

Section 358 BNSS, 2023 and the Power of Criminal Courts to Summon Additional Accused: Scope, Limitations and Judicial Standards

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Abstract

Section 358 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), corresponding to Section 319 of the Code of Criminal Procedure, 1973, empowers a criminal court to proceed against a person who, though not originally arraigned as an accused, appears from the evidence during an inquiry or trial to have committed an offence. The provision embodies the fundamental objective of criminal justice that the actual offender should not escape prosecution merely because his or her involvement was not detected or adequately presented during investigation. At the same time, the exercise of this power has serious implications for the liberty, reputation and fair-trial rights of a person brought into the proceedings at a later stage.

This research critically examines the scope, limitations and judicial standards governing the exercise of power under Section 358 BNSS, 2023. It analyses the legislative continuity between Section 319 CrPC and Section 358 BNSS and evaluates the extent to which the principles developed by the Supreme Court under Section 319 remain applicable under the new statutory framework. Particular emphasis is placed on the expression “it appears from the evidence”, the nature and quality of evidence required for summoning an additional accused, the appropriate stage for exercising the power, and the distinction between a mere prima facie satisfaction and the higher standard of judicial satisfaction required for invoking this extraordinary jurisdiction.

The study further examines the leading judicial principles relating to the power to summon additional accused, including the requirement of strong and cogent evidence, the prohibition against conducting a mini-trial at the summoning stage, and the necessity of exercising judicial discretion cautiously and for compelling reasons. It also considers whether a person named in the FIR but not charge-sheeted, discharged, or otherwise omitted from the array of accused can subsequently be proceeded against under Section 358. The procedural consequences of such summoning, including the right of the newly added accused to cross-examine witnesses and the requirement of commencing proceedings afresh, are also examined.

The research argues that Section 358 BNSS serves as an important mechanism for discovering the truth and preventing failure of justice, but its extraordinary nature requires a careful balance between the societal interest in prosecuting the real offender and the individual's constitutional right to a fair and impartial trial. The study concludes that consistent, reasoned and evidence-based judicial standards are essential to prevent both the escape of genuine offenders and the arbitrary implication of innocent persons.

Keywords: Section 358 BNSS, Section 319 CrPC, Additional Accused, Summoning of Accused, Criminal Procedure, Judicial Discretion, Strong and Cogent Evidence, Evidentiary Threshold, Fair Trial, Natural Justice, Criminal Justice, Judicial Standards, Extra-Ordinary Power, Right to Defence, Supreme Court Jurisprudence.

1. Introduction

Section 358 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), corresponding to Section 319 of the Code of Criminal Procedure, 1973 (CrPC), confers an important and extraordinary power upon the criminal courts to proceed against a person who is not originally arraigned as an accused but who, during an inquiry or trial, appears from the evidence to have committed an offence for which such person could be tried together with the existing accused. The provision is intended to prevent a person who emerges from the trial evidence as an alleged participant in the offence from escaping criminal prosecution merely because such person was not initially charge-sheeted or arraigned as an accused.

The power under Section 358 is significant because the investigation conducted by the police may not always identify every person involved in the commission of an offence. Evidence may emerge for the first time during examination of witnesses before the trial court. Section 358 therefore enables the court to respond to such evidence and ensure that the criminal proceeding is directed towards discovering the truth and bringing the actual offender before the court.

However, the power is extraordinary and must be exercised cautiously. The mere mention of a person's name in the FIR, a general allegation, suspicion, or material collected during investigation cannot automatically justify summoning a person as an additional accused. The judicial exercise must be founded upon evidence emerging in the inquiry or trial and must satisfy the applicable evidentiary threshold.

The Supreme Court's jurisprudence under Section 319 CrPC, particularly *Hardeep Singh v. State of Punjab*, *Brijendra Singh v. State of Rajasthan*, and *Sukhpal Singh Khaira v. State of Punjab*, has developed important principles concerning the nature of evidence, the degree of judicial satisfaction, the stage at which the power may be exercised and the procedural safeguards available to the newly added accused.

The enactment of Section 358 BNSS provides an opportunity to examine whether the principles developed under Section 319 CrPC continue to operate in their existing form or require reconsideration under the new criminal procedural framework. The present study therefore critically examines the scope, limitations and judicial standards governing the exercise of power under Section 358 BNSS, with particular emphasis on evidentiary threshold, judicial discretion and the right to a fair trial.

