The

Crime Times

Vol.1 Issue 1 July, 2025

From Editors Desk

Dear Readers,

We are happy to announce that with this issue, we are starting publication of a newsletter which is dedicated explicitly to criminal laws of India including White-Collar crimes and Corporate Criminal Laws. In this newsletter we will be also focusing on prosecutions relating to tax laws such as prosecution for offences under Income Tax Act and SFIO, etc.

These are challenging times, considering the aggressive approach adopted by government in initiating criminal prosecutions under various Indian Criminal laws. Many organizations, whether small, mid or large-sized, as well as their officials, may be facing criminal prosecution challenges. Nowadays, it has been witnessed that there is a surge in cases relating to various types of crimes, including but not limited to economic offences, money laundering, income tax prosecutions, benami transactions, data & identity theft, data misappropriation, cybercrimes, information technology-related offences, cheating, forgery, extortion and sexual harassment-related offences.

We will put our endeavor to bring knowledge and information relating to trial, procedure and judgements in the simplest possible manner, so as to make the same easy to understand and comprehend. Knowing the law is the best thing as there is a proverb which says "enemy known is half the battle won."

We welcome your views on the newsletter. Kindly feel free to write to us. Please write us at vpdalmia@vaishlaw.com .

With Regards.

Vijay Pal Dalmia

VAISH ASSOCIATES ADVOCATES ESTD. 1971

DRIVEN BY ETHICS & HUMAN VALUES

50 Years of Excellence

In This Issue: -

PROCESS OF TRIAL OF CRIMINAL CASES IN INDIA

*The flow chart is indicative & for general guidance only.

India has a well-established statutory, administrative and judicial framework for criminal trials. Indian Penal laws are primarily governed by 3 Acts:

1. **The Code of Criminal Procedure, 1973 (Cr.P.C.) / The Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS);**
2. **The Indian Penal Code, 1960 (IPC) / The Bhartiya Nyaya Sanhita, 2023 (BNS);**
3. **The Indian Evidence Act, 1872 (IEA) / The Bharatiya Sakshya Adhiniam, 2023 (BSA)**

Cr.P.C. / BNSS is a comprehensive and exhaustive procedural law for conducting a criminal trial in India, incuding the manner for collection of evidence, examination of witnesses, interrogation of accused, arrests, safeguards and procedure to be adopted by Police and Courts, bail, process of criminal trial, method of conviction, and the rights of the accused for a fair trial. The procedure for a criminal trial in India, is primarily, except as otherwise provided, governed by The Code of Criminal Procedure, 1973 (Cr.P.C.) / The Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS). IPC / BNS is the primary penal law of India, which is applicable to all offences, except as may be provided under any other law in India. IEA / BSA is a detailed treaty on the law of "evidence", which can be tendered in trial, manner of production of the evidence in trial, and the evidentry value, which can be attached to such evidence. IEA also deals with the judicial presumtions, expert and scientific evidence. There are certain other laws, which have been enacted to deal with criminality in special circumstances.

It is also important to note that India follows the adversarial system, where generally the onus of proof is on the State (Prosecution) to prove the case against the accused, and until and unless the allegation against the accused are proved beyond reasonable doubt, the accused is presumed to be innocent. In certain exceptional cases, which may relate to terrorism, etc., the onus of proof has been put on the accused person, who claims to be not guilty.

India has a highly developed criminal jurisprudence and prosecution system, supported by judicial precedents, however, there may be certain issues or concerns relating to the execution of the same by Police and implementation by Judiciary. The courts in India, particularly High Courts and Supreme Court have been proactively guarding the rights of the accused. Even Article 21 of the Constituion of India has been interpreted in a highly dynamic manner to protect the rights, life and liberty of the citizens, by also incorporating the principles of natural justice.

By the flowchart hereinbelow, an attempt is being made to make the reader briefly understand the process of criminal investigation and trial in India, as a lot of foreign companies and Ex-pats are coming to India, and due to unfortunate circumstances, they may, at times find themselves embroiled in unnecessary criminal cases.

