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Revised Reprint

Principles of Forensic Medicine & Toxicology

As per the Competency-based Medical Education Curriculum (NMC)

HIGHLIGHTS

- Inclusion of new criminal laws Bharatiya Nyaya Sanhita, Bharatiya Nagarik Sureksha Sanhita and Bharatiya Sakshya Adhiniyam
- Multiple choice questions (MCQs), short answer questions (SAQs), and long answer questions (LAQs) included
- 400+ color photographs, flowcharts and boxes
- New topic on AETCOM added

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Rajesh Bardale

4th Edition

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2

CHAPTER

Legal Procedure

If the law has made you a witness, remain a man of science. You have no victim to avenge, no guilty man to convict, and no innocent man to save. You must bear testimony within the limits of science.

—Paul H Brouardel—

COMPETENCY COVERED

The student after reading the chapter should be able to:

- **FM1.3:** Describe legal competencies including Bharatiya Nagarik Suraksha Sanhita (BNSS), Bharatiya Nyaya Sanhita (BNS), Bharatiya Sakshya Adhiniyam (BSA), Protection of Children from Sexual Offences Act (POCSO) civil and criminal cases, inquest (police inquest and magistrate's inquest), cognizable and non-cognizable offences.
- **FM1.4:** Describe courts in India and their powers: Supreme Court, High Court, Sessions Court, Magistrate's Court, Labor Court, Family Court, Executive Magistrate Court and juvenile justice board.
- **FM1.5:** Describe Court competencies including issue of Summons, conduct money, types of witnesses, recording of evidence oath, affirmation, examination in chief, cross examination, re-examination and court questions, recording of evidence and conduct of doctor in witness box.
- **FM1.6:** Describe offenses in court including perjury; court strictures vis-à-vis medical officer.
- **FM1.7:** Describe dying declaration and dying deposition.
- **FM1.8:** Describe the latest decisions/notifications/resolutions/circulars/standing orders related to medicolegal practice issued by Courts/Government authorities, etc.
- **FM1.9:** Describe the importance of documentation in medical practice in regard to medicolegal examinations, medical certificates and medicolegal reports especially—maintenance of patient case records, discharge summary, prescribed registers to be maintained in health centers.
  - Maintenance of medicolegal register like accident register.
  - Documents of issuance of wound certificate.
  - Documents of issuance of drunkenness certificate.
  - Documents of issuance of sickness and fitness certificate.
  - Documents for issuance of death certificate.
  - Documents of medical certification of cause of death: Form number 4 and 4a.
  - Documents for estimation of age by physical, dental and radiological examination and issuance of certificate.

INTRODUCTION

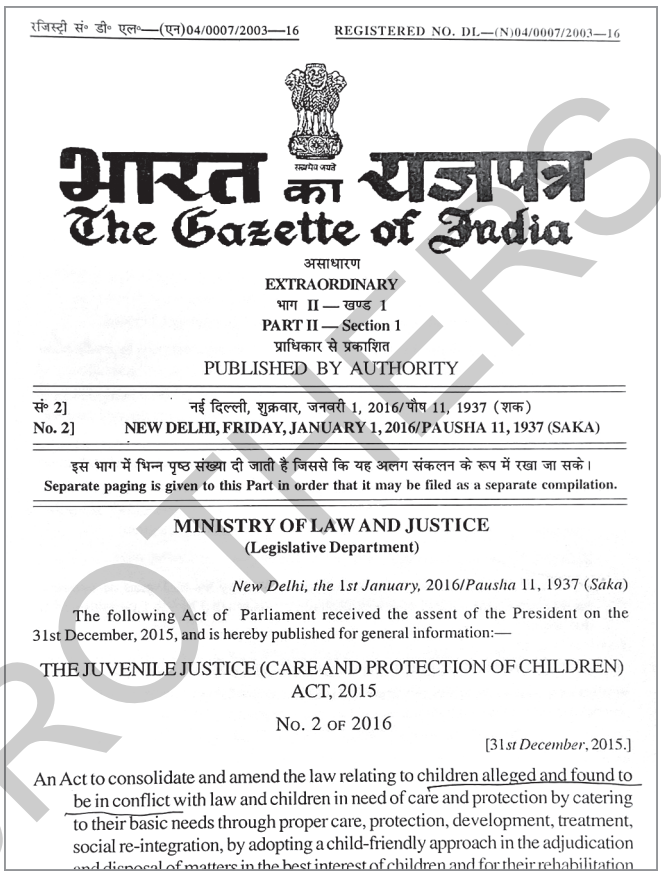
Doctors are essential part and play an important role in dispensing justice by the Court of law while dealing with civil or criminal matter affecting life and social cause. In this entire exercise medical men or women, i.e., doctors, have to appear in Court of law to give evidence in matters related with medicolegal cases. Therefore, it would be helpful if doctors are acquainted with law, the legal procedure, the legal terms and the Court procedures. In fact, every citizen of India owes a duty to assist the Court of law in the administration of justice.[1]

JAYPEE BROTHERS

LEGAL SYSTEM

The Constitution of India is the supreme source of law in the country. The Constitution of India lays down the framework demarcating fundamental political code, statue (statutory law), procedures, powers and duties of government and set out fundamental rights and duties of citizens of India.

In India, the basic pattern of legal system consists of civil law and criminal law and accordingly the cases are referred as civil case or criminal case. The civil laws or criminal laws like *(Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023, Bhartiya Sakshya Adhiniyam 2023)* and various Acts *[like Protection of Children from Sexual Offences Act 2012, the Medical Termination of Pregnancy Act 1971, the Transplantation of Human Organs Act 1994, the Motor Vehicles Act 2019, the Drugs and Magic Remedies (objectionable advertisements) Act 1954, the Environment protection Act 1986, etc.]* are called as **Statute** or **Statutory law** or **Codified law**. Statutes are the laws passed by the Parliament, State Legislatures and Union Territory Legislatures. Law proposals are brought before either house of the Parliament (Lok Sabha or Rajya Sabha) of India in form of a bill. A bill is draft of a legislative proposal and is passed by both houses (Lok Sabha and Rajya Sabha). It is submitted to the President of India. Once the President of India gives assent to this law bill, then it becomes an Act of Parliament and it is published in Gazette of India **(Fig. 2.1)** and now, it become codified law or statute. There are also other types of law like common law, case law or subordinate legislations and are discussed below **(Fig. 2.2)**.



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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 1st January, 2016/*Pausha* 11, 1937 (*Saka*)

The following Act of Parliament received the assent of the President on the 31st December, 2015, and is hereby published for general information:—

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

No. 2 OF 2016

[31*st December*, 2015.]

An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation

Fig. 2.1: The Gazette of India.

