

Powers & Functions of Executive Magistrates under BNSS, 2023

S.S. Upadhyay

- *Former District & Sessions Judge*
- *Former Legal Advisor to Different Governors, Uttar Pradesh, Lucknow*
- *Former Addl. Director (Training) Institute of Judicial Training & Research, UP, Lucknow.*
- *Lokpal, Dr. APJ Abdul Kalam University of Technology & Engineering, UP, Lucknow & its 760 Engineering Colleges*
- *Mobile: 9453048988*
- *E-mail: ssupadhyay28@gmail.com*
- *Website: lawhelpline.in*

- 1. Object of proceedings u/s 107 to 124 CrPC is to prevent crime, disturbance of public tranquillity and breach of peace:** The object of proceedings under Chapter VIII of the CrPC is of prevention of crime, disturbance of public tranquillity and breach of peace. The provisions are preventive in nature based on apprehended danger. **See:** Judgement dated 06.03.2020 of the Division Bench of the Hon'ble Allahabad High Court passed in Habeas Corpus writ petition no. 1045 / 2019, Amit Jain Vs State of UP & Others.
- 2. Procedure of Executive Magistrate u/s 116 to 124 CrPC:** Once in an enquiry u/s 116 CrPC, veracity of the allegations is found to be true, the Magistrate u/s 117 CrPC is empowered to direct the person concerned against whom the enquiry was made to execute his personal bonds with or without sureties for maintaining peace and good behaviour. Section 118 CrPC relates to discharge of the person informed, if he is exonerated in the enquiry. Section 119 relates to the commencement of period for which the security is required. Section 120 CrPC deals about the contents of the bond. Section 121 CrPC gives powers to the Executive Magistrate to reject the sureties. Section 122 CrPC relates to imprisonment in default of security. Section 123 CrPC relates to the power of the District Magistrate and Chief Judicial Magistrate to release persons imprisoned for failing to give security. Section 124 CrPC provides for taking security for unexpired period of bond. A conjoint reading of the provision of the aforesaid provisions manifest that the Executive Magistrate on receipt of information that any person is likely to commit a breach of peace or public tranquillity, such persons shall be put to notice as to why he be not directed to execute a bond with or without sureties. The Executive Magistrate is not obliged to issue a notice on mere *ipse dixit* (on his own without any evidence). **See:** Judgement dated 06.03.2020 of the Division Bench of the Hon'ble Allahabad High Court passed in Habeas Corpus writ petition no. 1045 / 2019, Amit Jain Vs State of UP & Others.

3. **Power of enquiry of Executive Magistrate u/s 116 CrPC:** Section 116 of the CrPC empowers an Executive Magistrate to conduct enquiry against a person after passing of an order u/s 111 CrPC. The enquiry should be to ascertain the truthfulness of the information forming the basis for which the action has been taken. The procedure contemplated for trial in evidence would be that of a summons case. **See:** Judgement dated 06.03.2020 of the Division Bench of the Hon'ble Allahabad High Court passed in Habeas Corpus writ petition no. 1045 / 2019, Amit Jain Vs State of UP & Others.
4. **Executive Magistrate can during the enquiry u/s 116 CrPC pass order requiring the person concerned to execute bond :** The Magistrate is also empowered to pass orders relating to immediate measures as are necessary for prevention of breach of peace, public tranquillity, commission of any offence or public safety by directing a person against whom an order u/s 111 CrPC has been passed to execute a bond with or without surety for maintaining peace, good behaviour until the conclusion of the enquiry and while doing so detain him in custody until such bond is executed or in default of the execution until the enquiry is concluded. **See:** Judgement dated 06.03.2020 of the Division Bench of the Hon'ble Allahabad High Court passed in Habeas Corpus writ petition no. 1045 / 2019, Amit Jain Vs State of UP & Others.
5. **The enquiry u/s 116 CrPC is to be completed within six months from the date of its commencements failing which proceedings shall be terminated by the Sessions Judge unless the Magistrate for reasons to be recorded directs otherwise:** A power is conferred upon the Sessions Judge to vacate a direction made u/s 116(6) CrPC on an application moved by an aggrieved party if the Sessions Judge is satisfied that the order of continuance of the proceedings is not based on special reasons or the same was perverse. **See:** Judgement dated 06.03.2020 of the Division Bench of the Hon'ble Allahabad High Court passed in Habeas Corpus writ petition no. 1045 / 2019, Amit Jain Vs State of UP & Others.
6. **Power by Executive Magistrate u/s 107/116 CrPC should be exercised in the manner prescribed or not at all:** It is well settled that when an act is required to be done in a particular manner, then the act is to be performed only in the manner provided under the statute or not at all. Any other modes are necessarily forbidden. The Executive Magistrate while acting u/s 107 CrPC is bound to adhere to the procedure laid down in Chapter VIII of the CrPC (Section 107 to 124 CrPC). **See:** Judgement dated 06.03.2020 of the Division Bench of the Hon'ble Allahabad High Court passed in Habeas Corpus writ petition no. 1045 / 2019, Amit Jain Vs State of UP & Others.

