

SECTION 528 BNSS: THE INHERENT POWER OF HIGH COURT - A COMPREHENSIVE ANALYSIS OF JUDICIAL DISCRETION IN CRIMINAL PROCEEDINGS

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ABSTRACT

Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 empowers High Courts with inherent jurisdiction to prevent abuse of legal processes and secure the ends of justice in criminal proceedings. This comprehensive study examines the evolution, scope, and judicial interpretation of Section 528 BNSS, analyzing how courts balance procedural compliance with substantive justice.

The research explores three fundamental circumstances enabling High Courts to exercise these powers: giving effect to Code orders, preventing process abuse, and securing justice. Through analysis of landmark judgments including “*State of Haryana v. Bhajan Lal, R.P. Kapoor v. State of Punjab, and Gian Singh v. State of Punjab*”, the paper elucidates the jurisprudential framework governing Section 482 CrPC (Sec 528 BNSS) applications, examining critical principles like the "Four Point Test" and illustrative guidelines for quashing proceedings. The study extensively analyzes the power to quash First Information Reports (FIRs), investigating circumstances such as compromise settlements, matrimonial disputes, financial disagreements, and cases where allegations fail to constitute cognizable offenses.

Key findings reveal that while Section 528 grants expansive discretionary powers, courts have developed stringent safeguards preventing arbitrary exercise. The research demonstrates how judicial interpretation created a nuanced framework distinguishing between cases warranting intervention and those requiring non-interference, emphasizing the "rarest of rare" standard for FIR quashing. The paper concludes that Section 528 BNSS successfully serves as a judicial safety valve, ensuring procedural barriers do not defeat substantive justice.

Keywords: Inherent Powers, Judicial Discretion, FIR Quashing, Abuse of Process

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LITERATURE REVIEW

Scholarship on the High Court's inherent power has developed in three broad phases. Early academic writing focused on establishing the doctrinal source of the power itself. Pinsler examined the historical and jurisprudential basis of "inherent jurisdiction" in common law courts, tracing how courts justified powers not expressly granted by statute, and this framework has informed most Indian commentary on Section 482 CrPC that followed.³ Domestic scholarship built on this by mapping the specific contours of Section 482: Kaushik summarised the principles Indian courts evolved for exercising the power, particularly the "sparingly and with caution" standard that recurs across the case law.⁴

A second wave of scholarship shifted from doctrine to application, particularly around the quashing of non-compoundable offences on the basis of compromise between parties. Panda and Bhimanwar analysed how High Courts approached this question before Gian Singh settled the position, tracking the inconsistency between High Courts willing to quash serious offences on compromise and those unwilling to do so.⁵ This body of work established the "heinous offence versus predominantly civil character" distinction as the central organising principle of quashing jurisprudence.

A third and more recent wave has responded specifically to the 2023 legislative transition. Tripathy's post-BNSS study confirms that the statutory text of Section 528 is substantially unchanged from the old Section 482, and surveys recent High Court rulings applying the provision under the new Code.⁶ This literature has, however, remained descriptive rather than evaluative it confirms that the text is unchanged but does not examine whether the surrounding changes in BNSS (altered timelines for completing investigation, expanded forensic and audio-video recording requirements for offences carrying seven years or more, and the new zero-FIR and e-FIR framework) create friction points where fifty years of CrPC-era interpretation may not transplant cleanly onto the new procedural architecture.

RESEARCH GAP

³ J.D. Pinsler, "The Inherent Powers of the Court," 39 *Sing. J. Legal Stud.* 1 (1997).

⁴ Nitish Kaushik, "Scope of the Inherent Powers of the High Court under S. 482 of Cr.P.C., 1973" (Apr. 5, 2013), available at SSRN: <https://ssrn.com/abstract=2316261>.

⁵ Debasmita Panda & Rucha Bhimanwar, "Quashing of a Criminal Proceedings in Respect of Non-Compoundable Offences on the Basis of Compromise," 4 *Supremo Amicus* 146 (2018). ⁶ FN-D: Priyanshu Kumar Tripathy, "Inherent Powers of High Court: A Voice to Escape the Silence of Law," 15(3) *Scope* 1369 (Sept. 2025).

No published study has yet examined whether the procedural changes introduced by BNSS as distinct from the unchanged text of Section 528 itself create situations where the inherited Bhajan Lal/Gian Singh/Narinder Singh framework produces different or contested outcomes under the new Code.

METHODOLOGY

This paper adopts a doctrinal research method, relying on statutory interpretation and case-law analysis rather than empirical or field-based data collection.

Sources consulted include the text of Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the corresponding Section 482 of the Code of Criminal Procedure, 1973, and reported judgments of the Supreme Court of India and various High Courts, accessed through the Supreme Court Cases (SCC), All India Reporter (AIR), and Live Law databases.

