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ALTERATION OF CHARGES AND PROTECTION OF THE ACCUSED DEFENCE

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Abstract

The framing of a charge informs an accused person of the precise allegation that must be answered and provides the foundation for preparing a defence. Criminal trials may, however, reveal material that makes it necessary to alter or add a charge. The law therefore has to reconcile two legitimate objectives: enabling the court to determine the real issue disclosed by the evidence and preventing an accused person from being taken by surprise or denied a meaningful opportunity to defend the case. This article examines the statutory framework governing alteration of charges in India, with particular attention to Sections 239 and 240 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the corresponding provisions of the former Code of Criminal Procedure, 1973 (CrPC). It analyses the principles emerging from Supreme Court decisions, including the need for a connection between the proposed charge and the material on record, the duty to explain an altered charge, and the safeguards of adjournment, retrial and recall of witnesses. The article argues that the power to alter a charge is broad but not arbitrary: it must be exercised judicially, with reasons and a practical assessment of prejudice. A fair-trial approach requires courts to ensure that procedural flexibility does not undermine the accused's ability to understand the case, challenge the prosecution evidence and present an effective defence.

Keywords: Alteration of charge; fair trial; accused's defence; BNSS; CrPC; recall of witnesses; prejudice.

1. Introduction

A criminal charge is more than a formal statement of an offence. It identifies the case the accused is required to meet and helps define the issues for evidence, cross-examination and final submissions. An accurately framed charge supports transparency and procedural fairness. Yet criminal proceedings are dynamic: evidence recorded during trial may disclose facts

suggesting that the original charge is incomplete or does not fully reflect the alleged offence. A rigid rule prohibiting all changes could prevent a court from deciding the case in accordance with the material before it.

The power to alter or add a charge addresses this difficulty. Its exercise must nevertheless be balanced against the accused's right to a fair trial. If a new or altered charge changes the legal ingredients to be proved, introduces a materially different factual theory, or calls for evidence that the defence had no reason to investigate, immediate continuation may cause real prejudice. The law consequently permits alteration while providing procedural safeguards intended to preserve a fair opportunity to answer the allegation.

2. Research Objectives and Methodology

This article has three objectives: first, to explain the statutory scheme governing alteration of charges; second, to examine judicial principles relevant to protection of the accused's defence; and third, to identify practical safeguards that trial courts should apply when considering an alteration. The study adopts a doctrinal method based on statutory provisions and reported judicial decisions. It is analytical rather than empirical and does not claim to measure the frequency of applications to alter charges.

The BNSS came into force on 1 July 2024. Section 239 governs alteration or addition of charges, while Section 240 provides for recall or re-summoning of witnesses after an alteration or addition following commencement of trial. For proceedings governed by the former CrPC, Sections 216 and 217 are the corresponding provisions. The applicable procedural law should be identified by reference to the relevant commencement and savings rules; the new numbering should not be applied mechanically to every pending or earlier proceeding.

3. Statutory Framework

3.1. Section 239, Bharatiya Nagarik Suraksha Sanhita, 2023

Section 239 authorises a court to alter or add to any charge at any time before judgment is pronounced. Every alteration or addition must be read and explained to the accused. If the court considers that proceeding immediately is unlikely to prejudice the accused in the conduct of the defence or the prosecutor in conducting the case, it may continue the trial as though the altered charge had originally been framed. If immediate continuation is likely to cause prejudice, the court may order a new trial or adjourn the proceedings for such period as is necessary. Where the altered charge requires prior sanction for prosecution, the case cannot

proceed until the required sanction has been obtained, subject to the statutory exception concerning sanction on the same facts.

The provision does not make alteration automatic merely because a party requests it. The power belongs to the court and must be exercised on a proper judicial basis. The proposed alteration should be connected to the material available in the case, and the court must consider whether the accused will have a fair opportunity to meet the changed allegation.

3.2. Section 240, BNSS: Recall of Witnesses

Section 240 supplies an important safeguard when a charge is altered or added after the trial has commenced. The prosecution and the accused must be allowed to recall or re-summon and further examine a witness with reference to the alteration. The court may refuse recall where it records reasons for concluding that the request is intended to cause vexation, delay or defeat the ends of justice. The parties may also call further witnesses whom the court considers material.

