditions, pending trial or other legal proceedings. The concept of bail balances the need to ensure the presence of the accused at trial with the fundamental right to personal liberty.

3.3.3.1 Meaning

Bail refers to the conditional release of an accused person from custody, with the assurance that they will appear in court when required. The primary purpose of bail is to ensure that the accused is not unnecessarily detained before their guilt is proven, while also safeguarding the legal process by ensuring their attendance at trial.

3.3.3.2 Legal Provisions Governing Bail

Section 478 of the BNSS deals with bail in bailable offenses, where the accused has the right to be released on bail. **Section 480 of the BNSS** governs bail in non-bailable offenses, where the grant of bail is at the discretion of the court. **Section 482 of the BNSS** provides for anticipatory bail, allowing a person to seek bail in anticipation of arrest for a non-bailable offense. **Section 483 of the BNSS** empowers High Courts and Sessions Courts to grant bail in both bailable and non-bailable cases and to impose conditions on the bail.

Section 484 relates to the amount of bail and the discretion of the court in fixing the bond amount. **Section 485** details the bond conditions, including surety and personal bonds, which the accused must furnish to secure bail. **Section 491** governs the forfeiture of bail bonds and the consequences of failure to appear in court.

3.3.3.3 Types of Bail

1. Bailable Offenses

Bailable offences are those where the accused has a legal right to be released on bail upon offering sufficient surety or bond. Section 478 of the BNSS mandates that if a person is arrested for a bailable offense, they must be released on bail if they provide the necessary surety or bond. Examples are minor offenses such as defamation, public nuisance, or simple assault. In bailable offences, the granting of bail is almost automatic, and the accused cannot be denied bail unless there are exceptional circumstances.

2. Non-Bailable Offenses

Non-bailable offenses are more serious crimes where bail is not granted as a matter of right and is subject to the discretion of the court. Section 480 of the BNSS gives the court the discretion to grant or deny bail in non-bailable offenses, considering factors like the nature of the crime, the severity of the punishment, and the likelihood of the accused absconding or tampering with evidence. Examples are serious crimes like murder, rape, or kidnapping.

3. Discretionary Bail

Typically seen in non-bailable offenses, where the court considers various factors before granting bail, and may impose conditions to ensure the accused's compliance with legal proceedings.

4. Anticipatory Bail

Anticipatory bail is a pre-arrest bail granted by a court to a person who anticipates being arrested for a non-bailable offense. Section 482 of the BNSS allows a person to apply for anticipatory bail, ensuring that they are released on bail if arrested for the offense mentioned in the application. The court may impose conditions such as the



accused's cooperation with the investigation, restriction on travel, or regular reporting to the police. Anticipatory bail provides protection from arrest, particularly when there is a fear of false accusation or harassment.

5. Interim Bail

Interim bail is temporary bail granted by the court pending a final decision on the bail application. While not explicitly defined in the CrPC, interim bail is granted by courts to ensure that the accused is not detained while their bail application is under consideration. Interim bail is usually granted for a short period and is subject to review by the court. It provides temporary relief to the accused until a final decision on regular or anticipatory bail is made.

3.3.3.4 Conditions for Granting Bail

Courts consider the seriousness of the crime and its impact on society. The more severe the crime, the less likely bail will be granted. If the court believes that the accused might flee to avoid trial, bail may be denied or granted with stringent conditions. Bail may be denied if there is a risk that the accused will tamper with evidence or influence witnesses. An accused with a history of criminal behavior may face more stringent conditions or denial of bail.

Courts may consider the health, age, and other personal circumstances of the accused when deciding on bail. The accused may be required to furnish a surety who guarantees their appearance in court. The reliability and financial standing of the surety are considered. The court may impose conditions such as surrendering the passport, regular reporting to the police, or not leaving the jurisdiction without permission.

3.3.3.5 Procedure for Applying for Bail

The accused or their legal representative must file a bail application in the appropriate court, detailing the reasons why bail should be granted. The court hears arguments from both the defense and the prosecution, considering factors like the nature of the offense, the accused's background, and the likelihood of absconding.

After hearing both sides, the court either grants or denies bail. If bail is granted, the court sets the amount of bail and the conditions to be fulfilled. The accused must furnish a bail bond, with or without sureties, as per the court's order. Once the bail bond is accepted, the court issues a release order, and the accused is released from custody. The accused must comply with all conditions set by the court as part of the bail order, failing which bail may be revoked.

3.3.3.6 Rights of the Accused in Relation to Bail

Every person accused of an offense has the right to apply for bail, whether it is a bailable or non-bailable offense. The accused must be informed of their right to bail in the case of a bailable offense. The grant of bail ensures that the accused does not suffer unnecessary pre-trial detention, aligning with the right to a fair and speedy trial. If bail is denied, the accused has the right to appeal the decision to a higher court.

3.3.3.7 Importance of Bail in the Criminal Justice System

Bail upholds the principle that a person is presumed innocent until proven guilty, ensuring that individuals are not unjustly detained. Granting bail helps prevent overcrowding in prisons, which can lead to inhumane conditions and strain on the correctional system. Bail ensures that the accused remains available for trial and complies with court orders while awaiting legal proceedings. The bail process provides an opportunity for judicial oversight, ensuring that arrests and detentions are lawful and justified.

Recap

- ◇ A warrant is a legal document issued by a judge or magistrate authorizing law enforcement to take specific actions, such as making an arrest, conducting a search, or seizing property.
- ◇ There are various types of warrants, including arrest warrants (for apprehending a suspect), search warrants (for searching premises) etc
- ◇ An arrest warrant is issued when there is probable cause to believe a person has committed a crime. It allows law enforcement to detain the individual named in the warrant.
- ◇ When someone is arrested, they are taken into custody by law enforcement. They must be informed of their rights, including the right to remain silent and the right to an attorney (Miranda Rights).
- ◇ Law enforcement can make an arrest without a warrant if they have probable cause to believe a crime has been committed in their presence or if the suspect poses an immediate threat.
- ◇ After an arrest, the suspect undergoes a booking process, where their personal information, fingerprints, and photographs are taken. They may also be searched, and their belongings catalogued.
- ◇ Bail is a sum of money or property posted as a guarantee that a suspect will appear in court for their trial. It allows the suspect to remain free while awaiting trial.
- ◇ The amount of bail is determined by a judge, considering factors like the severity of the crime, the suspect's criminal history, and the risk of flight. In some cases, bail can be denied.
- ◇ Bail can be paid in several forms, including cash bail, surety bonds (through a bail bondsman), or property bonds. In some instances, suspects may be released on their own recognizance without paying bail.
- ◇ If bail is granted, the suspect must adhere to certain conditions, such as regularly reporting to law enforcement, avoiding contact with certain individuals, and not leaving a specified area. Violation of these conditions can result in re-arrest.

Objective Questions

1. What legal document is issued by a judge to authorize an arrest or search?
2. What is the term for taking a suspect into custody by law enforcement?
3. What is the term for arresting someone without a warrant based on immediate probable cause?
4. What term refers to the money or property posted to secure a suspect's release before trial?
5. Who determines the amount of bail?
6. What type of bond is obtained through a bail bondsman?

