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FRAMING OF CHARGE AND PROSECUTION OF EVIDENCE IN A SESSIONS TRIAL: A CRITICAL STUDY UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

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ABSTRACT

A trial before the Court of Session is the principal forum for the adjudication of the most serious offences in India, and its fairness depends largely on two stages: the framing of charge and the proof of the prosecution case through evidence. The charge tells the accused precisely what must be met, and the evidence decides whether the allegation is established beyond reasonable doubt. With the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) replacing the Code of Criminal Procedure, 1973 (CrPC) from 1 July 2024, these stages are now governed by Chapter XVII and Chapter XIX of the new Sanhita. This paper examines the statutory scheme, traces the standards laid down by the Supreme Court for discharge and framing of charge, analyses the rules on errors and alteration of charge, and studies the manner in which prosecution evidence is fixed, recorded and tested. The paper argues that although the BNSS retains the settled structure of the Code, its time limits and provisions for electronic procedure will succeed only if courts, prosecutors and investigating agencies adhere to them in practice.

Keywords: Framing of charge; discharge; sessions trial; prosecution evidence; Bharatiya Nagarik Suraksha Sanhita, 2023; fair trial.

1. INTRODUCTION

The Court of Session is the court before which grave offences such as murder, dacoity and serious sexual offences are tried. Because the consequences of a conviction are severe, the law surrounds the trial with safeguards. Two of the most important are the requirement that the accused be told in clear terms what he is accused of, and the requirement that guilt be proved by legally admissible evidence produced in open court. The first is achieved through the charge; the second through the recording of prosecution evidence.

Until 30 June 2024 these matters were regulated by Chapters XVII and XVIII of the CrPC. The BNSS, which came into force on 1 July 2024, re-enacts the same scheme with a different numbering. The rules on charge now appear in Sections 234 to 247, and the trial before a Court of Session in Sections 248 to 260. The Sanhita keeps the essential architecture of the earlier Code but adds fixed time limits for discharge applications and for framing of charge, and it expressly accommodates audio-video electronic means in the recording of proceedings. Since the language of the corresponding provisions is largely carried forward, the body of precedent decided under the CrPC continues to guide courts applying the BNSS.

This paper studies how a charge is framed and how prosecution evidence is then brought on record in a Sessions trial. It considers the law as stated in the statute, the principles developed by the Supreme Court, and the practical difficulties that arise in the courtroom.

2. OBJECTIVES AND RESEARCH METHODOLOGY

The study has three objectives: first, to describe the stages of a Sessions trial from commitment to the close of prosecution evidence; second, to identify the judicial standards that govern discharge and the framing of charge; and third, to evaluate the rules relating to the recording of prosecution evidence and the court's role in that process.

The methodology is doctrinal. The primary sources are the BNSS, the Bharatiya Sakshya Adhiniyam, 2023 (BSA), the CrPC and reported decisions of the Supreme Court. Textbooks and commentaries on criminal procedure form the secondary sources. Section numbers of the BNSS and their CrPC counterparts have been cross-checked against published comparative tables and the text of Chapter XIX.

3. SCHEME OF THE SESSIONS TRIAL

A Court of Session cannot take cognizance of an offence directly. The case reaches it by an order of commitment made by a Magistrate under Section 232 of the BNSS, after the accused has been furnished with copies of the police report and the accompanying documents under Section 230. Once the case is committed, Chapter XIX prescribes a fixed sequence. The prosecution is conducted by a Public Prosecutor (Section 248), who opens the case by describing the charge and the evidence by which guilt is to be proved (Section 249). The Judge then decides whether to discharge the accused (Section 250) or to frame a charge (Section 251). If a charge is framed and the accused pleads guilty, he may be convicted on that plea (Section 252); otherwise the Judge fixes a date for prosecution evidence (Section 253) and takes that evidence (Section 254). The sequence continues with acquittal where no evidence of guilt

emerges (Section 255), defence (Section 256), arguments (Section 257) and judgment (Section 258). Table 1 summarises the stages and their counterparts in the earlier Code.

