

# Bharatiya Nyaya Sanhita 2023

## Chapter VI: OF OFFENCES AFFECTING THE HUMAN BODY

### Organised crime

111. (1) Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute organized crime.

Explanation. —For the purposes of this sub-Section,—

- (i) “organised crime syndicate” means a group of two or more persons who, acting either singly or jointly, as a syndicate or gang indulge in any continuing unlawful activity;
  - (ii) “continuing unlawful activity” means an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence, and includes economic offence;
  - (iii) “economic offence” includes criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and Government stamps, *hawala* transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution organization for obtaining monetary benefits in any form.
- (2) Whoever commits organized crime shall,—
- (a) if such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine which shall not be less than ten lakh rupees;
  - (b) in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

- (3) Whoever abets, attempts, conspires or knowingly facilitates the commission of an organised crime, or otherwise engages in any act preparatory to an organised crime, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.
- (4) Any person who is a member of an organised crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.
- (5) Whoever, intentionally, harbours or conceals any person who has committed the offence of an organised crime shall be punished with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees:  
Provided that this sub-Section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.
- (6) Whoever possesses any property derived or obtained from the commission of an organised crime or proceeds of any organised crime or which has been acquired through the organised crime, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than two lakh rupees.
- (7) If any person on behalf of a member of an organized crime syndicate is, or at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten years and shall also be liable to fine which shall not be less than one lakh rupees.

**Description:**

- A dedicated section to combat organized crime, ensuring no room for unlawful activities orchestrated by syndicates which pose a grave threat to the internal security of the country has been added.

- Section 111(1) BNS 2023 defines organized crime, covering a range of offenses including kidnapping, robbery, vehicle theft, extortion, contract killing, cyber-crimes, human trafficking and more.

- Offences which were either not clearly defined or non-existing in the previous statute have been kept as a separate section 112-(Petty Organised Crime) clearly defining it like snatching, shoplifting, betting or gambling & selling examination papers.

- It further explains organised crime syndicates and continuing offence and activities committed individually or by organized crime syndicates, using violence, threats, or coercion, are now punishable.

- Economic Offences have also been defined which includes a spectrum of crimes such as criminal breach of trust, forgery, counterfeiting of currency-notes, hawala transactions, mass-marketing fraud, and schemes to defraud institutions.

### **Stringent Punishment: 111(2)**

- In case the offence leads to the loss of life, the perpetrator shall face either the death penalty or life imprisonment, coupled with a mandatory fine of not less than Rs. 10 lakhs.
- Additionally, provisions exist for individuals aiding in the commission of organized crimes, member of an organised syndicate, intentionally harbours or conceals any person committing organised crime, proceeds of organised crime, outlining appropriate punishments.

It is a cognizable and non-bailable offence, triable by Sessions court.

### **Provisions under BNSS:**

FIR registration (Sections 173): The procedure begins when the complainant goes to the police station to file an FIR under Section 173. Section 173(1) of BNSS allows the information relating to the commission of a cognizable offence to be given by electronic communication.

Property Seizure (Sections 106-107): During the investigation, the police may seize any property associated with the crime vide Section 106. It also requires the seized property to be presented to the Magistrate. Section 107-(6),(7),(8) lays down the procedure for the attachment, forfeiture or restoration of proceeds of crime.

Section 105 is a new provision which provides for recording of search and seizure through audio-video electronic means

Investigation (Sections 173-196): A new provision in BNSS has been added vide Section 173(3) wherein on receipt of information relating to a cognizable offence, the officer-in-charge of the police station may with prior permission from an officer not

below the rank of Deputy Superintendent of Police (i) Conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within 14 days, or (ii) proceed with investigation when there exists a prima facie case. The procedure for investigation is given under Section 176. Section 176(3) provides for the visit of Forensic experts to scene of crime to collect evidence in offences with punishment of 7 years or more.

Section 112 provides for letter of request to competent authority for investigation in a country or outside India. Section 113 provides for letter of request from a country or a place outside India to a court or authority in India for investigation in India. The procedure in this respect is stated in section 123.

Charge Sheet (Section 193): If there is adequate evidence following an inquiry, a charge sheet is submitted under Section 193.

Framing of Charges (Section 251): Section 251 provides the framework for the start of the trial. BNSS states that charges must be framed within 60 days of the initial charge hearing.

Trial (Sections 248-260): The witnesses are examined, cross-examined, and re-examined as the trial moves along. Under Section 248, the Public Prosecutor will lead the trial. Section 249: Prosecution will begin. Section 250: Discharge. Section 251: Framing of charges. Under section 252, Plea of guilty and conviction. Section 253: Date of the prosecution's evidence. Section 254: Prosecution-related evidence and Section 255: Acquittal.

Section 336 provides for evidence of public servants, experts and police officers by successive officers in certain situations.

Judgment (Sections 258-260): The court renders a decision based on the evidence that was put out in the trial.

