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Judicial Powers in reaching Just Decisions in Criminal Law: A Study of Section 311 CrPC 1973/Section 348 BNSS 2023

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The Indian criminal justice system has traditionally been perceived as predominantly adversarial, with judicial officers functioning largely as neutral umpires rather than as active seekers of truth. However, Section 311 of the Code of Criminal Procedure 1973 and its corresponding provision, Section 348 of the Bharatiya Nagarik Suraksha Sanhita 2023, reflect the inquisitorial dimension embedded within the Indian judicial framework. These provisions empower courts to summon, recall, or re-examine witnesses at any stage of inquiry, trial, or proceeding whenever such intervention becomes essential for arriving at a just decision. This article critically examines the transformative role of these provisions in enabling courts to transcend procedural limitations in the pursuit of substantive justice. It analyses the scope, nature, and application of the provisions while highlighting the delicate balance between judicial activism and procedural fairness. Through an in-depth study of judicial interpretations and landmark precedents, the article explores both the strengths and limitations of the powers vested under Section 311 CrPC 1973 and Section 348 BNSS 2023. By evaluating the evolving role of courts as seekers of truth, this article seeks to demonstrate how these provisions reinforce public confidence in the administration of criminal justice and uphold the foundational principle that justice must not only be done, but must also be seen to be done.

Keywords: *criminal justice system, judicial powers, bnss, crpc.*

INTRODUCTION

The Criminal Justice System in India is known as the 'Adversarial System'. It is a legacy of a long-gone colonial era, with its underlying principle that 'all guilty persons should go unpunished, rather than that one innocent person suffers.' Jurists like Fali S. Nariman have argued that, whereas in an Adversarial System like ours, the insistence of the court is on the search for proof rather than the search for truth. The search for proof pays obeisance to due process values. The effort should be made somehow to make proof and truth synonymous. 'The ideal lies somewhere in between, but we have not been able to find it. This, then, is the great dilemma of a fair criminal justice system.'¹

The Government of India recognised this problem and constituted a committee known as the Malimath Committee in the year 2000, headed by Justice V. S. Malimath. The committee underwent extensive research and came out with its report in 2003, which points out several flaws in the adversarial system and recommended changes. The committee concludes that a fair trial, in particular fairness to the accused, is better protected under an adversarial system. Yet the committee favours adopting the 'inquisitorial system' in heinous and terrorist related crimes.

Apart from the weakness of the current system, to address this issue, the law provides provisions under the Code of Criminal Procedure 1973, as well as in the Bharatiya Nagarik Suraksha Sanhita 2023, for a positively motivated judicial officer to reach a just and fair decision. Section 311 CrPC/Section 348 BNSS is an important tool for the administration of criminal justice. This provision empowers courts to summon any witness or recall and re-examine any person whose evidence appears essential for arriving at a just decision. Before moving to the detailed discussion about the proceedings under section 311 CrPC/348 BNSS 2023, let us try to understand the systems of criminal justice.

SYSTEMS OF ADMINISTRATION OF CRIMINAL JUSTICE

Adversarial System: The adversarial system of Common Law is inherited from the British colonial rulers. The adversarial system relies on the skill of the Lawyers representing their

¹ Justice Sudhansu Dhulia, 'ROLE OF COURTS IN THE ADMINISTRATION OF CRIMINAL JUSTICE', Uttarakhand Judicial & Legal Review <<https://cdnbbsr.s3waas.gov.in/s37a68443f5c80d181c42967cd71612af1/uploads/2025/03/202503191167674425.pdf>> accessed 08 April 2026

clients' position before a neutral umpire, usually the Judge, trying to ascertain the truth of the case. The Judge, as a neutral observer, tries to find out and ascertain whether the prosecution has been able to prove its case beyond a reasonable doubt, and the benefit of doubt, if any, is given to the accused. The Judge never takes any initiative to discover the truth. This system does not impose a positive duty on the judge to discover the truth. Hence, he plays a passive role.²

The System resembles the separation of powers as suggested by Montesquieu, stating that 'when the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty.' Hence, the investigation is the exclusive domain of the police, and judges have no role in it. The bad remarks of this framework are that it protects the accused and is heartless to the victim's rights. It can also cause injustice when the accused has an untalented or exhausted lawyer, and this method may focus too much on procedure.