2. Statement of the Problem

The power to summon an additional accused under Section 358 BNSS creates a necessary but delicate balance between two competing interests of criminal justice. On one hand, the criminal justice system must ensure that a person whose involvement becomes apparent from the evidence does not escape prosecution merely because the investigating agency failed to array that person as an accused. On the other hand, an individual should not be subjected to criminal prosecution merely on the basis of suspicion, untested allegations, previous statements or a mechanical application of judicial discretion.

The principal difficulty lies in determining what degree and quality of evidence is sufficient to invoke Section 358. The provision uses the expression “it appears from the evidence,” but does not expressly define the precise evidentiary threshold required for summoning an additional accused. Consequently, judicial decisions under Section 319 CrPC have developed standards such as “more than a prima facie case” and “strong and cogent evidence.”

Another significant problem concerns the stage and manner in which the power may be exercised. Questions arise as to whether the power can be exercised solely on the basis of examination-in-chief, whether cross-examination is necessary, whether persons named in the FIR but not charge-sheeted may be summoned, and whether persons discharged during investigation can subsequently be proceeded against.

The transition from Section 319 CrPC to Section 358 BNSS further creates an important jurisprudential issue. Although the two provisions are substantially similar, the BNSS constitutes a new procedural framework. It is

therefore necessary to determine whether previous Supreme Court jurisprudence should be applied mechanically or whether the new statutory context requires a fresh interpretative approach.

The problem is consequently one of balancing effective criminal prosecution with procedural fairness. An overly restrictive approach may allow genuine offenders to escape prosecution, whereas an overly liberal approach may result in innocent persons being unnecessarily dragged into criminal proceedings. A clear and consistent judicial standard under Section 358 is therefore necessary.

3. Objectives of the Study

3.1 To critically examine the scope and legal nature of the power conferred upon criminal courts under Section 358 BNSS, 2023, with reference to the corresponding jurisprudence under Section 319 CrPC, 1973.

3.2 To analyse the evidentiary threshold, judicial standards and limitations governing the summoning of additional accused under Section 358 BNSS, particularly with reference to “prima facie,” “strong and cogent evidence,” and the expression “it appears from the evidence.”

3.3 To examine whether Section 358 BNSS adequately balances the interests of effective criminal justice and truth discovery with the constitutional right to fair trial and procedural safeguards of a person summoned as an additional accused.

4. Research Questions

4.1 What is the scope and nature of the judicial power conferred under Section 358 BNSS, 2023, and to what extent does the jurisprudence developed under Section 319 CrPC continue to govern its interpretation?

4.2 What evidentiary threshold and judicial standards should be satisfied before a criminal court exercises the power to summon an additional accused under Section 358 BNSS?

4.3 Does Section 358 BNSS strike an appropriate balance between the objective of bringing the real offender to justice and protecting the newly summoned accused's right to a fair trial?

5. Hypotheses

Hypothesis 1 —

Alternative Hypothesis (H₁): Section 358 BNSS, 2023 provides an effective judicial mechanism for bringing persons whose involvement emerges during inquiry or trial within the criminal process, and the principles developed under Section 319 CrPC substantially continue to govern its interpretation.

Null Hypothesis (H₀₁): Section 358 BNSS, 2023 does not provide a materially effective mechanism beyond the ordinary criminal process for bringing additional accused before the court, and the jurisprudence developed under Section 319 CrPC cannot be applied without substantial modification.

Hypothesis 2 —

Alternative Hypothesis (H₂): The requirement of strong and cogent evidence, together with careful judicial scrutiny, is necessary to prevent arbitrary or mechanically exercised power under Section 358 BNSS.

Null Hypothesis (H₀₂): The requirement of a heightened evidentiary threshold under Section 358 BNSS is unnecessary, and the ordinary prima facie standard is sufficient for summoning an additional accused.

Hypothesis 3 —

Alternative Hypothesis (H₃): Section 358 BNSS can effectively balance the objective of discovering the truth and prosecuting the real offender with the newly summoned accused's constitutional and procedural right to a fair trial, provided that the power is exercised cautiously and with recorded reasons.

Null Hypothesis (H₀₃): Section 358 BNSS does not adequately balance effective prosecution with the fair-trial rights of the newly summoned accused, thereby creating a substantial risk of arbitrary or prejudicial criminal proceedings.

6. Review of Literature

The literature on the power to summon additional accused under Section 358 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is still developing because the BNSS is a comparatively new procedural statute. Consequently, the principal body of literature presently available is found in Supreme Court jurisprudence under Section 319 CrPC, standard criminal-procedure commentaries, research articles, legal databases and earlier doctrinal discussions concerning the addition of accused during trial. Since Section 358 BNSS substantially corresponds to Section 319 CrPC, this earlier literature provides the essential jurisprudential foundation for the present study.

