

## **Ready Reckoner: Trial in Absentia**

- The BNSS has introduced provisions for conducting trial in absentia of certain kinds of accused. This allows the trial and pronouncement of judgment in the absence of the accused, which was not provided under the previous Cr.P.C.
- Trial in absentia refers to conducting a criminal trial without the presence of the accused person in court. Earlier, Indian law did not allow trial, conviction or sentencing of any person in absentia even for heinous offences.
- Under Section 355 of the BNSS, the Judge or Magistrate may conduct a trial of an accused in his absence if it is deemed that the personal attendance of the accused is not necessary in the interests of justice, or if the accused persistently disturbs the proceedings in court.
- The BNSS allows in-absentia trial of proclaimed offenders under specific conditions. Section 356 of the BNSS mandates the court to proceed with the trial in absentia when a person declared as a proclaimed offender has absconded to evade trial, and there is no immediate prospect of arresting him. It also specifies a mandatory waiting period of ninety (90) days from the date of framing of the charge before commencing the trial.
- The BNSS provides provisions for the pronouncement of judgment in in-absentia trials. It states that the voluntary absence of the accused after the trial has commenced shall not prevent the continuation of the trial, including the pronouncement of the judgment, even if the accused is arrested or appears at the conclusion of the trial.

## Provisions in New Criminal Laws Concerning Trial in Absentia

BNSS	BSA
<ul style="list-style-type: none"><li>• <b><u>Section 355 BNSS  Bharatiya Nagarik Suraksha Sanhita (BNSS):</u></b></li></ul> <p>Provision for inquiries and trial being held in the absence of accused in certain cases.</p> <p>(1) At any stage of an inquiry or trial under this Sanhita, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by an advocate, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.</p> <p>(2) If the accused in any such case is not represented by an advocate, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.</p> <p>Explanation.—For the purpose of this section, personal attendance of the accused includes attendance through audio video electronic means</p> <ul style="list-style-type: none"><li>• <b><u>Section 356 BNSS  Bharatiya Nagarik Suraksha Sanhita (BNSS):</u></b></li></ul> <p>Inquiry trial or judgment in absentia of proclaimed offender.</p> <p>(1) Notwithstanding anything contained in this Sanhita or in any other law for the time being in force, when a person declared as a proclaimed offender, whether or not charged jointly, has</p>	<ul style="list-style-type: none"><li>• <b><u>Deemed Joint Trial, Section 24 of Bharatiya Sakshya Adhinyam, 2023 (BSA)</u></b></li></ul> <p>New Explanation II is added in section 24 of Bharatiya Sakshya Adhinyam, 2023 so as to clarify that “<i>A trial of more persons than one held in the absence of the accused who has absconded or who fails to comply with a proclamation issued under section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall be deemed to be a joint trial for a purpose of this section.</i>”</p> <ul style="list-style-type: none"><li>• Note: Section 84 BNSS 2023 provides for proclamation for person absconding.</li></ul>

absconded to evade trial and there is no immediate prospect of arresting him, it shall be deemed to operate as a waiver of the right of such person to be present and tried in person, and the Court shall, after recording reasons in writing, in the interest of justice, proceed with the trial in the like manner and with like effect as if he was present, under this Sanhita and pronounce the judgment:

Provided that the Court shall not commence the trial unless a period of ninety days has lapsed from the date of framing of the charge.

(2) The Court shall ensure that the following procedure has been complied with before proceeding under sub-section (1) namely:—

(i) issuance of execution of two consecutive warrants of arrest within the interval of at least thirty days;

(ii) publish in a national or local daily newspaper circulating in the place of his last known address of residence, requiring the proclaimed offender to appear before the Court for trial and informing him that in case he fails to appear within thirty days from the date of such publication, the trial shall commence in his absence;

(iii) inform his relative or friend, if any, about the commencement of the trial;

and

(iv) affix information about the commencement of the trial on some conspicuous part of the house or homestead in which such person ordinarily resides and display in the police station of the district of his last known address of residence.

(3) Where the proclaimed offender is not represented by any advocate, he shall be provided with an advocate for his defence at the expense of the State.

(4) Where the Court, competent to try the case or commit for trial, has examined any witnesses for prosecution and recorded their depositions, such depositions shall be given in evidence against such proclaimed offender on the inquiry into, or in trial for, the offence with which he is

charged:

Provided that if the proclaimed offender is arrested and produced or appears before the Court during such trial, the Court may, in the interest of justice, allow him to examine any evidence which may have been taken in his absence.

(5) Where a trial is related to a person under this section, the deposition and examination of the witness, may, as far as practicable, be recorded by audio-video electronic means preferably mobile phone and such recording shall be kept in such manner as the Court may direct.

(6) In prosecution for offences under this Sanhita, voluntary absence of accused after the trial has commenced under sub-section (1) shall not prevent continuing the trial including the pronouncement of the judgment even if he is arrested and produced or appears at the conclusion of such trial.

(7) No appeal shall lie against the judgment under this section unless the proclaimed offender presents himself before the Court of appeal:

Provided that no appeal against conviction shall lie after the expiry of three years from the date of the judgment.

(8) The State may, by notification, extend the provisions of this section to any absconder mentioned in sub-section (1) of section 84 of this Sanhita.

- **Section 84 Of The Bharatiya Nagarik Suraksha Sanhita**

**84.** (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a

specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence which is made punishable with imprisonment of ten years or more, or imprisonment for life or with death under the Bharatiya Nyaya Sanhita, 2023 or under any other law for the time being in force, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).