Inquisitorial System: In the inquisitorial system, the responsibility of the trial judge is to discover the truth. The judge is assisted by a judicial police officer, who submits the investigation to the concerned prosecutor, who, after making a thorough scrutiny of the case, can move the judge to take over the responsibility of supervising the investigation. Since the investigation is under the guidance of the judge, the entire investigation process takes a minimum time. It is the judge who puts forth the questions to the witnesses, including the accused, in order to find the truth. One of the negative remarks in the framework is that support of the court in examination of the case may prompt a one-sided state of mind while deciding the case. The Indian Criminal System largely follows an adversarial system, but has incorporated specific inquisitorial elements in the provisions of the CrPC as well as in the BNSS. Section 311/Section 348 is one of the provisions where the Court acts as a seeker of truth rather than proof.

COURTS AS SEEKERS OF TRUTH: AN ANALYSIS OF SECTION 311 CRPC/348 BNSS

Section 311 CrPC/Section 348 BNSS -

² KD Gaur, *Criminal Law-Cases and Materials* (9th edn, LexisNexis 2019) 6

Power to Summon Material Witness, or Examine Person Present: *Any Court may, at any stage of any inquiry, trial or other proceeding under this Code/ Sanhita, summon any person as a witness, or examine any person in attendance though not summoned as a witness; or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.*³

The Provision of 311 of CrPC, which is now in 348 of BNSS, is identical; the only change is in the section number, not the wording.

This section is one of the powerful weapons in the hands of the judiciary that empowers courts to act in aid of criminal justice. The ultimate object of this provision is to enable the court to arrive at a just decision in a case. To reach a just decision, the Court can summon, examine, recall and re-examine any person who has already examined or examined any person in attendance, though not summoned as a witness. It is not only a power conferred on the judiciary, but also a duty of the court.⁴

For better understanding, this section can be divided into two parts:

Discretionary Power of the Court -

Under the first part, the court may act in one of these three ways:

- Summon any person as a witness,
- Examine any person present in court, although not summoned,
- Recall and re-examine a witness already examined.⁵

This discretionary power enables the judge to actively intervene in proceedings where it appears that relevant evidence has not been adequately presented by either party. It reflects a shift from a purely passive adjudicatory role to a more participatory role in the interest of justice. The Hon'ble Supreme Court in a case held that 'Discretionary power should be exercised consistently with the provisions of CrPC and the principles of criminal law. The

³ Bharatiya Nagarik Suraksha Sanhita 2023, s 348

⁴ Justice C K Thakker and MC Thakker, *Takwani: Criminal Procedure* (2nd edn, LexisNexis 2009) 206

⁵ *Ibid* 207

discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously.⁶

Mandatory Duty of the Court: The Second part is obligatory. It compels the court to act in three ways mentioned in the first part, or any of them, as the exigencies of justice may require. The use of the word 'shall' signifies that the court has no discretion in such circumstances and must act to ensure that justice is not compromised. In *Nageshwar v State of Maharashtra*⁷, the Hon'ble Supreme Court held that 'Justice would fail not only by unjust conviction of the innocent but also by the acquittal of the guilty for unjustified failure to produce available evidence.'

In *Rajaram Prasad Yadav v State of Bihar*⁸, the Hon'ble Supreme Court observed that, "A conspicuous reading of Section 311, CrPC would show that the widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression of 'any' has been used as a prefix to 'court', 'inquiry', trial, other proceedings, person as a witness, person in attendance though not summoned as a witness, and person already examined. By using the said expression 'any' as a prefix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the court was only in relation to such evidence that appears to the court to be essential for the just decision of the case."

APPLICATION OF THE SECTION

Section 311/Section 348 applies to all courts exercising criminal jurisdiction, from magistrate courts to sessions and high courts. The provision is temporally flexible. It can be invoked before, during or even after the conclusion of evidence, and even during arguments, as long as the final judgement is not pronounced. Courts can bring new witnesses who were not listed or cited by the prosecution or the defence. Even if a person is present in a court but not called as a witness, the court may still choose to examine them. Courts can recall a witness who has already been examined and question them again for clarity, contradiction, or newly discovered facts. If the court believes the testimony is vital to discovering the truth and

⁶ *Vijay Kumar v State of Uttar Pradesh and Anr* (2011) 8 SCC 136

⁷ *Nageshwar Shri Krishna Choube v State of Maharashtra* AIR 1973 SC 165

⁸ *Rajaram Prasad Yadav v State of Bihar and Anr* (2013) 14 SCC 461

rendering a fair verdict, it must summon or recall the witness even if it disrupts the procedural flow or affects the timeline.⁹ For example, in a case, the court had already recorded the accused's statement, and the judgment was due. Still, the prosecution applied to summon more witnesses. It was opined by the Rajasthan High Court that mere posting of a case for judgment does not limit the court's power to summon a material witness. The adjudication of whether a witness is a material witness depends upon the facts of the case.¹⁰

In *Mohanlal Shamji Soni v Union of India*¹¹, the Hon'ble Supreme Court held that, "Further, it is incumbent that due care should be taken by the court while exercising the power under the section 311 and it should not be used for filling up the lacuna left by the prosecution or by the defense or to the disadvantage of the accused or to cause serious prejudice to the defense of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties."

