

## **PROCESS TO COMPEL APPEARANCES & PRODUCTION OF THINGS**

A very recent legislative enactment is the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which has drastically changed the criminal procedure laws of India, replacing the Code of Criminal Procedure, 1973 (CrPC). One of the critical areas under the BNSS is the procedures to enforce a person's appearance in court. Compelling a person's appearance in court is fundamental for fair trial proceedings and BNSS offers the specific procedures for it.

### **1. Issuance of summons**

Under section 63 of BNSS, summons is the initial procedure under which an appearance before court is guaranteed. Actually, it is a formal order requiring a person to appear before a judge at a specific time and place. Normally, the accused persons, witnesses, or any other party involved in the case are issued with summons for purposes of appearing before court in the event the court considers them necessary for proper conduct of the case. Under BNSS, summons can be served through electronic means such as email or via registered post, such that it is delivered to the concerned individual.

### **2. Issuance of warrants**

In case a person fails to comply with the summons or in case the court feels that the individual is likely to evade appearance, the BNSS makes provision for warrants. There are two kinds of warrants:

- **Bailable Warrant:** This warrant lets the person post bail in case the person agrees to appear before the court.

- **Non-Bailable warrant:** When it would be assumed that the person may abscond from the proceedings, a non-bailable warrant is issued by the court. It is a more serious process and the person is produced before the court after the arrest without providing him with any emergency bails.

The BNSS places importance on the use of warrants with restraint, considering that individual rights should be balanced against the need for effective judicial processes.

### **3. Attachment of property (Section 85 of BNSS)**

As a further step to compel appearance, BNSS permits the court to issue orders for the attachment of an individual's property. If a person fails to respond to both summons and warrants, their property may be seized or attached by law enforcement, essentially freezing their assets until they comply with the court's orders.

### **Process to Compel the Production of Things (S.94 - S.110)**

Documents and other relevant materials for investigation should be available to the agencies conducting the proper proceedings of inquiry, investigation and trial. For that purpose, the sanhita provides for summons to produce things. If this fails, or circumstances demand so, there are also provisions for warrants and other coercive methods to obtain relevant materials. Apart from that, this chapter also deals with obtaining evidence and other materials from areas outside the jurisdiction of the court and from foreign states.

- I. **Section 94** of BNSS, corresponding to Section 91 of Cr.P.C., talks about the circumstances in which a police

officer or a court may issue summons for the **production of any document** or a thing necessary for investigation, inquiry or trial or other proceeding under this sanhita.

**Who Can Ask:**

The documents or things can be requested to be produced either at the request of the court or any officer in charge of a police station.

**How to Produce:**

The court shall **issue a summon** for the production of any document. Even the accused can ask for such production through an application to the court after framing of the charges. (for eg. document of prosecution for preparation of defense) The officer in charge of the police station shall ask the person in whose possession the document or thing may be to produce that thing, or to attend and produce that thing through **a written order**.

Section 94(2) tells us that if any person is required to attend to only produce a document, he can do so by getting that document produced instead of personally attending to produce it.

**To Produce What:**

The things that can be required to be produced are documents, electronic communication including communication devices and other material objects that may be important for the proceedings. It means a physical object and not intangible objects. Case diary, and records in possession of prosecution have been ruled to come under things.

***Section 94(3) tells us that there are two exceptions to this rule.***

1. Any evidence as to the unpublished records of affairs of the state and confidential official communications which can affect public interests (Section 129 and 130 of the BSA) need not be produced under Section 94.
2. This section also does not apply to letters, postcards or other documents or parcels or things (telegraph has been removed in BNSS). These documents and things which are under the custody of postal authority are covered under Section 95.

Not following the summons to produce documents under this section will lead to penal consequences under Section 388 of the BNSS. (Imprisonment or committal of person refusing to answer or produce documents)

## **II. Section 95: Procedure as to Letters**

This section corresponding to Section 92 of the Cr.P.C., is to be read as a whole with Section 94 of BNSS. This section empowers investigating officers to direct the production of documents, parcels or things under the custody of postal authorities. That document, parcel or thing must be under the control of postal authority when the order was made.

Under Section 95(1)

If in the opinion of the District Magistrate, Chief Judicial Magistrate, Court of session or High Court a thing in the custody of postal authority is needed, it will direct the postal authority to deliver such a thing to a person. This person is usually nominated by the magistrate or the court. Under Section 95(2), if any other magistrate, executive or judicial or a commissioner or a Deputy superintendent of police feels that he needs certain things from the postal authority for investigation or inquiry, he

can order the search and detention of such objects by directing the postal authority. This order of detention will be subject to further orders for delivery from either of the authorities mentioned in Section 95(1).

#### **4. Search Warrants**

A search-warrant is a written authority given to a police officer or other person by a competent magistrate or a court for the search of any place either generally or for specific things or for persons wrongfully detained. It is a coercive method generally used after the court has used summons without effect.

Search warrants are issued in six circumstances under this code. They are:-

1. **Section 96(1)(a)** - When a person who has possession of documents refuses to deliver it after being served with summons under Section 94 or 95.
2. **Section 96(1)(b)** - When a document is important for any stage of the proceedings but the court is unaware of who has the possession of the document.
3. **Section 96(1)(c)** - When the court considers that the document will be found only after a general search and inspection
4. **Section 97(1)** - When the authorities have reason to believe that a place is being used for deposit or sale of stolen property or objectionable articles
5. **Section 98(1)** - When there is a need to search a place for forfeited books or documents or their copies
6. **Section 100** - When the authorities have cause to believe that someone is imprisoned in a way that their detention constitutes an offence.

## **5. Proclamation for absconding persons (section 84 of BNSS)**

This section states that if in the opinion of the court, a person against whom a warrant has been issued, has absconded or is concealing himself so that the warrant cannot be executed, then the court can publish a written proclamation mandating such person to appear at a specified place & time. Such specified time cannot be less than 30 days from the date of the issuance of the proclamation.

## **Conclusion**

The BNSS has evolved the compulsion to appear, electronic progress, and procedure clarity. Summons, warrants, attachment of property, and proclamation have been made as a structure by BNSS. Such a structure respects individual rights but enhances judicial authority. Gradual escalation in steps ensures that a person gets a fair opportunity to comply before he or she faces the more serious consequences, which serve the purpose of both law enforcement and the dispensation of justice effectively.