Cases were selected on the basis of three criteria: first, precedential weight, with priority given to Constitution Bench and larger-bench decisions of the Supreme Court where available, followed by two- and three-judge bench rulings; second, subsequent judicial reliance, treating cases that have been consistently cited and applied in later rulings such as *Bhajan Lal*, *Gian Singh*, and *Narinder Singh* as load-bearing precedents, while cases cited only once or in passing were used for illustration rather than as central authority; and third, relevance to the three statutory grounds in Section 528 giving effect to Code orders, preventing abuse of process, and securing the ends of justice.

This paper is confined to the exercise of inherent power by High Courts in the specific context of quashing FIRs, complaints, and criminal proceedings. It does not address the exercise of inherent power for other purposes recognised under Section 528, such as expunction of remarks or transfer of cases. The paper also does not undertake an empirical or statistical study of how High Courts have applied these principles in practice for instance, disposal rates or bench-wise variation. The analysis is confined to the doctrinal content of reported judgments. Given that BNSS came into force only on 1 July 2024, the body of reported case law interpreting Section 528 specifically remains limited; this paper accordingly relies substantially on pre-BNSS Section 482 jurisprudence on settled points of law, supported by references to post-BNSS commentary and rulings addressing the transition

INTRODUCTION

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) stands as the cornerstone of criminal jurisprudence in India, providing the procedural framework for the administration of criminal justice. Among its various provisions, Section 528 occupies a unique and pivotal position as it empowers High Courts with inherent jurisdiction to prevent abuse of process and secure the ends of justice. This inherent power, while not expressly defined in exhaustive terms, serves as a safety valve in the criminal justice system, ensuring that technicalities do not override substantive justice.

The wisdom behind legislative enactment often faces testing times when justice seems a distant dream due to procedural and technical obstacles. The doctrine which addresses the above challenge is derived from “**Quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest**” " It means when the law gives anything to anyone, it gives also all those things without which the thing itself cannot exist. " In simple terms, it conveys that in situations where in the absence of procedural provision expressly tackling a given problem is missing, a Court still has the power to ensure Justice by correcting any wrong done or likely to be done.⁷

The territorial extent of this legislation is the Republic of India. " In *Madhu Limaye V. State of Maharashtra*, it was observed that the inherent power is expansive, yet as a rule of practice, its exercise is limited only in rare or exceptional situations. To ensure the sparing use of inherent power by the High Court, the following principles laid by the Supreme Court have to be kept in mind:

- If a specific provision in law exists to solve a grievance, refrain from using inherent power.
- To prevent abuse of process and to secure justice
- Not to bypass express legislation or provision contained therein. "⁸

The nature of power under 482 CrPC (Sec 528, BNSS) was reiterated in “*Pankaj Kumar v. State of Maharashtra*” is exceptional & not the rule.⁹ The legislation’s language clearly considers that what may arise cannot be ascertained in all possible cases, nor can a straight

⁷ " Dinesh Dutt Joshi v. State of Rajasthan [(2001) 8 SCC 570, Minu Kumari v. State of Bihar, (2006) 4 SCC 359"

⁸ " Madhu Limaye v. State of Maharashtra AIR 1978 SC 47 "

⁹ " Pankaj Kumar v. State of Maharashtra AIR 2008 SC 3077 "

formula be adopted. The discretionary mechanism prevents undue harassment through abusing judicial means by vindictive litigants for oblique motives. A noteworthy feature is the power to quash a proceeding even if offences were not compoundable.¹⁰ It is visible when the court finds that the parties are relatives and have compromised; also, prosecution witnesses have changed their stance away from the version forming the prosecution's narrative. In such cases, the court finds precious time of court will be exhausted without any success and remains a mere formality.¹¹

The Constitution of India establishes the Supreme Court as the apex judicial institution in the country. The hope for the urgent and efficient disposal of proceedings like quashing in criminal matters brings petitioners an opportunity to use Article 32¹² to justify a means to an end. However, in "*Gayatri Prasad Prajapati v. State of Uttar Pradesh*", the honourable Supreme Court held " when a petitioner has a remedy under section 482 CrPC (Sec 528, BNSS) before a High Court. The practice by the Supreme Court under Article 32 of the Indian Constitution for quashing the first information report must be avoided. It is important to note that the judgement is not restrictive in spirit but a guiding one. In essence, it requires a party to approach the proper forum to better utilize remedies already available under the Code of Criminal Procedure."¹³

A ground of contention between parties regarding filing wrong cases is often attributed to political affiliations. In such cases, the complaint or first information report, as the case may be, is based upon political vendetta. The matters relating to the quashing of points mentioned hereinbefore can be answered through observation made in "*Sheonandan Paswan v. State of Bihar*", wherein it was held, a complaint that may be caused due to political vendetta is not in itself a ground to vitiate or quash criminal proceedings.¹⁴ Also, 528 BNSS is not inconsistent with 438 BNSS, though, sometimes it may overlap, but inherent powers are to be exercised when a litigant has no other remedy to avail under the statute. In "*Dhanalakshmi v. Prasanna Kumar*" it was stated, interference with criminal proceedings is justified if offence is not disclosed in a complaint or it is frivolous.¹⁵ In "*Sharda Prasad Sinha v. State of*

¹⁰ " SEC 320 CrPC "

¹¹ " Ashok Bhai v. State of Gujrat AIR 2012 SC 499 "

¹² " Article 32 of Indian Constitution "

¹³ " Gayatri Prasad Prajapati v. State of Uttar Pradesh WP (Crl) 457 of 2021 "

¹⁴ " Sheonandan Paswan v. State of Bihar (1987) 1 SCC 288 "

¹⁵ " Dhanalakshmi v. Prasanna Kumar AIR 1990 SC 494 "

Bihar" it was rightly held that the High Court has inherent power to quash such a proceeding.