Answers

1. Warrant
2. Arrest
3. Arrest without Warrant
4. Bail
5. Judge
6. Surety

Assignments

1. Discuss the different types of warrants and explain the specific circumstances under which each type is issued. Provide examples to illustrate your points.
2. Analyze the legal and procedural steps involved in the arrest process. How do these steps protect the rights of individuals while ensuring justice?
3. Examine the concept of bail in the criminal justice system. Discuss the factors that influence the determination of bail amounts and conditions.

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BLOCK 04

Judicial System and Law Enforcement In India

Unit 1

System of Courts and their Jurisdiction in India

Learning Outcomes

A Careful study of this chapter will enable the learner to:

- ◇ Outline the structure of the Indian court system from Supreme Court to subordinate courts.
- ◇ Describe the jurisdiction and key functions of major courts in India.
- ◇ Identify the roles of various special courts and tribunals in the Indian legal system.
- ◇ Summarize the historical development of India's judiciary since independence.

Prerequisite

In 1973, the Supreme Court of India delivered a verdict that would shape the future of the world's largest democracy. The case began with a seer from Kerala, Swami Kesavananda Bharati, challenging a state law that restricted his property rights.

After the longest hearing in the Supreme Court's history, spanning 68 days, the judges ruled by a narrow 7-6 majority that while Parliament could amend the Constitution, it couldn't alter its "basic structure."

This decision, known as the Basic Structure Doctrine, effectively saved Indian democracy by protecting fundamental rights, ensuring separation of powers, and preserving judicial review. As you embark on your journey to understand India's judicial system, remember the Kesavananda Bharati case.

It stands as a powerful reminder that the courts are not just about legal jargon and procedures, but serve as the guardians of citizens' rights and the nation's democratic fabric. Your study of this system isn't merely an academic exercise; it's an exploration of how justice is upheld, rights are protected, and democracy is preserved in a nation of over a billion people.

Keywords

Jurisdiction, Supreme Court, High Courts, Subordinate Courts, Constitutional law, Appellate system, Special tribunals

Discussion

4.1.1 Historical Development of Indian Legal System

In 1773, the Regulating Act introduced the concept of a legal member in the Governor General's council, marking the beginning of British involvement in establishing courts to oversee criminal and civil justice in India. The Government of India Act of 1935 further advanced this effort by including a provision for the creation of a Federal Court with both original and appellate jurisdiction. Following India's independence, the Constitution of 1950 established a comprehensive legal framework, with the Supreme Court at the apex and courts extending down to the panchayat level.

4.1.2 Structure of the Indian Judiciary and different Courts of Appeal

Our Constitution establishes a unified judicial system with a structured hierarchy of courts, where the Supreme Court serves as the highest authority for both the Union and the States. High Courts function at the state level, with subordinate courts operating beneath them.

In addition to High Courts and other legally constituted courts, each district has District and Sessions Judges' courts, while metropolitan areas have Metropolitan Magistrates. Although the organization of the subordinate judiciary may differ between states, the fundamental hierarchy of the courts remains consistent.

At the lowest level, the judiciary is divided into two branches: Civil and Criminal Courts. The Munsif Courts, which handle civil cases involving claims up to Rs. Ten lakh rupees.. Subordinate judges, who have unlimited jurisdiction over civil suits, oversee the first appeals from Munsif courts. The District Judge, who hears first appeals from subordinate judges and Munsif courts, has unlimited original jurisdiction in both civil and criminal cases

District Judges are appointed by the Governor in consultation with the High Courts. To be eligible for the position of District Judge, a candidate must have at least seven years of experience at the bar. Article 233 of the Constitution outlines the conditions for the appointment of District Judges, while Article 234 specifies that the recruitment of other judicial officers is carried out by the Governor, following rules made in consultation with the State Public Service Commission (PSC) and the High Court.

The District Judge is the highest judicial authority in a district, overseeing both civil and criminal cases. The District Judge also hears appeals from serious criminal

cases, known as Sessions cases. A subordinate judge may be granted the powers of an Assistant Sessions Judge, thereby combining civil and criminal authority, similar to a District Judge.

Like the Supreme Court, each High Court is a court of record with both original and appellate jurisdiction, including the power to punish for contempt (Article 215). High Courts exercise appellate jurisdiction over District and Sessions Judges.

There is a High Court in each state, except for Mizoram, Arunachal Pradesh, and Nagaland, which share the High Court of Assam, and Haryana, which shares a High Court with Punjab at Chandigarh. The Bombay High Court serves both Maharashtra and Goa. The Supreme Court is the highest judicial body in the country, with appellate jurisdiction over High Courts, as well as original and advisory jurisdiction.

4.1.3 Other Specialised Courts and Tribunals

In addition to the courts established under the Constitution, several specialized courts have been created to address specific needs, interests, and emerging demands of society:

The Parliament passed the Administrative Tribunals Act in 1985, which led to the establishment of the Central Administrative Tribunal (CAT) in November of the same year. The primary objective of CAT is to provide quick and cost-effective justice to central government employees regarding service-related issues.

In addition to CAT, various other tribunals have been established to address specific legal matters, including Industrial Tribunals, Motor Accident Claim Tribunals (MACT), Commercial Tribunals, Cooperative Institutional Tribunals, and Commercial Tax Tribunals, among others.

The Family Court Act of 1984 was introduced to facilitate conciliation and ensure the swift resolution of disputes related to marriage and family matters. These courts are intended to be set up in cities or towns with populations exceeding ten lakhs, or in other areas where the State government considers it necessary.

Certain courts are established with specific purposes, such as those under the NDPS Act for narcotics and drug-related matters, Labour Courts for issues concerning labor and industry, and special courts dedicated to cases of corruption, CBI affairs, or offenses against Scheduled Castes and Scheduled Tribes. Additionally, in response to the need for more efficient legal processes, some states have recently introduced fast-track courts to expedite the resolution of legal cases.

Lok Adalats, are voluntary agencies, supervised by State legal aid and advisory boards. They are effective alternative forum for dispute resolution through conciliatory means. The Legal Services Authorities Act of 1987 was enacted to provide a statutory basis for the legal aid movement, granting Lok Adalats legal authority. Under this Act, any award issued by a Lok Adalat is considered equivalent to a decree of a civil court or an order of any other court or tribunal and is final and binding on all parties involved in the dispute.



4.1.4 The Supreme Court – Composition, Powers, and Functions

The Supreme Court of India stands at the apex of the country's judicial system, embodying the pinnacle of legal authority and constitutional guardianship. Established on January 26, 1950, coinciding with the adoption of the Indian Constitution, it succeeded the Federal Court of India and assumed a pivotal role in the nation's legal framework.

Composition: The court consists of the Chief Justice of India and 33 other judges. The number of judges was recently increased from 30 to 34 (including the Chief Justice) in 2019.

Appointment: Judges are appointed by the President of India in consultation with the Supreme Court Collegium consisting of four seniormost Judges of the Supreme Court including the Chief Justice. By convention, the senior-most judge of the Supreme Court is usually appointed as Chief Justice. Supreme Court judges serve until they reach the age of 65.

Qualification: As per Article 124(3) of the Constitution: The Candidate:

1. Must be a citizen of India.
2. Must have served as a judge of one or more High Courts for at least five years, or;
3. Must have been an advocate of one or more High Courts for at least ten years, or;
4. Must have held a position of eminence in the legal profession.