To appreciate the process of Indian criminal law, it is necessary that to understand following important terminology:

1. **Bailable Offence,** means an offence, which has been categorized as bailable, and in case of such offence, bail can be claimed, subject to fulfillment of certain conditions, as a matter of right under Section 436 of the Cr.P.C / 478 BNSS. In case of bailable offences, the Police is authoised to give bail to the accused at the time of arrest or detention.

2. **Non-bailable Offence**, means an offence in which the bail cannot be granted as a matter of right, except on the orders of a competent court. In such cases, the accused can apply for grant of bail under Section 437 and 439 of the Cr.P.C / 480 and 483 of BNSS. It is important to note that the grant of bail in a non-bailable offence is subject to judicial discretion of the Court, and it has been mandated by the Supreme Court of India that "Bail, not Jail" should be the governing and guiding principle.

3. **Anticipatory Bail**, under Section 438 of the Cr.P.C. / 482 BNSS, means that a person who apprehends arrest on a wrong accusation of committing a non-bailable offence, can apply before a competent court for a direction to police to immediately release such a person on bail in the event of arrest. However, the grant of anticipatory bail is discretionary and dependant on the nature and gravity of accusations, the antecedents of the applicant and the possibility of the applicant fleeing from justice.

4. **Cognizable Offence/case**, has been defined under Section 2(c) of Cr.P.C. / 2(1)(g) of BNSS, as an offence/case in which a Police Office can arrest without a warrant.

5. **Non-cognizable Offence/case**, has been defined under Section 2 (l) of Cr.P.C. / 2(1)(o) of BNSS, as an offence/case in which a Police Officer has no authority to arrest without a warrant.

6. Whether an offence/case is **bailable or not bailable**, and **cognizable or non-cognizable**, has been qualified under the 1st Table of the 1st Schedule of Cr.P.C./ First Schedule of BNSS, which relate to the offences under IPC.

7. **F.I.R (first information report),** is formal recordal of a complaint, by police in case of commission of a cognizable offence, and can be considered as a first step in the process of the investigation of a cognizable offence by Police.

8. The Table II of the 1st Schedule of Cr.P.C./ BNSS, gives a general guideline to determine whether an offence is bailable, non-bailable, cognizable or non-cognizable. The criteria in the table below, is applicable in those cases which are silent on this aspect. For easy understanding, the following criteria may be understood:

Offence	Cognizable or Non-Cognizable	Bailable or Non-bailable
Punishable With Imprisonment For • Less Than 3 Years or with fine only	Non-cognizable	Bailable
Punishable With Imprisonment For • 3 Years or more	Cognizable	Non-Bailable

