

**ISSUE OF PROCESS AND EXEMPTION FROM PERSONAL
APPEARANCE UNDER THE BHARATIYA NAGARIK SURAKSHA
SANHITA, 2023**

by

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ABSTRACT

Process and exemption from personal appearance are significant features of criminal procedure in India. When there are adequate grounds to proceed, a criminal court might order an accused individual to appear before it under the issuance of process. Exemption from personal appearance allows an accused individual to participate in a hearing through an advocate without having to be personally present. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which went into effect on July 1, 2024, governs these topics principally through Sections 227, 228 and 355. These provisions seek to maintain a balance between effective justice administration, individual liberty, and procedural fairness. This paper analyzes the statutory framework, corresponding judicial decisions, practical issues, and potential improvements regarding process and exemption from personal appearance. It contends that judicial application of mind, reasoned orders, and the proper use of judicial discretion are required to prevent undue harassment while ensuring that criminal processes are completed fairly and expeditiously.

Keywords: Issue of process, Exemption from Personal Appearance, Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), Judicial Discretion, Individual Liberty, Procedural Fairness and Judicial Application of Mind.

1. INTRODUCTION

The issue of process and the exemption from personal appearance are critical aspects of criminal procedure under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. The issue of process ensures that an accused is formally summoned before a court to answer the allegations leveled against them. Section 227 governs the issue of process, while Section 228 allows the magistrate to waive the accused's personal attendance in appropriate cases. Section 355 also allows for the waiver of personal attendance during an inquiry or trial, subject to certain statutory requirements. While protecting the rights of the accused, these provisions seek to guarantee the proper administration of justice, avoid needless hardship, and encourage the effective resolution of criminal cases.

2. SCOPE OF THE STUDY

The current procedural framework for these circumstances is established by the Bharatiya Nagarik Suraksha Sanhita, 2023, which went into effect on July 1, 2024. The issue of procedure is addressed in Section 227, but Section 228 permits a magistrate to substitute an accused person's appearance through an attorney for the accused person's physical presence. Procedures conducted in certain circumstances without the accused are covered by Section 355. These provisions emphasize how crucial it is to find a balance between societal justice, individual liberty, and procedural efficiency.

3. OBJECTIVE OF THE STUDY

The study intends to examine Sections 227, 228, and 355 of the BNSS¹, 2023. It investigates the powers of criminal courts and the rights of the accused. It also assesses the advantages of audio/video electronic attendance. It also investigates how these provisions contribute to shorter criminal proceedings and more equitable outcomes. It seeks to identify significant changes implemented by the BNSS.

4. RESEARCH METHODOLOGY

The study employs a doctrinal research approach, citing statutory provisions, landmark decisions, legal textbooks, and research articles. It also compares the relevant provisions of the BNSS, 2023, to the CrPC of 1973. Secondary sources include legal journals and authoritative websites. Case

¹ Bharatiya Nagarik Suraksha Sanhita, 2023 sec.227,228 and 355

laws are analyzed to better understand judicial interpretation. The study assesses the practical implications of these provisions in criminal justice.

5. MEANING AND DEFINITION OF ISSUE OF PROCESS

The issue of process is a critical stage in criminal proceedings in which a magistrate, after taking cognizance of an offense and applying judicial mind to the available evidence, directs the accused to appear in court by issuing a summons or warrant, as appropriate. Although the BNSS, 2023, does not define the term specifically, Section 227 governs the issue of process. It ensures that the accused is brought before the court when there are sufficient grounds to proceed with the case, allowing for the proper administration of criminal justice.

6. ISSUE OF PROCESS UNDER SECTION 227 OF BNSS

Section 227 of the BNSS 2023 is titled "Issue of Process". Under this provision, if a magistrate taking cognizance of an offense believes that sufficient grounds exist to proceed, the magistrate shall issue a summons in a summons case or may issue a warrant or, where appropriate, a summons in a warrant case. The process requires the accused to appear before the appropriate magistrate at the appointed time.

7. ESSENTIAL REQUIREMENTS UNDER SECTION 227 OF BNSS

7.1 Section 227(1): Issuance of summons or warrant

In a summons case, the magistrate will issue a summons if there are 'adequate grounds to proceed'. The magistrate may issue a warrant or, if deemed suitable, a summons in a warrant case. The accused may be required to appear before that magistrate or another magistrate with jurisdiction as part of the process. Additionally, the provision allows warrants or summonses to be issued electronically.