Term of Office and Removal: The term of office for a judge of the Supreme Court of India extends until he reach the age of 65. There is no fixed tenure, meaning a judge serves until this age limit unless they choose to resign earlier.

Removal of a Supreme Court judge is a rigorous process, designed to protect judicial independence. A judge can only be removed on grounds of **proved misbehaviour** or **incapacity**, following a motion initiated in either house of Parliament.

The motion must be backed by at least **100 members** of the Lok Sabha or **50 members** of the Rajya Sabha. Once the motion is submitted, an inquiry is conducted to investigate the allegations. If the charges are substantiated, both Houses of Parliament must pass the motion with a **two-thirds majority**.

Upon successful passage, the President of India can remove the judge from office.

Salary and Privileges: The salaries and allowances of Supreme Court judges in India are determined by Parliament and are subject to periodic revisions. These are charged from the Consolidated Fund of India. As of the most recent amendment to the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act in 2018, the Chief Justice of India receives a monthly salary of ₹2.80 lakh, while the other judges of the Supreme Court are entitled to ₹2.50 lakh per month.

In addition to their salaries, judges are entitled to several allowances and benefits, including an official residence, comprehensive medical facilities, and travel allowances

for both official and personal purposes. Other benefits include staff support for judicial and administrative functions, security provisions, and a well-structured pension system.

Seat of the Supreme Court: The seat of the Supreme Court of India is located in New Delhi, the capital of India. The Supreme Court building, situated on Tilak Marg, is an iconic structure that houses the Chief Justice of India, the associate judges, and the administrative offices of the court. While New Delhi is the permanent seat, the Constitution allows the Supreme Court, under Article 130, to sit in other places in India as well, if deemed necessary.

Powers and Functions of the Supreme Court: The Supreme Court's jurisdiction is extensive, encompassing three primary types: original, appellate, and advisory:

1. Original Jurisdiction: Its original jurisdiction, as outlined in Article 131 of the Constitution, grants it exclusive authority to adjudicate disputes between the central government and states, or between states themselves. This unique power underscores the Supreme Court's role in maintaining the federal balance within the Indian Union.

Complementing this is the court's writ jurisdiction under Article 32, which empowers it to issue writs for the enforcement of fundamental rights, thereby positioning the court as a direct protector of citizens' constitutional liberties.

2. Appellate Jurisdiction: The appellate jurisdiction of the Supreme Court further cements its status as the court of last resort. It hears appeals on constitutional, civil, and criminal matters from High Courts across the country. This appellate power is expansive, covering cases that involve substantial questions of law, interpretation of the Constitution, or matters of general public importance.

The court's discretionary power to grant special leave to appeal, conferred by Article 136, adds another dimension to its appellate authority, allowing it to hear cases from any court or tribunal in India, barring military courts.

3. Advisory Jurisdiction: The Supreme Court provides advice on legal or factual questions of public importance when referred to by the President. While the President is not obligated to accept this advice, it serves as an authoritative opinion on legal matters before any action is taken.

The Supreme Court also has jurisdiction under various laws, including the Representation of People Act, The Monopolies and Restrictive Trade Practices (MRTP) Act, the Advocates Act, the Contempt of Courts Act, and the Presidential and Vice-Presidential Act of 1952.

Other Powers:

1. Court of Record: Article 129 declares the Supreme Court a "court of record," meaning its decisions serve as precedents for future cases. The Court can initiate contempt proceedings against individuals or entities that show disrespect for its decisions.

2. Binding Precedent: According to Article 141 of the Constitution, decisions of



the Supreme Court are binding on all courts within India. However, the Supreme Court can overturn its previous decisions if it believes an error was made or if public interest demands it (Article 137).

3. **Enforceability:** The decrees and orders issued by the Supreme Court are enforceable throughout India.
4. **Regulation of Practice and Procedure:** The Supreme Court can make rules regarding its practice and procedure, subject to the approval of the President.
5. **Appointment of Officers:** The Court can appoint its officers and public servants in consultation with the Union Public Service Commission (UPSC) and determine their conditions of service in consultation with the President.
6. **Election Disputes:** The Supreme Court resolves disputes related to the election of the President and the Vice-President.
7. **Transfer of Cases:** Under Article 139A (added by the 44th Amendment Act), the Supreme Court can transfer cases involving significant legal questions from one or more High Courts to itself or transfer cases between High Courts in the interest of justice.
8. **Judicial Review:** The Supreme Court has the power of judicial review, allowing it to assess the constitutionality of laws. If a law is found to be unconstitutional, the Court can declare it null and void. This practice aligns with the model followed in the United States, ensuring that the Constitution, as the fundamental law, is upheld.
9. **Protection of Fundamental Rights:** The Supreme Court is responsible for protecting fundamental rights. Individuals whose rights have been violated can approach the Supreme Court, which can enforce these rights by issuing writs such as habeas corpus, mandamus, prohibition, quo warranto, and certiorari.

4.1.5 The High Court: Composition, Appointment, Powers, and Functions

The High Courts of India serve as the principal courts of justice for each state or group of states and occupy the second tier in the judicial hierarchy, directly below the Supreme Court. Established under Article 214 of the Constitution, there are currently 25 High Courts serving the 28 states and 8 union territories of India.

Each state in India has a High Court, though some states share a common High Court, such as Punjab and Haryana. High Courts have both **original and appellate jurisdiction**, handling civil and criminal cases, as well as constitutional matters specific to their jurisdiction.

Appointment of High Court Judges: As per Articles 217 and 224 of the Constitution, High Court judges are appointed by the President of India in consultation with the

Chief Justice of India, the Governor of the state, and, in the case of appointment of a judge other than the Chief Justice, the Chief Justice of that High Court. The collegium system, plays a significant role in this process, with recommendations for appointments being initiated by the High Court collegium and then considered by the Supreme Court collegium before being forwarded to the government for approval.

Qualifications: To be eligible for appointment as a High Court judge, an individual must meet specific qualifications as outlined in Article 217(2) of the Constitution. To qualify for appointment as a judge of a High Court, a person must:

1. Be a citizen of India and not exceed the age of 62 years.
2. Have held a judicial office for at least ten years or
3. Have been an advocate in a High Court (or multiple High Courts in succession) for a minimum of ten years .

Term of Office: Judges of the High Court hold office until they reach the age of 62. However, they can resign earlier by submitting a resignation letter to the President. A High Court judge can be removed by the President on the grounds of proven misbehavior or incapacity, upon an address by both Houses of Parliament, supported by a two-thirds majority of the members present and voting in each House. The procedure for removing a High Court judge mirrors that of a Supreme Court judge. A judge's office may also be vacated if they are appointed to the Supreme Court or transferred to another High Court by the President.

Salary: The salary of High Court judges is determined by Parliament and revised periodically. As per the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2018, the Chief Justice of a High Court receives a monthly salary of ₹2.50 lakh, while other judges receive ₹2.25 lakh per month.

In addition to their salaries, judges are entitled to rent-free official residences, use of an official car, reimbursement of expenses for official travel, and medical facilities for themselves and their families. They also receive administrative support, personal security, and other allowances designed to provide a comfortable standard of living. After retirement, High Court judges are entitled to a pension, which ensures their financial security post-tenure.