9. The criminal investigation process and prosecution mechanism in India, can be started in any of the following manner:

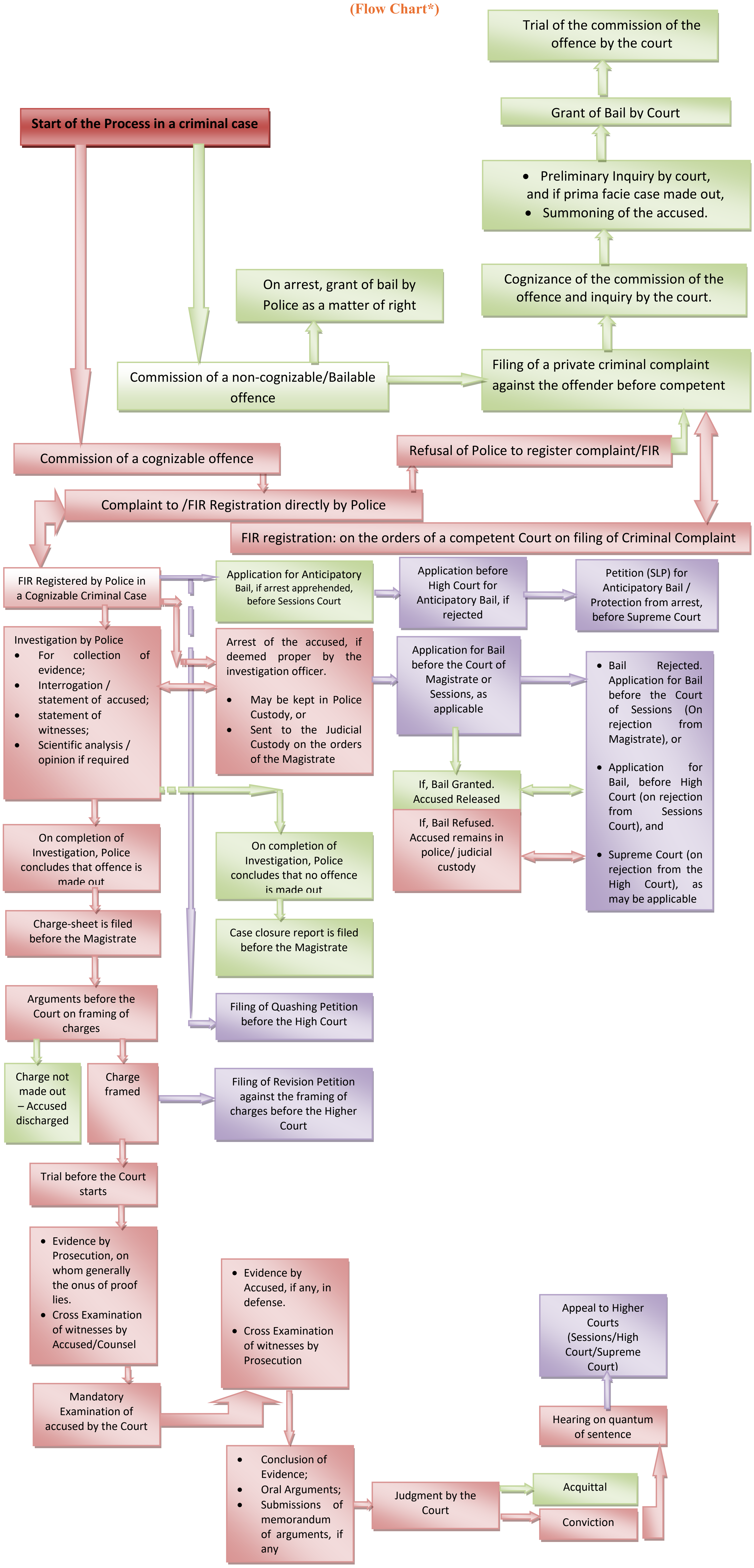
   a. On complaint /reporting /knowledge of the commission of a cognizable offence, any police officer, even without the orders of a Magistrate, can investigate the cognizable case. [Section 156 (1) of the Cr.P.C. / 175 of BNSS]

   b. In case of failure or inaction of a police officer to investigate a cognizable offence, a criminal complaint can be filed before a Magistrate under Section 190 of Cr.P.C./ 210 of BNSS, for taking cognizance of such offence, and on such complaint, the Magistrate himself can take cognizance of the case and do the enquiry, or in the alternative under Section 156 (3) of the Cr.P.C. / 175(3) of BNSS, order Police to register an F.I.R and investigate the offence.

   c. In case of non-cognizable offence, Police is not obliged to investigate, and the judicial process can be started by filing a criminal complaint before the competent court, under Section 190 of the Cr.P.C. / 210 of BNSS.

PROCESS OF TRIAL OF CRIMINAL CASES IN INDIA

(Flow Chart*)



REGISTRATION OF FIR
(FIRST INFORMATION REPORT)

As per Section 154 Cr.P.C./ 175 of BNSS it is provided that it is the duty of the Police Officer to lodge the FIR, if the information discloses the commission of a cognizable offence; thus, in respect of any cognizable offence for lodging the FIR is mandatory for the in-charge of the police station concerned.

The Five Judges' Bench of the Hon'ble Apex Court in Lalita Kumari vs. Government of Uttar Pradesh and others reported in MANU/SC/1166/2013 : (2014) 2 SCC 1, having considered a catena of the judgments, held that the FIR is a pertinent document in the criminal law procedure of our country and its main object from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities, is to obtain information about the alleged criminal activity so as to be able to take suitable steps.