OBJECT AND PURPOSE OF THE SECTION

The object underlying Section 311 CrPC/Section 348 BNSS is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side¹². The determinative factor is whether it is essential to the just decision of the case. In *Jamatraj Kewalji Govani v State of Maharashtra*¹³, the Hon'ble Supreme Court of India, while dealing with Section 540 of CrPC 1898, which is analogous to Section 311 CrPC and Section 348 BNSS, the Court was pleased to hold that the object is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society.

In *Iddar & Ors v Aabadia & Anr*¹⁴, the object underlying section 311 CrPC, 1973 has been stated by the Supreme Court in paragraph 11 as: "11. The object underlying section 311 of

⁹ Soumita Chakraborty, 'Truth Before Technicality: A Judicial Duty Under Section 311 CrPC' (2025) 7(3) Indian Journal of Law and Legal Research 9359 <<https://www.ijlr.com/post/truth-before-technicality-a-judicial-duty-under-section-311-crpc>> accessed 08 April 2026

¹⁰ *Chandra Shekhar v State of Rajasthan* (1992) CRILJ 4039

¹¹ *Mohanlal Shamji Soni v Union of India and Anr* AIR 1991 SC 1346

¹² Mulla, *Commentary of The Code of Criminal Procedure*, 1973, vol 2 (21th edn, Delhi Law House 2020) 1276

¹³ *Jamatraj Kewalji Govani v State of Maharashtra* AIR 1968 SC 178

¹⁴ *Iddar & Ors v Aabdia & Anr* AIR 2007 SC 3029

the code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers a magistrate to issue a summons to any witness at any stage of such proceedings, trial or enquiry. In section 311, the significant expression that occurs is 'at any stage of inquiry, or trial or other proceeding under this code'. It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power, the greater is the necessity for application of judicial mind."

The main purpose behind the section is that no true case should go unpunished for the want of material evidence, and an innocent person should also not be punished for their failure to bring relevant and material evidence on record at an earlier stage of the proceedings. The ends of justice would be the goal; the exigencies of circumstances would be the path; the availability of material on record would provide the means to travel; and the wisdom acquired by judicial experience would be the guide.

SCOPE OF THE SECTION

Section 311 CrPC/Section 348 BNSS gives wide discretion to the judge to admit any evidence at any stage of trial in the interest of justice. It does not give any discretion to the prosecution or the complainant to adduce any evidence whenever it likes to do so.¹⁵ The Hon'ble Supreme Court of India explained the scope and ambit of Section 311 CrPC, in *Vijay Kumar v State of Uttar Pradesh*, in paragraph 17 as: "17. Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of the CrPC and the principles of criminal law. The

¹⁵ S C Sarkar, *The Code of Criminal Procedure*, 1973 (10th edn, LexisNexis 2013)

discretionary power conferred under section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously.”

The Scope of Section 311 can be analysed in terms of:

Inherent Power of Court: If the court is satisfied that the witness is prepared to give evidence which is materially different from what he had given at the trial, then the court can recall such person, party asking for the recall of the witness not placing material before the court on which it could be so satisfied¹⁶.

Court Witness: Under Section 311 CrPC/Section 348 BNSS, a court witness can be cross-examined by both the accused as well as the prosecution, but only with the permission of the court. The cross-examination must be restricted to whatever he has stated in the examination in chief. The Court witness cannot be asked questions to bring on record the contradictions in his deposition and his statement made before the police during the course of the investigation¹⁷. In the case of *State of Assam v Muhimbarkatak*¹⁸, ASI recorded the dying declaration of the deceased. His examination as a court witness for the just decision of the case was held to be valid.

Circumstantial Evidence: The court must take the initiative to summon and examine material witnesses in cases of circumstantial evidence to bring the relevant circumstance on record if the prosecution is found to be lazy, weak or dishonest or not prepared or does not want to discharge its duty to examine all material witnesses. This duty of the court is reflected in Section 311¹⁹.