Independence of Judges: Several provisions are in place to ensure the independence of High Court judges:

1. A judge of the High Court can only be removed as per the process stipulated for the removal of a Supreme Court judge, on grounds of proven misbehavior or incapacity.
2. The salaries and allowances of judges are charged to the Consolidated Fund of the State, and cannot be altered to their disadvantage after appointment, except under a Financial Emergency.
3. A retired permanent judge of the High Court is prohibited from pleading or acting in any court in India except the Supreme Court or in a High Court other



than the one in which they served (Article 220).

Jurisdiction and Functions of the High Court: The jurisdiction of High Courts is extensive and multifaceted, encompassing both original and appellate jurisdictions.

1. Writ Jurisdiction: Under Article 226 of the Constitution, High Courts possess the power to issue writs for the enforcement of fundamental rights and for any other purpose. This writ jurisdiction is wider than that of the Supreme Court, as High Courts can issue writs not only for the enforcement of fundamental rights but also for the redressal of any other legal right.

2. Original Jurisdiction: High Courts exercise original jurisdiction in matters relating to company law, matrimonial disputes, contempt of court, and in some cases, election petitions. They can hear cases that involve fundamental rights violations, election petitions, or disputes involving state laws.

3. Appellate Jurisdiction: They are the highest courts of appeal within a state for civil and criminal matters and also hear cases related to matrimonial issues and admiralty law. Appellate jurisdiction covers appeals from subordinate courts and tribunals within their territorial jurisdiction. In criminal matters, High Courts can hear appeals against convictions and sentences imposed by Sessions Courts and other lower criminal courts.

High Courts can also transfer cases from one lower court to another for trial. As courts of record, High Courts have the authority to punish for contempt of court.

In matters of judicial appointments, postings, and promotions of district judges, the Governor consults the High Court. Similarly, the High Court is consulted along with the State Public Service Commission for appointments to the state's judicial service. The High Courts also exercise control over district courts and other subordinate courts within the state.

4.1.6 Subordinate Courts

Subordinate courts are vital as they handle the majority of legal cases and are the courts of first instance for most litigations in the country.

4.1.6.1 Structure of Subordinate Courts

1. District Courts

District and Sessions Court: At the top of the Subordinate Courts in each district is the District and Sessions Court. The District Court handles civil cases, while the Sessions Court handles criminal cases. A judge in this court is known as the District Judge when presiding over civil matters where it handles cases with the highest pecuniary jurisdiction within the subordinate judiciary, typically above ₹1 crore. A judge in this court is known as the Sessions Judge when dealing with criminal cases.

Appointment: District Judges are appointed by the Governor of the state in consultation with the High Court of that state.

Jurisdiction: The District and Sessions Court has original jurisdiction over serious

civil and criminal cases within its district. It also has appellate jurisdiction over cases decided by subordinate courts within the district.

2. Civil Courts (on the Civil Side)

Subordinate Judge's Court/Civil Judge's Court: These courts hear civil matters of a lower monetary value than those handled by the District Court. They are the courts of original jurisdiction for such civil cases. Subordinate Judges' Courts, which have jurisdiction over civil cases with monetary value of above ₹10 lakhs but below ₹1 crore.

Munsiff's Court: This is the lowest court in the civil judicial hierarchy. It deals with small civil disputes involving smaller amounts of money. These courts typically handle civil cases with lower pecuniary limits, usually up to ₹10 lakhs.

3. Criminal Courts (On the Criminal Side)

1. Chief Judicial Magistrate (CJM)/Chief Metropolitan Magistrate (CMM): The Chief Judicial Magistrate (or Chief Metropolitan Magistrate in large cities) oversees the functioning of all other Magistrates within the district and deals with more serious criminal cases that are not triable exclusively by the Sessions Court. They have the authority to pass sentences up to **seven years of imprisonment or impose fines or both.**

2. Judicial Magistrate of First Class (JMFC)/Metropolitan Magistrate: They try less serious criminal cases and have the authority to pass sentences up to **three years of imprisonment or impose fines or both**

3. Judicial Magistrate of Second Class (JMSC): They deal with minor criminal cases and have the authority to pass sentences of up to **one year of imprisonment or impose fines or both.**

4.1.6.2 Jurisdiction of Subordinate Courts

1. Territorial Jurisdiction

Subordinate courts have jurisdiction over cases arising within a specific geographical area, usually a district or a part thereof. The area of jurisdiction is defined by the law and can be modified by the state government.

2. Subject Matter Jurisdiction

Different courts within the subordinate judiciary have specific subject matter jurisdictions, meaning they can only hear particular types of cases. For example, family courts handle family matters, while civil courts handle civil disputes, and criminal courts handle criminal cases.

3. Pecuniary Jurisdiction

Subordinate courts have pecuniary jurisdiction, which means they can hear cases involving disputes of certain financial amounts. For example, a Munsiff's Court might



be restricted to hearing cases involving a smaller amount of money that is up to a maximum of 10 lakhs rupees, whereas a Sub- Court can hear cases involving larger sums up to rupees 1 crore

4. Appellate Jurisdiction

Some subordinate courts also have appellate jurisdiction, meaning they can hear appeals against the judgments of lower courts. For instance, a District Court can hear appeals from decisions of sub -Court or Munsiffs Court within its district.

5. Original Jurisdiction

These courts have original jurisdiction over cases that are brought before them for the first time. For example, a Sessions Court has original jurisdiction over serious criminal offenses, such as murder or rape, that are punishable by death or life imprisonment.

4.1.6.3 Functions of Subordinate Courts

1. Adjudication of Civil and Criminal Cases

Subordinate courts are responsible for hearing and deciding cases in the first instance. They interpret and apply laws to resolve disputes between parties in both civil and criminal matters.

2. Execution of Judgments

Once a judgment is passed, it is the responsibility of the subordinate court to ensure that it is executed. This may involve the enforcement of orders, recovery of fines, or execution of a decree.

3. Custody and Administration of Property:

In civil matters, subordinate courts may be required to take custody of and administer property in dispute or the property of a deceased person until final orders are passed.

5. Mediation and Alternative Dispute Resolution (ADR):

Subordinate courts increasingly engage in mediation and other forms of ADR to resolve disputes without lengthy litigation. This helps reduce the burden on the judiciary and provides quicker resolution to parties.

4.1.7 Special Courts and Tribunals

In India, special courts are established to address specific types of cases that require specialized knowledge or expedited procedures. These courts are crucial for managing legal issues that are complex or demand swift resolution. For instance, **Family Courts**, established under the Family Courts Act, 1984, focus on resolving family disputes such as divorce, custody, and maintenance, using a more conciliatory approach to settle matters.

Labour Courts, created under the Industrial Disputes Act, 1947, handle disputes between employers and employees related to wages, working conditions, and wrongful

dismissal. **Motor Accident Claims Tribunals (MACT)**, set up under the Motor Vehicles Act, 1988, provide a streamlined process for compensation claims arising from motor vehicle accidents, aiming for quick redressal for victims.