The Hon'ble Apex Court summarized the law as follows:

i) Registration of FIR is mandatory under Section 154 Cr.P.C., if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

Section 154 Cr.P.C./ 175 of BNSS. deals regarding Police Officer's power to investigate in cognizable offence; as per section the in-charge police station have a power to investigate the matter without the order of the Magistrate in a cognizable offence; as per sub-Section 3 of Section 156 Cr.P.C., any Magistrate empowered under section 190 may order such an investigation as above mentioned. Section 190 Cr.P.C. deals with the power of the Magistrate for taking cognizance.

CAN ACCUSED IN CRIMINAL CASE SEEK EXEMPTION FROM PERSONAL APPEARENCE EVEN BEFORE APPEARING IN PERSON IN COURT OR FURNISHING BAIL BONDS?

In criminal cases, pursuant to the issuance of the summons to the accused by the court, the accused appears before the Court and seeks bail in non-bailable offences or directly furnishes bail bonds in bailable offences up to the satisfaction of the Court. After securing bail and furnishing of bail bonds, an accused is required to appear before the court on each date of hearing. If an accused is not appearing before the Court on any date of hearing, an application seeking exemption from personal appearance is required to be filed on behalf of the accused stating the grounds for not appearing before the Court.

On the application of the accused seeking permanent exemption from personal appearance till further orders, the Court has the discretion to grant exemption to the accused from personally appearing on each date of hearing. In such cases, the accused is exempted from appearing in person before the Court on every date of hearing and the presence of the counsel of the accused is considered enough. Till the specific order for the presence of the accused is not passed, the accused is exempted from personal appearance.
The question herein is whether can accused seek permanent exemption from personal appearance till further orders of personal appearance by the court even on the first date of hearing through his counsel without appearing in person in the court and without furnishing bail bonds/ securing bail.

Section 317 of Code of Criminal Procedure, 1973 ("Cr.P.C.")/ Section 355 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNNS") deals with the power of the Court to proceed with inquiry or trial in the absence of accused. The relevant extract of the Section is reproduced herein below:

> ***317. Provision for inquiries and trial being held in the absence of accused in certain cases.—(****1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.*
>
> *(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be re corded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up for tried separately."*

In Section 355 of the BNNS, an explanation, i.e., personal attendance of the accused includes attendance through audio video electronic means, has been inserted which is not present in Cr.P.C.

As per Section 317 of the Cr.P.C./ Section 355 of the BNNS, the Court in the interest of justice can proceed with the inquiry or trial in the absence of accused. The said provision does not impose any restriction on the Court from exercising such discretion only after any particular stage.

In the case of **Bhaskar Industries Ltd. vs. Bhiwani Denim and Apparels Ltd. and Ors.,** MANU/SC/0489/2001, the Hon'ble Supreme Court while dealing with the question of granting personal exemption to the accused held that the magistrate can dispense with the personal appearance of an accused even throughout the matter.

The relevant extract from the judgment is as under:

> *It is within the powers of a magistrate and in his judicial discretion to dispense with the personal appearance of an accused* ***either throughout or at any particular stage of such proceedings in a summons case, if the magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations to him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice.*** *However, the magistrate who grants such benefit to the accused must take the precautions enumerated above, as a matter of course. We may reiterate that when an accused makes an application to a magistrate through his duly authorised counsel praying for affording the benefit of his personal presence being dispensed with the magistrate can consider all aspects and pass appropriate orders thereon before proceeding further.*

In the case of **Larsen and Toubro Ltd., Mumbai and Ors. vs. Anand Bangad and Ors.,** MANU/MP/1056/2002, the Hon'ble High Court of Madhya Pradesh set aside the Session Court's order wherein the Sessions Court upheld the Trial Court's order granting exemption from personal appearance to the accused persons and allowed them to appear through their pleader/counsel but directed the accused persons to appear before the Trial Court for executing bail bonds and personal bonds.

While setting aside the order of the Sessions Court, the Hon'ble High Court relied upon the judgment of the Hon'ble Supreme Court in the case of Bhaskar (supra) wherein the Apex Court held that if the magistrate finds that insistence of personal appearance of the accused persons would itself inflict enormous suffering or tribulation on them and the comparative advantage would be less, the Magistrate can dispense with the personal appearance. The Hon'ble High Court also considered that the accused persons are based in Mumbai and for appearing in person before the Court they have to travel to Ujjain at their own costs which would lead to loss of work and money and such loss is not only of the citizen but also of the Country.

