



**FAQs**  
**on**

**The Bharatiya Nyaya  
Sanhita**

**The Bharatiya Nagarik  
Suraksha Sanhita**

**The Bharatiya Sakshya  
Adhinyam**

**DELHI POLICE ACADEMY**



# Preface

During the course of training sessions conducted for police personnel in respect of new criminal laws, the Trainers of Trainers (ToTs) encountered numerous questions related to the newly implemented criminal laws. While some of these questions were addressed immediately during the sessions, others were noted as significant queries that any field functionary might have while engaging with the new legislation.

Recognizing the importance of these questions, the committee meticulously compiled them to benefit not only the Delhi Police force but also the police forces of other states. The training committee then undertook each question and thorough discussion was done with particular attention to the legal implications in the context of the new criminal laws.

To ensure the accuracy and comprehensiveness of the answers, draft responses were got reviewed by various eminent stakeholders, including legal luminaries and experienced field officers. Following an extensive vetting process, these FAQs have been finalized.

The resulting compilation aims to clarify any uncertainties and provide clear, authoritative answers to questions related to the new criminal laws, thereby supporting police personnel in their duties. We hope this resource will serve as a valuable tool for all members of the police force as they navigate these legal changes.

**Team Delhi Police Academy**

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# The Bhartiya Nyay Sanhita

Q

**Section 111 BNS is about organized crime. There is a requirement of two charge sheets which should have been filed before a court and the court has also taken cognizance of the same. Now after 1 July 2024, would it be applicable for cases where charge-sheet under IPC has been filed in two cases and cognizance has been taken or do we have to wait for filing charge sheet and taking of cognizance under BNS only for registration of a case under section 111 BNS?**

A

Sec 111 BNS pertains to organized crime. The prerequisite for invoking this section is that:

There should be continuing unlawful activity which means activity prohibited by law, which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person singly or jointly as a member of the organized crime syndicate. Further, more than one charge sheet should have been filed before the competent court within the last 10 years and the court has taken cognizance of such offence.

Now, in light of the above definition, it can be seen that nowhere the legislature has raised any bar in respect of the charge sheets filed under sections of IPC or any other relevant local or special law.

The requirement for invoking the section is: -

- i) Continuing unlawful activity which means activity prohibited by law, which is a cognizable offence punishable with imprisonment of three years or more.
- ii) Undertaken by any person singly or jointly as a member of the organized crime syndicate
- iii) More than one charge sheet should have been filed

before the competent court within the last 10 years and the court has taken cognizance of such offence

Considering the above points, we can say that the chargesheet filed which satisfies the above criterion can be in respect of, the Arms Act, NDPS Act, Excise Act etc. and also those of IPC cases for invoking this section.

Otherwise invoking of this section will not be possible in the near future unless cognizance of the offence has been taken by competent court in offences pertaining to BNS.

**Q**

**There is punishment of being a member of organized crime under section 111 BNS. What would be the requirement for becoming a member for organized crime? Are two cases in last ten years where charge sheet has been filed and cognizance has been taken in last ten years required for becoming a member also?**

**A**

Organized 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.

Requirement of Unlawful Activity: -

- i) Continuing unlawful activity which means activity prohibited by law, which is a cognizable offence punishable with imprisonment of three years or more.
- ii) Undertaken by any person singly or jointly as a member of the organized crime syndicate
- iii) More than one chargesheet should have been filed before the competent court within the last 10 years and the court has taken cognizance of such offence

One of the requirements of invoking this section is that at least two cases should be there of the accused person in the last ten years where charge sheet has been filed and cognizance has been taken. However, there is no such requirement for person to be a member of organised crime. Basically, this is an offence against syndicate not against an individual. The kingpin of the racket may run the syndicate even without any formal registration of two cases against him. We have to prove associations and crime committed by syndicate in unison on the basis of CDR communication or communication between them intercepted or financial transactions etc.

**Q**

**Who will decide that a case shall be registered under section 111 BNS or MCOCA?**

**A**

The concerned DCP or senior officer of police shall decide the registration of cases either under 111 BNS or MCOCA.

**Q**

**Whether pickpocketing in a moving public bus transport (bus/metro/flight etc.) would be covered under section 303 BNS or 305 BNS? What will be the criteria for deciding the value of a property in r/o the proviso of Sec 303 (2) BNS?**

**A**

Section 303(2) BNS would be invoked for this offence. The initial criteria would be the version of the complainant which would have to be further corroborated by bill/invoice, market price or valuation.