Commercial Courts, introduced by the Commercial Courts Act, 2015, are designed to expedite the resolution of business-related disputes, including those involving commercial contracts and transactions. **Cooperative Courts** address issues involving cooperative societies, while **Commercial Tax Tribunals** deal with disputes related to taxes such as sales tax and VAT. **Narcotic Drugs and Psychotropic Substances (NDPS) Courts**, established under the NDPS Act, 1985, manage cases involving drug trafficking and abuse, reflecting the need for specialized legal handling of drug-related offenses.

Anti-Corruption Courts tackle cases of bribery and corruption involving public officials, ensuring that such cases are dealt with swiftly and effectively. **Special Courts for Atrocities on Scheduled Castes and Scheduled Tribes**, created under the SC/ST (Prevention of Atrocities) Act, 1989, focus on offenses against these marginalized communities, aiming to provide timely justice and protection.

Fast Track Courts are set up to expedite the handling of serious crimes like rape and murder, addressing the need for swift justice in high-profile cases. Finally, **Juvenile Justice Boards**, established under the Juvenile Justice Act, 2015, handle cases involving minors, emphasizing rehabilitation and corrective measures rather than punishment.

These special courts play a significant role in India's judicial system by ensuring that cases requiring particular expertise or urgent attention are resolved efficiently, thereby enhancing the effectiveness and accessibility of justice.

Recap

- ◇ Supreme Court of India is the highest judicial authority in India. It has original, appellate, and advisory jurisdiction. The Supreme Court has the power to hear appeals against judgments from High Courts and tribunals across India and can also issue writs for enforcement of fundamental rights.
- ◇ Each state and union territory has its own High Court, which is the highest court at the state level. High Courts have original jurisdiction in civil and criminal cases, appellate jurisdiction over lower courts, and can hear cases involving fundamental rights.
- ◇ District Courts are the principal courts of original jurisdiction in each district. They handle civil and criminal cases at the district level. District courts have both original jurisdiction over cases filed directly and appellate jurisdiction over cases from subordinate courts.
- ◇ Subordinate Courts include various levels of courts below the District Courts, such as Civil Courts (Sub-Judge, Munsiff) and Criminal Courts (Chief Judicial Magistrate, Magistrate Courts). They handle civil and criminal matters of lower value and severity.

- ◇ Special Courts are established to handle specific types of cases, such as Family Courts, Consumer Courts, CBI Courts, Anti-Corruption Courts, and Fast Track Courts. They ensure specialized and expedited handling of cases.
- ◇ Tribunals are Quasi-judicial bodies established to adjudicate disputes related to specific matters such as tax, labor, environment, and administrative disputes. Examples include the Income Tax Appellate Tribunal, National Green Tribunal, and Central Administrative Tribunal.
- ◇ Both the Supreme Court and High Courts have the authority to enforce fundamental rights. The Supreme Court's power is outlined in Article 32, while the High Courts' power is given under Article 226 of the Indian Constitution.
- ◇ Public Interest Litigation (PIL) is the mechanism that allows individuals or organizations to approach the courts directly in matters of public interest, even if they are not directly affected by the issue.

Objective Questions

1. Which is the highest court in India?
2. Which is the highest court of appeal at the state level in India?
3. How many judges currently comprise the Supreme Court of India?
4. What type of jurisdiction does the Supreme Court have over disputes between states?
5. Which Article of the Constitution allows High Courts to issue writs?
6. What is the retirement age for Supreme Court judges?
7. Who appoints the judges of the High Courts?
8. What type of courts handle family-related disputes?
9. Which courts are at the lowest level of the Indian judiciary?
10. What is the term for courts that keep a record of their proceedings?

Answers

1. Supreme Court
2. High Courts
3. Up to 34 including Chief Justice of India
4. Original jurisdiction
5. Article 226
6. 65 years
7. The President
8. Family Courts
9. Subordinate Courts
10. Courts of Record

Assignments

1. Analyze the evolution of the Indian judiciary since independence, focusing on key constitutional amendments and landmark judgments that have shaped its current structure.
2. Compare and contrast the original, appellate, and advisory jurisdictions of the Supreme Court of India. Provide relevant case examples for each type of jurisdiction.
3. Examine the appointment process and qualifications for judges in the Supreme Court and High Courts. Discuss any recent controversies or reforms in this area.
4. Evaluate the role of specialized tribunals in the Indian judicial system. Choose two specific tribunals and analyze their effectiveness in addressing their designated areas of law.
5. Investigate the concept of judicial review in India. Compare it with judicial review in other democratic countries and assess its impact on Indian governance.

Self Assessments Questions

1. Explain the concept of judicial review in the Indian context.
2. Describe the appointment process for Supreme Court judges.
3. What are the qualifications required to become a High Court judge?
4. Discuss the role of Lok Adalats in the Indian judicial system.
5. Explain the importance of Public Interest Litigation (PIL) in India.
6. Analyze the structure of the Indian judiciary, discussing the hierarchy and jurisdiction of various courts.
7. Evaluate the powers and functions of the Supreme Court of India. How does it act as the guardian of the Constitution?
8. Discuss the composition, appointment process, and functions of High Courts in India. How do they contribute to the state-level administration of justice?
9. Examine the role of subordinate courts in India's judicial system. How do they ensure access to justice at the grassroots level?
10. Analyze the significance of special courts and tribunals in India. How do they address specific legal needs and contribute to efficient justice delivery?

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Unit 2

Legal Service Authorities Act And Right To Legal Aid - Lok Adalats

Learning Outcomes

A Careful study of this chapter will enable the learner to:

- ◇ Explain the key provisions of the Legal Services Authorities Act, 1987.
- ◇ Describe the structure and functions of legal services authorities in India.
- ◇ Discuss the concept and importance of free legal aid in the Indian justice system.
- ◇ Analyze the role and effectiveness of Lok Adalats in alternative dispute resolution.

Prerequisite

Imagine a small village where a farmer, unable to afford a lawyer, faces losing his land in a dispute. This scenario was common in India before 1987. That year, the Legal Services Authorities Act revolutionized access to justice. It established a system where even the poorest could seek legal help, and introduced Lok Adalats - 'People's Courts' where disputes could be resolved quickly and amicably. As you delve into this unit, picture how this Act has transformed lives, making justice accessible to all, from bustling cities to remote villages. You'll explore a system that aims to fulfil the constitutional promise of equal justice, bridging the gap between law and the common person.

Keywords

NALSA, Free Legal Aid, Lok Adalats, Alternative Dispute Resolution, Legal Literacy, Para-Legal Volunteers, Public Utility Services, Conciliation

4.2.1 Legal Services Authorities Act, 1987: Introduction

The right to legal aid is a fundamental aspect of the Indian legal system, ensuring that justice is accessible to all, regardless of financial or social status. The Legal Services Authorities Act, 1987, plays a pivotal role in institutionalizing this right, promoting legal literacy, and providing free legal services.

The Legal Services Authorities Act, 1987, finds its roots in Article 39A of the Indian Constitution, which mandates equal justice and free legal aid. This Article, inserted by the 42nd Amendment in 1976, emphasizes the state's duty to ensure that the legal system promotes justice on the basis of equal opportunity. The Act gives practical shape to this constitutional directive, creating a robust framework for providing free legal services to the underprivileged.