Civil Cases

- Civil cases are governed by the Civil Laws like Civil Procedure Code, etc.
- These cases are not related with an offence or a crime.
- This law concerns with a dispute between two individuals or parties. Here one citizen claims that another person has caused some wrong act with him or something wrong happens with him or someone had cheated him or some injustice happened with him. For example:
  - Dispute between husband and wife for divorce; or
  - Dispute between two brothers for inheritance of property; or
  - Dispute between two individuals because of property; or
  - Dispute between two individuals regarding payment of debt, etc.
- Here the State Government have no role in this dispute and will not intervene on behalf of society.

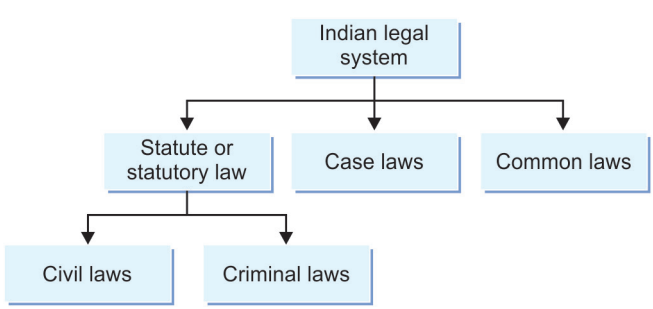

Fig. 2.2: Showing Indian legal system.

- In such cases the courts do not award punishment. The affected person approaches civil court to have remedy (*or solution or financial compensation or justice*) which, can restore the wrong caused by another person. For example, *"X" had a vacant land of 2000 square feet in prominent area of the city and he has lawful possession of the land. Suppose another person "Y" encroaches "X's" land illegally and without consent and knowledge of "X". "X" made repeated request to "Y" to vacate the land; however, "Y" do not vacate the land. Here "X" is having only remedy available with him is to approach the civil*

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court. "X" will approach appropriate civil court under civil law against "Y" so that "X" can have his land again back with him.

- The affected person who brings the action in a civil case is called as '**Plaintiff**' and other person against whom the action is brought is called as '**Defendant**'. In the above example "X" is called as '**Plaintiff**' and "Y" is called as '**Defendant**'.

Criminal Cases

- These cases are related with an offence or some crime.
- Maintaining law and order is a prime duty of the government, especially State Government, so that peace and harmony exists in the society. The State Government maintains the law and order through the police. If any citizen commits any crime *say, e.g., robbery, rape or murder (homicide)* then the government interferes here **through** police and take appropriate measures. The person is arrested and prosecuted by police in the court through government advocate. In other words, here the case will be heard by the court and the case will be labelled as "**accused person verses government**". *For example if "X", residing in Maharashtra, commits robbery into "Y's" house and if police arrested "X" then "X" will be prosecuted in the court by the police and the trial in the court will be labelled like "***X verses the Government of Maharashtra***".
- Unlike civil law, it is not merely dispute between two people but the case is related with commission of crime by one person with another.
- In such cases the court can award punishment or in some offence, punishment plus fine or only fine depending upon the nature of an offence.
- Criminal cases are governed by criminal laws like Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, Bharatiya Sakshya Adhiniyam, etc.

Common Law

- These are not statute law but there is a body of judge-made law.
- This law is used on certain matter which is not covered by any existing statute law.
- This sort of law is used in England. Indian courts, even after independence, are applying the principles of the English law. Now the question arises what is the authority for the application of the common law of England in India? The Constitution of India by Article 372 has specifically provided that all the laws in force in this country immediately before the commencement of constitution shall continue in force until altered or repealed or amended. For example, the law of tort is a common law and derived from the English law of Torts. The word tort is derived from the French word meaning '*harm*' or *injury*'. There are certain wrongs or injuries caused by one person to another or to another's property which are not covered by the law of contract or by the criminal law or by any other specific statute law.[1] In such cases Indian Court can use common law.

Case Law

- Case law is also called as "**Judicial decisions**".
- Technically the case law is not a statute law. In certain instances, there is no law and procedure that is to be followed in similar cases, if such cases arise, is to use case law. In such circumstances the Supreme Court delivers a judgement and provides certain guidelines to deal with similar cases until Statute law is passed by the Parliament.
- The judgement given by the Supreme Court is final judgement and lower courts have to follow the same as the judgement has precedential value.
- **Example of case law:** In case of death due to medical negligence, relatives make allegations against doctor and in past many times doctors were arrested by police under Section 304 (A) of Indian Penal Code. Now this IPC is replaced by Section 106 (1) of BNS 2023. There were no guidelines to deal with medical negligence like: (1) how to decide medical negligence; (2) the formation of expert committee of medical people for providing appropriate opinion, etc. Here, the Supreme Court of India had issued guidelines in two cases: *(1) Martin F D'Souza vs Mohd Ishfaq and (2) Jacob Mathew vs State of Punjab* regarding the same. These guidelines were issued by the Supreme Court of India and now become case laws in case of medical negligence.

Subordinate Legislation

- There are vast body of laws known as subordinate legislation in the form of Rules, Regulations, Standing Orders, Resolutions, notifications circulars and by-laws made by Central Government and/or State Government and/or local bodies like Municipal Corporations, Municipalities or Gram Panchayats.
- These subordinate legislations are made as per the need of the situation.

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Relevant Statute Laws[2-4]

Following account provide summary of various laws used while dealing with criminal cases.

- **The Bharatiya Nyaya Sanhita 2023 (BNS 2023):** The purpose of the BNS 2023 is to consolidate and amend the provisions relating to the offences and punishment. A person who is guilty of any commission of crime shall be liable to punishment under this Sanhita. In this Sanhita, the offences are defined and thereafter punishments are prescribed for those offences. For example, *rape is defined in Section 63 of BNS 2023 and punishment for rape is prescribed in Section 64, 65 and other Sections and subsections of BNS 2023*. Here the Police use these different Sections of BNS 2023 to register an offence against the offender and accordingly prosecuted in the court. It is the court, who ultimately decides whether the stated offence falls under the labelled Section of BNS 2023 and if yes, then accordingly punishment is awarded. This Sanhita (Act) has replaced Indian Penal Code (IPC).
- **The Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS 2023):** The purpose of BNSS 2023 is to consolidate and amend the law relating to Criminal Procedure. The provisions of this Sanhita (Act), other than those relating to Chapters IX, XI and XII thereof, shall not apply to:
  - the State of Nagaland; and
  - the tribal areas,

  But the concerned State Government (Nagaland and tribal areas of Assam) may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification.
  Explanation: In this Section, "tribal areas" means the territories which immediately before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred to in paragraph 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong.
  The Sanhita lays down the procedure for initiating action against any person accused of criminal offence. In other words, this Sanhita deals with how a criminal case should be investigated by the Police and how that case should proceed in the court. For example, *if a person dies in road traffic accident, then the inquest panchnama (given below) is conducted by Police as per 194 of BNSS for conducting the postmortem examination.*
  The BNSS 2023 has replaced the Criminal Procedure Code (CrPC).
- **The Bharatiya Sakshya Adhiniyam 2023 (BSA 2023):** The purpose of the BSA 2023 is to consolidate and to provide for general rules and principles of evidence for fair trial. It applies to all judicial proceedings in or before any Court, including Courts-martial. This Act will not be applied to affidavits presented to any Court or officer, or to proceedings before an arbitrator.
  This Adhiniyam deals with collection and interpretation of evidences as well as evidences produced before the court.
  For example, *(1) collection of blood for DNA analysis and the results obtained of such tests are produced in the court as evidence or (2) Submission of alleged weapon used in crime produced in the court as evidence, etc.*
  The BSA 2023 has replaced Indian Evidence Act (IEA).