The possibility of invoking S-112 (petty organised crime) may also be explored if on initial investigation some other persons or a group of persons are found involved in such pickpocketing.



**Q**

**What action will be instituted against the accused apprehended by the complainant or victim along with case property stolen amounting up to Rs 5000 and he is ready to return the same, as such cases are non-cognizable?**

**A**

As per the schedule this offence would fall under the category of non-cognizable. An NCR should be registered and the same be forwarded to the Magistrate in a fortnightly diary so that the punishment of community service may be decided.

**Q**

**Section 338 BNS is a substitute section of 467 IPC having punishment of imprisonment for life and is mentioned as non-cognizable. Should it not have been amended to be cognizable?**

**A**

Earlier also as per section 467 IPC the offence was non-cognizable. No change has been made in section 338 BNS by the legislature. The question is debatable and could have varying views on the aspect of whether the section should have been cognizable or non-cognizable.

**Q**

**What is the meaning of local authority used in sections 305 and 324 BNS? Is it defined somewhere in BNS?**

**A**

“Local Authority” has been defined in clause (31) of section 3 of the General Clauses Act, 1897, which is a corporation established by or under a Central or State Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013.

**Q**

**Does Section 69, “Sexual Intercourse by employing deceitful means” mandate a married woman to file a case/complaint under this section or in:**

**I. Live-in-relationship situation.**

**II. Regarding the relationship of an unmarried woman with a married male with the knowledge that the male is married.**

**A** Deceitful means has been explained in the section as sexual intercourse for false promise of marriage or false promise of employment or promotion or marrying by suppressing identity. If the allegations levelled fall under the definition of deceitful means, then this section can be invoked.

**Q** **Are financial institutions and individuals both included in offences under section 111?**

**A** Yes. It is defined in Section 2 (26) BNS defines that “person” includes any company or association or body of persons, whether incorporated or not. So, if offence is committed by any financial institution, it also shall be liable.

**Q** **Keeping in view the latter part of Sec 95 BNS, will enhanced punishment be given for crimes which have lesser punishment if committed by an adult?**

**A** No such view has been mentioned in the section. The punishment would be given as provided under the act for the offence committed.

**Q** **As per Sec 112 BNS, will the purchaser of the snatched item be charged with “Petty Organized Crime”?**

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

**Q**

**As per Sec 106 (2) (hit and run), won't calling/informing the Police after having committed an accident (resulting into death) be considered self-incriminatory [r/w Article 20 (3) Constitution of India]?**

**A**

Providing of information about accidental death is not self-incriminating. There can be any mode of information to the Police or Magistrate. However, the provision has not yet been implemented.

**Q**

**In which section will we file an FIR if any forceful intercourse with an adult male is reported?**

**A**

No specific provision has been provided. However, FIR may be registered under provisions of hurt, wrongful restraint, wrongful confinement etc. depending on the situation. Bestiality and non-consensual sexual intercourse between two males have not yet been addressed in law.

**Q**

**The word "Cheating" has been replaced with "Economic Offences". How wide is the spectrum of the words: "by any scheme" added in this section?**

**A**

Cheating has not been replaced with 'economic offence' rather new generic word has been introduced to cover all related offences which have financial implications for a purpose of specific provisions of law. Economic offence has been defined in Explanation 3 of Section 111 BNS which is as under:

- (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 organisation for obtaining monetary benefits in any form.

**Q**

**Sec. 34 IPC i.e. acting in furtherance of common intention has been removed. Instead, the words: “Acting in concert” have been added. Are they the same?**

**A**

Section 34 IPC is now section 3(5) BNS and there is no such addition of word “Acting in concert”.

**Q**

**As per Sec. 195(2) BNS, if a person tries to obstruct a police officer then it has been made a Non-Cognizable Offence. In such a case, the Police shall pursue the NCR till what level. Meaning, shall the Police approach the Court for getting an FIR registered or just leave the NCR be?**

**A**

The Public servant will have to pursue the matter and the same can be pursued by the concerned SHO. The Public Servant will have to be the complainant in this case and it will be treated as a private complaint case unless there is other cognizable offence also included in the case.

**Q**

**What does the word “permanent” in ‘permanent vegetative state’ mean? Till when is the state “permanent”?**

**A**

It is generally accepted that recovery from the vegetative state rarely occurs after 12 months, although recovery after this period has been reported. In some cases, such as in patients with anoxic brain damage, a shorter period of six months is considered to indicate permanence. However, the state of a person has to be opined by the medical expert.