Table 1: Stages of a Sessions trial and corresponding provisions

STAGE OF TRIAL	BNSS, 2023	CRPC, 1973
Supply of documents to the accused	Section 230	Section 207
Commitment to the Court of Session	Section 232	Section 209
Opening of the case by the prosecutor	Section 249	Section 226
Discharge	Section 250	Section 227
Framing of charge	Section 251	Section 228
Conviction on plea of guilty	Section 252	Section 229
Date for prosecution evidence	Section 253	Section 230
Evidence for the prosecution	Section 254	Section 231
Acquittal	Section 255	Section 232
Entering upon defence	Section 256	Section 233
Arguments	Section 257	Section 234
Judgment of acquittal or conviction	Section 258	Section 235

4. DISCHARGE AND THE FRAMING OF CHARGE

4.1 NATURE AND PURPOSE OF A CHARGE

A charge is a formal written statement, made by the court, of the offence alleged against the accused together with the particulars needed to give him notice of the case he must meet. It is not evidence and it is not a finding of guilt. Its function is to fix the issues for trial and to enable the accused to prepare his defence. Section 234 requires the charge to state the offence with which the accused is charged, and the following provisions require the time and place of the offence and the person against whom, or the thing in respect of which, it was committed to be stated where necessary to give reasonable notice. Where the nature of the case is such that these particulars do not suffice, the manner in which the offence was committed must also be set out. The words used in a charge to describe an offence are to be understood in the sense given to them in the law that defines that offence.

4.2 DISCHARGE UNDER SECTION 250

Before a charge is framed, the accused is entitled to ask the Judge to discharge him. Section 250 requires such an application to be made within sixty days of commitment, which is a time limit that did not exist in the corresponding provision of the CrPC. The Judge hears the prosecution and the accused, considers the record and the documents submitted, and, if satisfied that there is no sufficient ground for proceeding, discharges the accused after recording reasons. The purpose of this stage, as the Supreme Court has emphasised, is to protect a person from the harassment of a protracted trial where the case is plainly unsustainable.

4.3 STANDARD FOR FRAMING A CHARGE

If, after hearing the parties, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, Section 251 directs that a charge be framed in writing. Where the offence is exclusively triable by the Court of Session the Judge frames the charge himself, then reads and explains it to the accused and asks whether he pleads guilty or claims to be tried. The Sanhita requires this to be done within sixty days from the date of the first hearing on charge.

The judicial approach to this stage was settled in *Union of India v. Prafulla Kumar Samal* (1979) 3 SCC 4, where the Supreme Court held that the Judge may sift the material, but only to find out whether a prima facie case exists, and that the court is not to conduct a roving inquiry as if it were at the end of the trial. *State of Maharashtra v. Som Nath Thapa* (1996) 4 SCC 659 explained that at this stage the test is whether the material gives rise to a strong suspicion that the accused committed the offence, and that the court need not be satisfied that conviction is certain. *Sajjan Kumar v. CBI* (2010) 9 SCC 368 and *Amit Kapoor v. Ramesh Chander* (2012) 9 SCC 460 collected the earlier principles. Taken together, these decisions establish four propositions. The court must examine the material to decide whether a prima facie case is made out. It must not weigh the evidence as it would at the conclusion of the trial. Where two views are equally possible and the evidence leaves the Judge in real doubt, the accused is entitled to discharge. And a court may not ignore the material on record and act as a mere post office for the prosecution.

A related question is how far the accused may place his own material before the court at this stage. In *State of Orissa v. Debendra Nath Padhi* (2005) 1 SCC 568, the Supreme Court held that the accused has no right to file documents of his own at the stage of charge so as to demand a pre-trial evaluation of the defence. The position was later refined in *Nitya Dharmananda v. Gopal Sheelum Reddy* (2018) 2 SCC 93, which recognised that the court may in a rare case

take into account material of an unimpeachable quality that clearly shows the prosecution case to be false. These decisions show that the law seeks a balance: the trial must not be pre-empted, but the process of the court must not be used to subject an obviously innocent person to a full trial.