In the case of **V.S. Reddy vs. Excel Glasses Ltd. and Ors.**, MANU/KE/1367/2010, the Hon'ble Kerala High Court set aside the order passed by the Magistrate dismissing the application of the accused for personal exemption on the pretext that the accused didn't appear before the Court and the personal attendance of the Petitioner to obtain the bail is required.

While setting aside the order of the Magistrate, the Hon'ble High Court perused section 317 of the Cr.P.C. and held as under:

"Having gone through the above provisions, I fail to find that the accused can apply for exemption from personal attendance only after executing a bail bond. Even before executing a bail bond, in the event there are sufficient reasons, the accused is entitled to apply for exemption from personal appearance."

Further, the Hon'ble High Court held that in appropriate cases, the Magistrate can allow an accused to make even the first appearance through counsel. The High Court also observed that in the case in hand the Magistrate ought to have considered the petition filed by the Petitioner on merits, irrespective of the fact that he didn't execute the bail bond.
In view of the above cases, it is apparent that the Court has the power to grant permanent exemption from personal appearance to the accused even when an accused has not appeared in person before the Court or furnished bail bonds/ secured bail. However, while exercising such discretion, the Court must satisfy itself that there are sufficient grounds in the interest of justice for allowing such request of the accused and record such grounds.

NOTICE TO ACCUSED & WITNESSES BY POLICE IN INDIA : SUPREME COURT REINFORCES SAFEGUARDS FOR ARREST PROCEDURES AND UNDERTRIAL RIGHTS

In a significant development in the ongoing case of *Satender Kumar Antil v. CBI & Anr. (Miscellaneous Application No. 2034/2022 in MA 1849/2021 in SLP(Crl) No. 5191/2021)*, the Supreme Court of India has issued critical directives aimed at strengthening procedural safeguards for undertrial prisoners and ensuring compliance with statutory requirements under the Code of Criminal Procedure (CrPC) and the newly introduced Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 for issuance of NOTICE to ACCUSED and WITNESSES.

The Supreme Court addressed widespread concerns related to the improper issuance of notices under Section 41-A of the CrPC and the corresponding Section 35 of the BNSS, especially through non-statutory modes like WhatsApp and email.

The Court expressed concern over the increasing use of WhatsApp and other electronic means to serve notices under Section 41-A of the CrPC. The Court reiterated that notice must be served personally, in strict accordance with statutory provisions.In response to the issues raised, the Supreme Court issued the following binding directives:

- **Service of Notice:** All States and Union Territories (UTs) must issue Standing Orders mandating that notices under Section 41-A CrPC / Section 35 BNSS be served only through recognized modes, excluding WhatsApp and other electronic platforms. It was held that all the States/UTs must issue a Standing Order to their respective Police machinery to issue notices under Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 only through the mode of service as prescribed under the CrPC, 1973/BNSS, 2023. It has been made amply clear that service of notice through WhatsApp or other electronic modes cannot be considered or recognised as an alternative or substitute to the mode of service recognised and prescribed under the CrPC, 1973/BNSS, 2023.

It has been also directed by the Supreme court that all the States/UTs while issuing Standing Orders to their respective Police machinery relating to Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 13 must be issued strictly in accordance with the guidelines issued by the Delhi High Court in Rakesh Kumar v. Vijayanta Arya (DCP) & Ors., 2021 SCC Online Del 5629 and Amandeep Singh Johar v. State (NCT Delhi), 2018 SCC Online Del 13448, both of which were upheld by this Court in Satender Kumar Antil v. CBI & Anr. (2022) 10 SCC 51.

It has been also held that States/UTs must also directed to issue similar Standing Orders for service under Sections 160 and 175 CrPC (Sections 179 and 195 BNSS respectively).

This landmark order underscores the judiciary's commitment to procedural fairness and the protection of fundamental rights. The directive to uphold statutory service procedures and introduce institutional compliance mechanisms is expected to bring greater discipline and accountability to criminal justice administration across India.