7. **Power u/s 107, 108 and 109 of the CrPC to issue a show cause notice by the Executive Magistrate is to be exercised according to the defined procedure:** The power u/s 107, 108 and 109 of the CrPC to issue a show cause notice by the Executive Magistrate is to be exercised according to the defined procedure. **See:** Judgement dated 06.03.2020 of the Division Bench of the Hon'ble Allahabad High Court passed in Habeas Corpus writ petition no. 1045 / 2019, Amit Jain Vs State of UP & Others.
8. **Order of detention by Executive Magistrate can be passed only in default of execution of bond and not otherwise:** A Constitution Bench of the Supreme Court has ruled that the orders made by the Executive Magistrate under Chapter VIII of the CrPC (Section 107 to 124 CrPC) are judicial orders unlike the detention order made under Article 22(2) of the Constitution which is administrative in nature. The order of detention under Chapter VIII of the CrPC can be passed by the Executive Magistrate only in default of execution of bond and not otherwise. The *sine qua non* for detention under Chapter VIII of the CrPC is failure to execute a bond. **See:** Judgement dated 06.03.2020 of the Division Bench of the Hon'ble Allahabad High Court passed in Habeas Corpus writ petition no. 1045 / 2019, Amit Jain Vs State of UP & Others.
9. **Revision against order passed by Executive Magistrate u/s 107/111 CrPC:** An order passed by executive Magistrate u/s. 107/111 CrPC is an interlocutory order and in view of the bar u/s 397(2) CrPC no revision lies against such interlocutory order. **See:** Bindbasni vs. State of U.P., 1976 Cr.L.J. 1660 (Allahabad)(D.B.).
10. **Scope of Section 133 CrPC:** Section 133 CrPC is used to address a public nuisance that significantly impairs the health or physical comfort of the community. The word "community" extends beyond individual households to encompass the general public or residents of an entire locality. In the present case, the Supreme Court acknowledged the discretionary power of the SDM u/s 133 CrPC to regulate or prohibit the business that posed a public nuisance by storage and handling of the dry chillies in their vicinity. **See:** Kachrual Bhagirath Agrawal Vs. State of Maharashtra, 2004 INSC 538.
11. **"Nuisance" and its meaning:** "Nuisance" is an inconvenience that materially interferes with the ordinary physical comfort of human existence. It underscores the necessity of demonstrating imminent danger to life or property. **See:** Basant Manga Nikumba Vs. Baburao Bhikanna Naidu, 1995 Supl. (4) SCC 54.

12. **Constitutional validity of Section 144 CrPC:** Constitutional validity of the provisions of Section 144 CrPC has been upheld by the Constitution Bench of the Hon'ble Supreme Court way back in 1970. **See:** Madhu Limaye Vs. SDM, (1970) 3 SCC 746.
13. **Executive Magistrate must be satisfied regarding the existence of the circumstances showing the necessity of an immediate action u/s 144 CrPC (now u/s 163 BNSS):** Section 144 CrPC deals with the necessity of immediate prevention and speedy remedy. Therefore, before invoking such a provision, the statutory authority must be satisfied regarding the existence of the circumstances showing the necessity of an immediate action u/s 144 CrPC (now u/s 163 BNSS). **See:** Ramlila Maidan Incident Vs. Home Secretary, Union of India, (2012) 5 SCC 1.
14. **Power u/s 144 CrPC (now 163 BNSS) cannot be invoked to suppress legitimate expression of opinion or grievance or exercise of any democratic rights:** Power u/s 144 CrPC (now 163 BNSS) cannot be used to suppress the legitimate expression of opinion or grievance or exercise of any democratic rights. Section 144 CrPC cannot be invoked unless there is sufficient material to show that there is likely to be an incitement to violence or threat to public safety or danger. **See:** Anuradha Bhasin Vs. Union of India, (2020) 3 SCC 637.
15. **Difference between Sections 133 & 144 CrPC:** The Supreme Court has ruled that Section 133 CrPC is more specific and conditional, whereas Section 144 CrPC is more general and absolute in its directives. **See:** State of MP Vs. Kedia Leather and Liquor Limited, (2003) 7 SCC 389.
16. **Duration of restrictions to be imposed u/s 144 CrPC (now u/s 163 BNSS):** A two-month limit for magistrate, and a six-month limit for State Govt., has been provided u/s 144 CrPC for duration of an order u/s 144 CrPC. The Magistrate and the State Govt. must take all steps to ensure that the restrictions are imposed for a limited duration. **See:** Anuradha Bhasin Vs. Union of India, (2020) 3 SCC 637.
17. **Section 144(3) CrPC, a general order of restriction imposed by the Executive Magistrate may be justified:** According to Section 144(3) CrPC, a general order of restriction imposed by the Executive Magistrate may be justified but if the action is too general, the order may be questioned by the appropriate remedies under the Constitution or ordinary Statutes. **See:** Madhu Limaye Vs. SDM, (1970) 3 SCC 746.