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In "***JP. Sharma v. Vinod Kumar Jain***", the Supreme Court, reiterated that where an allegation contained in a complaint discloses the commission of an offence or, in case of first information report (FIR), a cognizable offence. It is not open for a High Court to verify the truthfulness of allegations and interfere at this stage, nor the sufficiency of evidence be questioned.¹⁷ This is done to prevent an investigation from being delayed or derailed by the petitioners seeking to quash proceedings, recently in "***Jagmohan Singh v. Vimlesh Kumar***" the Supreme Court of India, " stated that a High Court must not embark upon the reliability of evidence. The power must be used sparingly with caution, specifically within the bounds of section 482 CrPC (Sec 528, BNSS). "¹⁸

An offence is a criminal act that is committed not just against a single person but also against society as a whole; this means that the victim isn't the only one who is impacted by the crime; rather, the whole community is. It was deemed by the politicians that they needed to include a clause to permit for such inherent authority to be given to the judicial minds since it has such a direct influence on society.¹⁹

The significance of Section 528 extends beyond its textual boundaries. It represents the embodiment of judicial wisdom and discretion, allowing courts to intervene when the application of procedural law would result in manifest injustice. This power has been described by the Supreme Court as being "of wide amplitude" and has been instrumental in shaping the contours of criminal jurisprudence in India. The research undertaken in this paper seeks to provide a comprehensive analysis of Section 528 BNSS, examining its historical evolution, judicial interpretation, scope, and limitations. The study aims to understand how courts have balanced the need for procedural compliance with the imperative of substantive justice, and to identify the key principles that guide the exercise of inherent powers.

SECTION 528 BNSS

¹⁶ " Sharda Prasad Sinha v. State of Bihar AIR 1977 SC 1754 "

¹⁷ " JP. Sharma v. Vinod Kumar Jain (1986) 3 SCC 67 "

¹⁸ " Jagmohan Singh v. Vimlesh Kumar CrI. Appeal No.741 of 2022 "

¹⁹ " Dharmeshbhai Vasudevhai v. State of Gujarat (2009) 576 SCC "

Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 deals with the inherent power of the high court. It reads:

Saving of inherent power of High Court: - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of any process of any Court or otherwise to secure the ends of justice.²⁰

Three circumstances are listed in section 528 BNSS that allow the High court to employ its inherent powers, including (i) carrying out a code-mandated order, (ii) guarding against misuse of the legal system, and (iii) generally advancing the interests of justice. The three requirements are not mutually exclusive; rather, their application would inevitably result in overlap. For instance, it is impossible to distinguish between preventing abuse of the legal system and achieving justice's purposes; in reality, preventing such abuse would serve only to secure the ends of justice only. It also serves to secure the goals of justice to carry out an order made pursuant to the code. The scope of "securing the goals of justice" is obviously a fairly broad term that encompasses the first two requirements as well.²¹ A rigid regulation that would control how the court would employ its inherent powers cannot be established and is neither desired nor attainable. The High Court's authority is unquestionably very broad and unrestricted under the aforementioned paragraph.²²

In "*R.P. Kapoor v. State of Punjab*" the Supreme Court speaking through Justice Gajendragadkar observed that, " in general, a criminal proceeding against an accused person must be tried under the general provisions of the Code, so the High Court should be reluctant to quash the proceeding at an interlocutor. The case involved the High Court seeking to use its inherent powers to stop the criminal proceedings. This statement was made while stating the well-established fact that the High Court, in the exercise of its inherent powers, can quash a

criminal case in order to accomplish the objectives of justice or prevent misuse of any court's process. "²³

EXERCISE OF POWER UNDER SECTION 528 BNSS IS NOT THE RULE BUT AN EXCEPTION.

²⁰ " Code of Criminal Procedure, 1973, S 482, Act No. 2 of 1974, Acts of Parliament, 1973, (India) "

²¹ " Jeffrey J. Deirmer v. State of W.B., (2010) 6 SCC 243 at 251 "

²² Supra 19

²³ " R.P. Kapoor v. State of Punjab AIR 1960 SC 866 "

The majority of cases involving the assertion of inherent rights are brought in an effort to have the criminal proceedings interrupted at any point, so it is important to thoroughly comprehend these claims. In "*R.P. Kapoor v. State of Punjab*", the Supreme Court listed some of the types of requests for the dismissal of criminal proceedings that might warrant the High Court exercising its inherent authority to do so:

(i) The High Court would be justified in quashing the proceeding on that ground if the criminal proceeding in question relates to an offence that an accused person is accused of having committed and it is clearly evident that there is a legal barrier to the institution or continuation of the said proceeding.

