

CHARGE – JOINDER OF CHARGE

Introduction:

In the context of the BNSS (Bharatiya Nagarik Suraksha Sanhita), the charge and joinder of charge typically refer to legal procedures involving the framing of charges against individuals and the consolidation of multiple charges into a single proceeding.

Sections 234 to 247 of Chapter 18 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) deal with the topic of Charge which also includes the provisions of the Joinder of Charge. Earlier these provisions were covered under sections 211 to 224 of the Criminal Procedure Code, 1973 which is now repealed by the BNSS, 2023.

Definition of Charge:

A charge under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is a formal accusation of a crime made against an individual.

SECTION 2(c) of the Bharatiya Nagarik Suraksha Sanhita, 2023:

“**Charge**” includes any head of the charge when the charge contains more heads than one.

Joinder of Charge:

The Joinder of charge is the legal process of combining multiple charges into a single trial.

Provisions of BNSS related to Charge - Chapter XVIII (18)

234. Contents of charge.

235. Particulars as to time, place, and person.

236. When the manner of committing offense must be stated.

237. Words in charge are taken in the sense of law under which offense is punishable.

238. Effect of errors.

239. The court may alter the charge.

240. Recall of witnesses when charge altered.

241. Separate charges for distinct offenses.

242. Offenses of the same kind within a year may be charged together.

243. Trial for more than one offense.

244. Where it is doubtful what offense has been committed.

245. When offense proved included in the offense charged.

246. What persons may be charged jointly?

247. Withdrawal of remaining charges on conviction on one of several charges.

Contents of Charge - Section 234 of BNSS:

(1) Every charge under this Sanhita shall state the offense with which the accused is charged.

(2) Specific Name of the Offence.

(3) The Definition of the Offence

(4) The law and section of the law

(5) The facts or particulars of the case.

(6) In the language of the Court.

(7) Any previous Conviction.

Particulars as to time, place, and person – Section 235 of BNSS:

It includes the particulars as to the time, place of the alleged offense, and person (if any) against whom; to give the accused the notice of the matter with which he is charged.

But this above-mentioned rule is not applied in the case of criminal breach of trust or dishonest misappropriation.

When the manner of committing offense must be stated - Section 236 of BNSS:

It is given in this section that the manner of committing the offense must be mentioned in the charge. Such as Cheating or Giving False Evidence.

Illustration:

1. If A is accused of cheating B . Then the charge must include how A cheated B.

Words in charge taken in the sense of law under which offense is punishable - Section 237 of BNSS:

The words used in the Charge should be mentioned or taken in the sense of law or statute under which the particular offense is punishable.

Effect of errors - Section 238 of BNSS:

This Section helps to protect the Justice when there is only a technical breach of rules. But it is necessary these errors should not be considered material unless they will mislead the accused.

This section 238 should be read with 510 of BNSS. The object of this section is to prevent the failure of justice.

The court may alter the charge - Section 239 of BNSS:

The Court has the power of addition or alteration of the charge but this alteration or addition should be made before the final judgment is

pronounced. The Matter altered or added should be read and explained to the required parties.

Recall of witnesses when charge altered - Section 240 of BNSS:

The section provides the provision of the recall, summon, and examination of the witnesses when the charge is altered by the court. It is also mentioned that the court also has the power to call any further witnesses whom the court may think to be material.

JOINDER OF CHARGE

The joining of charges under the BNSS (Bharat National Security Act), in other words, refers to the process of bringing together different charges or sins in respect of a single person in one trial. This may improve legal processes where there is a possibility of similar crimes being committed and prosecuted which may be good for the courts and judicial system.

GENERAL RULE UNDER SECTION 241 - Separate Charge for Distinct Offences

It provides that each different offense must have a distinct charge. Nonetheless, in certain instances, several limitations may apply, enabling the prosecution to combine multiple counts within one charging document.

EXCEPTIONS AS TO THE GENERAL RULE OF SECTION 241 When the Accused made an application to the Magistrate:

When the accused person, by a written application, requests the magistrate to have a single charge for all the offenses committed by such person, then the Magistrate thinks it fits orders to charge jointly. But it's also mentioned that such a person shall not be prejudiced thereby.

Offenses of the same kind within a year may be charged together: *Section 242 of BNSS*

(1) Where a person is alleged to have committed more than one offense of a similar nature within twelve calendar months commencing with the first to the last of such offenses, whether about the same or different persons, he may be prosecuted for and convicted for any number of the said offenses not exceeding five; at a single trial.

(2) Offences are classified as being of the same nature when the punishment that a convict would be subjected to is under the same specific section of the Bharatiya Nyaya Sanhita, 2023, or of some special or local law:

Provided that, for this section, an offense punishable under section 301 of the Bharatiya Nyaya Sanhita, 2023 shall be deemed to be an offense of the same kind as an offense punishable under section 303 of the said

Sanhita, and that an offense punishable under any section of the said Sanhita or any special law or local law which abets insurrection against this nation shall also be regarded as an offense of the same nature as the offending act when such act is itself an offense.