4.4 PLEA OF GUILTY

When the charge has been read and explained, the accused may plead guilty. Section 252 provides that the Judge shall record the plea and may, in his discretion, convict the accused on it. The discretion is important in grave cases. A prudent court satisfies itself that the plea is voluntary and made with full understanding of the charge, since a conviction in a Sessions trial may carry the heaviest sentences known to law.

5. ERRORS, OMISSIONS AND ALTERATION OF CHARGE

A defect in a charge does not by itself vitiate a trial. Under Section 238 of the BNSS, an error or omission in stating the offence or its particulars is material only if the accused was in fact misled and the error occasioned a failure of justice. Section 510, which corresponds to Section 464 of the CrPC, adds that a finding or sentence is not to be reversed merely because of an irregularity in the charge unless a failure of justice has in fact been occasioned. The courts have consistently treated prejudice to the accused as the controlling test. In *Willie (William) Slaney v. State of Madhya Pradesh* AIR 1956 SC 116, the Supreme Court held that the real question is whether the accused knew what he was being tried for and had a fair opportunity to defend himself. The same approach was applied by the Court in *Rattiram v. State of Madhya Pradesh* (2012) 4 SCC 516.

The charge may also be changed during the trial. Section 239 empowers the court to alter or add to any charge at any time before judgment is pronounced, provided that the alteration is explained to the accused. Where the alteration is such that, in the court's opinion, it is not likely to prejudice the accused, the trial may proceed forthwith; where it is likely to do so, the court may direct a new trial or adjourn the matter for such period as is necessary. Section 240 permits the accused and the prosecutor to recall or re-summon witnesses for further examination on the altered or added charge. In *Anant Prakash Sinha v. State of Haryana* (2016) 6 SCC 105, the Supreme Court stressed that the power to alter must be exercised with care so that the accused is not surprised by a case he was never called upon to meet.

The provisions on joinder of charges complete this scheme. A distinct charge is ordinarily required for each distinct offence (Section 241), subject to exceptions for offences of the same

kind committed within twelve months (Section 242) and for acts forming one transaction (Section 243). Where it is doubtful which of several offences the facts constitute, Section 244 allows alternative charges, so that the accused is not acquitted merely because the prosecution selected the wrong provision.

6. PROSECUTION OF EVIDENCE IN THE SESSIONS TRIAL

6.1 FIXING THE DATE AND SECURING ATTENDANCE

Once the accused has pleaded not guilty, or has declined to plead, Section 253 requires the Judge to fix a date for the examination of witnesses. On the application of the prosecution, the Judge may issue a process to compel the attendance of any witness or the production of any document or thing. The provision is a recognition that proof is the prosecution's burden, and that the court has a duty to assist in securing the material evidence rather than leave the matter to the vagaries of service of summons.

6.2 RECORDING OF EVIDENCE UNDER SECTION 254

Section 254 directs the Judge to take all such evidence as is produced in support of the prosecution. Evidence includes oral testimony of witnesses and documentary and material exhibits. Under the BSA, the definition of evidence has been widened to include electronic records and statements given by electronic means, and the BSA lays down a certificate-based procedure for admitting electronic records. Witnesses are examined in chief by the Public Prosecutor, cross-examined by the defence and, where necessary, re-examined. The BNSS permits the examination of witnesses through audio-video electronic means, which is intended to reduce the delay and expense of securing the attendance of witnesses, particularly experts and public servants. The Judge may, in his discretion, permit cross-examination of any witness to be deferred until another witness has been examined, or recall a witness for further cross-examination.

6.3 THE ROLE OF THE JUDGE AND THE PUBLIC PROSECUTOR

The Public Prosecutor is not a litigant seeking a conviction at any cost; he is an officer of the court who must present the evidence fairly. The Judge, on the other hand, is not a passive umpire. In *Zahira Habibulla H. Sheikh v. State of Gujarat* (2004) 4 SCC 158, the Supreme Court held that a fair trial requires the court to take an active interest in ensuring that the truth is brought out, and that the court cannot remain a silent spectator when material witnesses are intimidated or evidence is withheld. The statutory source of this duty is Section 348 of the

BNSS, corresponding to Section 311 of the CrPC, which authorises the court at any stage to summon a person as a witness or recall one already examined if the evidence appears essential to a just decision.

