

Electronic Trials under BNSS | 23 Dec 2024

Introduction

- [Bharatiya Nyaya Suraksha Sanhita, 2023 \(BNSS\)](#) represents a significant departure from the [Code of Criminal Procedure, 1973 \(CrPC\)](#).
- Technological and societal changes are more prominently reflected in BNSS definitions
- **Chapter XXXIX** states miscellaneous provisions which cover the provision related to electronic trial.

Objectives of Electronic Trials

- The primary objectives of implementing electronic trials under the BNSS include:
 - **Efficiency:**
 - To expedite the trial process by reducing the time taken for hearings and judgments.
 - **Accessibility:**
 - To make the judicial process more accessible to litigants, especially those in remote areas.
 - **Transparency:**
 - To enhance the transparency of court proceedings through digital records and real-time access to hearings.
 - **Cost-Effectiveness:**
 - To minimize the costs associated with physical trials, such as travel and logistics.

Provision of Electronic Trial Under BNSS

- **Section 530 of BNSS** states the provisions for Trial and proceedings to be held in electronic mode as:
 - **Summons and Warrants:**
 - **Courts can now:**
 - Issue summons (official orders to appear) electronically.
 - Serve these documents to people through electronic means.
 - Execute warrants using electronic methods.
 - Send legal notices via email or other electronic platforms.
 - **Examination of People:**
 - **Courts can conduct:**
 - Questioning of complainants (people who file cases) through video conferencing.
 - Interviewing witnesses remotely.
 - Taking statements via electronic platforms.
 - Recording testimonies through audio-video means.
 - **Recording Evidence:**
 - **Courts can:**
 - Record all trial evidence electronically.
 - Accept digital documents and evidence.
 - Store witness statements in electronic format.
 - Maintain digital records of all proceedings.
 - Document exhibits and materials presented during trial electronically.
 - **Appeal Proceedings:**
 - **Higher courts can:**
 - Hear appeals through video conferencing.
 - Accept appeal documents electronically.
 - Conduct appeal hearings remotely.
 - Issue appeal orders through electronic means.
 - **Other Proceedings:**
 - **Any other court proceedings can be conducted electronically, including:**
 - Bail hearings.
 - Arguments by lawyers.
 - Case status hearings.
 - Judgment pronouncements.
 - Production of accused persons.
 - Pre-trial proceedings.

Implications for the Legal System

- The introduction of electronic trials under the BNSS is expected to have several implications for the Indian legal system:
 - **Reduction in Backlog:**
 - By expediting trials, electronic proceedings may help reduce the backlog of cases in courts.
 - **Increased Public Confidence:**
 - Enhanced transparency and accessibility may lead to increased public confidence in the judicial system.
 - **Adaptation of Legal Professionals:**
 - Lawyers and judges will need to adapt to new technologies and procedures, necessitating training and resources.

Conclusion

The electronic trial provisions under the BNS represent a transformative step towards modernizing the Indian criminal justice system. By leveraging technology, the BNS aims to create a more efficient, accessible, and transparent judicial process. As the legal community adapts to these changes, the successful implementation of electronic trials could pave the way for further innovations in the legal framework of India.

Sedition under BNS | 23 Dec 2024

Tejender Pal Singh v. State of Rajasthan & Anr.

“One must be mindful that the provision is used as a shield for national security and as a sword against legitimate dissent.”

Justice Arun Monga

Source: [Rajasthan High Court](#)

Why in News?

A bench of **Justice Arun Monga** held that Section 152 of BNS should not be used to cripple legitimate dissent and only deliberate actions with malicious intent would fall within the ambit of this provision.

- The [Rajasthan High Court](#) held this in the case of **Tejender Pal Singh v. State of Rajasthan & Anr (2024)**.

What was the Background of Tejender Pal Singh v. State of Rajasthan & Anr. Case?

- The complainant alleged that the petitioner, Tejendrapal Singh Timma, posted a Facebook video on July 5, 2024, from Baba Deep Singh Gurudwara, expressing sympathy for MP Amritpal Singh, who is in judicial custody in Assam.
- The petitioner is accused of making anti-national statements advocating for Khalistan, which allegedly hurt the complainant's religious sentiments and risked inciting public unrest.
- The complaint further accuses the petitioner of associating with pro-Khalistan individuals and displaying Khalistan flags at public events.
- The First Information Report (FIR) claims the petitioner made treasonous comments, supported Khalistan, and threatened public officials in earlier incidents.
- Alleged prior actions include threats and provocative statements in front of government offices and supporting a separatist movement.
- The FIR was filed under Section 152 and Section 197 of [Bharatiya Nyaya Sahita, 2023 \(BNS\)](#).
- The petitioner seeks the quashing of the FIR and subsequent proceedings, citing false allegations, delay, and lack of substantive evidence.
- Thus, the matter was before the High Court.

What were the Court's Observations?