7.2 Electronic Issuance of Summons and Warrants

Section 227 of the BNSS, 2023 expressly authorizes the electronic issuance of summonses and warrants. Unlike Section 204 of the CrPC, this provision recognizes the use of electronic means to facilitate faster communication, reduce paperwork, and minimize procedural delays. However, electronic issuance must meet statutory requirements while also protecting the accused's procedural rights.

7.3 Distinction between Summons-Case and Warrant-case

Section 227(1)(a)- Summons in a Summons-Case

According to Section 2(1)(x) of the BNSS, a summons case is related to an offense that is not a warrant case. According to Section 227(1)(a) of the BNSS, the court will issue a summons compelling the accused to appear before it if the magistrate determines that there are sufficient grounds to proceed in a summons-case. Through this process, the accused can appear in court without being arrested right away and have a chance to take part in the proceedings and refute the accusations.

Section 227(1)(b)- Warrant or Summons in a Warrant-Case

According to Section 2(1)(z), a warrant case pertains to a crime that carries a sentence of death, life in prison, or more than two years in prison. According to Section 227(1)(b) of the BNSS, when there are sufficient grounds to proceed in a warrant case, the magistrate may issue a warrant or a summons, as appropriate. This allows the court to choose the best method for ensuring the accused's attendance. The process determines how the accused is brought before the court while also ensuring that the proceedings adhere to the law.

7.4 M/S. Pepsi Foods Ltd. & Anr vs. Special Judicial Magistrate & Ors ²

The Supreme Court famously stated that "summoning an accused person in a criminal case is a serious matter." Criminal law cannot be implemented on a regular basis." Before bringing people or corporate officers into court, a magistrate must exercise judicial discretion to determine whether a prima facie case exists.

7.5 Section 227(2): Filling of the prosecution witness list

A list of prosecution witnesses must be filed before a warrant or summons under Section 227(1) can be issued against the accused. This requirement identifies the witnesses that the prosecution plans to question and establishes procedural order.

7.6 Section 227(3): Copy of the written complaint

Every summons or warrant issued under section 227(1) in response to a written complaint must include a copy of the complaint. This allows the accused to understand the accusations that are the basis of the proceedings.

² 1998 (5) SCC 749

7.7 Section 227(4): Payment of process fees

Where applicable law requires payment of process fees or other fees, the process will not be issued until the required fees are received. If the fees are not paid in a timely manner, the magistrate may dismiss the complaint.

7.8 Section 227(5): Application of Section 90

Section 227 has no bearing on Section 90 BNSS, which allows for the issuance of a warrant in lieu of or in addition to a summons, subject to the conditions specified by law.

7.9 Mehmood UI Rehman vs. Khazir Mohammad³

The Supreme Court emphasized that the magistrate must consider the allegations and supporting evidence before issuing a process and must not act mechanically.

8. EXEMPTION FROM PERSONAL APPEARANCE UNDER BNSS, 2023

An exemption from personal appearance is a legal permission granted by a criminal court that allows an accused person to appear through an advocate rather than physically attending each hearing. The purpose of this provision is to minimize unnecessary hardship and expenses while ensuring that criminal proceedings continue uninterrupted. Under Section 228 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), a Magistrate has the authority to dispense with the personal attendance of an accused when issuing a summons, as long as sufficient grounds exist.

8.1 Section 228(1) - Dispensing with Personal Attendance

Section 228(1) empowers the magistrate to allow an accused person to appear in court through an advocate if there is a sufficient reason to justify such an exemption. The magistrate must exercise this power judicially, taking into account the facts of the case and the requirements of justice. Illness, physical disability, advanced age, a significant distance from the court and other legitimate difficulties may be considered. However, exemption is not granted simply because an accused files an application. The court must decide whether personal attendance is required to ensure the proper conduct of the proceedings.