Classification of Criminal Cases (Fig. 2.3)

For purpose of trial in the court, these cases are classified as:

- **Warrant case:** It means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term **exceeding two years** is called as warrant case *[Section 2 (1) (z) of BNSS]*.
- **Summons case:** It means a case relating to an offence, which is not warrant case. In summons case, the punishment for an offence does **not exceed more than two years** *[Section 2 (1) (x) of BNSS]*.

Offences (Fig. 2.4 and Table 2.1)

Offence means an illegal act or a crime or a criminal act which is punishable by the law. The act may be an act of commission or an act of omission. It is a breach of a law or an illegal act. If a person had committed an offence, then he may be punished as per the nature of an offence. In United States, the preferred spelling is offense. The offences are classified as:

- **Depending on arrest of a person:**
  - Cognizable offence *[Section 2 (1) (g) of BNSS]*
  - Non-cognizable offence *[Section 2 (l)(o) of BNSS]*

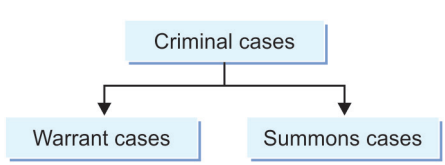

Fig. 2.3: Classification of criminal cases.

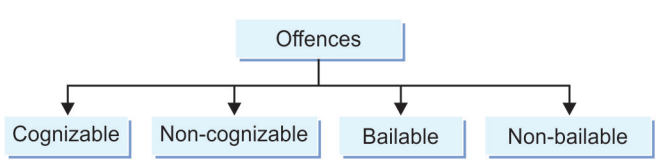

Fig. 2.4: Types of offences.

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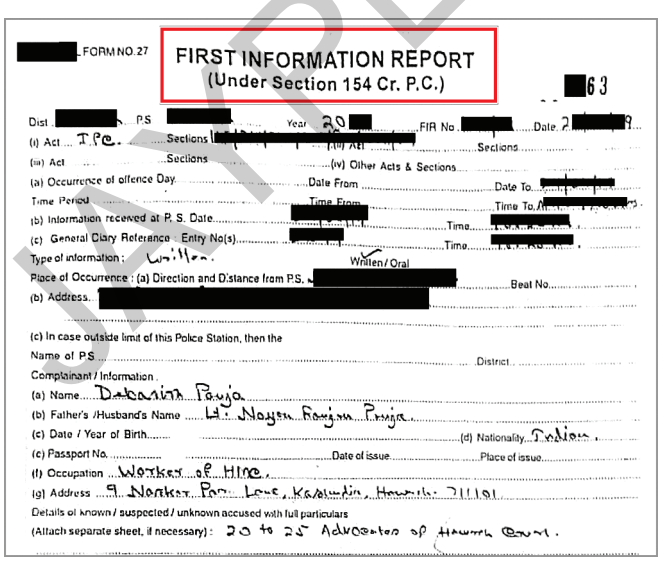
Table 2.1: Classification of offences.

Sl. No.	*Offence*	*Cognizable offence or non-cognizable offence*	*Bailable offence or non-bailable offence*
1.	If punishable with death, imprisonment for life, or imprisonment for more than 7 years	Cognizable	Non-bailable offence
2.	If punishable with imprisonment for 3 years and upwards but not more than 7 years	Cognizable	Non-bailable offence
3.	If punishable with imprisonment for less than 3 years or with fine only	Non-cognizable	Bailable

- **Depending on bail:**
  - Bailable offence *[Section 2 (1)(c) of BNSS]*
  - Non-bailable offence *[Section 2 (1) (c) of BNSS]*

Cognizable Offence

- Cognizable offence refers to an offence in which a police officer can arrest a person **without warrant** from the magistrate.
- When an information regarding commission of a cognizable offence is received to an officer-in-charge of a police station or Station House Officer (SHO), it should be recorded in writing by him and be read over to the informant (*or complainant*) and shall be signed by the person giving such information **(Fig. 2.5)**. This information is recorded in a book prescribed for this purpose *(Section 173 of BNSS)*. Such written information is called as **First Information Report** (F.I.R.).
- An Officer-in-charge of a police station may investigate any cognizable case without an order of the Magistrate *(Section 175 of BNSS)*.
- Cognizable offences are both—bailable and non-bailable.
- Examples of cognizable offences are—*rape, murder, dowry death, ragging, etc.*


FORM NO. 27

FIRST INFORMATION REPORT
(Under Section 154 Cr. P.C.)

Dist. P.S. Year 20 FIR No. Date

(i) Act IPC Sections (ii) Act Sections

(iii) Act Sections (iv) Other Acts & Sections

(a) Occurrence of offence Day Date From Date To

Time Period Time From Time To

(b) Information received at P. S. Date Time

(c) General Diary Reference Entry No(s). Time

Type of information: Written Written / Oral

Place of Occurrence : (a) Direction and Distance from P.S. Beat No.

(b) Address

(c) In case outside limit of this Police Station, then the Name of P.S. District

Complainant / Information

(a) Name Debasmita Panja

(b) Father's /Husband's Name Lt. Nayan Ranjan Panja

(c) Date / Year of Birth (d) Nationality Indian

(e) Passport No. Date of issue Place of issue

(f) Occupation Workes of Hire.

(g) Address 9, Nonkar Par Lane, Kadamtala, Howrah- 711101

Details of known / suspected / unknown accused with full particulars

(Attach separate sheet, if necessary) : 20 to 25 Advocates of Howrah Court.