Section 356 provides for trial in absentia of proclaimed offenders.

### **Provisions under BSA:**

Section 23 of BSA speaks about confession before police officer and discovery of facts.

### **Petty Organised crime**

112. (1)Whoever, being a member of a group or gang, either singly or jointly, commits any act of theft, snatching, cheating, unauthorised selling of tickets, unauthorised betting or gambling, selling of public examination question papers or any other similar criminal act, is said to commit petty organized crime.

*Explanation.*—For the purposes of this sub-Section "theft" includes trick theft, theft from vehicle, dwelling house or business premises, cargo theft, pick pocketing, theft through card skimming, shop lifting and theft of Automated Teller Machine.

(2) Whoever commits any petty organized crime shall be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine.

Description: This is a new provision and chain snatching and leaking of exam papers etc. have been covered under this section. It provides for an imprisonment for not less than one year but which may extend to seven years and fine.

It is a cognizable, non-bailable offence, triable by the Magistrate of the first class.

## Terrorist Act

113. (1) Whoever does any act with the intent to threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India or with the intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substance or inflammable substance or fire arms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substance (whether biological, radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause,—

- (i) death of, or injury to, any person or persons; or
- (ii) loss of, or damage to, or destruction of, property; or
- (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
- (iv) damage to, the monetary stability of India by way of production or smuggling or circulation of counterfeit Indian paper currency, coin or of any other material; or
- (v) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public

functionary or attempts to cause death of any public functionary;  
or

(c) detains, kidnaps or abducts any person and threatening to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organization or any other person to do or abstain from doing any act, commit a terrorist act.

*Explanation.*—For the purpose of this sub-Section,—

(a) “public functionary” means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

(b) “counterfeit Indian currency” means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features of Indian currency.

(2) Whoever commits a terrorist act shall,—

(a) if such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of a terrorist act or any act preparatory to the commission of a terrorist act, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Whoever organises or causes to be organised any camp or camps for imparting training in terrorist act, or recruits or causes to be recruited any person or persons for commission of a terrorist act, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Any person who is a member of an organization which is involved in terrorist act, shall be punished with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

(6) Whoever voluntarily harbours or conceals, or attempts to harbor or conceal any person knowing that such person has committed a terrorist act shall be punished with imprisonment for a term which

shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine:

Provided that this sub-Section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

(7) Whoever knowingly possesses any property derived or obtained from commission of any terrorist act or acquired through the commission of any terrorist act shall be punished with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

*Explanation.*—For the removal of doubts, it is hereby declared that the officer not below the rank of Superintendent of Police shall decide whether to register the case under this Section or under the Unlawful Activities(Prevention) Act, 1967.

Description: It is for the first time that the offence of terrorism has been introduced in the general law of the land and act of terrorism defined. Section 113 has been drafted on the lines of UAPA. It provides punishment for the commission, attempt, abetment, conspiracy, being member of any terrorist organization, recruitment or organizing camp for training, harboring or concealing any person who has committed terrorist act, proceeds of crime/property obtained or derived by commission of a terrorist act with the option of death or life imprisonment without parole.

Counterfeiting Indian currency has also been covered under this section as a terrorist act like UAPA. Destruction of any property in India or abroad, disruption of essential services and damage to the monetary stability of India has been covered under this section.

The provision recognizes the term "public functionary," encompassing constitutional authorities and other functionaries notified by the Central Government. Criminal force or attempts to cause death to a public functionary falls under the purview of terrorism. Destruction of public facilities or private property is now criminalized under terrorist act.

This section addresses terrorism beyond International borders. The section encompasses acts that result in the "causeable damage by way of destruction of critical infrastructure," recognizing the global threat of international terrorism and special attention is given to vulnerabilities posed by cyber-attacks on critical infrastructures.

### **Cognizability/ Bailability/ Triability:**

It is a cognizable, non-bailable offence, triable by the Sessions court. Officer not below the rank of SP will decide whether to register a case under the BNS,2023 or UAPA.

### **Provisions under BNSS:**

FIR registration (Sections 173): The procedure begins when the complainant goes to the police station to file an FIR under Section 173. Section 173(1) of BNSS allows the information relating to the commission of a cognizable offence to be given by electronic communication.

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### **Provisions under BSA:**

Section 23 of BSA speaks about confession before police officer and discovery of facts.

Section 63 of the BSA corresponds to section 65B of Evidence Act and relates to admissibility of electronic records. Section 63(1) of BSA extends the scope of section 65B(1) from information contained in computer to that contained in semi-conductor memory or in any communication device (smart phones) or stored, recorded or copied or in any electronic form.

Section 63(4) provides for format of certificate for electronic record evidence which was earlier not specified under section 65(B) of Evidence Act.

Section 1 of the BSA omits the territorial extent and definition of "India" so that any stipulation that the BSA extends to the whole of India does not result into questioning the admissibility of evidence digitally generated outside the borders of India.