SERIOUS FRAUD INVESTIGATION OFFICE (SFIO) IN INDIA

The Serious Fraud Investigation Office (SFIO) is a specialized investigative agency under the Ministry of Corporate Affairs, established to tackle serious corporate frauds. It was initially formed by executive order in 2003 (post-Stock Market Scam of 2001) and lacked clear statutory powers under the Companies Act, 1956. The Companies Act, 2013 ("the Act") gave SFIO statutory status and robust powers to investigate fraud in companies.

Section 211 of the Companies Act, 2013 formally establishes the SFIO as a multi-disciplinary organization for investigating corporate frauds.

- **Constitution:** The SFIO is headed by a Director (at least of Joint Secretary rank) and comprises experts in banking, corporate affairs, taxation, forensic auditing, capital markets, IT, law, etc., all appointed by the Central Government. This reflects the complex, multi-faceted nature of corporate fraud investigations.

- **Continuity:** The section also provided continuity by deeming the pre-2013 SFIO (set up via Government Resolution in 2003) as the SFIO under the new Act until the new office was formally established.

Assignment of Investigations: Section 212 of the Act empowers the Central Government to assign investigations into a company's affairs to the SFIO. Importantly:

- **Triggering an SFIO Investigation:** The Central Government "may, by order," assign a case to SFIO if it "is of the opinion" that an SFIO probe is necessary, based on one of the following grounds as per Section 212(1):

(a) receipt of a report from the Registrar or an inspector (under Sec. 208),
(b) a company's own special resolution that its affairs require investigation,
(c) public interest, or
(d) request by any Department of Central/State Government.

The Government's order must record the necessity of an SFIO investigation, and the formation of this "opinion" is a jurisdictional duty – courts have held that an order without a proper opinion lacks merit. Once an SFIO investigation is ordered, no other agency may investigate the case under the Companies Act – any parallel probes by other agencies for offences under the Act must cease and transfer their records to SFIO. However, agencies like CBI or ED can still investigate distinct offences under other laws such as bribery or money laundering on the same facts.

- **Investigative Procedure:** Upon assignment, the Director, SFIO designates Investigating Officers (IOs) who have all the powers of an inspector under Chapter XIV (Investigations) of the Act. Section 217 specifically empowers an inspector to summon and examine persons on oath (including present or past officers, employees, agents) and use their statements in evidence. This is a significant power, as statements given to SFIO inspectors on oath can be used against the examinee, unlike statements to police which are inadmissible against the accused. The company's officers and employees must cooperate, providing all information and documents required by the IO.

- **Exclusive Jurisdiction & Reporting:** Section 212(2) reiterates the exclusivity of SFIO for that case. The SFIO is to conduct the investigation "in the manner provided and submit its report to the Central Government within the period specified in the order. Notably, there is no fixed statutory time-limit for SFIO investigations – any deadline in the Government's order is directory, not mandatory, as held by the Supreme Court in SFIO v. Rahul Modi (AIRONLINE 2019 SC 196).

- The SFIO can also be directed to submit interim reports (per Sec.212(11)). Upon completion, the final investigation report goes to the Central Government (Sec. 212(12)), and any person concerned is entitled to obtain a copy of this report by applying to the court.

- **Central Govt's Action on Report:** After examining the SFIO report and taking legal advice, the Central Government may direct SFIO to initiate prosecution against the company and officers/employees involved (Sec. 212(14)). The law also provides that if the investigation finds that fraud has taken place and certain persons have obtained undue benefit, the Government can approach the National Company Law Tribunal for return of such benefits (Sec. 212(14A)).

- **Inspector's Search & Seizure Powers:** Although not in Sec.212 itself, the SFIO's inspectors wield powers under related provisions (since Sec.212(4) invokes Chapter XIV procedures). Section 220 authorises an inspector, during the investigation, to enter and search premises and seize documents if there are reasonable grounds to believe that company records

may be destroyed or altered. The inspector can take possession of books and papers (after allowing the company to make copies) and must return them once the investigation concludes. Searches/seizures under Sec.220 must comply with CrPC provisions on search/seizure. Additionally, Sec.221 allows freezing of assets by the Tribunal on a reference by the Government during investigation, and Sec.212(17) mandates information-sharing between SFIO and other agencies (reciprocal cooperation).
In summary, Sections 211 and 212 of the Companies Act, 2013 create the statutory framework for SFIO – establishing its existence and laying out the procedure for SFIO investigations, from initiation to report. These provisions, effective from 2014 (with arrest powers added in 2017), transformed SFIO into a powerful investigative body with exclusive jurisdiction over serious corporate fraud cases.