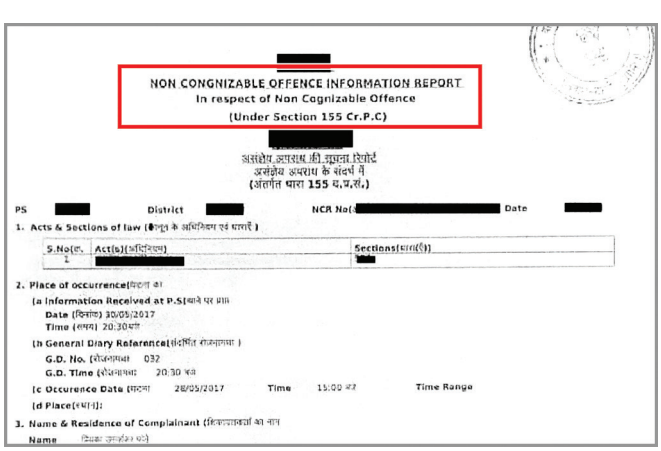
Fig. 2.5: Specimen of FIR in cognizable offence.

Non-cognizable Offence (Fig. 2.6)

- Non-cognizable offence refers to an offence in which, a police officer cannot arrest a person without a warrant.
- When an information regarding commission of a non-cognizable offence is received to an Officer-in-charge of a police station or Station House Officer (SHO), it should be entered such information in a prescribed book and refer the information to the Magistrate *(Section 174 of BNSS)*.
- No police officer shall investigate a non-cognizable case without an order of the Magistrate having power to try such case or commit the case for trial *(Section 174 of BNSS)*.
- Examples of non-cognizable offences are—*assault, attempt of suicide by a person, making false statement in connection with an election, cheating, forgery, defamation, etc.*

Bailable Offence

- Bail is a conditional release of an accused with a surety (*or a promise*) to appear in the police station (*or court as the case may be*) when required.
- Bailable offence means, an offence where the accused is granted bail. The bail is either given by Police Officer who is investigating the case or it can be granted by the court.


NON CONGNIZABLE OFFENCE INFORMATION REPORT
In respect of Non Cognizable Offence
(Under Section 155 Cr.P.C)

असंज्ञेय अपराध की सूचना रिपोर्ट
असंज्ञेय अपराध के संबंध में
(अंतर्गत धारा 155 द.प्र.सं.)

PS District NCR No. Date

1. Acts & Sections of law (अधिनियम एवं धाराएँ)

S.No(क्र. सं.)	Act(s)(अधिनियम)	Sections(धारा(ऐं))
1		

2. Place of occurrence(घटना का)

(a Information Received at P.S(थाने पर प्राप्त

Date (दिनांक) 30/05/2017

Time (समय) 20:30 HRS

(h General Diary Reference(सामान्य डायरी संदर्भ)

G.D. No. (सामान्य डायरी सं.) 032

G.D. Time (सामान्य डायरी समय) 20:30 HRS

(c Occurence Date (घटना दिनांक) 28/05/2017 Time 15:00 HRS Time Range

(d Place(स्थान))

3. Name & Residence of Complainant (शिकायतकर्ता का नाम)

Name (शिकायतकर्ता का नाम)

Fig. 2.6: Specimen of non-cognizable offence.

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- The accused is released on bail after providing a bond known as **"bail bond" with or without giving sureties**. The bail bond contains certain terms and condition that is to be followed by accused.
- The bailable offence is such an offence, punishable with imprisonment **for less than 3 years or with fine only**.
- Examples of bailable offences are—*causing public nuisance (Section 292 BNS), bribery (Section 173 BNS) or death by rash and negligent act (Section 106 BNS),* etc.

Non-bailable Offence

- Non-bailable offence means an offence, in which, the grant of bail is not a matter of right. In this scenario, the accused will have to apply to the court for the bail. It will be the discretion of the court either to grant bail or not to grant bail.
- Non-bailable offences are the offences, which are punishable with death, imprisonment of life or imprisonment for 3 years and more than 3 years.
- Examples of non-bailable offences are—*ragging, dowry death, murder, rape, etc.*

PUNISHMENTS

As per Section 4 of BNS 2023, the various punishments that can be awarded are:

- Death
- Imprisonment for life
- Imprisonment—either—rigorous imprisonment or simple imprisonment
- Forfeiture of property
- Fine
- Community Service
  - As per Section 393 (5) of BNSS 2023 **death sentence** (*or capital punishment*) is carried out by hanging in India. When any person is sentenced to death, the sentence shall direct that he/she will be hanged by the neck till he/she is dead.
  - Practically '**imprisonment for life**' means imprisonment till the end of life in the prison. The appropriate government have an important role while dealing with various provisions of commutation, remission or suspension of sentences. Imprisonment for life is always with rigorous imprisonment. Considering the BNSS 2023 and various High Court and Supreme Court judgements, the maximum imprisonment that can be awarded for an offence is **fourteen years** (Section 5 of BNS 2023).[5,6] For interested students, *see* **Box 2.1** for additional information.
  - In rigorous imprisonment, the offender is put to hard labor (*hard work*) such as grinding corn, digging earth, drawing water, cutting fire-wood, bowing wool, etc.
  - In simple imprisonment the offender is confined to jail and is not put to any kind of work.
  - Forfeiture is a punishment in which, the property of criminal is seized without compensation as a consequence of violation of certain laws. The court may order to forfeit a property.
  - Fine is a monetary penalty imposed on accused. The court may impose fine only. The court may impose fine along with imprisonment depending upon the nature of an offence.
  - Community service: First time in India, the concept of community service as a form of punishment is introduced in the BNS 2023. The punishment as community service will be awarded for petty offences. In the explanation part after Section 23 of BNSS, "Community service" shall mean the work which the Court may order a convict to perform as a form of punishment that benefits the community for which he shall not be entitled to any remuneration. This change in law is made to provide alternative to traditional forms of punishment. Community service as a form of punishment has been widely used in developed countries like USA, UK and European countries. In these countries, community service punishment work as an effective alternative to traditional form of punishments, especially in petty offences or non-violent offences. Introduction of community service in India will provide an opportunity to these offenders to reform themselves and adopt the living style of the society without considerable form of social stigma.

INQUEST (IN = IN, QUEST = TO SEEK)

Definition: An inquest is a legal inquiry (*or investigation*) to ascertain the circumstances and cause of death.

There are four types of inquests:

1. Police inquest
2. Magistrate inquest
3. Coroner inquest
4. Medical examiner's system

Only police and magistrate's inquest are conducted in India.

Police Inquest (Inquest Panchnama)

The Police inquest is conducted under Section 194 of Bharatiya Nagarik Suraksha Sanhita (BNSS 2023). It is conducted by the police officer, usually not below the rank of police sub-inspector (*However, in Maharashtra and some other States, inquest is conducted by lower-rank police*

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Box 2.1

Life imprisonment—14 years or 20 years.[5,6]

There may be confusion, what life imprisonment means? Whether it is for life or 20 years or 14 years. Generally, it is thought that the imprisonment for life means only 14 years of imprisonment and a convict person shall be released as soon as he completes 14 years of imprisonment. It is a wrong assumption. In fact, the punishment under the imprisonment *for life means imprisonment for whole of the remaining period of the convicted person's natural life*.