It's important to note that the right to free legal aid has been interpreted by the Supreme Court as an essential component of the 'right to life' under Article 21, thus elevating it to the status of a fundamental right. In landmark cases like *Hussainara Khatoon v. State of Bihar* (1979) and *Khatri v. State of Bihar* (1981), significantly strengthened the legal basis for providing comprehensive legal aid.

4.2.1.1 Structure and Organization of Legal Services Authorities

The Act establishes a hierarchical structure of legal services authorities. At the apex is the **National Legal Services Authority (NALSA)**. Chief Justice of India is the Patron-in-Chief of NALSA. NALSA is chaired by the Executive Chairperson, a serving or retired Judge of the Supreme Court to be nominated by the President of India in Consultation with the Chief Justice of India. Each state has a **State Legal Services Authority**. Chief Justice of the respective High Court will be the Patron-in-Chief. State Legal Services Authority is chaired by the Executive Chairperson, who will be the senior most Judge of the High Court of that State, to be nominated by the State Government in consultation with the Chief Justice of the State. Further down the hierarchy are **District Legal Services Authorities** and **Taluk Legal Services Committees**.

This multi-tiered structure ensures that legal aid reaches even the most remote areas of the country. The composition of these authorities includes judicial officers, legal practitioners, and representatives from various social service organizations, ensuring a diverse and comprehensive approach to legal aid delivery.

Eligibility and Scope of Legal Services

The Act defines an extensive list of eligible persons for free legal services. This includes members of Scheduled Castes and Scheduled Tribes, women and children, persons with disabilities, victims of mass disaster, ethnic violence, caste atrocity, flood,

drought, earthquake, or industrial disaster. Additionally, individuals in custody and those with an annual income below certain specified limits are eligible.

The scope of legal services is broad, encompassing legal representation in courts, legal advice, drafting of legal documents, and even payment of court fees and other charges incidental to legal proceedings. The Act also mandates legal literacy and awareness programs to educate the public about their legal rights and duties. These programs are conducted through seminars, workshops, and the distribution of legal literature.

4.2.1.2 Free Legal Aid

Article 39A of the Directive Principles of State Policy in the Indian Constitution emphasize that, the state shall ensure that the legal system promotes justice on the basis of equal opportunity, and shall provide **free legal aid** to ensure that justice is not denied to any citizen by reason of economic or other disabilities. The Supreme Court of India, in various judgments, has interpreted Article 21 to include the right to legal aid.

In *Hussainara Khatoon v. State of Bihar* (1979), the Supreme Court held that the right to free legal aid at the cost of the state is a fundamental right under Article 21. In *Khatri II v. State of Bihar* (1981), the Supreme Court emphasized that legal aid must be provided to an accused from the time of their arrest, not merely at the time of trial.

- ◇ Under Section 12 of the Act, free legal aid is provided to:
- ◇ Members of Scheduled Castes and Scheduled Tribes.
- ◇ Victims of human trafficking or forced begar.
- ◇ Women and children.
- ◇ Disabled persons.
- ◇ Persons in custody, including those in a psychiatric institution.
- ◇ Victims of natural disasters, ethnic violence, or industrial disasters.
- ◇ Industrial workmen.
- ◇ Persons with an annual income below a specified limit as determined by the respective state government.

Free legal aid includes representation by a lawyer, payment of court fees, process fees, and other charges, and assistance in drafting legal documents.

4.2.1.3 Lok Adalats: People's Courts for Alternative Dispute Resolution

A significant innovation of the Act is the establishment of **Lok Adalats or People's Courts**. These are a system of Alternative Dispute Resolution Mechanism that has roots in ancient Indian traditions. These forums aims to settle disputes through conciliation and compromise, providing a speedy and inexpensive alternative to traditional court proceedings.

The first Lok Adalat was held in Gujarat in 1982, and the success of this model led to its widespread adoption across the country. In Lok Adalats, disputes are resolved quickly without the need for prolonged litigation.

Lok Adalats can handle various types of cases, including **civil matters, matrimonial disputes, motor accident claims, and even certain criminal cases (compoundable offenses)**. The decisions of Lok Adalats are binding on the parties and have the status of a **civil court decree** which is non-appealable, which ensures a quick resolution, making them an effective tool for dispute resolution. The success of Lok Adalats lies in their informal nature, speed of disposal, and the principle of mutual consent, which often leads to more satisfactory outcomes for all parties involved.

Permanent Lok Adalats for Public Utility Services

The 2002 amendment to the Legal Services Authorities Act introduced Permanent Lok Adalats for public utility services. These specialized forums deal with disputes related to essential services like transport, postal and telegraph services, power supply, water supply, and public health services.

The establishment of these permanent bodies reflects the Act's recognition of the need for specialized dispute resolution mechanisms in sectors that affect the daily lives of citizens. These Lok Adalats have the power to decide cases even if parties fail to reach a settlement, provided the dispute does not relate to any offense. This provision enhances their effectiveness in resolving public utility disputes expeditiously.

Legal Awareness and Literacy Programs

An essential component of the Legal Services Authorities Act is its emphasis on legal literacy and awareness. Legal Services Authorities are mandated to conduct legal awareness camps, especially in rural areas, to educate people about their rights and the availability of free legal services.

These programs often include street plays, distribution of pamphlets, and interactive sessions with legal experts. The Act recognizes that meaningful access to justice is possible only when citizens are aware of their rights and the legal remedies available to them. This aspect of the Act plays a crucial role in empowering citizens and promoting a rights-based approach to justice.

Para-Legal Volunteers and Legal Aid Clinics

To extend the reach of legal services, the Act provides for the training and deployment of para-legal volunteers. These volunteers, often drawn from local communities, act as intermediaries between the legal services institutions and the people, helping to identify those in need of legal aid and providing basic legal guidance.

Additionally, **legal aid clinics** have been established in **law schools and colleges**, serving the dual purpose of providing legal assistance to the community and exposing law students to practical aspects of legal aid work. These initiatives significantly enhance the accessibility and effectiveness of legal aid services.



4.2.3.1 Types of Lok Adalats

1. **Permanent Lok Adalats:** These are established for the settlement of disputes related to public utility services, such as transport, postal services, and telecommunication. They have the power to decide disputes even if the parties fail to reach a settlement, provided it does not involve a non-compoundable offense.
2. **Mobile Lok Adalats:** These are Lok Adalats organized in different locations, especially in rural or remote areas, to bring justice to the doorstep of the common people.
3. **National Lok Adalats:** Organized at regular intervals across the country on a single day, National Lok Adalats are held to settle a large number of cases in a single sitting.

Challenges

Despite its comprehensive framework, the implementation of the Legal Services Authorities Act faces several challenges. These include inadequate funding, lack of awareness among the target population, insufficient number of trained legal aid lawyers, and sometimes, concerns about the quality of legal services provided. There's also a need for better coordination between various stakeholders, including the judiciary, legal services authorities, and social organizations.

The Legal Services Authorities Act and the associated right to legal aid represent a significant step towards democratizing access to justice in India. By providing free legal aid, alternative dispute resolution mechanisms, and legal awareness programs, the Act aims to make the legal system more accessible, affordable, and efficient for all citizens, particularly the disadvantaged sections of society.