PREVENTION OF MONEY LAUNDERING ACT, 2002 (PMLA)

The Prevention of Money Laundering Act (PMLA), 2002 is a crucial legislative framework in India aimed at combating money laundering and preventing the misuse of financial systems for illicit activities. Enacted to curb the generation and circulation of black money, PMLA is instrumental in ensuring financial transparency and regulatory compliance in the economy.

The primary objectives of PMLA are:

1. Prevention and Control of Money Laundering

PMLA is designed to prevent the process of money laundering, where illicit funds generated from illegal activities are disguised as legitimate earnings. The law provides stringent measures to track and curb such practices.

2. Confiscation and Seizure of Proceeds of Crime

One of the key provisions of PMLA is the power to attach, seize, and confiscate assets acquired through money laundering. This ensures that criminals do not benefit from illicit financial gains.

3. Punishment for Money Laundering Offenses

PMLA establishes a strict legal framework for penalizing those involved in money laundering activities. Offenders can face rigorous imprisonment and heavy fines.

4. Strengthening the Financial System Against Illicit Transactions

The act aims to safeguard the integrity of financial institutions by mandating due diligence, record-keeping, and reporting of suspicious transactions by banks, financial intermediaries, and other regulated entities.

5. Compliance with International Standards

India, as a member of the Financial Action Task Force (FATF), has implemented PMLA to align with global standards in combating money laundering and terrorist financing.

6. Prevention of Funding to Illegal Activities

PMLA ensures that funds are not diverted to illegal activities such as terrorism, drug trafficking, human trafficking, and other organized crimes.

7. Establishment of Specialized Investigation Agencies

The law provides for the establishment of enforcement agencies such as the Enforcement Directorate (ED) to investigate and prosecute money laundering cases.
The scope of the Prevention of Money Laundering Act is extensive, covering a wide range of financial and economic crimes.

Applicability Across Individuals and Entities

PMLA applies to a broad range of individuals and organizations, including:

- Individuals
- Companies & Corporations
- Banks & Financial Institutions
- Real Estate Agents & Builders
- Stock Brokers & Investment Firms
- Crypto Exchanges & Virtual Asset Service Providers (VASPs)

Under Section 3, money laundering is defined as:

"Whosoever directly or indirectly attempts to indulge or knowingly assists or is a party to the activity connected with the proceeds of crime, including its concealment, possession, acquisition, or use, shall be guilty of money laundering."
It is important to note that Money laundering offence extends beyond direct involvement and includes aiding, abetting, and facilitating illicit transactions. Possession of criminal proceeds with knowledge is sufficient to establish an offense. The definition has been broadly interpreted by courts to include layering and integrating illicit funds into legitimate financial systems.

In Kartikeya Sharma v. Union of India[1], The Delhi High Court ruled that indirect involvement, such as facilitating money transfers through shell companies, falls under the ambit of Section 3 of PMLA.

In *Vijay Madanlal Choudhary v. Union of India*[2], the Supreme Court upheld the stringent provisions of PMLA and ruled that the offense of money laundering is independent of the scheduled offense.

CASE LAW

SECTION 138 OF THE NEGOTIABLE ACT & RECOURSE TO THE VICTIM

Celestium Financial v. A. Gnanasekaran & Ors., 2025 INSC 804

In a significant ruling, the Hon'ble Supreme Court in Celestium Financial v. A. Gnanasekaran & Ors., 2025 INSC 804, held that a complainant in a cheque dishonour case under Section 138 of the Negotiable Instruments Act, 1881 ("NI Act") qualifies as a 'victim' under Section 2(wa) of the Code of Criminal Procedure, 1973 ("Cr.P.C"). As a result, if a

[1] (2015) SCC OnLine Del 4521
[2] (2022) SCC OnLine SC 929

complaint under Section 138 of the NI Act is dismissed by the Magistrate or if inadequate compensation is awarded, the complainant is now entitled to directly file an appeal, without seeking prior leave of the appropriate High court.