Application by either Party: The court can summon any witness by the application of either party if the conditions of Section 311 CrPC/Section 348 BNSS of the Sanhita are satisfied.²⁰

Suo Motu Application: The court can summon a witness under section 311 not only on the application of either party but on its own motion.²¹

¹⁶ *Mohd Hussain Umar Kochra Etc v K S Dalip Singhji and Anr* AIR 1970 SC 45

¹⁷ *Mohanlal Shamji Soni v Union of India and Anr* AIR 1991 SC 1346

¹⁸ *State of Assam v Muhim Barkataki and Anr* AIR 1987 SC 98

¹⁹ *State of Gujarat v Serma Savabhai Bhikhabhai and Anr* (1995) Cri LJ 40 (Guj)

²⁰ *Mohanlal Shamji Soni v Union of India and Anr* AIR 1991 SC 1346

²¹ *Masalti v State of Uttar Pradesh* AIR 1965 SC 202

Application by Third Party: Where an application for summoning a witness is filed neither by APP nor by the complainant, but by a third person who has no locus standi to apply, the same would be rejected.²²

Hostile Witness: A hostile witness can also be recalled for further examination if his evidence is necessary for the just decision of the case. But where the prosecution witness, after he has supported the prosecution's case, is won, and he applies to the Court under Section 311 CrPC/Section 348 BNSS for his recall that the accused are innocent, the Court would be justified in rejecting such an application.²³

Examination of a Session Judge: The High Court has the power to examine a Sessions Judge in any case whatsoever, for there may be proper and suitable cases where the examination of the sessions judge of the trial court may be very necessary, but this must indeed be a very rare occasion where all other remedies are exhausted.²⁴

Recording of Reasons: When a trial Court Considers it proper to summon any person has witness in exercise of its power under Section 311 CrPC/Section 348 BNSS, it has to give reasons as to why the evidence of the witness sought to be summoned is necessary for the dispensation of Justice. Without stating any reason, a summoning order cannot be said to be proper.²⁵

In criminal jurisprudence, while the offence is against society, it is the unfortunate victim who actually suffers, and therefore, the state and prosecution ensure that no stone is left unturned. The duty and responsibility of the court is to be alive and alert in the course of a trial of a criminal case and ensure that the evidence recorded in accordance with the law reflects every bit of vital information placed before it.²⁶

JUDICIAL ROLE UNDER SECTION 311 CRPC/ SECTION 348 BNSS

Criminal Justice reflects the responses of society to crimes and criminals. The key components engaged in this role are the courts, police, prosecution and defence. Administering criminal Justice satisfactorily in a democratic society governed by the rule of

²² *G H Iyer v State (Govt of India)* (1998) Cr LJ 1821 (Ori)

²³ *Umar Mohammad and Ors v State of Rajasthan* (2008) Cr LJ 816

²⁴ *Rameshwar Dayal and Ors v State of Uttar Pradesh* AIR 1978 SC 1558

²⁵ *Surendra Singh v State of Uttar Pradesh* 2012 (3) Crimes 377 (378) (All)

²⁶ *Mohanlal Shamji Soni v Union of India and Anr* AIR 1991 SC 1346

law and guaranteed fundamental rights is a challenging task. The judiciary assumes great importance in the administration of criminal justice.²⁷

In the case of *All India Judges' Association v Union of India*²⁸, the Hon'ble Supreme Court observed that: "41. The Trial Judge is the Kingpin in the hierarchical system of administration of Justice. He directly comes in contact with the litigant during the proceedings in the courts. On him lies the responsibility of building up the case appropriately, and on his understanding of the matter, the cause of justice is first answered. The personality, Knowledge, Judicial restraint, and capacity to maintain dignity are the additional aspects that go into making the court's functioning successful."

In the case of *Ramchandra v State of Haryana*²⁹, Justice O. Chinnappa Reddy in the said Judgement says about the presiding judge in a criminal trial, that: "2. The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice, the presiding justice, the presiding judge must cease to be a spectator and mere recording machine. He must become a participant in the trial by evincing intelligent, active interest by putting questions to witnesses to ascertain the truth."

As per Section 311 CrPC/Section 348 BNSS has been inserted with an aim to provide justice rather than looking into the technicalities of the case. In a system where a judge often acts as an umpire, as quoted by Justice O. Chinnappa Reddy, this section gives the court the status of being equally important and an active participant. A Judicial officer shall always be willing to find the truth rather than merely sitting in the court and deciding the case based on evidence.