(ii) Cases arising under this category, for instance, might be provided by the absence of the necessary sanction.

(iii) There may also be situations in which the First Information Report or complaint's allegations, even if taken at face value and accepted in their entirety, do not constitute the alleged offence. In these situations, there is no need to consider the value of the evidence; one must simply determine whether the alleged offence is disclosed by reading the complaint or the First information Report. ²⁴

After reviewing a number of prior Supreme Court rulings on the subject, the Supreme Court once again reaffirmed the factors necessary for the dismissal of a criminal case in "*Indian Oil Corporation v. NEPC India Ltd.*" The following were the relevant principles that the court so declared:

" (i) A complaint can be quashed where the allegation made in the complaint, even if accepted in its totality and taken at face value, do not, on their own, establish an offence or

establish guilt or innocence.

(ii) A complaint may also be quashed when there has been an obvious misuse of the legal system, such as when it is determined that the criminal case was started with the intent to hurt or exact revenge, or when the charges are ridiculous and improper

(iii) The ability to quash, however, may not be utilised to stop or thwart a valid investigation. Use the power wisely and with great caution.

²⁴ " R.P. Kapoor v. State of Punjab AIR 1960 SC 866 "

(iv) The legal elements of the alleged offence need not be described in detail in the complaint. The proceedings should not be thrown out if the complaint has all the necessary factual information, this is true even if some elements have not been described in great detail. Only when the complaint is so devoid of even the most basic facts that are absolutely necessary for proving the offence is it warranted to quash the complaint.

(v) A given set of facts may point to: (a) a civil wrong that is also a criminal offence; (b) a criminal offence that is just a civil wrong; or (c) both a civil wrong and a criminal offence. A business deal or a legal issue may also contain a criminal offence, in addition to providing grounds for seeking relief under civil law.²⁵ "

- **No Power under section 482 (Sec 528, BNSS) to review its judgement**

The Supreme Court ruled in "*Hari Singh Mann v. Harbhajan Singh Bajwa*", " said that there is no clause in the Criminal Procedure Code that allows the High Court to appeal a decision it made while exercising appellate, revisional, or original jurisdiction. Such a power cannot be used in conjunction with or as a cover for another authority under section 482 of the Cr.P.C. (Sec 528, BNSS). "²⁶

- **Exercise of inherent power to direct registration of fir**

In many cases, the petitioner would approach the High Court praying for a direction to the state to register the case if the police had not done so. However, the Apex Court has shown its displeasure with this practice. In "*Zakir Vasu v. State of U.P.*", " it was held that the High Court should not support this practise and should typically decline to intervene in such matters, leaving the petitioner to pursue his alternative remedies before the relevant police

officers first under sections 154(3) and section 36 Cr.P.C. and, if that doesn't work, by approaching the concerned magistrate under section 156(3). Keeping in mind the fact that inherent powers must be used sparingly and by way of abundant caution. "²⁷

DEVELOPING JURISPRUDENCE

● No Strict Formula

The court disapproved of any desirability to lay down some inflexible rule to exercise inherent power. It is considered that a criminal prosecution should not become a tool of

²⁵ Indian Oil Corporation v. NEPC India Ltd. (2006) 6 SCC 736

²⁶ Hari Singh Mann v. Harbhajan Singh Bajwa (2001) 1 SCC 169

²⁷ Zakir Vasu v. State of U.P 2008 AIR SCW 309

harassment. It was best left for the concerned High Court to decide jurisdiction per facts and circumstances in the interest of justice. To prevent weaponization of criminal proceedings for ulterior motives, 528 BNSS is formulated.²⁸

● Evolved Guidelines

An attempt to lay illustrative guidelines to prevent abuse of process and secure ends of justice was again made by the Supreme Court. In “*State of Haryana v. Bhajan Lal*”, the use of extraordinary power under Article 226 of the Indian Constitution and Section 482 (Sec 528, BNSS) of the Code of Criminal Procedure was discussed.

“The power can be exercised sparingly and with circumspection in the rarest of cases:

Where allegations in the complaint or First Information Report (FIR), if accepted entirely, do not constitute a prima facie offence or case.

Where allegations in FIR or any other accompanying matter do not disclose a cognisable offence.

Where evidence collected concerning a complaint or FIR does not disclose the commission of any offence, and no case is made against the accused.

Where allegations in FIR constitute a non-cognizable offence, not a cognizable one.

The investigation is subject to section 155(2) CrPC (Sec 174(2), BNSS). This means

an order of the magistrate becomes a pre-requisite for starting the investigation.

Where allegations are so absurd and improbable that no prudent man can conclude a sufficient ground for proceeding against the accused.

Where there is an express legal bar, or express provision exists for efficacious redressal of grievances of the aggrieved party.