Recap

- ◇ Legal Services Authorities Act, 1987 establishes legal services authorities at the national, state, and district levels to provide free legal services to the weaker sections of society and ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
- ◇ National Legal Services Authority (NALSA), constituted under the Legal Services Authorities Act, is responsible for framing policies and principles for making legal services available under the provisions of the Act. It oversees and monitors the implementation of legal aid programs across India.
- ◇ State and District Legal Services Authorities are established in every state and district to implement the legal aid programs and policies at the local

level. They work under the guidance of NALSA and are responsible for organizing Lok Adalats and providing legal aid to eligible individuals.

- ◇ Right to Legal Aid ensures that free legal aid is provided to marginalized and disadvantaged sections, including women, children, scheduled castes (SC), scheduled tribes (ST), persons with disabilities, victims of trafficking, and those in custody, among others. Legal aid includes free legal advice, representation, and assistance in legal proceedings.
- ◇ Lok Adalats meaning “People’s Courts,” are established under the Legal Services Authorities Act to provide an alternative dispute resolution mechanism. These courts are informal and non-adversarial, aims to settle disputes through conciliation and compromise, without going through the lengthy and costly process of formal court proceedings.
- ◇ Jurisdiction of Lok Adalats: Lok Adalats have the power to settle any matter pending before any court as well as any dispute that has not yet been brought before a court. They handle a wide range of cases, including matrimonial disputes, civil cases, land disputes, labor disputes, and minor criminal cases.
- ◇ Permanent Lok Adalats (PLA) are a special type of Lok Adalat established under the Legal Services Authorities Act for pre-litigation cases related to public utility services, such as transport, postal, and telecommunication services. They provide a mechanism for resolving disputes before they escalate into formal legal cases.

Objective Questions

1. What is the full form of NALSA?
2. Who chairs the National Legal Services Authority?
3. In which year was the Legal Services Authorities Act passed?
4. What type of cases can Lok Adalats handle?
5. Who is eligible for free legal aid under the Act?
6. What is the status of a Lok Adalat’s decision?
7. What are Permanent Lok Adalats primarily concerned with?
8. Who can act as intermediaries between legal services institutions and people?

Answers

1. National Legal Services Authority
2. Executive Chairperson
3. 1987
4. Civil, matrimonial, and certain criminal cases
5. SC/ST members, women, children, disabled persons, etc.
6. Equivalent to a civil court decree
7. Public utility services disputes
8. Para-legal volunteers

Assignments

1. Conduct a detailed study of the Legal Services Authorities Act, 1987. Analyze its implementation challenges and suggest improvements to enhance its effectiveness.
2. Research the functioning of legal aid clinics in law schools. Propose a comprehensive plan to strengthen their role in providing legal assistance to the community.
3. Examine the concept of Permanent Lok Adalats for public utility services. Assess their performance and suggest ways to enhance their dispute resolution capabilities.
4. Investigate the role of legal literacy programs in empowering marginalized communities. Design a legal awareness campaign for a specific target group (e.g., rural women, urban slum dwellers).
5. Analyze the use of technology in improving access to legal aid services. Propose innovative tech-based solutions to enhance the reach and efficiency of legal aid delivery.

Self Assessments Questions

1. Discuss the constitutional basis for the right to free legal aid in India.
2. How does the structure of legal services authorities in India ensure widespread access to legal aid?
3. Explain the concept of Lok Adalats and their significance in the Indian justice system.
4. What are the challenges in implementing the Legal Services Authorities Act effectively?
5. How do legal literacy programs contribute to access to justice in India?

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Unit 3

Role of Police in Law Enforcement

Learning Outcomes

A Careful study of this chapter will enable the learner to:

- ◇ Outline the key powers and functions of the police under the Bharatiya Nagarik Suraksha Sanhita (BNSS)
- ◇ Explain the process of criminal investigation from FIR registration to charge sheet filing.
- ◇ Discuss the role of police in maintaining law and order beyond crime investigation.
- ◇ Analyze the safeguards and limitations on police powers in the Indian legal system.

Prerequisite

Picture a crowded marketplace suddenly disrupted by a pickpocket's swift move. In that moment, a nearby police officer springs into action, embodying the front line of India's criminal justice system. This scene captures the essence of policing - a delicate balance between maintaining order and protecting individual rights.

As you begin this unit, imagine yourself walking in the shoes of that officer. You'll explore the intricate web of powers and responsibilities that guide police actions, from the bustling streets to the courtroom. This journey will reveal how the police, armed with legal authority yet bound by constitutional safeguards, play a crucial role in upholding the rule of law in the world's largest democracy.

Keywords

FIR, Criminal Investigation, Arrest Procedures, Remand, Charge Sheet, Preventive Action, Community Policing, Police Accountability

4.3 Introduction

The police play a crucial role in the criminal justice system of India, serving as the primary law enforcement agency. Their functions and powers are primarily governed by the Bharatiya Nagarik Suraksha Sanhita (BNSS), which provides a comprehensive framework for criminal proceedings in India. The multifaceted role of the police under BNSS, highlighting their duties, powers, and limitations are as follows:

4.3.1 Powers and Functions of Police

1. **Registration of FIR:** The registration of a First Information Report (FIR) is one of the most crucial functions of the police under the CrPC. Section 154 of the CrPC mandates that the police must record any information relating to the commission of a cognizable offense. The FIR serves as the first step in the criminal investigation process and sets the criminal justice machinery into motion.
2. **Investigation of Crimes:** One of the primary responsibilities of the police is to investigate crimes. Under Section 173 of BNSS, the police are obligated to register a First Information Report (FIR) upon receiving information about a cognizable offense.

The investigation process includes: a) Visiting the crime scene b) Collecting evidence c) Interviewing witnesses d) Arresting suspects e) Preparing case files for prosecution. The police have broad investigative powers under Sections 179-195 of the BNSS, including the authority to summon witnesses, conduct searches, and seize relevant evidence.

3. Interrogation and Confession

The BNSS grants the police the authority to interrogate suspects and witnesses during the course of an investigation. However, it is crucial to note that any confession made to a police officer is not admissible as evidence in court under Section 23(1) of the Bharatiya Sakshya Adhiniyam (BSA). To ensure that confessions are not coerced or obtained through improper means, the BNSS provides that confessions must be made before a magistrate (Section 183), who is required to ensure that the confession is made voluntarily.

4. **Arrest and Detention:** The BNSS empowers the police to make arrests under various circumstances: a) Section 35 allows for arrest without warrant in cognizable offenses b) Section 39 permits arrest of a person who refuses to give name and residence c) Section 170 authorizes preventive detention to maintain public order.

However, the police must follow proper procedures during arrests, as outlined in Sec



tions 35(3), 35(4), 35(5), 35(6), 36, 37, 38, including informing the arrested person of the grounds of arrest and their rights, the right to be informed of the right to bail (Section 47) and the right to be produced before a magistrate within 24 hours (Section 58).