**Q**

**Does non-registration of FIR in section 69 BNS which is sexual intercourse by employing deceitful means attract 199 BNS (old 166A IPC) against public servants?**

**A**

No. As per Sec 199 (c) BNS:

...fails to record any information given to him under sub-section (1) of section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in relation to cognizable offence punishable under section 64, section 65, section 66, section 67, section 68, section 70, section 71, section 74, section 76, section 77, section 79, section 124, section 143 or section 144.

Here, Section 69 BNS is not mentioned which indicates that the same is not mandatory.





# **The Bharatiya Nagarik Suraksha Sanhita**

**Q**

**How the applicability of section 105 BNSS would be affected in chance recovery cases or police man running behind a criminal who is opening gun fires on police or in encounters?**

**A**

This section starts with the wordings that “The process of conducting search of a place or taking possession of any property, article or a thing under this Chapter or under section 185 BNSS...” meaning whereby that section 105 BNSS is applicable to provisions of Chapter VII (Process to Compel Production of Things) only and not beyond it. Also, it is applicable to section 185 BNSS. Section 185 BNSS comes into play only after registration of FIR meaning that during investigation if search of a place is required then it is mandatory to follow the provisions of Section 105 BNSS.

In the above scenario, the FIR is not registered and neither any other sections of Chapter VII BNSS (Process to Compel Production of Things) are involved. Therefore, there would be no requirement of complying with the provisions of section 105 BNSS.

**Q**

**Is videography of personal search of an accused also required under Section 105 BNSS? Whether IO shall use his personal phone or otherwise?**

**A**

Section 105 BNSS starts with the wordings that “The process of conducting search of a place or taking possession of any property, article or a thing under this Chapter or under section 185 BNSS...”. This clearly indicates that both sections 105 and 185 BNSS mandate search of any place and does not mention about any provisions for search of arrested person. However, search of arrested person is mentioned in Section 49 BNSS wherein the procedure of effecting search of arrested person has also been mentioned. In Sec 49BNSS, no provision of videography of arrested person has been

mentioned.

**Q**

**Whether the provisions of BNSS related to time limit will apply in cases registered prior to 1 July?**

**A**

Cases registered prior to 1st July 2024, will be governed by provisions of Cr.P.C. only. S-531(2)(a) BNSS clarifies such situation.

**Q**

**There is no bar on time period for enquiry of complaints alleging offence punishable for more than 7 years. In such cases, how much time is there for IO. What will be effect of Lalita Kumari Vs State on PE (Preliminary Enquiry) under section 154 CrPC (Now Section 173 in BNSS)?**

**A**

Applicability of Lalita Kumari shall remain in effect in respect of the issues mentioned in the judgement. However, it is pertinent to mention that the provisions of Sec 173 BNSS clearly speaks about enquiry for 14 days which can be conducted only in respect of offences punishable for 3 years or more and less than 7 years to find out whether cognizable offence is made out or not after obtaining prior permission from officer not below the rank of DSP. Here it is pertinent to mention that there is no provision of Preliminary Enquiry for cases punishable with imprisonment of 7 years or more in BNSS. Hence, FIR would be registered as per law or as per the mandate of Lalita Kumari judgement.

**Q**

**Sec 18(1) BNSS Whether Govt. can appoint SPP (Special Public Prosecutor) in session court as only High Court is mentioned in this section?**

**A**

Section 18(8) of BNSS does not impose restriction for appointment of Special Public Prosecutor for High Court only as such may be appointed in district court also.



**Q**

**Whose onus/responsibility will be there for getting e-FIR physically signed by the complainant?**

**A**

e-FIR was prevalent in Delhi. Now, with the implementation of the new law, guidelines have to be framed. Further, as per Section 173 BNSS FIR can be registered by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it. However, in case an offence is committed and the complainant/informant is unable to come for signing the information, the police officer may also get the case registered on his behalf and start investigation to avoid destruction/tampering of evidence.

**Q**

**If somebody has come to visit Delhi and he registers an e-FIR of theft of his purse and mobile and then goes to his residence and doesn't come to police station for signing E-FIR. What action should be taken?**

**A**

Previously, concept of e-FIR was confined only to Delhi Police. Now, with the advent of the new law, an FIR can be registered by electronic communication which shall be taken on record by him and registered after being signed within three days by the person giving it. There is no distinct provision of e-FIR in law and is just a provision in Delhi to facilitate citizens. If someone sends communication electronically to Police but does not sign it within three days, then his complaint would not be converted into FIR. Here, the police have got two options, either register a case if it appears that case has in fact taken place or complainant is identified or discard it if no case is made out and complainant is not reachable or identified and may also transfer the application to other concerned police station if offence is committed in transit.

