

Cyber Crime Offences in the domain of Bharatiya Nyaya Sanhita (BNS) – 2023



akshaya



Classification of Cyber Crime in the BNS, 2023 as **Organised Crime**



**Organised Crime defined as
per Sec. 111 (1) Bharatiya
Nyaya Sanhita (BNS) – 2023**

Sec. 111. (1) BNS:

Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, **economic offence, cyber-crimes**, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom:

- by any person or
- a group of persons
- acting in concert, singly or jointly,
- either as a member of an organised crime syndicate or
- on behalf of such syndicate,

by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute **organised crime.**

Explanation:

(i) “organised crime syndicate” means a **group of two or more persons** who, acting **either singly or jointly**, as a syndicate or gang indulge in any continuing unlawful activity;

(iii) “economic offence” includes **criminal breach of trust**, **forgery**, counterfeiting of currency-notes, bank-notes and Government stamps, **hawala transaction**, **mass-marketing fraud** or **running any scheme** to **defraud several persons** or doing any act in any manner with a view to defraud any bank or financial institution or any other institution or organization **for obtaining monetary benefits in any form.**

Punishment for Organised Crime

Sec. 111(2)(b) BNS: in any other case, be punished with imprisonment for a term which **shall not be less than five years but which may extend to imprisonment for life**, and shall also be liable to fine which **shall not be less than five lakh rupees**.

Cognizable. Non-bailable. Court of Session.

Sec. 111(3) BNS: Whoever abets, attempts, conspires or knowingly facilitates the commission of an organised crime, or otherwise engages in any act preparatory to an organised crime, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

Cognizable. Non-bailable. Court of Session.

Sec. 111(4) BNS: Any person who is a member of an organised crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

Cognizable. Non-bailable. Court of Session.

Sec. 111(5) BNS: Whoever, intentionally, harbours or conceals any person who has committed the offence of an organised crime shall be punished with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees:

Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

Cognizable. Non-bailable. Court of Session.

Sec. 111(6) BNS: Whoever possesses any property derived or obtained from the commission of an organised crime or proceeds of any organised crime or which has been acquired through the organised crime, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than two lakh rupees.

Cognizable. Non-bailable. Court of Session.

Sec. 111(7) BNS: If any person on behalf of a member of an organised crime syndicate is, or at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten years and shall also be liable to fine which shall not be less than one lakh rupees.

Cognizable. Non-bailable. Court of Session.



Petty Organised Crime defined as
per Sec. 112 (1) BNS

112. (1) BNS: Whoever, being a member of a group or gang, either singly or jointly, commits any act of **theft**, snatching, **cheating**, unauthorized selling of tickets, **unauthorized betting or gambling**, selling of public examination question papers or any other similar criminal act, is said to commit petty organised crime.

Explanation.—For the purposes of this sub-section "theft" includes trick theft, theft from vehicle, dwelling house or business premises, cargo theft, pick pocketing, **theft through card skimming**, shoplifting and theft of Automated Teller Machine.

Punishment for Petty Organised Crime

Sec. 112 (2) BNS: Whoever commits any petty organised crime shall be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine.

Cognizable. Non-bailable. Magistrate of the First Class.



Offences relating to Cheating



Definition of Cheating

Sec. 318 (1) BNS:

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Sec. 2 (9) BNS:

“fraudulently” means doing anything with the **intention to defraud** but not otherwise;

Sec. 2 (7) BNS:

“dishonestly” means doing anything with the intention of causing **wrongful gain** to one person or **wrongful loss** to another person;

CHEATING

[Definition : Section 318(1)]



If offender is part of a
group or a gang



Punishable as petty organised
crime under section 112(2) of
BNS

[Non-compoundable offence]



If offender is a lone wolf
(sole operator not part of any
group or gang)



Punishable under section
318(2)/318(3)/318(4)

{ offence under section 318(2)
is compoundable u/s 359(1) of
BNSS;

offence u/s 318(3) and 318(4)
are compoundable u/s 359(2) of
BNSS]

Punishment for Cheating

Sec. 318 (4) BNS:

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cognizable. Non-bailable. Magistrate of the First Class.