- 18. Conditinal order must before ordering removal of public nuisance:** Section 133 CrPC empowers an Executive Magistrate to issue a conditional order to remove a public nuisance that threatens the public health, safety or convenience. **See:** Kachrual Bhagirath Agrawal Vs. State of Maharashtra, 2004 INSC 538.
- 19. Section 133 CrPC applies strictly to matters affecting the community of general public at large:** Section 133 CrPC applies strictly to matters affecting the community of general public at large. **See:** Kachrual Bhagirath Agrawal Vs. State of Maharashtra, 2004 INSC 538.
- 20. Section 133 CrPC cannot be used to settle private civil disputes between individuals:** Section 133 CrPC cannot be used to settle private civil disputes between individuals. **See:** Kachrual Bhagirath Agrawal Vs. State of Maharashtra, 2004 INSC 538.
- 21. First step to be taken by the Executive Magistrate u/s 133 CrPC:** Bare reading of the provisions of Section 133 CrPC indicates that in case of public nuisance, the first step is about passing of a conditional order by the Executive Magistrate to remove the nuisance. **See:** Kachrual Bhagirath Agrawal Vs. State of Maharashtra, 2004 INSC 538.
- 22. Non-compliance with the mandatory requirement of passing a preliminary order u/s 133 CrPC vitiates the entire proceedings:** Non-compliance with the mandatory requirement of passing a preliminary order u/s 133 CrPC vitiates the entire proceedings. **See:** Judgement dated 01.08.2022 of the Bombay High Court passed in Sundarabai Vishwanath Piparwar Vs. SDM, Rajura.
- 23. Issuing show cause notice u/s 133 CrPC before ordering removal of public nuisance mandatory:** The Executive Magistrate must follow a strict summary procedure beginning with a proper preliminary conditional order and an opportunity for a show cause notice / enquiry and failing to do so would make the entire proceeding of the Magistrate invalid. **See:** C.A. Avarachan Vs. C.V. Sreenivasan.
- 24. Revision against an order passed u/s 133 CrPC is maintainable:** Revision against an order of Executive Magistrate passed u/s 133 CrPC for the removal of public nuisance is maintainable. **See:**
1. Budhwa vs. State of U.P., 2006(54) ACC 519 (All)
 2. State of MP vs. Dedia Leather & Liqor Ltd., AIR 2003 SC 3236
 3. Gram Sabha vs. Ram Dev, 1993 CRLJ 3277(All)

- 25. Revision against order of SDM passed u/s 133 CrPC for removal of encroachment not maintainable:** An order passed by SDM u/s 133 CrPC for removal of encroachment over public path is only interlocutory order. Revision against such order is not maintainable. **See:** Ram Kripal Vs. State of UP, 2016 (93) ACC 899 (All).
- 26. Order of SDM passed u/s 133 CrPC directing removal of public nuisance should ordinarily be not interfered with in revision:** In the present case, the Supreme Court criticized the revisional order passed by the Addl. Sessions Judge for his interference with the SDM's discretion u/s 133 CrPC by asserting that the well-reasoned decision of the lower authority should not have been arbitrarily overturned. **See:** Kachrual Bhagirath Agrawal Vs. State of Maharashtra, 2004 INSC 538.
- 27. Impleadment of parties in Revision:** Where the proceedings initiated u/s 133 CrPC before the Executive Magistrate for the removal of unauthorized construction by Gaon Sabha/complainant terminated against the opposite party who feeling aggrieved by the said order filed a revision before the Sessions Judge, the Allahabad High Court, interpreting the provisions of Sec. 397 and 403 CrPC, has held that the Gaon Sabha/complainant being necessary party was required to be impleaded in revision and was also required to be afforded an opportunity of hearing. Non-joinder of a necessary party in revision may deprive him of his rights without being heard. **See:**
- (i) Shyamsunder Radheshyam Agarwal Vs. State of Maharashtra, 2013 CrLJ (NOC) 371 (Bombay)(DB)
 - (ii) Gram Sabha vs. Ram Dev, 1993 CrLJ 3277 (Allahabad)
- 28. Object of Section 151 CrPC is to prevent by the police commission of cognizable offence:** Section 151 CrPC deals with the preventive action of police and to prevent the commission of cognizable offence. **See:** Judgement dated 06.03.2020 of the Division Bench of the Hon'ble Allahabad High Court passed in Habeas Corpus writ petition no. 1045 / 2019, Amit Jain Vs State of UP & Others.
- 29. No person arrested u/s 151 CrPC shall be detained in custody for period exceeding 24 hours:** No person arrested u/s 151 CrPC shall be detained in custody for period exceeding 24 hours from the time of his arrest unless his further detention is required or authorized under any other provisions of the CrPC or of any other law for the time being in force. **See:** Judgement dated 06.03.2020 of the Division Bench of the Hon'ble