Let's have a look from legal point of view:

- Before 1955, the words "**transportation for life**" was used. The *Criminal Procedure Code* was amended in 1955 *(by Act No. 26 of 1955)* and the words "transportation for life" was replaced by "**imprisonment for life**". During British Rule, the convict person was deported to the Andaman Island and other prison under the term transportation for life.
- **Imprisonment for life** *(also called as life sentence or life incarceration)* is a sentence of imprisonment for a serious crime under which a convicted person is to remain in prison *(jail)* for the rest of his natural life.
- **Section 55 and 55 A of IPC** provides that when sentence of imprisonment for life has been passed then the appropriate government *(*the *Central Government or State Government as the case may be)* may without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding 14 years. This Section empowers the Central or State Government to commute the sentence of imprisonment for life. Exercise of such right is at the discretion of the Central or State Government. This Section does not lay down that life imprisonment shall be an imprisonment for fourteen years and a prisoner is not to be automatically released after expiry of fourteen years of imprisonment. It is for the appropriate government to commute the sentence and for this purpose rules have been framed by the government. With enactment of BNS 2023, the older sections 55 and 55 A of IPC are now replaced with Section 5 of BNS 2023.
- **Section 57 of IPC** provides that calculating fractions of terms of imprisonment; imprisonment for life shall be supposed to be equivalent to imprisonment for 20 years. Section 57 does not say that imprisonment for life shall be deemed to be imprisonment for 20 years. Consequently, imprisonment for life usually means imprisonment for whole of the remaining period of the convicted person's natural life. With enactment of BNS 2023, the older Section 57 of IPC is now replaced with Section 6 of BNS 2023.
- **Section 432 of Code of Criminal Procedure—*Power to suspend or remit sentences:*** When any person has been sentenced to punishment for an offence, the appropriate government may, at any time, without conditions or upon any conditions that the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced. With enactment of BNSS 2023, the older Section 432 of CrPC is now replaced with Section 473 of BNSS 2023.
- **Section 433 of Code of Criminal Procedure—*Power to commute sentence (with enactment of BNSS 2023, the older Section 433 of CrPC is now replaced with Section 474 of BNSS 2023):*** The appropriate government may, without the consent of the person sentenced commute:
  - *A sentence of death*, for any other punishment provided by the Bharatiya Nyaya Sanhita 2023
  - *A sentence of imprisonment for life*, for imprisonment for a term not exceeding fourteen years or for fine
  - *A sentence of rigorous imprisonment* for simple imprisonment for any term to which that person might have been sentenced, or for fine
  - *A sentence of simple imprisonment*, for fine.
- **Section 433 A of Code of Criminal Procedure (with enactment of BNSS 2023, the older Section 433 A of CrPC is now replaced with Section 475 of BNSS 2023)—*Restriction on powers of remission or commutation in certain cases:*** Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he has served at least fourteen years of imprisonment.
- The appropriate government has power under Sections 473 and 474 of BNSS 2023 to suspend or remit or commute the sentence while Section 475 of BNSS 2023 imposes restrictions on the powers of remission or commutation in certain cases.
- **Case law: *Gopal Vinayak Godse verses the State of Maharashtra:***[6] It was held by a Constitution Bench of the Supreme Court that the meaning of a sentence of imprisonment for life is no longer *res integra* (in legal language it means—*those points of law which have not been decided*). A sentence of transportation for life or imprisonment for life must, prima facie, be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life. It was further held that unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the BNS 2023 or BNSS 2023, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison.
- From the above discussion, a conclusion can be drawn that life imprisonment is to be interpreted as being imprisonment for the whole of a convict's natural life. On a careful study of Section 5 of BNS 2023 and Sections 473, 474 and 475 of BNSS 2023, it is clearly seen that a prisoner sentenced to life sentence has to serve at least 14 years in prison.

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officials like Head Constable in certain cases). The officer in-charge of a police station, if receives information that a person:

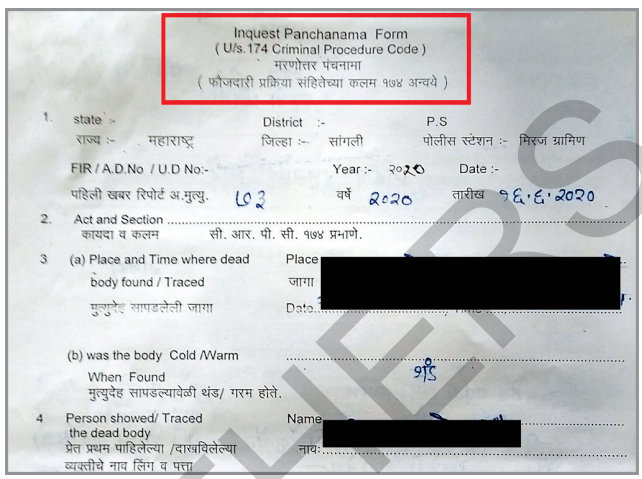
- Has committed a suicide; or
- Has been killed by another (*homicide*); or
- Has been killed by an animal; or
- Has been killed by machinery (*industrial accidents*); or
- Has been killed by an accident (*example—road traffic accidents, fall from building, collapse of house, etc.*); or
- Has died under circumstances raising a reasonable suspicion that some other person has committed an offence then he shall give immediate intimation to the nearest Executive Magistrate and shall visit to the place where the dead body is laying and prepare an inquest.

Similarly, inquest is also made when:

- The case involves suicide by a woman within 7 years of her marriage [*as per clause (i) of Sub-section 3 of Section 194 of BNSS 2023*]; or
- The case relates to the death of a woman within 7 years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or
- The case relates to the death of a woman within 7 years of her marriage and any relative of the woman has made a request in this behalf; or
- There is any doubt regarding the cause of death; or
- The police officer for any other reason considers it expedient so to do.

The officer conducting the inquest is called as **"Investigating Officer"** (IO). At that place, the Investigating Officer (IO) in presence of two or more **responsible persons** living in that area (*these persons are called as* **Panchas** ***(or witness)***) makes an investigation and prepares a report called as **Inquest Panchnama**. Panchnama means a document prepared by the investigating officer in presence of Panchas (witness). The inquest panchnama contains a rough description of scene of crime; appearance of body; description of clothes, presence of any identifying features (*like tattoo or scar, etc.*); presence of any wounds or fractures; apparent cause of death and manner of death. The Investigating Officer (IO) and the Panchas (*witness*) then sign the report.