Where a proceeding is malicious or malafide based on an ulterior motive for wreaking vengeance due to personal grudges against the accused.”²⁹

²⁸ Kapil Agarwal and Others v. Sanjay Sharma and Others (2021) 5 SCC 524

²⁹ State of Haryana v. Bhajan Lal, 1992 Suppl (1) SCC 335

The seven categories laid down in *Bhajan Lal* have proved more durable in application than in theoretical coherence. Categories (1) and (3), for instance, both turn on whether the allegations "disclose the commission of any offence" one assessed at the stage of the FIR alone, the other after evidence has been collected yet courts have not always been consistent about which category governs a given stage of proceedings, particularly once an investigation is partially complete. This ambiguity becomes sharper under BNSS, where statutorily mandated timelines for completing investigation and the wider availability of forensic evidence at an earlier stage mean that the line between "allegations alone" and "allegations plus evidence collected" is reached faster than it typically was under the CrPC. Whether the *Bhajan Lal* categories should be read as sequential stages or as independent, freestanding tests is a question the case law has left open, and BNSS's compressed timelines make the answer more consequential than it was in 1992.

● Four Point Test

In “ **Rajiv Thapar Versus Madan Lal Kapoor** ”, the Supreme Court examined the process of quashing at various stages like issuing of process, committal, and framing of charges., that is, before the actual commencement of trial. The consequences of quashing were discussed, especially given the effect on the prosecution or complainant, as the case may be. The court observed that it negates the opportunity to lead evidence of the allegations levelled by the prosecution or complainant against the accused. Therefore, the High Court must proceed with

great caution after it is fully satisfied that the material adduced by accused will undoubtedly displace and discard allegations levelled by the opposite party. It is based upon the rule that a reasonable or prudent person will dismiss the accusations as false after relying on the material presented by an accused person.

“ The Supreme Court outlined four points/steps to determine the veracity of prayer for quashing raised by an accused under 528 BNSS:

Whether the material relied upon by the accused is of sterling and impeccable quality?

Whether material relied upon by the accused is sufficient to reject and overrule allegations in the complaint, i.e., the material would persuade a reasonable man to dismiss allegations as false?

Whether material relied upon by the accused has not been refuted or cannot be refuted by the other party?

Whether proceeding with trial would result in abuse of process or ends of justice will not be served? ”

The Supreme Court held that if all four steps laid above are answered in the affirmative, it would be just for the judicial conscience of the High Court to become active through the use of inherent power under section 528 BNSS.

The developing jurisprudence relating to exercising inherent power to quash or not to quash proceedings has paved through traditional contentions, though in exceptional cases. About the above statement, it must be noted that certain offences cannot be compounded under the law for the time being in force. The rule behind the same is grave, and heinous violations are not merely against persons but society.³⁰

- **Recent bail guidelines under Sec 482 (Sec 528, BNSS)**

In “ *Satender Kumar Antil Vs Central Bureau of Investigation*”-Among the most significant innovations of the Antil decision is the establishment of a four-part categorization of offences

to guide and structure judicial discretion in bail matters an established a presumptive pathway for courts, especially at the trial level, which adds predictability and uniformity to an exercise of discretion that is often inconsistent.

- **“Category A: Offences for which the maximum punishment is imprisonment for 7 years”.**

This category is the most elaborated and entails the largest number of cases contributing to the undertrial population. The Court established a clear process that would protect liberty:

1. Issue a regular summons initially and permit appearance by attorney.
2. If the accused is not present, issue a bailable warrant.
3. Use an NBW only if a bailable warrant fails.
4. Ideally, most preferably, on merit, the bail application of such an accused be disposed of without taking physical custody, or alternatively, interim bail till final orders are made on the

³⁰ “ Rajiv Thapar Versus Madan Lal Kapoor Crl. Appeal No. 174 of 2013 ”

main application. This is crucial, to prevent automatic jailing of accused persons who were never taken into custody during investigation.

- **“Category B: Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years”.**

For these comparatively more serious offenses, the Court directed that bail application must be decided on its merits at the time of appearance of the accused, with the discretion of the Court being maintained to take into consideration the seriousness of the offense, probability of flight and potential for destruction of evidence.

- **“Category C: Offences punishable under Special Acts containing stringent provisions for bail”.**

This category includes laws like the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS), the Prevention of Money Laundering Act, 2002 (PMLA), and the Unlawful Activities (Prevention) Act, 1967 (UAPA). The Court acknowledged that 32 Page 32 of 41 these statutes often contain "twin conditions" for bail that are much stricter than the general provisions of the BNSS. For this category, the Court directed that the procedure would be the

same as provided in Category B, but with the additional requirement of complying with the stringent conditions of the specific special law.

- **“Category D: Economic offences not covered by Special Acts”.**

For these cases, the Court mandated that bail applications be decided on their merits. Importantly, it cautioned against the practice of categorizing all economic offences into a single, homogenous group and denying bail on that basis alone.