**Q**

**In property dispute cases, different parties have different documents to prove their ownership so we have to register FIRs for different parties. Now, People want to register**

**FIRs in the police station of their choice. However, that property does not come under the jurisdiction of that particular police station. How shall the staff of concerned police station(s) proceed in this respect?**

**A**

Registration of FIR is one thing and Investigation into FIR is entirely another thing. Registration of FIR is dealt with in section 173 BNSS and investigation is dealt with in section 175 BNSS. There is no requirement of jurisdiction for getting FIR registered but there is requirement of jurisdiction for investigation into an FIR. Jurisdiction has been defined in Chapter XIV BNSS (JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS).

**Q**

**Who will evaluate the value of stolen property during summary trial?**

**A**

It would be decided by the court on the basis of evidence produced by the complainant/victim.

**Q**

**What are the provisions for speedy investigation under new laws?**

**A**

Timelines have been imposed in respect of sharing of medical report of rape victim, filing of chargesheets in offences u/s 64 to 71 BNS (except 69 BNS) and POCSO Act, electronic service of summons, PC remand till 40th/60th day in continuous detention, informing victim about progress of investigation within 90 days etc. are some notable modifications which help speedy investigation.

**Q**

**What shall be the standard guidelines/SOP for “Search and Seizure”?**

**A**

No standard guidelines/SOP for search and seizure have been laid so far.

**Q**

**Till how many days can Police Custody remand of the accused in cases of Rape be taken? 40 days or 60 days?**

**A**

60 days. As per S-193(2) the charge sheet shall be filed within 60 days in rape and POCSO cases but remand may taken till 60 days since offence falls in the category of cases punishable for imprisonment 10 years or more.

**Q**

**When does the countdown for presenting the accused in Court in case of arrest by private person start?**

**A**

When Police Officer effects the arrest.

**Q**

**What would be the fate of a complaint sent electronically for registration of FIR and the complainant or victim does not turn up for signature within three days:**

(i) **Will it be required to send the same to court?**

**A**

No

(ii) **Does it need to be kept in a record somewhere in PS?**

**A**

Yes, like complaints received but no FIR is registered on them.

(iii) **How will it be disposed?**

**A**

The same will be filed by the officer to whom it is addressed.

**Q**

**As an infirm person will be arrested only after taking the permission of DSP for offences having punishment below three years, how would the infirmity be decided as there are major chances that the accused will manipulate infirmity for avoiding arrest?**

**A**

That is why the permission of DSP has been made mandatory who shall decide on the basis of his wisdom, experience and medical documents if so required. Further, it is subject to the specific situation and may vary from case to case.

**Q**

**Is the recording of statement under section 180 BNSS (old 161 CrPC) allowed to be recorded through audio-video means for IOs in regard to witnesses who could not be able to present themselves before him?**

**A**

Yes. However, the IO can also go himself and examine the witness. But if IO decides to record through audio-video electronic means, IO will have to ensure identity and that there is no threat/inducement/coercion to the witness while making the statement.

**Q**

In case of recovery of illicit liquor, arm, ammunition, whether the videography is to be conducted of the recovery of the said article/substance by the police officer making the recovery or it is to be conducted of the process of seizure of the said recovered article/substance by the IO?

**A**

The relevant section in this regard is Sec. 105 BNSS which is self explanatory:

Section 105 BNSS:- The process of conducting search of a place or taking possession of any property, article or thing under this Chapter or under section 185, including preparation of the list of all things seized in the course of

such search and seizure and signing of such list by witnesses, shall be recorded through any audio-video electronic means preferably mobile phone and the police officer shall without delay forward such recording to the District Magistrate, Sub-divisional Magistrate or Judicial Magistrate of the first class.

**Q**

**Where a direction for registration of FIR is issued after 01.07.2024, on an application u/s 156(3) CrPC which was filed prior to 01.07.2024, then under which procedural law, CrPC or BNSS, the investigation is to be conducted?**

**A**

As per section 531(c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

In view of the above, the provisions of BNSS shall be followed during investigation in the above scenario.