Allahabad High Court passed in Habeas Corpus writ petition no. 1045 / 2019, Amit Jain Vs State of UP & Others.

- 30. In the absence of dispute regarding possession, mere apprehension of breach of peace not sufficient to initiate proceedings u/s 145 & 146(1) CrPC:** Relying on the Supreme Court decision in **Ashok Kumar Vs. State of Uttarakhand, 2013 (80) ACC 599 (SC)**, it has been held by the Hon'ble Allahabad High Court that if there is no dispute regarding possession and the possession of one of the parties has been admitted in the police report then there remains no dispute regarding possession and the Executive Magistrate cannot proceed u/s 145 and 146(1) CrPC merely on apprehension of breach of peace. **See:** Sharad Yadav Vs. State of UP, 2013 (82) ACC 832 (All).
- 31. An order by Executive Magistrate appointing receiver of the property u/s 146 CrPC may be even tentative, not necessarily final:** Determination of rights by the Competent Court of the parties u/s 146 CrPC has not necessarily to be a final determination. It may be even tentative at the interim stage when the Competent Court passes an order of interim injunction or appoints a receiver in respect of the subject matter of dispute pending final decision in the suit. **See:** Dharmpal Vs. Ramshri, (1993) 1 Crimes 304 (SC).
- 32. Executive Magistrate u/s 145 CrPC cannot decide party's title or right to possession:** No party can be allowed to use the provisions of Section 145 CrPC for ulterior purposes or as a substitute for civil remedies. The jurisdiction and power of the civil court cannot in any manner be hampered. An Executive Magistrate cannot decide a party's title or right to possession of the land. **See:** M. Siddiq (Ram Janmabhumi Temple) Vs. Suresh Das, (2020) 1 SCC 1 (Five-Judge Bench) (Paras 293 to 298).
- 33. An order passed by Executive Magistrate u/s 145 CrPC does not affect the title of parties to the disputed immovable property:** An order passed by Executive Magistrate u/s 145 CrPC does not in any way affect the title of parties to the disputed premises, though it reflects the factum of possession. **See:** Sadharam Bansal Vs. Pulin Bihari Sarkar, (1984) 3 SCC 410.
- 34. Continuation of proceedings and passing of orders by Executive Magistrate u/s 145 and 146(1) CrPC is not permissible during the pendency of civil suit to decide questions of title and possession:** Continuation of proceedings and passing of orders by Executive Magistrate u/s 145 CrPC and u/s 146(1) CrPC was not permissible during the

pendency of civil suit before the civil court to decide the dispute of title and entitlement to possession. The Executive Magistrate should have dropped the proceedings pending before him by advising the parties to move to the civil court for adjudication of their rights and title. **See:** Judgment dated 28.01.2025 of Patna High Court passed in Criminal Misc. Petition no. 41314 of 2016, Ram Pradhan Singh Vs. State of Bihar.