The categorization illustrates the 'real-world' dynamics of the Court. By creating a wide and liberal route for Category A, it addresses most of the issue of undertrial detention, and creating Category C revealed the inherent tension in Indian bail jurisprudence. While courts facilitate freedom in children's regular criminal law, they are bound servilely to the legislative will of special statutes that circumscribe bail for particular classes of offence. The Antil judgment is appropriate for this advanced legal terrain. The judgment redefines what can be reformulated judicially in terms of meanings acknowledging constraints enforced by parliamentary sovereignty.³¹

³¹ “ Satender Kumar Antil v. Central Bureau Of Investigation (2024) 9 SCC 177 ”

- **Rape Case Quashing Allowed in Rare Settlements**

In “*Madhukar & Ors. v. The State of Maharashtra & Anr*”. Justices Vikram Nath and Sanjay Kumar said “Offences under Section 376 IPC (Now in Sec 64 BNS) are grave and typically not quashed on the basis of compromise. However, it clarified that the High Court's power under Section 482 CrPC (Sec 528, BNSS) to ensure justice is flexible and must be applied considering the unique facts and circumstances of each case.”³²

INHERENT POWER AND QUASHING OF FIRS

Very often petitions under Section 528 BNSS are filed in the High courts to quash First Information Reports registered by the police. In a catena of decisions, the Supreme Court has consistently given a note of caution that inherent power of quashing an FIR should be exercised very sparingly and with circumspection and that too in rarest of rare cases. “The Supreme Court has also held that the High Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR and inherent power do not confer an arbitrary jurisdiction on the court to act according to its

whims and caprice.”

In “ *Kurukshetra University v. State of Haryana*,” the Apex Court observed:

It surprises in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 Cr.P.C.(Sec 528, BNSS) it could quash an FIR. The police had not even commenced investigation into the complaint filed by the warden of the university and no proceedings at all were pending in any court in pursuance of the FIR. It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice.³³

It has also been held that the inherent power should not be exercised to stifle a legitimate prosecution³⁴. The Observations of the Supreme Court in “ *Manjula Sinha v. State of Uttar Pradesh*” are relevant in this scenario. The court held:

The powers possessed by the High Court under Section 482 (Sec 528 BNSS) of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles.

³² “ Madhukar & Ors. v. The State of Maharashtra & Anr. ”

³³ “ Kurukshetra University v. State of Haryana (1977) 4 SCC 451 ”

³⁴ “ Janata Dal v. H. S. Choudhary and others, (1992) 4 SCC 305; State of Madhya Pradesh v. Awadh Kishore Gupta and others, AIR 2004 SC 517; ”

The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case, where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. ³⁵

● Quashing of FIR after chargesheet is filed

Even after the prosecution has filed a chargesheet, the HC has the authority to quash a FIR under Section 528. The parties may also reach an agreement. Even after the investigation, the accused can inform the Court that there is no material evidence against him. Another option for the accused is to plead inherent improbability based on the full facts and evidence gathered against him in the charge sheet. Because the HC’s powers under Section 528 are broad, it can issue an order quashing a FIR under such circumstances. ³⁶

● **FIR quashed on the grounds of a Compromise**

The FIR can be overturned by the HC at any time based on a compromise. The complainant and the accused can reach an agreement. Both parties might submit a joint plea for FIR quashing U/S 528 BNSS. Following that, the Court will examine the facts, circumstances, and elements of the case before issuing a quashing order. If the High Court is not pleased with the facts of the compromise, the quashing on the basis of compromise can be denied. If the offence is compoundable and the HC has declined to quash the FIR, the parties might go to the Trial Court. If the parties to the process have reached an agreement and sought for the FIR to be cancelled, the HC can order it to be quashed.

The High Court in “*Madan Mohan Abbot v. State of Punjab*”, refused to quash the FIR on the grounds that the offence under section 406 of the IPC (Now in Sec 316 BNS) is not compoundable. An appeal was filed to the Supreme Court, which concluded that “...it is likely appropriate that in conflicts when the issue is of a purely personal nature, the court should typically accept the terms of compromise even in criminal proceedings...”³⁷

● **FIR Quashing in Financial Disputes**

³⁵ “Manjula Sinha v. State of Uttar Pradesh (2008) 3 SCC (Cri) 271 ”

³⁶ “Sheo Nath Singh v. Sujata, II (2007) DMC 601 ”

³⁷ “Madan Mohan Abbot v. State of Punjab (2008) 4 SCC 582 ”

When a financial issue is resolved after the parties reach an agreement, quashing the FIR is the natural option. If certain major offences other than economic offences are involved, parties frequently resort to a Compromise Deed and seek the quashing of the FIR. Using the authority provided by Section 528 BNSS, the HC can issue an order for quashing on the grounds of settlement, taking into account the facts and circumstances of the case.