This safeguard is central to fairness because a witness's earlier testimony may have been tested against the original charge, not the new legal or factual issue.

3.3. Constitutional Foundation

The right to a fair criminal process is grounded in Article 21 of the Constitution of India and is reinforced by procedural guarantees governing criminal trials. A charge that changes without adequate notice or opportunity to respond may impair the accused's ability to challenge the prosecution case. Fairness is therefore not satisfied by formal compliance alone; the court should consider the practical effect of the alteration on preparation, cross-examination, defence evidence and legal submissions.

4. Principles Governing Alteration of Charges

4.1. Power to Alter Before Judgment

The statutory language allows alteration or addition before pronouncement of judgment. The power is designed to ensure that the charge corresponds with the case disclosed by the material on record. It should not be used to fill gaps through speculation or to introduce an unrelated accusation without a proper evidentiary basis. The court must remain attentive to the purpose of the power and the stage at which it is invoked.

4.2. Notice and Explanation to the Accused

Reading and explaining the altered charge is a substantive safeguard, not a ceremonial step. The accused must understand what has changed and which elements of the offence now require an answer. Depending on the nature of the change, a meaningful response may require time to consult counsel, obtain documents, identify witnesses, seek expert assistance or reconsider the approach to cross-examination.

4.3. Prejudice and the Need for an Adjournment or Retrial

The central question is whether the trial can fairly continue immediately. Prejudice may arise where the alteration changes the ingredients of the offence, affects a defence previously adopted, introduces a new factual allegation, or makes previously completed cross-examination inadequate. Not every alteration necessarily causes prejudice. The court should assess the actual circumstances, record its reasons and choose a proportionate response. An adjournment may be sufficient in some cases; a new trial may be required where the earlier proceedings cannot fairly be adapted.

4.4. Recall and Further Examination of Witnesses

The right to recall witnesses allows the defence to test evidence against the altered charge. The court should consider which witnesses are material to the new issue and whether further cross-examination or additional defence evidence is necessary. A request should not be rejected merely because the witness has already testified. Conversely, recall need not be permitted where the statutory grounds for refusal are established and reasons are recorded.

4.5. Avoiding Failure of Justice

A procedural error relating to a charge does not invariably invalidate a trial. The relevant question under the applicable statutory provisions is whether the error has caused a failure of justice. This inquiry must be practical and case-specific. It should examine whether the accused knew the substance of the allegation, had a fair chance to contest it and could make an informed decision about the defence. The absence of demonstrated prejudice may be relevant, but it should not be assumed simply because the accused was represented by counsel.

5. Judicial Decisions

5.1. Jasvinder Saini v. State (Government of NCT of Delhi)

In *Jasvinder Saini v. State (Government of NCT of Delhi)*, (2013) 7 SCC 256, the Supreme Court considered the power to alter or add a charge under Section 216 CrPC. The decision explains that the power must be exercised with reference to the facts and material in the case; a direction to add a particular charge should not be treated as an automatic rule applicable irrespective of the evidence. The judgment is significant because it illustrates that alteration is a judicial function requiring attention to the individual case. Its reasoning remains relevant when interpreting the materially corresponding provision in Section 239 BNSS.

5.2. Anant Prakash Sinha v. State of Haryana

In *Anant Prakash Sinha v. State of Haryana*, (2016) 6 SCC 105, the Supreme Court discussed the court's authority under Section 216 CrPC to alter or add a charge before judgment. The decision recognises that the court may act where the material on record warrants an alteration, while emphasising that the accused must receive a fair opportunity to respond. The case supports a balanced approach: the court should not ignore material evidence, but must ensure that the procedure following alteration does not prejudice the defence.

5.3. Umesh Kumar v. State of Andhra Pradesh

In *Umesh Kumar v. State of Andhra Pradesh*, (2013) 10 SCC 591, the Supreme Court considered the scope of the power to alter or add charges. The decision is commonly cited for the proposition that charges may be adjusted before judgment where the record supports doing so, subject to compliance with the procedural protection for witnesses. It reinforces the link between the power to correct the charge and the need to provide a fair opportunity to meet the case as it ultimately stands.