Trial for more than one offense - Section 243 of BNSS

(1) About a single transaction, wherein a series of acts are so connected that they are perceived to be one continuous act, it is possible for the same individual to commit several offenses and be indicted for and tried for every such offense in one trial.

(2) A person who has been charged under Subsection (2) of Section 235 or Subsection (1) of Section 242 of the Indian Penal Code with one or more of the crimes of criminal breach of trust or dishonest misappropriation of property, who has also been charged about that offense or those offenses with one or more of the offenses of falsification of accounts, which was committed to aid or hide the said offense or offenses, may be charged with and tried at one trial for, every such offense.

(3) If the alleged actions amount to an offense defined by two or more distinct provisions of any law within the jurisdiction at the time, the person charged with such actions may be charged with and tried at one trial for, all such offenses.

(4) Where several acts done by an accused, each of which is an offense or a number of them is an offense, are charged, because they form together a different crime, about the acts done an accused may be charged with, and tried in the same proceedings for the offense arising from the combining of such acts, as well as for any offenses arising from any one or more of such acts.

(5) Nothing in this section shall prejudice the provisions of section 12 of the Bharatiya Nyaya Sanhita, 2023.

Where it is doubtful what offense has been committed - Section 244 of BNSS

(1) In cases where the act or series of acts is of such nature that it is unclear which of several offenses the evidence adduced will sustain, the accused may be charged with all or any of those offenses and any

number of those charges may be tried at once; or he may be alternatively charged with the commission of all or any of the offenses alleged in the charge.

(2) In such circumstances, where the accused is charged with one offense and there is evidence that he has committed another offense of which a charge might have been brought under subsection (1), he may be found guilty of the offense that he is found to have committed even though he has not been charged with it.

What persons may be charged jointly - Section 246 of BNSS

In the following situations, individuals may be prosecuted and convicted jointly: -

(a) individuals who engaged in the same illegal activity during the same time frame; commission of acts that constitute the same transaction;

(b) Individuals who are suspected of committing a crime and those presumed to have helped commit or endorsed the crime;

(c) Individuals who are suspected to have committed a series of similar offenses of the same nature, as defined under section 242, with a time frame of twelve months;

(d) Individuals suspected to have committed different types of crimes but which took place as part of the same event;

(e) Individuals suspected to have committed an offense taking into account, theft, diversion under pretenses, defalcation, or dishonest infringement of trust and those suspected of providing facilitation or aiding in disposing or hiding any property alleged to have been dealt in, as a result of the crime committed, or of an offense referred to in respect of the last group;

(f) Individuals facing legal action for crimes listed under section 315 of the Bharatiya Nyaya Sanhita, 2023, and those included in the section, regarding stolen goods that were dealt with in one crime;

(g) individuals charged with any crime under Chapter XII of the Bharatiya Nyaya Sanhita, 2023 related to counterfeiting and/or about the commission of similar counterfeiting or abetment of attempted illegal or done acts related to such counterfeiting and it is provided that those provisions also apply to those charges contained in the beginning of this Chapter, To the extent possible”:

Provided that in the case of individual persons being found guilty of separate offenses which do not fall into the categories of cases included under this section, the Magistrate or Court of Session may upon written application of such individuals, if at all he or it is satisfied that such individuals would not suffer prejudice thereby and it is necessary in that regard, try all such individuals together.

Withdrawal of remaining charges on conviction on one of several charges - Section 247 of BNSS

When multiple limbs of charge are framed against the same accused and when one or more of such headed charges are found proven against him, the complainant or the prosecutor may – with the leave of the court – withdraw the balance of the charges or the court may of its motion suspend the proceedings on that charge or those charges and such withdrawal shall operate as a dismissal of such charge or charges, except where the dismissal is reversed, in which event, the said court (unless stayed by the court that overturned the dismissal) shall be allowed to continue with the investigation or trial of the charges that were withdrawn.

Section 245 of BNSS: When offense proved included in the offense charged.

Here in this section, it is said that when the minor offense is proved shall be included in the major offense which is charged.

Case Laws:

- 1. V. C. Shukla v. State:** The Supreme Court in the case of V. C. Shukla v. State (1979) held that the purpose behind framing charge is to give clear, unambiguous, or precise notice of the nature of accusation that the accused is called upon to meet in the course of a trial.
- 2. Balakrishna v. State** AIR 1958 Ker 283: It was held in this case that the framing of a proper charge is vital to a criminal trial, and it is a matter on which the judges should bestow the most careful attention.
- 3. Ranchhod Lal v. State of Madhya Pradesh** AIR 1964 : It was held in this case that failure to mention the particulars previously due to the nature of the information may not invalidate the proceedings.
- 4. Kailash Gir v. V. K. Khare** (1981) Cri LJ 1556, 1556 (MP): In this case, it was held that sections 215 and 464 of CrPc (now Section 238 and 510 of BNSS) read together lay down that whatever the irregularity in the framing of a charge, it is not fatal unless there is prejudice caused to the accused.