Definition of Cheating by Personation

Sec. 319 (1) BNS:

A person is said to cheat by personation if he cheats by **pretending** to be some other person, or by knowingly **substituting** one person for or another, or **representing** that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Punishment for Cheating by Personation

Sec. 319 (2) BNS:

Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Cognizable. Bailable. Any Magistrate.

Definition of Forgery

Sec. 336 (1) BNS:

Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Punishment for Forgery

Sec. 336 (2) BNS:

Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Non-Cognizable. Bailable. Magistrate of the First Class.

Punishment for Forgery for the purpose of Cheating

Sec. 336 (3) BNS:

Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cognizable. Non-bailable. Magistrate of the First Class.

Punishment for Forgery with the intention to harm the reputation

Sec. 336 (4) BNS:

Whoever commits forgery, intending that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Cognizable. Bailable. Magistrate of the First Class.

Punishment for Forgery of record of Court or of public register, etc.

Sec. 337 BNS:

Whoever forges a document or an electronic record, purporting to be a record or proceeding of or in a Court or an identity document issued by Government including voter identity card or Aadhaar Card, or a register of birth, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Non-cognizable. Non-bailable. Magistrate of the First Class.

Punishment for Forgery of valuable security, will, etc.

Sec. 338 BNS:

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with **imprisonment for life**, or with imprisonment of either description for a term which may **extend to ten years**, and shall also be liable to fine.

Non-cognizable. Non-bailable. Magistrate of the First Class.

Meaning of Forged document or electronic record

Sec. 340 (1) BNS:

A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

Punishment for Forged document or electronic record and using it as genuine.

Sec. 340 (2) BNS:

Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Cognizable. Bailable. Magistrate of the First Class.

Sexual Harassment defined-

Sec. 75 (1) BNS:

A man committing any of the following acts:—

- (i) physical contact and advances involving **unwelcome and explicit sexual overtures**; or
- (ii) a demand or request for **sexual favours**; or
- (iii) showing **pornography** against the will of a woman; or
- (iv) making **sexually coloured remarks**, shall be guilty of the offence of sexual harassment.

Punishment for Sexual Harassment

Sec. 75 (2) BNS:

Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may **extend to three years**, or with fine, or with both.

Cognizable. Non-bailable. Court of Session.

Punishment for Sexual Harassment

Sec. 75 (3) BNS:

Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cognizable. Non-bailable. Court of Session.

Punishment for Voyeurism

Sec. 77 BNS:

Whoever watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or **disseminates** such image shall be punished on first conviction with imprisonment of either description for a term which **shall not be less than one year**, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Cognizable. Bailable. Court of Session.

Explanations:

1.—For the purposes of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim’s genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

2.—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

Stalking defined-

Sec. 78 (1) BNS:

Any man who—

- (i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- (ii) **monitors the use by a woman of the internet, e-mail or any other form of electronic communication, commits the offence of stalking:**

Punishment for Stalking

Sec. 78 (2) BNS:

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Cognizable. Bailable. Any Magistrate.

Saving Clause under Stalking-

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

- (i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- (ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- (iii) in the particular circumstances such conduct was reasonable and justified.

Punishment for word, gesture or act intended to insult modesty of a woman.

Sec. 79 BNS:

Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object in any form, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

Cognizable. Bailable. Any Magistrate.

Definition of “Obscene”

Sec. 294 (1) BNS:

A book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, including display of any content in electronic form shall be deemed to be obscene:

- if it is lascivious or appeals to the prurient interest or
- if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

Punishment for publication & transmission of obscene material

Sec. 294 (2) BNS:

Anyone who commits an offence under this section for publication and transmission of obscene material including electronically; shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to five thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to ten thousand rupees.

Cognizable. Bailable. Any Magistrate.

Punishment for obscene acts

Sec. 296 BNS:

Whoever, to the annoyance of others,— (a) does any obscene act in any public place; or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Cognizable. Bailable. Any Magistrate.