Legal Position Prior to the Judgment

Before this ruling, if a Magistrate dismissed a complaint under the NI Act and acquitted the accused, the complainant's only remedy was to seek leave from the High Court under Section 378(4) of the Cr.P.C. Only upon grant of such leave could an appeal be entertained. If leave was denied, the complainant had no further recourse to appeal the acquittal. The only recourse left to the complainant, in such cases, was to challenge the High Court's refusal to grant leave by filing a Special Leave Petition ("SLP") before the Supreme Court.

Impact of the Judgment

Following this judgment, a complainant in a cheque dishonour case whose complaint is dismissed or who receives inadequate compensation can now directly file an appeal before the Court of Session.

CAN A CORPORATE ENTITY BE TREATED AS VICTIM & RIGHT TO APPEAL

Asian Paints Limited v. Ram Babu & Another, 2025 INSC 828

In a significant ruling, the Hon'ble Supreme Court in Asian Paints Limited v. Ram Babu & Another, 2025 INSC 828, clarified that a complainant company qualifies as a "victim" under Section 2(wa) of the Code of Criminal Procedure, 1973 (CrPC) and can directly appeal an acquittal under Section 372 of the CrPC.

The High Court had wrongly concluded that only the authorized individual who had actually filed the complaint on behalf of the company could only maintain such an appeal. The Supreme Court overruled this, affirming that the company itself having suffered reputational and financial harm, is the real victim and can pursue an appeal independently.

Importantly, the Court reiterated that when a complainant company qualifies as a "victim" under Section 2(wa), there is no requirement to seek prior leave appeal under Section 378 of the CrPC and the order of acquittal can be directly assailed under Section 372 of the CrPC.

VALIDITY OF PHONE RECORDINGS IN MATRIMONIAL DISPUTE

Vibhor Garg vs. Neha, 2025 INSC 829

In a significant ruling, the Hon'ble Supreme Court in Vibhor Garg vs. Neha, 2025 INSC 829, held that secretly recorded phone calls between spouses are admissible as evidence in divorce proceedings, thereby settling the law amidst conflicting judgments by various High Courts.

In arriving at this conclusion, the Court observed that under Section 122 of the Indian Evidence Act, what is barred is the disclosure of a communication made by one spouse to the other through testimony in court. However, the communication itself as captured through other means is not inadmissible. The Court likened the recording device (such as a phone) to an eavesdropper, noting that the evidence obtained thereby does not fall within the scope of the statutory bar.

The Court further clarified that Section 122 contains an exception and it does not apply to litigation between the spouses. Thus, in matrimonial disputes, the protection ordinarily afforded to spousal communications is not available.

Additionally, the Court recognized that while the right to privacy may, in certain situations, be enforceable even against non-State actors, the statutory exception under Section 122 constitutes a valid legislative mechanism. In this context, the right to a fair trial also rooted in Article 21 of the Constitution, prevails over the right to privacy, which also emanates from Article 21.

Notably, the Court remarked:

"If the marriage has reached a stage where spouses are actively snooping on each other, that is in itself a symptom of a broken relationship and denotes a lack of trust between them."

The Court emphasized that before a recorded conversation can be admitted into evidence, the three-fold test of relevance, identification, and accuracy must be satisfied.

However, the mere fact that a conversation was recorded without the consent or knowledge of the speaker does not, by itself, render the evidence inadmissible.

We may be contacted at

Vaish Associates Advocates
11th Floor, Mohan Dev Building, 13, Tolstoy Marg, New Delhi-110001, India
Email: vpdalmia@vaishlaw.com

Editor in Chief: Vijay Pal Dalmia, Advocate (vpdalmia@vaishlaw.com)
Editorial Team: Rajat Jain, Advocate, Aditya Dhar, Advocate, Ankush Mangal, Advocate