The criminal system to be truly just must be free of bias. There should be judicial fairness; otherwise, the public's faith in the rule of law would be broken. One of the cardinal principles

²⁷ Justice P Sathasivam, 'ROLE OF JUDICIAL OFFICERS IN CRIMINAL JUSTICE ADMINISTRATION' (*Tamil Nadu State Judicial Academy*, 05 January 2013)

<<https://www.tnsja.tn.gov.in/article/JO%20in%20Cr%20Justice%20Admin-PSJ.pdf>> accessed 08 April 2026

²⁸ *All India Judges' Association v Union of India* AIR 1992 SC 165

²⁹ *Ramchandra v State of Haryana* AIR 1981 SC 1036

of criminal law is that everyone is presumed to be innocent unless his guilt is proved beyond a reasonable doubt. In a trial before an impartial and competent court. Justice requires that no one be punished without a fair trial, and judicial officers play their part in ensuring the same.³⁰ In this context, the subordinate judiciary assumes great importance. Let us understand the Magisterial role during investigation.

MAGISTRATE AND INVESTIGATION

The first stage of every criminal case is the investigation. The executive, through the police, is responsible for conducting the investigation. The Judges are in charge of the inquiry and the trial. The principle of separation of powers states that each organ should act in its own domain and not interfere with the others. This is also reflected in the police investigation principle. As the Judiciary's first point of contact with the general public and as their courts of last resort, magistrates have a greater responsibility to protect constitutional rights and personal liberty. In this regard, the magistrate must abandon minimalism as their guiding principle and actively protect rights and rectify wrongs.³¹

STAGES OF INVESTIGATION BY MAGISTRATE

1. After Registration of FIR
2. Production of the Accused before the Court for the First Time
3. Magisterial Intervention while Recording the Statements
4. Monitoring of Investigation
5. Further Investigation

Stage 1: After Registration of FIR: Section 157 CrPC/Section 176 BNSS deals with the procedure of investigation after the registration of the F.I.R.

"If, from information received or otherwise, an officer in charge in police station has reason to suspect the commission of an offence which is empowered under Section 175 to investigate, he shall forthwith send a report of the same to a magistrate empowered to take cognizance of such offence upon a police record and shall proceed in person or shall depute one of the subordinate officers not being below such rank as a state Government may, by general or special order, prescribe in this behalf, to proceed, to the

³⁰ *State of Gujarat v Serma Savabhai Bhikhabhai and Anr* (1995) Cri LJ 40 (Guj)

³¹ Prashant Phad, 'Role of Magistrate in Investigation' (2023) SSRN

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4400356> accessed 08 April 2026

spot, to investigate the facts and circumstance of the case, and, if necessary, to take measures for the discovery and arrest of the offender.”³²

This safeguard is intended to prevent overreach by the police, embellishment, false prosecutions, and non-investigation at an important stage. A copy of the FIR must be presented to the magistrate as soon as possible.³³ Additionally, Section 310 CrPC/Section 347 BNSS allows the magistrate to make full use of the authority when it is necessary to investigate the location of the crime scene.

Stage 2: Production of the Accused before the Court for the First Time: The sufficiency of the police officer’s recorded reasons for the arrest must be examined by magistrates, not simply accepted by the police. Following the examination of the arrest, the next point of inquiry is whether the accused can be released on bail or otherwise discharged, where there are grounds to keep him in detention, or both. In cases where the offence happens within the presence of the magistrate and within his/her local jurisdiction, the magistrate may himself arrest a person, or order any other person to effect the arrest.

Stage 3: Magisterial Intervention while Recording the Statements: The CrPC, as well as the BNSS, lacks faith in police officers when it comes to recording statements. Section 164 CrPC/Section 183 BNSS clearly states that a judicial magistrate has the power to record any confession or statement made to him in the course of investigation. Any statement other than a confession shall be recorded in the opinion of the magistrate, who is best fitted to the circumstances of the case.

Stage 4: Monitoring of Investigation: The outdated idea of a passive magistrate has been thoroughly disproven over the past few years, and the definitive shift toward a more inquisitorial and participative system is more evident. Section 311 CrPC/Section 348 BNSS plays a powerful role in monitoring the investigation. Section 482 Cr.PC/Section 528 BNSS acknowledges “inherent powers of the trial court” to issue any orders to complete justice.

Stage 5: Further Investigation: The Court may decide to proceed with a case based on a police report or even a prior complaint after hearing the informant, despite the closure report. Ordering additional investigation is a third choice. The Court has the authority to direct

³² Bharatiya Nagarik Suraksha Sanhita 2023, s 176

³³ *Umar Mohammad and Ors v State of Rajasthan* (2008) Cr LJ 816

additional evidence into an aspect of a case where crucial evidence has been ignored by the police. A second investigation by a different agency other than the initial investigation agency cannot be ordered by the magistrate because doing so would be considered a re-investigation. Reinvestigation by a different agency, like the CBI, can only be ordered by higher courts. However, if the magistrate believes that there has been wrongdoing in the investigation, he/she can issue orders for senior officers to personally supervise the investigation and file periodic compliance reports, similar to a continuing mandamus.