35. **Revision against an order passed by Executive Magistrate u/s 146(1) CrPC not maintainable:** In the cases noted below, it has been repeatedly held that the preliminary order passed by Executive Magistrate u/s 145(1) CrPC and 146(1) CrPC is only interlocutory order and revision u/s 397 CrPC against such interlocutory orders is not maintainable. **See:**
 - (i) Revati Raman Vs. State of UP, 2007(1) ALJ 448 (All)
 - (ii) Maan Babu Dubey vs. State of UP, 2006 (55) ACC 489(All)
 - (iii) Satya Pal Singh vs. State of UP, 2005(52) ACC 922 (All)
 - (iv) Jai Prakash vs. Rajeshwar Prasad, 2003(1) J Cr. C 88 (Uttaranchal)
 - (v) Bhrigunath vs. Parmeshwar, 1996 JIC 232 (All)
 - (vi) Laxman vs. Handal, 1995 JIC 32 (All)
 - (vii) Kunj Behari vs. State of U.P., 1996 Suppl. AWC 353 (All)
 - (viii) Sai Ram vs. Guru Dutt, 195(32) ACC 336 (All)
 - (ix) Indra Dev Pandey vs. Smt. Bhagwati Devi, 1981 ALJ 687(All)(D.B.)
 - (x) G.D. Mukerji vs. Shyam Lal Tewari, 1978 ALJ 1331 (All)
36. **Revision against an order passed u/s 145(1) or 146(1) CrPC may lie depending on facts of each case:** Orders passed by the Executive Magistrate u/s 145(1) or 146(1) CrPC do not fall within the exact nature of an interlocutory order. Such orders may not be prohibited from being subjected to a revision in larger public interest. Orders passed u/s 145(1) or 146(1) CrPC are not orders simpliciter in every circumstance. A revision against such order would be maintainable depending on facts of each case. **See :** Munna Singh Vs. State of UP, 2011 (75) ACC 797 (All)(FB) (paras 35, 36, 37, 38, 40 & 41)=2012 (1) ALJ 493 (All) (FB).
37. **Revision against an order passed u/s 145(1) or 146(1) CrPC may lie depending on facts of each case :** Relying on Munna Singh Vs. State of UP, 2011 (75) ACC 797 (All)(FB), it has been held by the Lucknow Bench of the Hon'ble Allahabad High Court that it will depend on the facts and circumstances of each individual case where the revising authority will have to examine as to whether the Magistrate has proceeded to exercise his judicious discretion well within his jurisdiction or has travelled beyond the same and thus the revision would not be barred u/s 397(1) CrPC if the order impugned before the revising authority falls within the tests indicated in the cases reported in Ram Sumer Mahant Puri Vs. State of UP & Others,

1985 (22) (ACC) 45 (SC) and Sajjan Kumar Vs. CBI, 2010 (71) ACC 611 (SC). See : Smt. Binda Devi Vs. State of UP, 2014 (84) ACC 528 (All)(LB)

- 38. Revision against order of attachment passed u/s 146(1)CrPC maintainable:** An order passed by executive magistrate attaching the property u/s 146(1) Cr PC when there was absolutely no material before the magistrate to record his satisfaction regarding likelihood of breach of peace being imminent is not interlocutory order and revision u/s 397 Cr PC against such order is maintainable. **See:** Gulabchand vs. State of UP, 2004 Cr LJ 2672 (All).
- 39. Revision against order dismissing proceeding in default maintainable:** Where the proceeding u/s 145 CrPC was dismissed in default by the executive Magistrate, it has been held that revision u/s 397 Cr PC against such order is maintainable. **See:** Ram Yagya Vs. State of UP, 1983 CrLJ (NOC) 87 (All).
- 40. Revision against order u/s 145(1) CrPC :** In the cases noted below, it has been repeatedly held that the preliminary order passed by executive magistrate u/s 145(1) CrPC and 146(1) CrPC is only interlocutory order and revision u/s 397 CrPC against such interlocutory orders is not maintainable. See:
- (i) Revati Raman Vs. State of UP, 2007(1) ALJ 448 (All)
 - (ii) Maan Babu Dubey vs. State of UP, 2006(55) ACC 489(All)
 - (iii) Satya Pal Singh vs. State of UP, 2005(52) ACC 922 (All)
 - (iv) Jai Prakash vs. Rajeshwar Prasad, 2003(1) J Cr. C 88 (Uttaranchal)
 - (v) Bhargunath vs. Parmeshwar, 1996 JIC 232 (All)
 - (vi) Laxman vs. Handal, 1995 JIC 32 (All)
 - (vii) Kunj Behari vs. State of U.P., 1996 Suppl. AWC 353 (All)
 - (viii) Sai Ram vs. Guru Dutt, 195(32) ACC 336 (All)
 - (ix) Indra Dev Pandey vs. Smt. Bhagwati Devi, 1981 ALJ 687(All)(D.B.)
 - (x) G.D. Mukerji vs. Shyam Lal Tewari, 1978 ALJ 1331 (All)