**Q**

**Whether the words “appeal, application, trial, inquiry, or investigation” as appearing in Section 531(2)(a) BNSS are to be read disjunctively? In other words, if an investigation which is pending as on 01.07.2024 is continued as per CrPC, and thereafter chargesheet is filed, whether the trial will be conducted as per CrPC or BNSS?**

**A**

Section 531 (2) (a)BNSS is self explanatory in respect of the above query.

531. (1) The Code of Criminal Procedure, 1973 is hereby repealed.

(2) Notwithstanding such repeal-

- (a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

**Q**

**What is the procedure to be adopted once the Accused has been arrested after the pronouncement of judgment in absentia, as per Section 356 BNSS?**

**A**

The accused has right to appeal against the judgement once he appears before the Hon'ble Court of Appeal. Further it is pertinent to mention that no appeal shall lie against the order of judgment after expiry of three years from the date of judgement.

**Q**

**Whether the police can arrest an accused who is residing outside the jurisdiction of the PS in a Zero FIR ? What is the procedure to be followed when such an accused is produced before the Court, not having jurisdiction over the territory where the offence has taken place?**

**A**

Yes, Police can arrest an accused who is residing outside the jurisdiction of the PS in respect of zero FIR if it is necessary in the interest of justice. However, immediately thereafter the case file alongwith the accused should be forwarded to the police Station of competent jurisdiction.

**Q**

**The new law envisages the police remand beyond the initial 15 days. If the accused is granted bail and the police**

**thereafter files for police custody remand under justifiable reasons, will the taking into custody again amount to cancellation of bail?**

**A**

Firstly, the process of cancellation of bail should be initiated with reasons and the court in its wisdom will decide for cancellation of the bail. Once the bail is cancelled then the Police Custody Remand of accused can be sought.





# The Bharatiya Sakshya Adhiniyam



**Q**

**What will be the format of 'Chain of custody memo' in case of digital evidence required?**

**A**

Bureau of Police Research & Development and Ministry of Home Affairs have prepared an SOP w.r.t. audio-video recording of scene of crime. In this SOP, they have provided a detailed explanation of Chain of Custody of electronic evidence. However, as the Hon'ble Supreme Court in the matter of 'Ram Ramaswamy Vs Union of India' has stated that till such time Court passes guidelines regulating seizure of electronic evidence, then for the time being at least the CBI Manual shall be followed by all Central Government agencies.

**Q**

**Should Police obtain any certificate from the expert who is collecting the evidence at the scene of crime?**

**A**

Yes. Certificate U/s 63 (4) (c) BSA, in all cases where electronic evidence is being seized, shall be filled and got signed by Party 'A' (first responder/owner/manager/handler etc.) and Party 'B' (any police officer of sufficient seniority, In-charge of Forensic team).

**Q**

**What is the admissibility of CCTV footage taken by IO in pen drive? Will he generate hash value at the spot/scene of the crime for the pen drive or the original source or both?**

**A**

As per Section 57 BSA (Explanation 5) where an electronic or digital record is produced from proper custody, such electronic and digital evidence is primary evidence unless disputed and (Explanation 7), where an electronic or digital record is stored in multiple storage spaces in a computer source, each such automated storage, including temporary files is primary evidence. Here, if the CCTV footage is obtained from its hard disk and transferred to another storage device under proper custody (after generating its

hash value), the said footage in the storage device shall also be a primary evidence. Procedure in the above context has been given in the audio-visual recordings SOP issued by BPR&D, MHA.

**Q**

**Issue of unavailability of language in Certificate U/s 63(4) BSA which indicates that the Hash Value has been generated by the IO on behalf of the person furnishing it.**

**A**

SOP on audio-visual recording issued by BPR&D, MHA clarifies this point in respect of Certificate U/s 63(4)(c):

The Part (A) of the format of certificate – ‘to be given by party’ - as specified by BSA explicitly refers to certificate giver of this part to be the owner/ handler or operator/first responder/manager. In videography and photography done by first responders (police team), the videography may have been done by constable and certificate can be given by head-constable of the same first responder team which routinely manages the audio-video recording of police station or can even be given by records head-mohr of police station under whom the record is downloaded and archived. But the chain of custody form should clearly mention the change of hands and reasons there-of. Similarly, the case for the seizure of digital evidence, ‘the party’ or giver of certificate of Part -A of 63(4)(c) would be the owner/operator/handler or manager or person in-charge of communication /computer device in contention.

