

Trial in Absentia

Mains: GS II - Judiciary

Why in News?

The concept of trial in absentia has gained renewed significance following the decision of a Special National Investigation Agency (NIA) Court in Jammu to issue a non-bailable warrant against Hafiz Saeed, the Pakistan-based chief of the banned terrorist organisation Lashkar-e-Taiba (LeT), in connection with the investigation into the Pahalgam terror attack.

What is trial in absentia?

- **A trial in absentia** - It refers to a criminal trial conducted in the absence of the accused person.
- **Position under BNSS - Section 356** of the Bharatiya Nagarik Suraksha Sanhita provides that:
 - Where a person has been declared a **proclaimed offender**, has absconded to evade trial, and there is no immediate prospect of arrest, the court may treat the accused's absence as a voluntary waiver of the right to be present during the proceedings.
- After recording the reasons in writing, the court may proceed with the inquiry, trial and pronouncement of judgment as though the accused were present before it.
- This provision represents a significant departure from the earlier criminal procedure framework, as it allows courts to conclude criminal proceedings even when an accused deliberately avoids the judicial process.
- **Position under the Code of Criminal Procedure (CrPC)** - Prior to the enactment of the BNSS, the Code of Criminal Procedure, 1973 contained limited provisions dealing with absconding accused persons, but it did not permit a complete trial in their absence.
- **Section 82(4) of the CrPC** empowered courts to issue a proclamation against an absconding accused and attach their property.
- **Section 317** allowed a Judge or Magistrate to dispense with the personal attendance of an accused in certain situations and proceed with the trial where such attendance was not necessary in the interests of justice.
- **Section 299** enabled courts to record the evidence of witnesses in the absence of an absconding accused if there was no immediate prospect of arrest.
- However, these provisions merely gave limited discretion to the presiding officer.
- They could be invoked only when the court considered that the personal attendance of the accused was unnecessary in the interests of justice or where the accused persistently disturbed the court proceedings.

- They did not authorise a full-fledged criminal trial in absentia.
- Consequently, criminal proceedings involving absconding accused persons often remained pending for years until the accused was arrested, delaying justice and affecting the efficiency of the criminal justice system.

Who can be tried in absentia?

- The BNSS does not permit every accused person to be tried in their absence.
- The provision applies only to individuals who have been declared **proclaimed offenders** under Section 84 of the BNSS.
- Therefore, trial in absentia is restricted to serious criminal cases involving offences punishable with:
 - Imprisonment of ten years or more
 - Life imprisonment
 - Death penalty
- Only after an accused has been declared a proclaimed offender can the court invoke the provisions of Section 356 to conduct the trial in the absence of the accused.

What are the procedural safeguards under section 356 of the BNSS?

- **Issuance of Consecutive Arrest Warrants** - Before initiating a trial in absentia, the court must issue **two consecutive warrants of arrest**, with an interval of at least **30 days** between them.
- This ensures that sufficient attempts are made to secure the presence of the accused before resorting to an ex parte trial.
- **Public Notice to the Accused** - The law also mandates that a notice requiring the accused to appear before the court must be published in a local or national newspaper, granting the accused **30 days** to respond and appear before the court.
- **Notice at the Last Known Residence** - In addition to newspaper publication, the notice must be displayed at the accused's last known place of residence. This increases the likelihood that the accused becomes aware of the proceedings.
- **Intimation to Family or Friends** - To further strengthen procedural fairness, the law requires that a relative or friend of the accused be informed about the initiation of the trial. This ensures that information regarding the proceedings reaches someone closely connected with the accused.
- **Waiting Period Before Trial** - The trial cannot commence immediately after framing of charges. Instead, Section 356 requires that **90 days must elapse from the date of framing of charges** before the trial can begin. This waiting period provides the accused with adequate opportunity to surrender or appear before the court.
- **Right to Legal Representation** - One of the most important safeguards incorporated in Section 356 relates to the accused's right to legal representation.
- If the absconding accused does not engage a lawyer, the court is required to appoint a defence counsel at the expense of the State.
- This ensures that the interests of the accused are represented during the proceedings and that the principles of a fair trial are maintained despite the accused's absence.
- This safeguard reflects the broader constitutional commitment to ensuring access to justice and protecting the rights of individuals facing criminal prosecution.

- **Recording and Use of Evidence** - Section 356 also contains provisions relating to the recording and admissibility of evidence during a trial in absentia.
- Statements of prosecution witnesses recorded before the commencement of the trial may be relied upon as evidence against the absconding accused.
- This enables the court to continue with the proceedings without unnecessary delay.
- However, the law also recognises the possibility that the accused may subsequently surrender or be apprehended.
- In such circumstances, the court may permit the accused to cross-examine witnesses if it considers such cross-examination necessary in the interests of justice.
- Thus, while facilitating expeditious trials, the BNSS also preserves judicial discretion to ensure procedural fairness.
- **Use of Audiovisual Electronic Means** - To enhance transparency and preserve the integrity of criminal proceedings, Section 356 encourages the recording of witness examination and depositions through audiovisual electronic means, as far as practicable.
- These electronic recordings must be preserved carefully. Such preservation serves multiple purposes:
 - Ensuring transparency in judicial proceedings;
 - Maintaining the accuracy and integrity of witness testimony;
 - Facilitating judicial review if the accused is later arrested or voluntarily appears before the court.
- The increasing use of technology in criminal trials is intended to improve both efficiency and accountability within the justice delivery system.

What is the significance of trial in absentia?

- The introduction of trial in absentia under the BNSS represents a significant reform in India's criminal justice framework.
- It seeks to address long-standing delays caused by accused persons who deliberately evade arrest and remain outside the jurisdiction of Indian courts, particularly in cases involving terrorism, organised crime and offences affecting national security.
- At the same time, the law balances the objective of expeditious justice with procedural safeguards such as repeated attempts to secure the accused's presence, mandatory public notice, legal representation at State expense, opportunity for later cross-examination, and preservation of audiovisual evidence.

What lies ahead?

- Section 356 of the Bharatiya Nagarik Suraksha Sanhita introduces, for the first time, a comprehensive legal framework permitting trial in absentia in India.
- Unlike the earlier provisions under the Code of Criminal Procedure, which allowed only limited proceedings in the absence of the accused, the BNSS enables courts to complete criminal trials against proclaimed offenders accused of serious offences carrying punishment of ten years or more, life imprisonment or death.
- The provision is particularly relevant in cases involving absconding terrorists and offenders operating from outside India, where securing their physical presence before Indian courts may not be immediately possible.
- At the same time, the detailed procedural safeguards incorporated in Section 356 seek

to uphold the principles of natural justice and ensure that the extraordinary power to conduct a trial in absentia is exercised with fairness, transparency and due process.

Reference

[The Hindu| Trial in Absentia](#)