- The inquest panchnama is a hand written document prepared in two copies. One copy is in ink and other copy is a carbon copy **(Fig. 2.7)**. *Nowadays, many police officers are using digital (computerized) inquest system with the help of laptop and printers brought at fields (or place of inquest).*
- The investigating officer (IO) then forwards the dead body to the nearest government hospital with the requisition and a copy of inquest report (*carbon copy of Panchnama*) for conducting postmortem examination.


Inquest Panchanama Form
(U/s.174 Criminal Procedure Code)
मरणोत्तर पंचनामा
(फौजदारी प्रक्रिया संहितेच्या कलम १७४ अन्वये)

1. state :- राज्य :- महाराष्ट्र District :- जिल्हा :- सांगली P.S पोलीस स्टेशन :- मिरज ग्रामिण
FIR / A.D.No / U.D No:- Year :- २०२० Date :-
पहिली खबर रिपोर्ट अ.मृत्यु. ८०२ वर्षे २०२० तारीख २६.६.२०२०
2. Act and Section कायदा व कलम सी. आर. पी. सी. १७४ प्रमाणे.
3 (a) Place and Time where dead body found / Traced मृत्युदेह सापडल्याची जागा Place जागा [redacted] Date
(b) was the body Cold /Warm When Found मृत्युदेह सापडल्यावेळी थंड/ गरम होते. शीत
4 Person showed/ Traced the dead body प्रेत प्रथम पाहिलेल्या /दाखविलेल्या व्यक्तीचे नाव लिंग व पत्ता Name नाव: [redacted]

Fig. 2.7: Specimen of inquest panchnama.

Magistrate Inquest

Magistrate inquest is conducted as per Section 196 of Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS 2023). The Magistrate empowered to hold inquests are:

- **District magistrate (DM)** (*in certain States they are also called as District Collector and District Magistrate*); or
- **Sub-divisional magistrate (SDM)**; or
- **Executive magistrate** (*Tahsildar*) specially appointed (*empowered*) in this regard on behalf of the State Government or the District Magistrate.

Magistrate inquest is considered to be superior to the police inquest. Magistrate inquest is conducted in following circumstances:

1. Death in police custody; or
2. Death in prison (jail); or
3. The case involves suicide by a woman within seven years of her marriage [*as per Sub-section 1 of Section 196 of BNSS 2023*]; or
4. The case relates to the death of a woman within 7 years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman [*as per Sub-section 1 of Section 196 of BNSS 2023*]; or
5. The magistrate can conduct an inquest to ascertain cause of death **instead** of police inquest or **in addition** to the police inquest, in cases where a *person has committed suicide or has been killed by another or by an animal or by machinery or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence* [*as per Sub-section 1 of Section 196 of BNSS 2023*].
6. Exhumation—to know the cause of death.

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The magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case. Where an inquiry is to be held under this Section, the magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

- In a condition where any person dies or disappears or rape is alleged to have been committed on any woman, while such person or woman is in the **custody of the police** or in any other custody authorized by the Magistrate or the court, in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Magistrate within whose local jurisdiction the offence has been (Sub-section 2 of Section 196 of BNSS 2023).
- The Magistrate or the Executive Magistrate or police officer holding an inquiry or investigation, in a condition where any person dies or disappears or rape is alleged to have been committed on any woman, while such person or woman is in the **custody of the police** or in any other custody authorized by the Magistrate or the court, shall within twenty-four hours of death of the person, forward the dead body with a view to its being examined to the nearest **Civil Surgeon or other qualified medical person** appointed in this behalf by the State Government [*as per Sub-section 5 of Section 196 of BNSS 2023*].
- Difference between police and magistrate inquest are mentioned in **Table 2.2**.

Coroner's Inquest

During British rule in India, the Coroners Act 1871 was enacted. According to this Act an Officer of the rank of First-Class Magistrate, was appointed by the State Government (*during British rule, appointed by the Provincial Government)* known as Coroner. He was appointed for Bombay (*Mumbai*) and Calcutta (*Kolkata*). Accordingly, inquest was held by Coroner in the city of Kolkata and Mumbai. However, it was abolished in Kolkata way back and was discontinued on 29 July 1999 in Mumbai. Coroner inquest is now having historical significance. For interested students, more information about Coroner's inquest is provided in **Box 2.2**.

Table 2.2: Differences between police inquest and magistrate inquest.

Police inquest	*Magistrate inquest*
Conducted by police	Conducted by District Magistrate, Sub-divisional Magistrate or Executive Magistrate
Cannot hold inquest in death in police custody, or death in jail	Can hold inquest in death in police custody or death in jail
Cannot order for exhumation	Can order for exhumation
Investigation is considered inferior to magistrate investigation	Investigation is considered superior to police investigation

Medical Examiner System

- Death investigation by medical examiner is routinely done in some states of USA.
- The medical examiner is a physician or mostly a Forensic Pathologist. A medical examiner receives forensic pathology training and board certification.
- All sorts of sudden, unnatural or suspicious deaths are investigated by medical examiner.
- This type of investigation is considered to be superior to all other type of investigations.
- In India, there is no provision of medical examiner system for death investigation.

COURT

There are two types of courts in India and they are:

1. Civil Courts
2. Criminal Courts

The Civil Courts deals with civil matters and the criminal courts deals with criminal cases. There are of four types of Criminal Courts and they are **(Fig. 2.8)**:

1. The Supreme Court
2. The High Court
3. The Sessions Court
4. The Magistrate Court

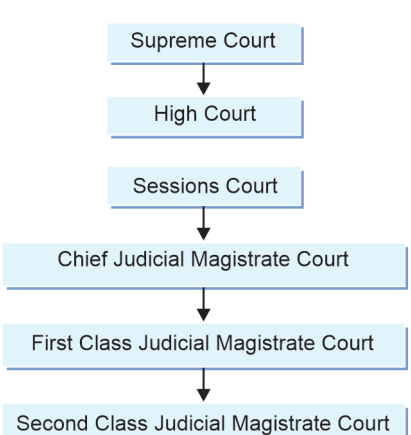

Fig. 2.8: Showing different types of courts in India.

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Box 2.2

Coroner's inquest: Historical significance.

The coroner was empowered to inquire into cases of following deaths:[7]

- All sudden deaths where, cause of death is unknown
- All unnatural or suspicious deaths (*like homicide or suicide or infanticide or accident or poison or machinery vehicular accident*)
- Death occurred in prison (*jail*) or police custody.
- Death occurred in Asylum or mental hospital or Beggar home or certified school or Remand home
- **Exhumation** *means to dig out body which was already buried (or interred)*

In past, when the coroner was informed that the dead body was lying in his jurisdiction and there was reasonable cause to suspect that such person had died under unnatural or suspicious circumstances or died a sudden death of which the cause was unknown, the coroner would proceed to hold preliminary inquiry (*or inquest*) on the body without a jury.