● **Quashing of FIR when investigation has not begun**

The High Court cannot quash the FIR if the police investigation has not yet begun and there are no proceedings pending in any court in connection with the FIR. Because the FIR does not reveal any offence, the inquiry cannot be quashed because it might be conducted using other evidence.³⁸

● **FIR disclosing offence**

An FIR should only be overturned in the most exceptional of circumstances. When a prima facie case is revealed in a FIR, the FIR cannot be quashed simply because it was filed late. The High Court would not be justified in quashing the initial information report if the FIR discloses the crime. If the facts in the FIR appear to disclose a cognizable offence, the High Court is required to investigate the veracity, reliability, sufficiency, and adequate proof of the facts alleged, as well as to conduct a meticulous examination. It is not necessary at this stage to determine whether all of the ingredients are precisely spelled out in the complaint. The FIR/Complaint cannot be quashed if the petitioner fails to prove that the allegations in the FIR/Complaint do not constitute an offence. When a FIR reveals an offence, it cannot be quashed before the inquiry is completed. If, after considering the charges in light of the oath statement, the ingredients of the offence are revealed and the complaint is not mala fide, frivolous, or vexatious, there would be no grounds for the High Court to intervene. When a prima facie case is established, the FIR cannot be quashed under Section 528, BNSS, and the evidentiary value of the statements cannot be evaluated in a petition under Section 528, BNSS. When an FIR reveals the commission of alleged crimes, the accused's denial is insufficient to quash the FIR. Under S.528 BNSS, a FIR that discloses a cognizable offence cannot be quashed. The FIR in a case under S.376, IPC (Sec 64, BNS) would not be invalidated just because the prosecutrix might be embarrassed in the future. Even if the prosecution is mala fide, or the offence is of a technical nature, if the allegations in the FIR

³⁸ “ State of W.B. v. Narayan K. Patodia, AIR 2000 SC 1405 48 Suresh Chandra Swain v. State of Orissa, 1988 CrLJ 1175 (Ori) ”

constitute an offence, the prosecution cannot be quashed. The High Court cannot use its inherent power under S. 528, BNSS to quash a FIR or police inquiry in response to a Magistrate's order under S.156(3).³⁹

- **When the power of investigation has been used in a fraudulent manner, the FIR can be quashed.**

Even if the FIR or its following reports create a suspicion of a cognizable offence, the HC has the right to quash if it is concerned that the power of investigation has been misused.⁴⁰

- **Quashing of FIR if allegations do not constitute an offence**

The High Court is normally hesitant to interfere with FIR and inquiry, but it can be quashed if

the FIR does not disclose components of a cognizable offence. The High Court may, in the exercise of its inherent powers, quash a FIR that contained no facts constituting an offence.⁴¹

“ A full bench of Punjab and Haryana High Court has held that there is no blanket bar against the quashing of a first information report and the consequent investigation. It has laid down the following requisite pre conditions for the exercise of the power

- i. When the FIR, even if accepted as true, discloses no reasonable suspicion of the commission of a cognizable offence.
- ii. When the materials subsequently collected in the course of an investigation further disclose no such cognizable offence at all;
- iii. When the continuation of such investigation would amount to an abuse of power by the police; and
- iv. That even if the FIR or its subsequent investigation purports to raise a suspicion of a cognizable offence, the High Court can still quash if it is convinced that the power of investigation has been exercised mala fide. ”⁴²

In “*Manjula Sinha v. State of Uttar Pradesh*” the hon’ble court said that after charge sheet against the accused has been filed and charge has been framed in the case, the question of quashing FIR on petition filed under S. 482 CrPC (Sec 528, BNSS) would not arise. ⁴³

³⁹ “ State of Bihar v. P.P. Sharma, 1991 CrLJ 1438, 1448 (SC) ; Pulgaon Cotton Mills Ltd. v. Maharashtra Pollution Control Board, 2001 CrLJ 610 (Bom) ; S. Rajendra v. K.A.S. Rama Appaswamy, 1981 CrLJ 1298 (Kant) ”

⁴⁰ Vinod Kumar Sethi v. State of Punjab, AIR 1982 (P&H) 372 (FB).

⁴¹ Mangal Chauhan v. State, 1983 CrLJ 279 (Cal-DB)

⁴² Vinod Kumar Sethi v. State of Punjab, AIR 1982 (P&H) 372 (FB).

⁴³ Manjula Sinha v. State of Uttar Pradesh (2008) 3 SCC (Cri) 271

In this context, reference may also be made to “*State of M.P. v. Laxmi Narayan*” & others. In Laxmi Narayan the Supreme Court summarised the law as under:

- i. “ That the powers conferred under S.528 to quash the criminal proceedings for the compoundable offences under S.359 BNSS can be exercised in cases having overwhelmingly and predominantly the civil character, particularly those arising out of Commercial transactions or arising out of matrimonial relationships or family disputes and where the parties have resolved the entire dispute amongst themselves.

- ii. Such power is not exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society.
- iii. Similarly, such power is not to be exercised for the offence under special statutes like Prevention of Corruption Act or offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.
- iv. Offences under section 307 IPC and Arms Act would fall in the category of heinous and serious and therefore are to be treated as crime against society and not against individual alone and not therefore the criminal proceedings for the offence under S.320 IPC(Sec 116, BNS) or under Arms Act which have a serious impact on society cannot be quashed in exercise of powers under section 482 CrPC on the ground that the parties have resolved their entire dispute among themselves. However, the high court would not rest its decision merely because there is a mention of section 307 in the FIR or charge framed under the provisions. It would be open to the high court to examine as to whether the mention of section 307 (Sec 109, BNS) is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under section 307. For this purpose, it would be open for the high court to go by the nature of weapons used etc. However, such an exercise by the high court would be permissible only after evidence is collected after investigation and a charge sheet is filed during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in para 29.6 and 29.7 of the decision of the

supreme court in Narinder Sing should be harmoniously and to be read as a whole and in the circumstances stated herein.