As per section 63(4)(c) of BSA: “an expert shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section, it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule”. Certificate of Part -B of 63(4) (c) can be signed by a person occupying responsible official position and evidence to the chain of

events and stated to the best of his knowledge and belief. For example, SHO of police station who was evidence to the chain of events is best to ascertain the authenticity on his knowledge and belief. If first responder recorded the video, the forensic team in-charge can also be made to give part B certificate. Certificate must relate to Identification of record, the manner in which it was produced and Particulars of device. The above expert should not be confused with 'expert' defined in Sec 39 (2) BSA which states that 'When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form. The expert in this case could be responsible officer of sufficient seniority who is either himself evidence of the whole process or who can state to the best of his knowledge and belief that affirmation of the handler as to continuity & authenticity of it.

Q

**Will the Part 'B' of the Certificate U/s 63(4) BSA be filled by the Forensic Expert on the spot itself? Or by the FSL when it is sent to them for verification?**

A

SOP on audio-visual recording issued by BPR&D, MHA clarifies this point in respect of Certificate U/s 63(4)(c): As per section 63(4)(c) of BSA, "an expert shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section, it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule".

Certificate of Part -B of 63(4) (c) can be signed by a person occupying responsible official position and evidence to the chain of events and stated to the best of his knowledge and belief. For example, SHO of police station who was evidence to the chain of events is best to ascertain the authenticity on his knowledge and belief. If first responder recorded the

video, the forensic team in-charge can also be made to give part B certificate. Certificate must relate to Identification of record, the manner in which it was produced, Particulars of device. The above expert should not be confused with 'expert' defined in Sec 39 (2) BSA which states that 'When in a proceeding', the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form. The expert in this case could be responsible officer of sufficient seniority who is either himself evidence of the whole process or who can state to the best of his knowledge and belief that affirmation of the handler as to continuity & authenticity of it. The burden of proof in case of contention will be on defense to mount a challenge and prove the violation of authenticity and the at that time, court can seek opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000 and check all the hashing and chain of custody provided by responder.

Q

**Who is to be considered an Expert in respect of Certificate U/s 63(4) BSA {to be read with 58 BSA}: skilled person/examiner/expert?**

A

SOP on audio-visual recording issued by BPR&D, MHA clarifies this point: The 'expert' mentioned in Certificate U/s Sec 63 (4)(c) BSA should not be confused with 'expert' defined in Sec 39 (2) BSA which states that 'When in a proceeding', the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form.

The opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000, is a relevant fact. Explanation. —For the purposes of this sub-section, an Examiner of Electronic Evidence shall be an

expert.

The 'expert' in the certificate u/s 63 (4)(c) BSA could be responsible officer of sufficient seniority who is either himself evidence of the whole process or who can state to the best of his knowledge and belief that affirmation of the handler as to continuity & authenticity of it.

The burden of proof in case of contention will be on defense to mount a challenge and prove the violation of authenticity and the at that time, court can seek opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000 and check all the hashing and chain of custody provided by responder.

**Q**

**Is a Certificate U/s 63(4) BSA needed to be produced along with Primary Evidence as well?**

**A**

Yes. Officer seizing the electronic/digital evidence shall always take certificate u/s 63(4)(c) BSA from the handler/ first responder/manager providing the evidence along with the 'hash value'. Moreover, he shall document proper chain of custody of the evidence seized.

**Q**

**How is "Digital Chain of Custody of evidence" to be appended with the case file?**

**A**

A detailed format has been provided in the SOP on audio-visual recording issued by BPR&D, MHA.

**Q**

**Shall an "Undertaking" on behalf of the person giving the Certificate U/s 63(4) BSA be added on our part as it cannot be expected of general public to be aware how to generate hash value?**

**A**

No. As per the SOP on audio-visual recording issued by BPR&D, MHA, the certificate itself is sufficient and there is no such need of taking an undertaking from the manager/handler of the evidence.

**Q**

**How a layman would be able to calculate the hash value for production of electronic documents?**

**A**

As per the SOP on audio-visual recording issued by BPR&D, MHA a portal is being developed for simplifying this process.

**Q**

**What shall be the standard guidelines/SOP for “Seizure of digital evidence”?**

**A**

Bureau of Police Research & Development and Ministry of Home Affairs have prepared an SOP w.r.t. audio-video recording of scene of crime. However, as the Hon'ble Supreme Court in the matter of 'Ram Ramaswamy Vs Union of India' has stated that till such time Court passes guidelines regulating seizure of electronic evidence, then for the time being at least the CBI Manual shall be followed by all Central Government agencies.





# DELHI POLICE ACADEMY