Punishment for Theft

Sec. 303 BNS:

- (1) Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.
- (2) Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both and in case of second or subsequent conviction of any person under this section, he shall be punished with rigorous imprisonment for a term which shall not be less than one year but which may extend to five years and with fine:

Cognizable. Non-bailable. Any Magistrate.

Expanded definition of "theft" vis-a-vis IPC [Section 303(1) read with section 112(1) and section 2(21) of BNS]

- The definition of "movable property" in BNS is wider than it was in IPC.
- Section 2(21) of BNS defines 'movable property'. It omits the word "are intended to include corporeal" before the word "property" which was there in the definition of movable property in Section 22 of IPC.

- Therefore, movable property includes property of every description other than immovable property whether such property is in **corporeal (tangible physical) form or not.**
- Definition of movable property under BNS will **include intangible assets like patents, copyrights, etc., also as well as actionable claims.**
- Definition of theft will include **data theft** also and will cover online stealing of funds by hacking bank accounts.

- In view of expanded definition of movable property, theft will include **theft of intangible assets, theft of data, theft through card skimming, online theft through hacking bank accounts or cloning the mobile etc.**
- In view of section 3(2) of BNS, the term "theft" in section 303 will also cover offences included in scope of "theft" in the inclusive definition of "theft" in Explanation to section 112(1).
- In terms of the said Explanation, "theft" includes trick theft, theft from vehicle, dwelling house or business premises, cargo theft, pick pocketing, theft through card skimming, shoplifting and theft of Automated Teller Machine.

THEFT

[Definition : Section 303(1) + Explanation to section 112(1)]

If offender is a part of a group or a gang

Punishable as petty organised crime under section 112(2) of BNS

Imprisonment for a term not less than 1 year but which may extend to 7 years + fine
[Non-compoundable offence]

If offender is a lone wolf (i.e. sole operator not part of a group or gang)

Punishable as theft u/s 303(2)

First conviction: Imprisonment for a term which may extend to 3 years or fine or both

However, if value of stolen property is less than ₹ 5,000 and the first-time convict restores the property or returns its value, the first-time convict shall be punished with community service instead of fine or imprisonment or both

Second or subsequent conviction: Rigorous imprisonment for a term not less than 1 year but which may extend to 5 years + fine

[Compoundable offence]

CREDIT CARD SKIMMING

(Theft of credit card data through skimmers)

If offender is a part of a group or a gang

Punishable as petty organised crime under section 112(2) of BNS

Imprisonment for a term not less than 1 year but which may extend to 7 years + fine
[Non-compoundable offence]

If offender is a lone wolf (i.e. sole operator not part of any group/gang)

Punishable as 'theft' u/s 303(2) of BNS read with section 303(1), Explanation below section 112(1) and section 2(21)

First conviction: Imprisonment for a term which may extend to 3 years or fine or both.

However, if value of stolen property is less than ₹ 5,000, punishment shall be community service instead of imprisonment or fine or both if stolen property is restored or value of stolen property is returned.

Second or subsequent conviction: Rigorous imprisonment for not less than 1 year but which may extend to 5 years + fine

[Compoundable offence]

Stolen Property defined-

Sec. 317 (1) BNS:

Property, the possession whereof has been transferred by theft or extortion or robbery or cheating, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as stolen property, whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India, but, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Punishment for Stolen Property

Sec. 317 (2) BNS:

Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may **extend to three years**, or with fine, or with both.

Cognizable. Non-bailable. Any Magistrate.

Punishment for Stolen Property

Sec. 317 (4) BNS:

Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with **imprisonment for life**, or with imprisonment of either description for a term which may **extend to ten years**, and shall also be liable to fine.

Cognizable. Non-bailable. Court of Session.

Punishment for Stolen Property

Sec. 317 (5) BNS:

Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may **extend to three years**, or with fine, or with both.

Cognizable. Non-bailable. Court of Session.

:Defamation:

Sec. 356 (1) BNS:

(1) Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes in any manner, any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Punishment for Defamation

Sec. 356 (2) BNS:

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both, or with community service.

Sec. 356 (3) BNS:

Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Sec. 356 (4) BNS:

Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

All the Offences are Non-cognizable in nature.

Thanks



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