RELATION BETWEEN SECTION 311 CrPC/SECTION 348 BNSS AND SECTIONS 138 & 165 THE INDIAN EVIDENCE ACT 1872/SECTIONS 143 & 168 OF BHARATIYA SAKSHYA ADHINIYAM 2023

Section 138 of the IEA, as well as Section 143 of the BSA, explain the order of examinations as:

- (1) *“Witness shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re- examined.*
- (2) *The examination-in-chief and cross-examination must relate to relevant facts, but the cross-examination needs to be confined to the facts to which the witness testified on the examination-in-chief.*
- (3) *The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross- examined upon that matter”³⁴*

Section 311 CrPC/Section 348 BNSS and Section 138 IEA/Section 143 BSA are complementary to each other. When the former Sections make provision relating to the order of examination of witnesses, the latter Section mentions the procedure and the duty of the Court to consider and pass orders relating to examination and/or re-examination of witnesses.³⁵

Section 165 IEA/Section 168 BSA states that: *“The Judge may, to discover or obtain proof of relevant facts, ask any question he considers necessary, in any form, at any time, of any witness, or of the parties about any fact; and may order the production of any document or thing; and neither the*

³⁴ Bharatiya Sakshya Adhiniyam 2023, s 143

³⁵ C D Fields, *Law Relating to Witnesses* (3rd edn, Delhi Law House 2014) 336

parties nor their representatives shall be entitled to make any objection to such question or order, nor without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question."³⁶

This Section grants sweeping powers to the judge to put questions in the interest of justice. It also shows the active participation of judges during criminal trials. Counsel seeks the client's success, but the judge must watch Justice triumph. This section works together with Section 311 CrPC/Section 348 BNSS to bring the best available evidence on record.

STEPS TO BE FOLLOWED FOR FILING AN APPLICATION UNDER SECTION 311 CRPC/SECTION 348 BNSS

Application by a Party or Court's Suo Motu Power: Either the prosecution, defence, or even the court on its own motion can invoke this Section. The application must state the necessity of summoning the witness to ensure justice.³⁷

Filing an Application (If by a Party): The concerned party must file a written application before the court explaining:

- The identity of the person summoned.
- The relevance of their testimony.
- How will their evidence assist in delivering justice?

Court's Consideration: The court will examine the necessity of the witness's testimony. If it finds that the witness's presence is essential for just decision-making, it will issue a summons.

Issuance of Summons: If the application is allowed, the court can issue a summons (or a warrant, if necessary). The witness is required to appear on a specified date.

Examination of the Witness: Once the witness appears, they will be examined, cross-examined, and re-examined as per legal provisions.

³⁶ Bharatiya Sakshya Adhinyam 2023, s 168

³⁷ 'How to Summon Under Section 311 CrPC?' (Usha Vats & Associates, 30 January 2025)

<<https://ushavatsassociates.in/how-to-summon-under-section-311-crpc>> accessed 08 April 2026

SEGREGATION OF GRAIN FROM CHAFF: POINTS TO BE NOTED FOR EXERCISING POWERS UNDER SECTION 311CrPC/SECTION 348 BNSS

The Hon'ble Supreme Court has directed in the case *Rajaram Prasad Yadav v State of Bihar*.³⁸ While dealing with an application under Section 311 CrPC, read along with Section 138 of IEA, the following principles have to be borne in mind by the Courts:

- a) "Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the court for a just decision of a case.
- b) The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment is not rendered on an inchoate, inconclusive, speculative presentation of facts, as thereby the ends of justice would be defeated.
- c) If the evidence of any witness appears to the court to be essential to the Just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.
- d) The exercise of power under section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.
- e) The exercise of the said power cannot be dubbed as filling a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in a miscarriage of justice.
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.
- g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination to arrive at a just decision of the case.
- h) The object of Section 311 CrPC. simultaneously imposes a duty on the court to determine the truth and to render a just decision.
- i) The court concludes that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

³⁸ *Rajaram Prasad Yadav v State of Bihar and Anr* AIR 2013 SC 3081

- j) Exigency of the situation, fair play and good sense should be safeguarded while exercising discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or relevant material was not both on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.
- k) The Court should be conscious of the position that, after all, the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it could be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such discretionary power may lead to undesirable results.
- l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the parties.
- m) The power must be exercised keeping in mind that the evidence that is likely to be tendered would be germane to the issue involved, and also ensure that an opportunity of rebuttal is given to the other party.
- n) The power under section 311 CrPC must therefore be invoked by the Court only to meet the ends of Justice for strong and valid reasons, and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned must be ensured, being a constitutional goal, as well as a human right.”