- The Court observed that the provision under Section 152 of BNS should be read and interpreted in such a way that it mandatorily requires mens rea i.e. the act must be committed purposely or knowingly.
- Laws that limit speech must be specific and only apply when there is a clear and immediate risk of rebellion or secession; simply voicing dissent or criticism is not the same as sedition or anti-national activity.
- These laws should be interpreted in line with the constitutional right to free speech, ensuring they protect democratic freedoms and do not suppress legitimate expression.
- The provision must be interpreted in conjunction with the constitutional rights to free speech and expression to ensure it does not infringe on democratic freedoms.
- The Court further observed that both the provisions Section 152 and Section 197 of BNS should be given a strict interpretation, and the provisions must be balanced with the constitutional right of freedom of speech and expression under Article 19 (1) (a) of the Constitution of India, 1950 (COI).
- Thus, in order to attract these offences there must be a direct nexus between the impugned act and the likelihood of causing disharmony or hatred.

- In the present facts the Court observed that the Punjabi language's expressive and direct nature might make statements seem offensive, but there was no malicious intent or evidence of intent to incite unrest or violence in the petitioner's video.
- The Court concluded that the video conveyed a message of equality among citizens of India, without any attempt to incite rebellion, separatism, or endanger India's sovereignty, leading to the quashing of the FIR as no offense under Section 152 or 197 of the BNS was established.

What is Sedition under BNS?

- Under BNS, it can be said that the offence of sedition is provided under Section 152 of BNS.
- This provision has its genesis in Section 124 A of Indian Penal Code, 1860 (IPC).
 - Offence of Sedition was originally introduced in year 1870 by the British Government for punishing the acts of hatred or contempt or disaffection towards Her Majesty or the Crown
- The offence of sedition under section 124-A of IPC has though been done away in the BNS, but a new provision in section 152, somewhat similarly worded, has been brought in by the law makers in Parliament.
- It criminalizes acts or attempts that incite secession, armed rebellion, or subversive activities, or encourage separatist sentiments that threaten the country's stability
- Prima facie it appears that this provision has reintroduced Section 124A of IPC, however, it is unclear which of the two provisions is more stringent.
- It is to be noted that the punishment under Section 124A was either life imprisonment or up to 3 years imprisonment to which fine may be added.
- However, under BNS the punishment provided is either life imprisonment or seven years imprisonment and a mandatory fine.
- The provision is aimed at maintaining national integrity and preventing destabilization.
- The legislature has by way of this provisions aimed to curb the acts that could fragment the country given the India's history and diversity of secessionist movements.

What is the Difference Between Section 124A of IPC and Section 152 of BNS?

| Section 124A Of IPC | Section 152 of BNS |
|---|---|
| <p>Sedition—Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in [India], shall be punished with [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.</p> <p>Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.</p> <p>Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.</p> <p>Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.</p> | <p>Act endangering sovereignty, unity and integrity of India - Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine.</p> <p>Explanation.—Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.</p> |

What are the Important Case Laws on Sedition?

- **Kedar Nath Singh v. State of Bihar (1962):**

- It was determined that the **law was constitutional** and that it applied to any **written or spoken words** that had the affirmative intention of circumventing the government through violent means, regardless of their source.
- Citizens who condemn the government with the aim of creating public disorder are permitted to do so, so long as they do not incite people to engage in violence against the government.
- While the **Supreme Court** upheld the **constitutionality of Section 124A**, it limited its application to acts involving the intent or inclination to create **public disorder, disruption of law and order, or provocation of violence** among other things.
- As the court pointed out, the essence of the crime of “**sedition**” is the **incitement to violence or the inclination or the intention to cause public disorder** through **words spoken or in a written form** that has the potential or the impact of inciting hatred or contempt for the government established by law, or of causing disaffection in the sense of distrust to the state.

- **Dr Vinayak Binayak Sen v. State of Chattisgarh (2011):**

- **Supreme Court** redefined a seditious act only if it had essential ingredients as:
 - **Disruption of public order.**
 - Attempt to violently overthrow a lawful government,
 - **Threatening** the security of the State or public.

Order XXIII Rule 2 of CPC | 23 Dec 2024

Ram Janam Ram v. Kripa Nath Chaudhary

“Once the permission is granted to withdraw the suit with liberty to file the fresh suit, the law of limitation will apply only as if the very suit after granting the permission by the Court has been instituted afresh.”

Justice Subhash Chand

Source: [Jharkhand High Court](#)

Why in News?

A bench of Justice Subhash Chand held that limitation period for a fresh suit instituted after withdrawal with the permission of the Court applies as if original suit had never been filed.

- The [Jharkhand High Court](#) held this in the case of **Ram Janam Ram v. Kripa Nath Chaudhary (2024)**.

What was the Background of Ram Janam Ram v. Kripa Nath Chaudhary Case?