- The coroner would view and examine the body. Such examination was done in presence of the police officer of the jurisdiction and in the presence of the relatives or friends. The findings were recorded into writing. This was called as ***Coroner's inquest***. Every such inquest would be deemed to be a judicial proceeding within the meaning of **Section 193 of the Indian Penal Code** (*Sub-section 4 of Section 9 of the Coroners Act 1871*).
- After examining a body, the coroner used to decide whether postmortem examination is necessary or not necessary. If he thought that postmortem examination was not necessary then he authorized the relatives to take body for the last rites. However, if the coroner thought that the postmortem examination was necessary to ascertain the cause of death, then the coroner used to forward such dead body to his surgeon or to a duly qualified registered medical practitioner for postmortem examination.
- The coroner used to hold one inquest on the bodies of several persons provided that they all were believed to have died in one or in consequence of one and the same incident.
- Coroner's court was only court of inquiry into the cause of death. A coroner cannot prescribe punishment.
- In the process of investigation, the coroner examined witnesses on oath and recorded their evidence. After completion of an inquiry, the coroner founds a verdict as to the cause of death. If the coroner founds a verdict of foul play (*for example, homicide*), he used to issue warrant to the concerned accused and then handed over the case to the concerned Metropolitan Magistrate. When the accused was not found, the coroner returned an *open verdict*. ***Open verdict means an announcement of the commission of crime without information about the accused***.

The Supreme Court

- Located at New Delhi and is the highest judicial tribunal (*or Court*) in the country.
- It supervises all the courts in India.
- The rulings (*or judgements*) delivered by the Supreme Court are binding on all the lower courts in India.
- No criminal case can be initiated in the Supreme Court.
- For criminal cases, it acts as an appeal court.
- It can sustain or alter the punishment awarded by lower courts.

The High Court

- Generally, they are located in the capital of state and are the highest tribunal in that state.
- Deals with appeal in criminal cases.
- It confirms the death sentence awarded by the sessions court.

The Sessions Court

- Usually located at district headquarters.
- The court of sessions is presided over by a senior judge known as Principal Sessions Judge and other courts of sessions are called as Additional Courts of Sessions.
- The sessions court can pass any sentence authorized by law; however, death sentence awarded by it must be confirmed by the high court.
- The court can pass a sentence of imprisonment up to 10 years and unlimited fine.

Magistrate's Court

They are of three types namely:

A. Chief judicial magistrate

- In every district, among the available Judicial Magistrates of First Class (JMFC), the High court appoints one of the Judicial Magistrate of First Class (JMFC) to be the Chief Judicial Magistrate for the district.
- The function of the Chief Judicial Magistrate is to have general administrative control of the working of other Judicial Magistrates in the district.
- Chief Judicial Magistrate may pass a sentence of imprisonment not exceeding seven years.

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B. Judicial magistrate first class (JMFC)

- The State Government in consultation of the High Court establishes Court of Judicial Magistrate of First Class (JMFC).
- Court of Judicial Magistrate of First Class may pass a sentence of imprisonment for a term not exceeding three years, or can impose fine not exceeding fifty thousand rupees (₹ 50,000/-) or both—fine and imprisonment.
- As per BNSS 2023, now the Court of Judicial Magistrate of First Class may pass a sentence of **Community Service**.

C. Judicial magistrate second class (JMSC)

- The State Government in consultation of the High Court establishes Court of Judicial Magistrate of Second Class (JMSC).
- Court of Judicial Magistrate of First Class may pass a sentence of imprisonment for a term not exceeding one years, or can impose fine not exceeding ten thousand rupees (₹ 10,000/-) or both—fine and imprisonment.
- As per BNSS 2023, now the Court of Judicial Magistrate of Second Class may pass a sentence of **Community Service**.

Table 2.3 describes the powers of different criminal courts.

Special Courts

- The Parliament and the State Government are empowered to setup Special Courts for speedy disposal of cases in certain offences. Accordingly Central Government and many State Governments have passed Acts to establish Special Court.
- Nowadays, many State Governments are establishing special courts of sessions known as "**Fast track Courts**". The purpose is to get speedy justice for victims of certain heinous crimes like cases in POCSO Act, rape cases, etc.
- Examples of special courts established under various Acts are—Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act; Essential Commodities Act, Narcotic Drugs and Psychotropic Substance Act (NDPS), the Maharashtra Control of Organized Crime Act 1999 (MCOCA), etc.

Table 2.3: Powers of different criminal courts.

Court	*Imprisonment and fine*
The Supreme Court	Can award any punishment provided in law
The High Court	Can award any punishment provided in law
The Sessions Judge	Can award any punishment provided in law
The Additional Sessions Judge	Can award any punishment provided in law
Chief Judicial Magistrate	• Imprisonment up to 7 years
First class Judicial Magistrate	• Imprisonment up to 3 years • Fine not exceeding ₹ 50,000* • Both—imprisonment and fine • Community service
Second class Judicial Magistrate	• Imprisonment up to 1 year • Fine not exceeding ₹ 10,000* • Both—imprisonment and fine • Community service

*As per Sub-section 2 and 3 of Section 23 of BNSS 2023

Executive Magistrate

In every district, the State Government appoints Executive Magistrate. The State Government may delegate its power to the District Magistrate.

- At district headquarter; he/she is designated as "**District Magistrate**".
- At sub-divisional level, he/she is designated as "**Sub-Divisional Magistrate**"
- At Taluka (or Taluk) level, he/she is designated as "**Executive Magistrate**"

Public Prosecutor

For every High Court, the Central Government or the State Government in consultation of respective High Court appoints a lawyer designated as Public Prosecutor. Similarly for every district, the State Government appoints a lawyer designated as Public Prosecutor. Following are the functions of Public Prosecutor.

- Prosecution
- Appeal
- Other proceedings on behalf of the Central Government or State Government.

Juvenile Justice Act[8]

The Juvenile Justice (Care and Protection of Children) Act 2015 deals with:

- Children alleged and found to be in conflict with law;
- Provide care and protection to the children who are in need; and
- Provide rehabilitation of such children.

There are certain terms in this Act like:

- "**Child**" means a person who has not completed eighteen years (18 years) of age
- "**Juvenile**" means a child below the age of eighteen years (18 years). It is uniform for both sexes, i.e., for boys and girls.

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- "**Abandoned child**" means a child deserted by his biological or adoptive parents or guardian, who has been declared as abandoned by the committee after due inquiry.
- "**Child in conflict with law**" means a child who is alleged or found to have committed an offence and who has not completed 18 years of age on the date of commission of such crime.