In *Zahira Habibullah H. Sheikh v State of Gujarat*³⁹, well known as the Best Bakery case, the Hon'ble Supreme Court observed that: “It is not that in every case where the witness who had given evidence before the Court wants to change his mind and is prepared to speak differently, that the Court should readily accede to such a request by lending its assistance. If the witness who deposed one way earlier comes before the appellate Court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the Court can consider the genuineness of the prayer in the context has to whether the party concerned had a fair

³⁹ *Zahira Habibullah H Sheikh and Anr v State of Gujarat and Ors* (2004) 4 SCC 158

opportunity to speak the truth earlier and in appropriate case accept it. It is not that the power is to be exercised routinely, but being an exception to the ordinary rule of disposal of appeal based on records received in exceptional cases or extraordinary situations, the court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of Justice. The Court can certainly be guided by the metaphor, separate the grain from the chaff, and in a case which has a telltale imprint of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and acceptability of the same on the merits of the material sought to be brought in. Ultimately, the duty of the Court is to arrive at the truth and subserve the ends of Justice. Section 311 of the Code does not confer any party any right to examine, cross-examine, or re-examine any witness. This is a power given to the Court not to be merely exercised at the bidding of any one party/person, but the powers conferred and the discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by Courts to power under this Section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision in the case.”

LEADING CASE LAWS

Chandran v State of Kerala (1985)⁴⁰ -

Facts: In this case, the recovery mahazars and the case diary statements of the concerned witnesses proceeded as if the recoveries were by search or otherwise and not based on information conveyed by the accused. They are conspicuously silent regarding the disclosure statements. The entire trial, including examination of the investigation officer, is over, and the case stands posted for questioning the accused under Section 313 of the Code. The prosecution now wants, and the Additional Sessions Court has allowed, recalling the investigating officer to be examined again for production and proof of the disclosure statements. This petition is filed under Section 482 of the CrPC for setting aside the order.

Decision: The Hon’ble Kerala High Court held that under Section 311 of the Code, the Court has the power to recall and re-examine any witness, but that could be only when the court is satisfied that it is essential for the just decision of the case. Recalling and re-examining a

⁴⁰ *Chandran v State of Kerala* (1985) KLJ 452

witness like the investigating officer for production and proof of a vital record having great relevance in deciding the guilt of the accused, and that too after conclusion of evidence, cannot be said to be essential for the just decision of the case. It may result in a miscarriage of Justice. Hence, the petition is allowed, and the impugned order is set aside.

AG v Shiv Kumar Yadav & Anr (2015)⁴¹ -

Facts: A First Information Report was lodged alleging that the respondent, who was a driver of a cab hired by the victim for returning home from her office, committed rape on her. The witnesses were duly cross-examined by the counsel engaged by the accused. Thereafter, the accused engaged another counsel who filed an application for the recall of all 28 prosecution witnesses. The trial Court rejected the application, but the High Court allowed the same even though the specific grounds urged in the application were duly considered and rejected. It was observed by the High Court that the recall of certain witnesses was deemed proper for ensuring a fair trial; not a single specific reason has been assigned by the High Court as to how, in the present case, the recall of witnesses was necessary as directed in the impugned order. No fault has been found with the reasoning of the order of the trial court. The High Court rejected on merits the only two reasons pressed before it that the trial was hurried and the counsel was not competent.

Decision: The Supreme Court disapproved the view of the High Court and held that it is difficult to approve the view taken by the High Court. Undoubtedly, a fair trial is the object, and it is a duty of the court to ensure such fairness. The width of the power under Section 311 CrPC is beyond any doubt. Not a single specific reason has been assigned by the High Court as to how, in the present case, recall of as many as 13 witnesses was necessary as directed in the impugned order. Mere observation that recall was necessary “for ensuring fair trial” is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course, and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. Thus, the Supreme Court set aside the impugned order passed by the High Court and set aside and dismissed the application for recall.