Certain Judgments of Supreme Court & High Courts Reported On

- **Bharatiya Nyaya Sanhita, 2023 (BNS)**
 - **Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS)**
 - **Bharatiya Sakshya Adhiniyam, 2023 (BSA)**
1. **Bharatiya Nyaya Sanhita, 2023 made enforceable from 01.07.2024:** Vide Notification no. S.O. 850(E) dated 23.02.2024, the Central Government has notified 01.07.2024 as the effective date for enforcement of the provision of the **Bharatiya Nyaya Sanhita, 2023**, except its Section 106(2). **Bharatiya Nagarik Suraksha Sanhita, 2023** and **Bharatiya Sakshya Adhiniyam, 2023** have also been made effective from the same date i.e. 01.07.2024 by the said notification dated 23.02.2024.
 2. **PIL challenging constitutionality of three new criminal laws of 2023 dismissed by Supreme Court:** A PIL challenging the constitutional validity of the three new criminal laws enacted by Parliament in 2023 viz. (i) Bharatiya Nyaya Sanhita, 2023, (ii) Bharatiya Nagarik Suraksha Sanhita, 2023 and (iii) Bharatiya Sakshya Adhiniyam, 2023 was dismissed by the Supreme Court on 26.02.2024.
 3. **Madras Bar Association passes resolution to change the nomenclature of BNS, BNSS & BSA:** Even before passing of the said three bills, the Madras Bar Association had passed a resolution on 25.08.2023 raising objections against the renaming of the IPC, CrPC and the Indian Evidence Act in Hindi. The Bar Association took objections to the names "Bharatiya Nyaya Sanhita Bill", "Bharatiya Nagarik Suraksha Sanhita Bill" and "Bharatiya Sakshya Bill" which sought to replace the Indian Penal Code, Code of Criminal Procedure and the Indian Evidence Act.
 4. **Division Bench judgment dated on 6.08.2024 of Allahabad High Court on applicability of IPC & BNS and CrPC & BNSS:** If an offence is committed prior to the enforcement of new criminal laws, then if the FIR is registered after the enforcement of the new criminal laws, the same will be registered under the provisions of the IPC in view of the provisions of Article 20 of the Constitution of India, but the procedure for investigation will be as per the BNSS. Similarly, in case the offence is committed after the enforcement of the new criminal laws and thereafter the FIR is registered, then the investigation would be conducted as per the BNSS. However, in case the offence is committed prior to the enforcement of the new criminal laws and FIR is also registered prior to the enforcement of

the new criminal laws, then the procedure of investigation would be as per the CrPC in view of Section 531 (2)(a) of the BNSS. Therefore, the procedure for investigation provided by the Circular dated 07.04.2024 of the Police Technical Services Headquarter, Uttar Pradesh is absolutely correct. **See:** Judgment dated 06.08.2024 of Allahabad High Court passed in Criminal Misc. Writ Petition No. 12287/2024, Deepu Versus State of UP (DB) (Para 15).

- 5. Summary of Division Bench judgment dated 06.08.2024 of Allahabad High Court on applicability of IPC/BNS and CrPC/BNSS:** Summary of Division Bench judgment dated 06.08.2024 of the Allahabad High Court regarding applicability of IPC/BNS and CrPC/BNSS is reproduced below:
- (i) If an FIR is registered on or after 01.07.2024 for the offence committed prior to 01.07.2024, then the FIR would be registered under the provisions of the IPC but the investigation will be conducted as per the BNSS.
 - (ii) In the pending investigation on 01.07.2024 (on the date of commencement of new criminal laws), investigation will continue as the CrPC till the cognizance is taken on the police report and if any direction is made for further investigation by the competent court, then the same will continue as per the CrPC.
 - (iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceedings including inquiry, trial or appeal would be conducted as the procedure of the BNSS.
 - (iv) Section 531 (2)(a) of the BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or appeal is commenced after 01.07.2024, the same will be proceeded as per the procedure of the BNSS.
 - (v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024, then appeal or revision against the judgment passed in such a trial will be as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024, then the procedure of CrPC will apply.
 - (vi) If the criminal proceeding or charge sheet is challenged before the High Court on or after 01.07.2024, where investigation was conducted as the CrPC, then the same will be filed u/s 528 of the BNSS, not u/s 482 CrPC. **See:** Judgment dated 06.08.2024 of Allahabad High Court passed in Criminal Misc. Writ Petition No. 12287/2024, Deepu Versus State of UP (DB)(Para 16)