Juvenile Justice Board (Juvenile Court)[8]

As per Section 4 of the Act, the Juvenile Justice Board is constituted by the State Government in every district of the state. The Juvenile Justice Board consists of three members comprising of:

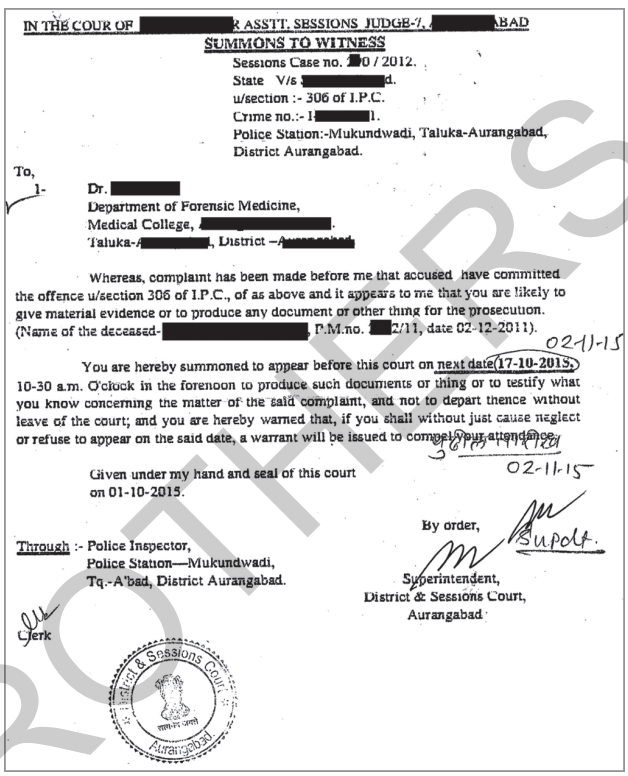
1. One Judicial Magistrate of First Class (*or Metropolitan Magistrate in metropolitan area*).
2. Two Social Workers and amongst them one should be a woman.
   - Every such Bench shall have the powers conferred by The Juvenile Justice Act 2015 is not amended to include BNSS 2023. In coming days, such amendment will be included.
   - The Judicial Magistrate of First Class (*or Metropolitan Magistrate in metropolitan area*) is designated as the Principal Magistrate.
   - The Judicial Magistrate of First Class (*or Metropolitan Magistrate in metropolitan area*) should have at least three years of experience.
   - The social worker should be actively involved in health, education or welfare activities related to children for at least seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.
   - Where an inquiry into a juvenile offender ceases to be a juvenile (*means for example a child of 17 years was arrested and trial is going on and in the meanwhile if the offender turns 18 years or more then also the case will be trialed in the Juvenile Justice Board*), the inquiry shall continue in the same bench.

SUMMONS OR SUBPOENA

Definition: A summons is a written document (*writ or written court order*) compelling the attendance of the witness in a court, at a specified date, time and place, and for a specified purpose under penalty (*subpoena, sub = under, poena = penalty*) **(Fig. 2.9)**.

Procedure of Serving Summons

- A **summons** is issued by the court in writing, in duplicate, signed by the presiding officer (*Judge*) and bears the seal (*stamp impression*) of the court. It is served to witness by a police officer or an officer of the court or other government servant specifically authorized for the purpose. After receiving a summons, the witness should sign the other copy of summons on the **back** as a receipt and one copy is to be kept with him.
- Now with enactment of BNSS 2023, a summons can be served in an electronic form. It can also be an encrypted or in any other form of electronic communication and shall bear the image of the seal of the Court or digital signature (*Section 63 of BNSS*).
- The witness must obey a summons and appear in the court. If the witness has a valid and urgent reason, he should communicate to the court, preferably in writing.
- Where a summoned person is in the active service of the Government, the Court issuing such summons shall ordinarily send it in duplicate to the head of the office in which such person is employed and the head should sign the second copy as a receipt (*Section 68 of BNSS*).
- Disobedience of a summons issued by court or intentionally omits to appear before the Court is an offence. The offence is punishable under Section 208 of BNS 2023. The punishment includes simple imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees (₹ 10,000/-) or with both (*Section 208 (b) of BNS 2023*).



IN THE COUR OF [redacted] R ASSTT. SESSIONS JUDGE-/, [redacted] BAD

SUMMONS TO WITNESS

Sessions Case no. [redacted] 0 / 2012.
State V/s [redacted] d.
u/section :- 306 of I.P.C.
Crime no.:- I[redacted]1.
Police Station:-Mukundwadi, Taluka-Aurangabad,
District Aurangabad.

To,
1- Dr. [redacted]
Department of Forensic Medicine,
Medical College, [redacted].
Taluka-A[redacted], District –A[redacted]

Whereas, complaint has been made before me that accused have committed the offence u/section 306 of I.P.C., of as above and it appears to me that you are likely to give material evidence or to produce any document or other thing for the prosecution. (Name of the deceased- [redacted], P.M.no. [redacted]2/11, date 02-12-2011).

02-11-15

You are hereby summoned to appear before this court on next date(17-10-2015, 10-30 a.m. O'clock in the forenoon to produce such documents or thing or to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the court; and you are hereby warned that, if you shall without just cause neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

02-11-15

Given under my hand and seal of this court on 01-10-2015.

By order,
Superintendent,
District & Sessions Court,
Aurangabad

Through :- Police Inspector,
Police Station—Mukundwadi,
Tq.-A'bad, District Aurangabad.

Clerk

District & Sessions Court Aurangabad

Fig. 2.9: Summons.

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- 400+ real, color photographs—help the reader to understand the subject in a clear way.
- Numerous line diagrams and flowcharts are the key components—help to understand the basic concept of the subject.
- Inclusion of new criminal laws Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Sureksha Sanhita 2023 and Bharatiya Sakshya Adhiniyam.
- New topics on AETCOM, Mass Disaster, Forensic Odontology, Domestic Violence included.
- The text has been updated extensively with inclusion of amended Acts like the Medical Termination of Pregnancy Act (Amendment) 2021, Medical Termination of Pregnancy Rules 2021, Assisted Reproductive Technology (Regulation) Act 2021, Assisted Reproductive Technology (Regulation) Rules 2022, Surrogacy (Regulation) Act 2021, and Surrogacy (Regulation) Rules 2022, etc.
- Topics on Toxicology have been thoroughly revised and new poisons like neonicotinoid compounds, plant growth regulators, phenylpyrazole, etc., are included.
- This book is one of the well-referenced textbooks.

Rajesh Bardale MD is presently working as Professor and Head, Department of Forensic Medicine, Government Medical College and Hospital, Miraj, Sangli, Maharashtra, India. He did his MBBS from Government Medical College, Nagpur, Maharashtra, and MD (Forensic Medicine) from Indira Gandhi Government Medical College, Nagpur. He is a life member of the Indian Academy of Forensic Medicine and the Indian Society of Toxicology and Medicolegal Association of Maharashtra. He has published about 102 research papers in international and national journals.

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