- v. While exercising the powers under section 528 to quash the criminal proceedings in respect of non-compoundable offences which are private in nature and do not have a serious impact on society on the ground that there is a settlement compromise between the victim and the offender, the high court is required to consider the antecedents of the accused the conduct of the accused, namely

whether the accused was absconding how he had managed with the complainant to enter into a compromise etc.”⁴⁴

There are several instances where various high courts have quashed criminal proceedings which are inherently of a civil nature on the ground that the settlement between the parties had brought peace in the society and the parties were willing to lead a harmonious life.⁴⁵

Laxmi Narayan's five-point summary is best understood not as a new test but as an attempt to reconcile *Gian Singh* and *Narinder Singh* with the specific problem of Section 307 IPC (attempt to murder) cases, where the gap between the charge as framed and the injury actually inflicted is often wide. The guideline's instruction that courts examine "the nature of weapons used" as a proxy for intent is a workable evidentiary heuristic, but it also imports a fact-finding exercise into what is meant to be a threshold, non-merits stage of proceedings the very concern *R.P. Kapoor* and *Indian Oil Corporation* caution against. The equivalent offence under the Bharatiya Nyaya Sanhita, 2023 (Section 109, attempt to murder) carries the same sentencing structure as its IPC predecessor, so the *Laxmi Narayan* weapons-based heuristic transplants without adjustment one of the few instances in this body of jurisprudence where the old and new codes align cleanly rather than requiring reinterpretation.

● Quashing of FIR in matrimonial cases

In “*Mohindra and others v. State and another*” a two judge Bench of Supreme Court of India after referring to “*Gian Singh v. State of Punjab, Narinder Singh v. State of Punjab and State of M.P. v. Lakshmi Narayan*” proceeded to quash criminal proceedings in which the

⁴⁴ “State of M.P. v. Laxmi Narayan & others”

⁴⁵ Kamleshkumar Mohanji Methana v. State of Gujarat, 2022 Live Law (Guj.) 301

accused stood accused of sections 498A and 377 of Indian Penal Code. The court reasoned as follows:

“An offence under Section 377 IPC is a heinous offence and points to the mental depravity of the accused and hence ought not to be quashed by the High Court on the basis of compromise by exercising its jurisdiction under Section 482 CrPC.

The present case arises out of matrimonial dispute and the allegation has been made by the

wife against the husband. The parties have decided to part ways and get ahead in their lives without having any acrimony against each other. In the facts and circumstances of the case, this Court is inclined to exercise its powers under Section 482 CrPC even for an offence under Section 377 IPC on the ground that the dispute is private in nature.

It is made clear that this Court is exercising its powers under Section 482 CrPC to quash an offence of Section 377 IPC on the ground that the parties have compromised the matter with each other only because it arises out of a matrimonial dispute, the allegation has been levelled by wife against her husband of committing an offence under Section 377 IPC and the parties have decided to move ahead in life.”⁴⁶

CONCLUSION

Section 528 of the Bharatiya Nagarik Suraksha Sanhita stands as a testament to the wisdom of the legal system in recognizing that no statutory code, however comprehensive, can anticipate every situation that may arise in the administration of justice. The provision embodies the principle that procedural law must serve justice, not obstruct it.

The study reveals several critical insights. The "rarest of rare" standard for FIR quashing, coupled with the "Four Point Test" articulated in *Rajiv Thapar v. Madan Lal Kapoor*, provides a structured framework guiding judicial discretion while preventing arbitrary exercise. The jurisprudential distinction between heinous crimes affecting societal interests and disputes of predominantly civil character reflects sophisticated understanding of when criminal prosecution serves public interest versus perpetuating private vendetta. The Court's willingness to quash proceedings in matrimonial disputes, financial disagreements, and commercial matters even for non-compoundable offences demonstrates judicial pragmatism in recognizing that not every technical violation warrants full criminal prosecution.

⁴⁶ “ Sanchit Mohindra and others v. State and another CrI.M.C. 600/2021 ”

Recent developments, including the categorized bail guidelines in *Satender Kumar Antil v. Central Bureau of Investigation* and nuanced approaches to sexual offences in *Madhukar v. State of Maharashtra*, illustrate the dynamic nature of this jurisprudence. Courts balance liberty interests with societal protection while maintaining vigilance against routine quashing that might undermine deterrence.

This comprehensive analysis reveals that Section 528 has successfully served its intended purposes of preventing abuse of process and securing the ends of justice. The judicial interpretation of the provision has evolved from an initially restrictive approach to a more balanced framework that recognizes both the importance of inherent powers and the need for judicial restraint.