8.2 M/S. Bhaskar Industries Ltd. vs. M/S. Bhiwani Denim & Apparels Ltd. Ors⁴

According to the Bhaskar Industries case guidelines, personal exemption is a discretionary power of the Magistrate rather than an automatic right, and it must never be used to delay or prejudice

³ (2015) 12 SCC 420

⁴ 2001 AIR SCW 3413

the trial. The Magistrate must document the reasons for granting or denying it, and the trial can only begin if a duly authorized counsel is present in court. Furthermore, the accused must sign undertakings not to contest their identity or object to evidence obtained in their absence. Finally, if the liberty is abused, the court has the absolute authority to revoke the exemption and require the accused's physical presence.

8.3 Helen Rubber Industries & Others vs. State of Kerala & Others⁵

Section 228 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, replaces Section 205 of the old CrPC, allowing magistrates to waive an accused's personal attendance from the time the summons is issued and instead allow them to appear through their advocate. When applied to technical or minor offenses, such as corporate compliance defaults, this section ensures that individuals can be represented by counsel without being required to physically attend every routine court appearance.

8.4 Section 228(2): Power to Require Personal Attendance

Section 228(2) empowers the magistrate to require the accused to appear in person at any stage of the investigation or trial. Where personal attendance is required, the accused must obey the court's orders in accordance with the law. This provision states that the exemption is conditional and subject to judicial oversight. It allows the court to strike a balance between the accused's convenience and the requirement for active participation in criminal proceedings.

8.5 T.G.N. Kumar vs. State of Kerala⁶

The Supreme Court ruled that the magistrate must consider the nature of the case, the accused's conduct, and whether personal attendance is required to move the trial forward. The Court also emphasized that exemptions should not be granted automatically and should not be used to delay or prejudice the complainant.

9. Proceedings in the Absence of the Accused under Section 355 of the BNSS, 2023

The court may waive the accused's personal attendance at any point during an investigation or trial if it documents reasons for believing that the accused consistently interferes with the proceedings or that personal attendance is not necessary in the interests of justice. An advocate is required to represent the accused. The accused may then be ordered to appear in person by the

⁵ 1973 CRILJ 262

⁶ (2011) 2 SCC 772

court. The Section 355 explanation makes it clear that attendance via audio-video electronic devices is considered personal attendance. The court may, for documented reasons, postpone the investigation or trial or mandate that the accused's case be taken up or tried separately if the accused is not represented by an advocate or if it determines that personal attendance is required.

9.1 Recognition of Audio-Video Electronic Attendance

Section 355 of the BNSS, 2023, unlike Section 317 of the CrPC, 1973, expressly acknowledges attendance via audio-video electronic means. Its purpose is to enable virtual participation in criminal proceedings. This lowers travel costs, saves time, reduces inconvenience for the accused, and promotes efficient court proceedings while ensuring access to justice.

9.2 Distinction between Section 228 and Section 355 of BNSS, 2023

Basis	Section 228	Section 355
Legal Provision	Dispensing with personal attendance when issuing summons	Inquiry or trial in the absence of the accused in certain cases
Purpose	To exempt the accused from personal appearance	To permit proceedings to continue in the accused's absence
Application	At the time of issuing summons	At any stage of inquiry or trial
Conditions	The Magistrate considers that it is appropriate to dispense with personal attendance	Statutory conditions must be satisfied, and reasons must be recorded
Legal Effect	The accused may appear through an advocate	The court may proceed without the accused's personal attendance

10. SUGGESTIONS

1. Courts should use their judicial discretion fairly when issuing summonses and warrants.
2. Unnecessary personal appearances by the accused should be avoided where legally permitted.
3. Criminal courts should improve their audio-video electronic attendance systems.
4. There should be clear guidelines for granting exemption from personal appearance.
5. Advocates and the general public should become more aware of the relevant BNSS provisions.

11. CONCLUSION

The BNSS, 2023's provisions on process and exemption from personal appearance, promote fairness and efficiency in criminal proceedings. Sections 227, 228, and 355 help to reduce unnecessary hardship, shorten delays, and facilitate electronic attendance. Proper implementation of these provisions, combined with effective judicial discretion, is critical for protecting the rights of the accused and ensuring access to justice. The use of technology enhances convenience and accessibility in criminal courts. Finally, these provisions help to create a more effective, transparent, and modern criminal justice system in India. These provisions must be implemented consistently to uphold the principles of natural justice and strengthen public confidence in the criminal justice system.



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