5.4. Ratilal Bhanji Mithani v. State of Maharashtra

In *Ratilal Bhanji Mithani v. State of Maharashtra*, (1979) 2 SCC 179, the Supreme Court considered the limits of a criminal court's power in relation to charges at different stages of proceedings. The case is relevant to the broader principle that statutory powers over charges depend on the stage of the case and the governing procedural provisions. It should be read with the later authorities on alteration and with care to distinguish the particular procedural context in which the issue arose.

These decisions were delivered under the CrPC. Because Sections 239 and 240 BNSS substantially carry forward the earlier framework on alteration of charges and recall of witnesses, the reasoning of these decisions may assist interpretation. However, a publication should identify them as CrPC decisions and avoid describing them as direct rulings on the BNSS unless a court has expressly considered the new provisions.

6. Practical Tests for Protecting the Defence

When an application to alter or add a charge is made, the court should consider the following questions:

Is the proposed alteration supported by material already on record, and is it relevant to the case?

Does the change alter the essential ingredients of the offence or introduce a materially different factual allegation?

Has the accused been clearly informed of the altered charge and given an explanation of its implications?

Would immediate continuation affect the defence strategy, completed cross-examination, access to evidence or ability to produce witnesses?

Which witnesses, if any, should be recalled or further examined, and what additional evidence is material?

Would a reasonable adjournment cure the prejudice, or is a new trial necessary?

Have reasons been recorded for the decision, particularly where recall is refused or the trial is continued immediately?

These questions are not a substitute for the statutory text. They provide a structured way to apply the statutory safeguards to the facts of an individual case.

7. Analysis and Discussion

The alteration-of-charge framework reflects a deliberate compromise between procedural accuracy and trial fairness. A court must be able to respond to evidence that emerges during proceedings; otherwise, a technical defect in the charge could prevent adjudication of the real controversy. But flexibility is legitimate only where the accused is not deprived of a fair opportunity to answer the case.

The most important safeguard is an assessment of prejudice before the trial continues. The mere fact that the statute permits alteration until judgment does not mean that every alteration

can be implemented immediately. A change late in the trial may have a greater practical impact than a clarification made early in proceedings. Courts should therefore explain why the chosen procedural response is adequate in the circumstances.

The right to recall witnesses is particularly important where the new charge changes the questions that ought to be put in cross-examination. Without that opportunity, the accused may be required to defend a materially different allegation using a record created for another issue. At the same time, the statutory power to prevent vexatious or delaying recall protects the integrity and efficiency of the trial. The appropriate balance is a reasoned decision based on materiality, not a blanket acceptance or rejection of recall applications.

A further concern is that prejudice may be difficult to identify unless the defence is invited to explain the consequences of the proposed change. Courts should allow the parties to make focused submissions on the need for time, additional evidence and further examination. This helps the court choose a remedy that protects fairness without causing unnecessary delay.

8. Recommendations

First, courts should give a concise but reasoned order identifying the material that supports the alteration and explaining why immediate continuation, adjournment or retrial is appropriate. Secondly, the accused should receive a clear explanation of the altered charge and a reasonable opportunity to consult counsel. Thirdly, courts should consider recall requests by reference to the new issue and the specific purpose of further examination. Fourthly, where a party claims prejudice, the court should assess the practical effect on the defence rather than relying solely on formal compliance. Finally, lawyers should identify the precise prejudice alleged and propose a proportionate remedy, such as targeted recall of a witness, additional defence evidence or a short adjournment.

9. Conclusion

The power to alter or add a charge is essential to a criminal court's ability to decide a case in light of the material placed before it. Under Section 239 BNSS, this power remains subject to notice, explanation and an assessment of prejudice;

Section 240 strengthens the protection by providing for recall of witnesses and the calling of further material witnesses. The constitutional commitment to a fair trial requires these safeguards to operate in substance, not merely in form. The governing principle is neither

that charges can never be changed nor that they may be changed without consequence. Alteration is permissible when supported by the record and exercised judicially, but the accused must retain a meaningful opportunity to understand and answer the case. A reasoned assessment of prejudice, appropriate time to prepare, and effective access to relevant witnesses and evidence are indispensable to maintaining the legitimacy of criminal adjudication.

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