5. **Production before Magistrate:** Under Section 58 of the BNSS, the police must produce an arrested person before a magistrate within 24 hours of arrest (excluding the time of journey). This provision safeguards against arbitrary detention and ensures judicial oversight.
6. **Remand and Custody:** The police can seek police custody of an accused for further investigation under Section 187 of the BNSS. However, this is subject to judicial scrutiny, and the total period of police custody cannot exceed 15 days. But if the Magistrate is satisfied that adequate grounds exist for the extension of custody, he may authorise the detention further.
7. **Filing of Charge Sheet:** Upon completing an investigation, the police are required to file a charge sheet (Section 193 of the BNSS) if there is sufficient evidence to prosecute the accused. The charge sheet includes details of the offense, the evidence collected, and the list of witnesses. It forms the basis for the prosecution's case in court. If the police find that there is insufficient evidence to proceed, they may file a closure report instead, which the magistrate may accept or reject.
8. **Assistance to Courts:** The police play a supportive role in court proceedings by: a) Producing accused persons and witnesses in court b) Executing warrants issued by courts c) Assisting in the service of summons and other judicial processes
9. **Preventive Action:** Under the BNSS, the police have a proactive role in preventing the commission of offenses. They are empowered to take preventive actions under various sections of the BNSS, such as issuing notices to individuals who are likely to commit offenses (Section 168), arresting individuals without a warrant in certain situations (Section 170), and dispersing unlawful assemblies (Section 148). These provisions enable the police to act swiftly to prevent crime and maintain public order.
10. **Maintenance of Law and Order:** Beyond their investigatory functions, the police have a broader role in maintaining public order and ensuring the safety of citizens. This includes duties such as regulating traffic, managing crowds during public events, and enforcing laws related to public safety.

The BNSS also empowers the police to take action in situations where public peace and order are threatened. This includes: a) Patrolling and surveillance b) Crowd control during public gatherings c) Implementing preventive measures (under Sections 126-129 of the BNSS) d) executing orders issued by magistrates for maintaining public tranquillity etc.

11. **Special Powers in Disturbed Areas:** Under Section 163 of the BNSS, the police have enhanced powers in areas declared as disturbed by the appropriate authority. This includes the power to impose curfews and restrict public gatherings.
12. **Community Policing:** While not explicitly mentioned in the BNSS, community policing initiatives have gained importance. These aim to foster better police-public relations and involve the community in crime prevention.
13. **Accountability:** While the police have significant powers under the BNSS, they are also subject to checks and balances to prevent abuse of power. The BNSS provides for mechanisms to ensure police accountability, such as the requirement for judicial oversight in the detention of individuals (Section 187) and the provision for complaints against police officers for misconduct or illegal detention (Section 218). The police are accountable for their actions through various mechanisms such as: a) Internal disciplinary procedures b) Judicial scrutiny of police actions c) Human Rights Commissions d) Police Complaints Authorities (as recommended by the Supreme Court in *Prakash Singh v. Union of India*).

4.3.2 Limitations and Safeguards

The BNSS also imposes certain limitations on police powers to prevent misuse: a) Prohibition on torture and custodial violence (reinforced by judicial pronouncements) b) Mandatory medical examination of arrested persons (Section 53) c) Restrictions on arrest of women (Section 43) d) Obligation to inform about grounds of arrest (Section 47)

4.3.3 Conclusion

The role of the police under the BNSS is integral to the functioning of the criminal justice system in India. They serve as the primary agents for the enforcement of law and the protection of citizens' rights. While the BNSS grants the police substantial powers, it also imposes strict procedural requirements to safeguard the rights of individuals and ensure the fair administration of justice. Effective policing, when carried out within the framework of the BNSS, is essential for upholding the rule of law and maintaining public confidence in the justice system.

Recap

- ◇ Maintenance of Law and Order: One of the primary roles of the police is to maintain public order and safety. This includes preventing public disturbances, managing crowds during events, and taking measures to prevent riots and unrest.
- ◇ Crime Prevention and Detection: Police are responsible for preventing

crimes by conducting regular patrolling, intelligence gathering, and implementing community policing strategies. They also investigate criminal activities, gather evidence, apprehend suspects, and work to solve crimes.

- ◇ **Protection of Life and Property:** The police are tasked with safeguarding the lives and property of citizens. They respond to emergency calls, offer assistance in natural disasters, provide security in public places, and protect individuals and their assets from criminal threats.
- ◇ **Enforcement of Laws:** Police enforce laws enacted by the legislature, ensuring compliance with local, state, and national regulations. This includes issuing fines for traffic violations, enforcing court orders, and implementing other legal statutes. Their role is crucial in upholding the rule of law.
- ◇ **Investigation of Crimes:** Police are responsible for conducting thorough investigations into criminal activities. This involves collecting evidence, interviewing witnesses, and preparing cases for prosecution. They work closely with forensic teams and other specialists to gather all necessary information.
- ◇ **Public Assistance and Support:** Police officers provide assistance to the public in various situations, including helping lost individuals, aiding in medical emergencies, and offering support to victims of crime. They often act as the first point of contact for people in distress.
- ◇ **Traffic Regulation and Road Safety:** The police manage traffic control, enforce traffic laws, and ensure road safety. They conduct regular checks to prevent drunk driving, speeding, and other violations. They also play a key role in investigating traffic accidents and educating the public on road safety measures.
- ◇ **Role in Criminal Justice System:** Police serve as the first step in the criminal justice system. They are responsible for the arrest and detention of suspects, ensuring that the rights of the accused are protected, and gathering evidence that can be used in court proceedings.
- ◇ **Community Policing:** A modern approach to law enforcement where police work closely with the community to identify and solve local problems. This strategy builds trust between the police and the public, encourages cooperation, and enhances the effectiveness of crime prevention and response initiatives.
- ◇ **Counter-Terrorism and Internal Security:** The police play a vital role in counter-terrorism efforts and maintaining internal security. They gather intelligence, conduct surveillance, and coordinate with other security agencies to prevent terrorist activities and respond to threats.

Objective Questions

1. What does FIR stand for?
2. Within how many hours must an arrested person be produced before a magistrate?
3. Under which section of BNSS can police make preventive arrests?
4. What is the maximum period of police custody allowed under BNSS?
5. Which act makes confessions to police officers inadmissible in court?
6. What document does the police file upon completing an investigation?
7. Under which section of BNSS can police take action in disturbed areas?
8. What is the primary aim of community policing initiatives?

Answers

1. First Information Report
2. 24 hours
3. Section 170
4. 15 days
5. Bharatiya Sakshya Adhiniyam
6. Charge sheet
7. Section 163
8. Foster better police-public relations

Assignments

1. Examine the process of criminal investigation in India, from FIR registration to charge sheet filing. Identify potential areas for improvement in this process.
2. Analyze the concept of community policing in the Indian context. Develop a detailed implementation plan for a community policing initiative in a specific urban or rural setting.



3. Investigate the safeguards against police misconduct in India. Compare these with international best practices and suggest reforms to enhance police accountability.
4. Evaluate the role of police in maintaining public order during protests or civil unrest. Discuss the balance between maintaining law and order and protecting citizens' rights to peaceful assembly.
5. Research the use of technology in modern policing in India. Propose innovative technological solutions to enhance the efficiency and transparency of police operations.

Self Assessments Questions

1. Explain the process of FIR registration and its significance in criminal investigation.
2. Discuss the powers of arrest granted to the police and the safeguards against their misuse.
3. How does the Bharatiya Nagarik Suraksha Sanhita balance police powers with individual rights?
4. Analyze the role of police in maintaining law and order beyond crime investigation.
5. What are the key challenges in implementing effective community policing in India?

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Suggested Reading

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