- The petitioner, Ram Janam Ram, filed Original Suit **seeking a declaration of his right**, title, and interest over certain immovable property.
- The plaintiff claimed to be the legal heir and raiyat (tenant) of the disputed land based on ancestral succession.
- It was the case of the plaintiff that the property was recorded in the name of plaintiff's great grandfather in survey records.
- The respondent, Kripa Nath Chaudhary, **opposed the suit** by filing a written statement.
- The plaintiff filed an application under **Order 23 Rule 1** of the [Civil Procedure Code](#), 1908 (CPC) to withdraw the suit with liberty to file a fresh one, citing formal defects in the original suit.
- The application **was opposed** by the defendant on the grounds of delay.
- The Trial Court **rejected the withdrawal** application, reasoning that allowing withdrawal would result in the new suit being time-barred under Article 58 of the Limitation Act.
- The petitioner contended that the Trial Court's interpretation of the law was incorrect and sought to set aside the rejection order.
- The matter was hence before the High Court.

What were the Court's Observations?

- Order 23 Rule 1 of CPC **allows the plaintiff to withdraw a suit** with liberty to file a fresh one if the suit suffers from formal defects or if sufficient grounds exist for instituting a fresh suit.
- Order 23 Rule 2 of CPC specifies that a fresh suit filed after withdrawal is subject to the **same limitation laws as if the first suit had not been filed**.
- The High Court held that in the present facts the Trial Court erroneously applied Article 58 to a case involving immovable property where Article 65 was more relevant.
- The High Court recognized that the withdrawal application met the criteria under Order 23 Rule 1 since formal defects were cited as the basis.
- The High Court emphasized that the law of limitation would apply afresh to the new suit upon withdrawal.
- Thus, the High Court **set aside the order** of the Trial Court.
- The plaintiff was granted permission to withdraw the suit with the liberty to file a fresh one, subject to payment of Rs. 1,000/- as costs to compensate the defendant.

What is Withdrawal of Suit under Order 23 of CPC?

- **Rule 1 (1) of Order 23** provides:
 - The plaintiff **can abandon the entire suit** or a part of their claim against all or any defendants.
 - If the plaintiff is a minor or falls under the protection of rules 1 to 14 of Order XXXII, they cannot abandon the suit or any part of the claim without the court's permission.
- **Rule 1 (2) of Order 23** provides:
 - For minors or protected persons, an application for court **permission to abandon the suit must be filed**.
 - The application must include an affidavit from the plaintiff's next friend.
 - If the minor or protected person is represented by a pleader, the pleader must certify that the abandonment is in the best interest of the plaintiff.
- **Rule 1 (3) of Order 23** provides:
 - The Court may allow withdrawal if:
 - The suit would fail due to a formal defect.
 - Sufficient grounds exist for filing a fresh suit.
 - The Court can grant permission to withdraw the suit or part of the claim with liberty to file a fresh suit on the same subject matter.
 - The Court may impose terms it deems appropriate while granting such permission.
- **Rule 1 (4) of Order 23** provides:
 - If the plaintiff abandons a suit or part of a claim under sub-rule (1), or withdraws without permission under sub-rule (3), specific consequences apply.
 - The plaintiff will be liable to pay costs as determined by the court.
 - The plaintiff is barred from filing a fresh suit on the same subject matter or part of the claim.
- **Rule 1 (5) of Order 23** provides:
 - The court cannot allow one plaintiff to abandon or withdraw a suit or part of a claim without the consent of the other plaintiffs.
- **Rule 2 of Order 23** provides that limitation law is not affected by first suit.
 - If a fresh suit is filed with permission after withdrawal, the plaintiff is bound by the law of limitation as if the original suit was never filed.

What are the Case Laws on Withdrawal under Order 23?

- **K.S. v. Kokila (2000):**
 - The Court held that the grant of leave under sub-rule (3) of Rule 1 is at the discretion of the Court.
 - The Court held that there are two alternatives for leave:
 - The Court can allow leave if the suit is likely to fail due to a formal defect.
 - Alternatively, the Court can grant leave if there are sufficient grounds to allow the plaintiff to file a fresh suit for the same subject matter or claim.
 - Under clause (b) of sub-rule (3), the Court must be satisfied that there are sufficient grounds to allow the plaintiff to institute a fresh suit on the same cause of action or part of the claim.
- **Sarguja Transport Service v. STAT (1987):**
 - The Court discussed in this case the applicability of Order 23 on writ petitions.
 - The Supreme Court observed that while the CPC does not directly apply to writ proceedings, its procedural principles are often followed by High Courts in writ petitions.
 - The Court extended the principle of Order 23 Rule 1(3) to writ petitions under Articles 226 and 227, based on public policy to prevent "Bench hunting tactics" and to promote justice.
 - If a petitioner withdraws a writ petition without leave from the High Court to file a fresh one on the same cause of action, it is considered an abandonment of the remedy, barring them from filing a fresh petition on the same issue.
 - The ruling does not apply to writ petitions involving the enforcement of fundamental rights or personal liberty, as they stand on a different legal footing.