6. **Supreme Court compared Sections 102, 103(1), 109 of the BNS, 2023 with analogous Sections of IPC:** While setting aside the judgment of conviction and sentence dated 28.05.1983 passed by the Addl. Sessions Judge, Kanpur Dehat as affirmed by the Allahabad High Court for the offences under Sections 302, 301, 307 IPC, the Supreme Court compared the said penal sections of the IPC with the new Sections 102, 103(1), 109 of the Bharatiya Nyaya Sanhita, 2023 and extended to the convicts the benefit of doubt. **See:** Ram Singh Vs. State of UP, (2024) 4 SCC 208 (Paras 21 to 39).
7. **Supreme Court ruling on cancellation of bail under BNSS, 2023:** Pointing out Sections 483, 480, 403 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the Hon'ble Supreme Court has recently ruled that the law is well settled that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the court is satisfied that after being released on bail:
- (i) the accused misused the liberty granted to him
 - (ii) the accused flouted the conditions of bail order
 - (iii) the bail was granted by the court in ignorance of statutory provisions restricting the powers of the court to grant bail
 - (iv) the bail was procured by the accused by misrepresentation or fraud.
- See:** Himanshu Sharma Vs. State of MP, (2024) 4 SCC 222 (Paras 10 & 11).
8. **Two statutes when can be said to be in pari materia?:** Two statutes are said to be in pari materia with each other when they deal with the same subject matter. Rationale behind this rule is based on the interpretative assumption that words employed in legislations are used in an identical sense. However, this assumption is rebuttable by the context of the statutes. Therefore, words used in a particular statute cannot be used to interpret the same word in a different statute specially in the light of the fact that the two statutes are not in pari materia with each other and have a wholly different scheme from one another. **See:**
- (i) Royal Medical Trust Vs. Union of India, (2015) 10 SCC 19 (Three-Judge Bench)
 - (ii) Bangalore Turf Club Limited Vs. ESI Corporation, (2014) 9 SCC 657.
9. **Two statutes when not in pari materia:** Rule of construction of statutes in pari materia is to avoid contradiction between two statutes dealing with the same subject but this rule is not applicable when two statutes are not in pari materia. Unless and until the facts and circumstances in a cited case are in pari materia in all respects with the facts and circumstances of the

case in hand, it will not be proper to treat an earlier case as a precedent to arrive at a definite conclusion. Hence a given case should be determined on facts and circumstances of that case only and facts arising in the cases cited should not be blindly treated as a precedent to determine the conclusions. **See:**

(i) Ramesh Singh vs. State of A.P., (2004) 11 SCC 305.

(ii) Babu Khan vs. Nazim Khan, (2001) 5 SCC 375.

10. Pari materia principles not to be applied when two Acts of two States are different?: Decision of a High Court of a State on interpretation of provisions of a State Act holds the field in the State and the same cannot be relied upon to interpret the provisions of an Act of another State on the same subject matter when the two Acts are not in pari materia. **See:** Shahabad Co-operative Sugar Mills Ltd. Vs. Special Secretary to Govt. of Haryana Corporation & Others, (2006) 12 SCC 404.

11. Supreme Court's criticism of Sections 85 & 86 of BNS, 2023 and suggests changes in BNS: Days after the Hon'ble Chief Justice of India Dr. DY Chandrachud called the introduction of new criminal laws a watershed moment for the Indian society, a Bench of the Supreme Court comprising Hon'ble Justices JB Pardiwala and Manoj Misra made an observations on 03.05.2024 while quashing a case filed by a wife against her husband and his relatives by questioning the justification of Sections 85 and 86 of the Bharatiya Nyaya Sanhita, 2023. The Bench observed that Section 490A of the Bharatiya Nyay Sanhita (BNS) has produced Section 498A of the Indian Penal Code (IPC) in verbatim. The apex court urged the Union government and Parliament to make necessary changes in the BNS and to consider pragmatic realities. Section 498A of the IPC dealt with cruelty against the wife by the husband or his relatives. The Bench observed thus: "We request the Legislature to look into the issue, taking into consideration the pragmatic realities and consider making necessary changes in Sections 85 and 86, respectively, of the Bharatiya Nyaya Sanhita, 2023, before both the new provisions come into force". The Supreme Court's observations came during the hearing of an appeal against a Punjab and Haryana High Court order which refused to quash the proceedings against the husband. The apex court bench observed that the case filed by the wife was pretty vague, sweeping and without a specific instance of criminal conduct. The Bench further observed that "The plain reading of the FIR and the charge-sheet papers indicate that the allegations leveled by the First Information Report are quite vague, general and sweeping, specifying no instances of criminal conduct. It is also pertinent to note that no specific date or time of the alleged offence/offences has been disclosed in the FIR. Even the police thought fit to drop the

proceedings against the other members of the appellant's family. The Supreme Court observed that such legal methods lead to the complete destruction of marriage on trivial issues and minimize even fair chances of reconciliation between spouses. Many times, the parents, including the close relatives of the wife, make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavors to save the marriage, their action, either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about the destruction of marriage on trivial issues. The first thing that comes to mind of the wife, her parents and her relatives is the police as if the police are the panacea of all evil. No sooner the matter reaches up to the police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed.”