⁴¹ *AG v Shiv Kumar Yadav and Anr* AIR 2015 SC 3501

Ratan Lal v Prahlad Jat (2017)⁴² –

Facts: A charge sheet No. 22 of 2009, dated 20/3/2009, was presented under Sections 302, 201, 342, and 120B of the IPC against Respondent Nos. 1 and 2 and three other charges have been framed under the sections against the accused persons. Statements of 28 witnesses have been recorded in the file. The statements of Sawarmal and Chandri have been recorded as PW4 and PW5, respectively. After the passage of 14 months, both moved applications before the sessions Judge under Section 311 of CrPC for re-recording their statements on the ground that the previous statements were made under the influence of the police. The Sessions Judge dismissed the application, while the High Court allowed the applications of PW4 and PW5. This appeal is directed against the order of the High Court of Rajasthan.

Decision: The Hon'ble Supreme Court held that delay in filing the application is one of the most important factors which has to be explained in the application. Further, the Sessions Judge has recorded a finding that the witnesses were not under any pressure while recording their evidence, and they have not assigned any reasons for the delay in making the application. As a result, the appeal succeeds, and it is accordingly allowed.

V.N Patil v K. Niranjan Kumar (2021)⁴³ –

Facts: The background facts in this case are that the marriage of Keerthi (deceased daughter of appellant) was solemnised with the first respondent in 2002. On the night of April 2004, the appellant received a call that her daughter had died. Based on a complaint filed by the appellant (father of the deceased), the crime came to be registered at Sanjay Ngara Police Station, Bangalore, for an offence punishable under Sections 302 and 498A IPC. During the course of the trial, the examination of all the relevant witnesses and the documentary evidence produced by the investigating officers indicates that the second postmortem on the victim's body was conducted on 4th April 2004, by a team of 5 doctors in JJ Hospital, Mumbai. The second postmortem documents were not made available to the investigation officer during the submission of the main charge sheet and the additional charge sheet. The first doctor who conducted the first post-mortem turned hostile. At this stage, the application came to be filed under section 311 CrPC for summoning the witnesses and to examine the

⁴² *Ratanlal v Prahlad Jat and Ors* AIR 2017 SC 5006

⁴³ *V N Patil v K Niranjan Kumar and Ors* AIR 2021 SC 1276

Doctor who conducted the second postmortem to meet the ends of justice. The additional Sessions Judge Bengaluru allowed the application. But the Judge of the Karnataka High Court, without assigning any reason, set aside the finding recorded by the trial Judge.

Decision: The Hon'ble Supreme Court held that every Court aims to discover the truth. Section 311 CrPC is one of many such provisions which strengthen the arms of a Court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under Section 311 CrPC has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice. Therefore, the petition is summarily allowed, and the judgment of the High Court was set aside.

Varsha Garg v State of Madhya Pradesh (2022)⁴⁴ -

Facts: In this case, an advocate was found brutally murdered outside his office. During the course of the investigation, five accused were arrested. The Sessions Court rejected an application under section 311 CrPC seeking to summon the nodal officers of certain cellular entities along with the decoding register to trace the mobile location of the accused. The High Court upheld the order of the Session Court.

Decision: The Hon'ble Supreme Court held that an application seeking the summoning of nodal officers of cellular entities along with the decoding register cannot be dismissed merely on the ground that it will lead to filling in loopholes of the prosecution's case. Decoding registers are additional documents required to be able to appreciate the existing evidence in the form of the call details, which are already on record, but use codes to signify the location of the accused, a crucial detail which can be decoded only through the decoding registers. The right of the accused to a fair trial is not prejudiced. The production of the decoding registers fits into the requirement of the relevant material, which was not brought on record due to inadvertence. The decisions of the High Court, as well as the Sessions Court, were set aside and allowed the appeal.

CONCLUSION

In summary, Section 311 CrPC/Section 348 BNSS is meant to provide Justice. It cannot be used to repair or strengthen a weak prosecution or defence case. The provision is not meant

⁴⁴ *Varsha Garg v State of Madhya Pradesh and Ors* AIR 2022 SC 3707

to be a second chance to improve what was left incomplete in the trial. Courts are more conscious when it is used in the final stage of a trial, although it can be invoked at any stage. The court should also examine whether the recall or summon witness is genuine and in good faith. The main aim of the section is that the procedural technicalities should not hamper the ultimate discovery of truth and fairness in criminal trials.

Properly exercised, it harmonises two foundational pillars of Indian criminal jurisprudence: the right to fair trial under Article 21 of the Constitution and the judicial duty to discover the truth⁴⁵. When justice appears distant, the court assumes an investigative role under this section to ensure fair and just decisions, thereby maintaining public confidence in the judiciary.

⁴⁵ *Rajaram Prasad Yadav v State of Bihar and Anr* (2013) 14 SCC 461