



HARYANA STATE LAW COMMISSION

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TWENTIETH REPORT

**Recommendation to amend sub-section (2) and
sub-section (3) of Section 23 of The Bhartiya
Nagrik Suraksha Sanhita, 2023.**

Government of Haryana

HARYANA STATE LAW COMMISSION

**Justice H.S. Bhalla,
Chairperson**

**Ms. Sangita Vardhan,
Part-time Member**

**Mr. Sandeep Kumar,
Member Secretary**

**Mr. Bhupinder Singh,
Registrar**

Government of Haryana

HARYANA STATE LAW COMMISSION

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24th September, 2024

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With the passage of time, the law is also required to be amended to adjust the changing status of human beings, modes of crime due to invention of new technical devices, changing nature of the society, keeping in view the development of the Citizens, State and Nation, etc. Section 23 of the Bhartiya Nagrik Suraksha Sanhita, 2023 provides sentences which Magistrates may pass. Earlier, the provisions of Section 23 of the Bhartiya Nagrik Suraksha Sanhita, 2023 were incorporated in Section 29 of the Code of Criminal Procedure, 1973.

Sub-section (2) and sub-section (3) of Section 29 of the Code of Criminal Procedure, 1973, had the following provisions: -

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding ten thousand rupees or of both.

(3) The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding five thousand rupees or of both.

Now Section 23 of the Bhartiya Nagrik Suraksha Sanhita, 2023 has increased this power in terms of fine. Sub-section (2) and sub-section (3) of Section 23 of the Bhartiya Nagrik Suraksha Sanhita, 2023, provides as under: -

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding fifty thousand rupees, or of both, or of community service.

(3) The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding ten thousand rupees, or of both, or of community service.

If the Magistrate considers the fine exceeding fifty thousand rupees is to be imposed, then the case has to be forwarded to the Chief Judicial Magistrate concerned. In some serious offences, the Court of a Magistrate has to pass sentence of fine in Lakhs of rupees keeping in view the seriousness of the offence and consequently the sentence in lieu of non-payment of fine. Furthermore, it is also relevant to point out that as per Section 138 of the Negotiable Instruments Act, 1881, the fine

amount provided is up to the double of the cheque amount. In most of the cheque cases, the amount covered by the cheque is for amounts exceeding fifty thousand rupees. But the Judicial Magistrate of the First Class is now not competent to impose a fine above the limit of fifty thousand rupees. To address this issue, the Courts are now awarding compensation under sub-section (3) of Section 395 of the Bhartiya Nagrik Suraksha Sanhita, 2023 without imposing any fine and ordering the said compensation to be paid to the complainant either in part or in full. However, in such cases no default sentence can be passed for non-payment of compensation. This also makes it necessary to amend sub-section (2) and sub-section (3) of Section 23 of the Bhartiya Nagrik Suraksha Sanhita, 2023.

The Hon'ble Chief Minister, Haryana in his noting dated 14.11.2023 has observed that the prescribed ceilings of fine by the Magistrates under sub-section (2) and (3) of Section 29 of the Cr.P.C. (now sub-section (2) and (3) of the Bhartiya Nagrik Suraksha Sanhita, 2023), are very outdated. In fact, even the amendment of Arunachal Pradesh in this regard is four years old. Therefore, the Hon'ble Chief Minister has desired that a proposal for a State amendment be put for substituting the word 'thousand' with 'lakh' in the above sub-sections.

In view the above discussion, the Haryana State Law Commission has critically and minutely examined the provisions of sub-section (2) and sub-section (3) of Section 23 of the Bhartiya Nagrik Suraksha Sanhita, 2023 and proposes amendment in sub-section (2) and

sub-section (3) of the aforesaid Sanhita, 2023 so that the power of Magistrates to pass sentence in terms of fine be increased substantially as desired by the Hon'ble Chief Minister, Haryana. The Haryana State Law Commission is, therefore, of the view that sub-section (2) and sub-section (3) of Section 23 of the Bharatiya Nagrik Suraksha Sanhita, 2023 may be as under: -

- (i) in sub-section (2), for the words “fifty thousand”, the words “five lakh” shall be substituted; and
- (ii) in sub-section (3), for the words “ten thousand”, the words “one lakh” shall be substituted.

RECOMMENDATIONS

In the light of the above discussion, the Haryana State Law Commission recommends that Section 23 of the Bharatiya Nagrik Suraksha Sanhita, 2023, should be amended for the State of Haryana, as under: -

“23. Sentences which Magistrates may pass. – (1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five lakh rupees, or of both, or of community service.

(3) The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one lakh rupees, or of both, or of community service.

Explanation.- “Community service” shall mean the work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration. ”

NOTE:

The Bharatiya Nagrik Suraksha Sanhita, 2023 has been enacted under Concurrent List 3 to the Constitution of India. Therefore, Parliament as well as the State Legislature has concurrent power to enact laws to regulate Criminal Procedure. As the Parliament has already enacted the Bharatiya Nagrik Suraksha Sanhita, 2023, Article 254 of the Constitution comes into play. It provides that where the law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provision of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for consideration of the President and has received his assent shall prevail in that State. It is, therefore, clear that the amendment proposed above can be passed by the Legislature and reserved for consideration of the President. After receipt of the assent of the President, the amendment can come into operation in the State of Haryana.