- 12. Extra - judicial confession made by accused to a member of public in presence of police officer inadmissible in evidence u/s 22 & 23 of BSA,2023:** Extra - judicial confession made by an accused to a member of public in presence of police officer is inadmissible in evidence u/s 22 & 23 of the BSA, 2023: **See:** Lal Mohammad Manjur Ansari Vs. State of Gujarat, (2024) 7 SCC 733 (Para 10).

Sections Providing for Powers & Functions of Executive Magistrates under CrPC (now under BNSS, 2023)

Section under BNSS, 2023	Corresponding Section under CrPC, 1973	Powers & Functions of Executive Magistrates
Section 14	Section 20	Appointment of Executive Magistrates; appointment of District Magistrate, Additional District Magistrate and Sub-Divisional Magistrate
Section 15	Section 21	Appointment of Special Executive Magistrates for particular areas or functions.
Section 16	Section 22	Defines the local jurisdiction of Executive Magistrates.
Section 17	Section 23	Provides for subordination of Executive Magistrates to the District Magistrate.
Section 125	Section 106	Security for keeping peace on conviction in certain cases.
Section 126	Section 107	Security for keeping peace in other cases where there is apprehension of breach of

		peace or disturbance of public tranquillity.
Section 127	Section 108	Security for good behaviour from persons disseminating certain matters.
Section 128	Section 109	Security for good behaviour from suspected persons.
Section 129	Section 110	Security for good behaviour from habitual offenders.
Section 130	Section 111	Written order requiring a person to show cause why security should not be taken
Section 131	Section 112	Procedure where the person against whom an order is made is present in Court
Section 132	Section 113	Issue of summons or warrant where the person is not present.
Section 133	Section 114	Service of summons/order upon the person concerned.
Section 134	Section 115	Power to dispense with personal attendance in appropriate cases.
Section 135	Section 116	Inquiry into the truth of the information and determination whether security is necessary.
Section 136	Section 117	Order requiring the person to give security after inquiry.
Section 137	Section 118	Discharge of the person where the necessity for security is not established.
Section 138	Section 119	Commencement of the period for which security is required
Section 139	Section 120	Contents and conditions of the bond
Section 140	Section 121	Power to reject a surety after inquiry into his suitability.
Section 141	Section 122	Consequences of failure to furnish security, including detention in accordance with law.
Section 142	Section 123	Power to release a person imprisoned for failure to furnish security in appropriate circumstances.
Section 143	Section 124	Security for the unexpired period of a bond.
Section 148	Section 129	Dispersal of unlawful assembly by use of civil force.

Section 149	Section 130	Use of armed forces for dispersal of assembly in specified circumstances
Section 150	Section 131	Power of certain armed force officers to disperse an assembly in urgent situations
Section 151	Section 132	Protection against prosecution for acts done under Sections 148–150, subject to statutory conditions.
Section 152	Section 133	Conditional order for removal of public nuisance such as obstruction of public ways, dangerous structures, etc.
Section 153	Section 134	Service or notification of the conditional order.
Section 154	Section 135	Direction to the person concerned to obey the order or show cause against it.
Section 155	Section 136	Consequences where the person fails to comply with the order.
Section 156	Section 137	Procedure where the existence of a public right is denied
Section 157	Section 138	Inquiry into the matter where the person shows cause against the order
Section 158	Section 139	Power to direct local investigation or examination by an expert.
Section 159	Section 140	Power to issue written instructions regarding local investigation/expert examination.
Section 160	Section 141	Making the conditional order absolute and consequences of disobedience.
Section 161	Section 142	Injunction pending inquiry in cases of public nuisance
Section 162	Section 143	Prohibition against repetition or continuance of public nuisance.
Section 163	Section 144	Urgent cases of nuisance or apprehended danger; power to issue preventive orders for protection of life, health, safety, public tranquillity, etc.
Section 164	Section 145	Dispute concerning land or water likely to cause breach of peace; preventive inquiry primarily concerning possession, not final title.

Section 165	Section 146	Attachment of disputed property and appointment of receiver in appropriate cases
Section 166	Section 147	Dispute concerning right of use of land or water and preventive adjudication of such right.
Section 167	Section 148	Local inquiry in matters relating to the right of use of land or water

Quick classification for judicial reference

BNSS Sections	Principal Function
14–17	Constitution and administrative control of Executive Magistrates
125–143	Security proceedings for keeping peace/good behaviour
148–151	Dispersal of unlawful assemblies
152–162	Removal and prevention of public nuisance
163	Urgent preventive orders — corresponding to Section 144 CrPC
164–167	Land/water disputes, possession, right of use and attachment