6.4 BURDEN, STANDARD AND CIRCUMSTANTIAL EVIDENCE

The burden of proving the charge lies upon the prosecution throughout, and the standard is proof beyond reasonable doubt. Where the case rests upon circumstances, the principles in *Sharad Birdhichand Sarda v. State of Maharashtra* (1984) 4 SCC 116 apply. The circumstances must be fully established; they must be consistent only with the guilt of the accused; and they must form a chain so complete that no reasonable ground remains for a conclusion consistent with innocence. This test, popularly described as the five golden principles, has been followed by the Supreme Court in numerous later cases and operates as a check against conviction on suspicion.

6.5 EXAMINATION OF THE ACCUSED AND ACQUITTAL

After the prosecution evidence is complete, the court examines the accused under Section 351 of the BNSS (earlier Section 313 of the CrPC) so that he may explain the circumstances appearing against him. If, after taking the prosecution evidence and examining the accused, the Judge finds no evidence that the accused committed the offence, Section 255 requires him to record an order of acquittal. Only where such evidence exists does the trial proceed to the defence under Section 256. This provision enables a trial to end early when the prosecution has failed to prove its case, and prevents the defence from being called upon to fill gaps left by the prosecution.

6.6 SUMMONING OF ADDITIONAL ACCUSED

Evidence recorded during the trial may reveal the involvement of a person who was not charged. Section 358 of the BNSS, corresponding to Section 319 of the CrPC, permits the court to proceed against such a person. In *Hardeep Singh v. State of Punjab* (2014) 3 SCC 92, a Constitution Bench held that the power is extraordinary, to be exercised sparingly, and that the evidence must be stronger than that required for the framing of a charge, though short of the standard necessary for conviction.

7. CRITICAL ANALYSIS

The BNSS has not altered the principles on which a Sessions trial proceeds, and this continuity is valuable because courts and practitioners are able to rely on a large body of settled precedent. The new time limits for discharge applications and for framing of charge respond to a long-standing complaint that the pre-trial stage consumes years. A charge that is framed within weeks of the first hearing allows the evidence stage to begin while the memory of witnesses is fresh.

Several difficulties nonetheless remain. First, statutory time limits are of limited value unless a consequence attaches to non-compliance; if courts regard them as directory only, delay will persist. Second, the quality of the charge depends on the quality of the record placed before the Judge. Where the police report is incomplete or the documents are supplied late, the Judge is compelled to frame a charge on a thin record, and the defect surfaces only at the end of the trial. Third, the evidence stage continues to be affected by witnesses who turn hostile, by delays in forensic reports and by the unavailability of witnesses. The provision for examination through electronic means addresses some of these concerns but requires reliable infrastructure in district courts, and safeguards to ensure that the witness is free from outside influence. Fourth, the discretion to summon additional witnesses or accused under Sections 348 and 358 must be exercised with restraint, so that the court does not take over the prosecution's role.

A few measures may strengthen the working of these provisions: training of prosecutors in the drafting of precise charges; a practice of proposing the draft charge to the defence in advance of the hearing; scheduling of prosecution witnesses in blocks so that examination and cross-examination are completed on consecutive dates; and periodic audit of the use of electronic modes of recording evidence.

8. CONCLUSION

The framing of charge and the recording of prosecution evidence are the two stages at which the Sessions trial takes its final shape. The first gives the accused notice of the case; the second tests it. The BNSS preserves the CrPC framework of discharge, charge, plea, evidence and acquittal, while attempting to quicken it with prescribed periods and electronic procedure. The standards fixed by the Supreme Court for prima facie scrutiny, for prejudice-based review of defective charges and for fairness in recording evidence remain the foundation of this law. Whether the reforms will reduce delay will depend less on the text of the statute than on disciplined case management by trial judges and a prosecution service that prepares its cases

before, not after, the charge is framed.

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