6.1 Judicial Literature

6.1.1 *Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92

The most important judicial authority concerning the subject is *Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92. The Constitution Bench examined the scope, nature and extent of the power under Section 319 CrPC and resolved several conflicting judicial interpretations. The Court held that Section 319 confers a discretionary and extraordinary power upon the court to summon a person who is not already an accused but against whom evidence emerges during inquiry or trial. The Court explained that the power should not be exercised mechanically or merely because the court forms an opinion that another person may be guilty. There must be strong and cogent evidence against the proposed accused. At the same time, the Court clarified that the standard is higher than the ordinary prima facie standard applied at the stage of framing charge, but lower than the satisfaction required for conviction.

The judgment is particularly important for the present research because it examines the meaning of “evidence,” the stage at which the power can be exercised, whether examination-in-chief can constitute a sufficient basis, and the distinction between an additional accused and an accused already facing trial. It also explains that the power is intended to prevent the real culprit from escaping the criminal process because of an investigative omission.

Research relevance: This judgment supplies the foundational doctrinal test against which Section 358 BNSS can be examined.

6.1.2 *Brijendra Singh v. State of Rajasthan*, (2017) 7 SCC 706

In *Brijendra Singh v. State of Rajasthan*, (2017) 7 SCC 706, the Supreme Court considered the exercise of Section 319 power against persons who had been named in the FIR but had not been charge-sheeted. The Court emphasised that the power cannot be exercised merely because a person was named in the FIR or because the investigating material contains allegations against that person. The evidence before the trial court must provide an adequate foundation for summoning the additional accused.

The Court scrutinised the evidence and surrounding circumstances, including material collected during investigation and concluded that the requirements for exercising the extraordinary power had not been satisfied. The judgment is particularly significant for understanding the relationship between investigation material and evidence emerging during trial.

Research relevance: The case provides an important limitation on Section 358 BNSS and supports the proposition that a person should not be summoned merely on the basis of suspicion or the contents of the FIR.

6.1.3 *Sukhpal Singh Khaira v. State of Punjab*, (2022) 17 SCC 246

The Constitution Bench decision in *Sukhpal Singh Khaira v. State of Punjab*, (2022) 17 SCC 246 is another major authority. The Court considered the precise stage at which the power under Section 319 CrPC can be exercised. The Constitution Bench held that where there is a conviction, the power must be exercised before

pronouncement of the order of sentence; in the case of acquittal, it must be exercised before the order of acquittal is pronounced. The Court also issued detailed procedural guidelines concerning bifurcated trials, re-hearing and de novo proceedings.

The judgment is directly relevant to Section 358 because it demonstrates that the power is not unlimited in time. It also highlights the importance of procedural fairness when a new accused is introduced after evidence has already been recorded.

Research relevance: It provides the principal authority for analysing the temporal limitation and procedural consequences of Section 358 BNSS.

6.1.4 *Dharam Pal v. State of Haryana, (2014) 3 SCC 306*

The Constitution Bench judgment in *Dharam Pal v. State of Haryana, (2014) 3 SCC 306* is relevant to the distinction between the power to take cognizance and the power to summon additional accused during trial. The jurisprudence recognises that the Sessions Court, in appropriate circumstances, may take cognizance against persons not originally sent up for trial on the basis of the materials forwarded by the police. This is conceptually distinct from the later power under Section 319/358, which is founded upon evidence emerging during inquiry or trial.

Research relevance: This decision is important for distinguishing the pre-trial power of taking cognizance from the trial-stage power of summoning additional accused.

6.1.5 *Manjit Singh v. State of Haryana, (2021) SCC OnLine SC 632*

In *Manjit Singh v. State of Haryana*, the Supreme Court considered the object and scope of Section 319 CrPC and contributed to the continuing development of the principles governing the addition of accused during trial. The decision was specifically considered by the Constitution Bench in *Sukhpal Singh Khaira*.

Research relevance: It assists in understanding the continuing evolution of Section 319 jurisprudence before the Constitution Bench's comprehensive determination in *Sukhpal Singh Khaira*.

6.2 Standard Books and Commentaries

6.2.1 R.V. Kelkar, *Criminal Procedure*

R.V. Kelkar, *Criminal Procedure*, revised by K.N. Chandrasekharan Pillai, Eastern Book Company, Lucknow, is one of the established academic works on Indian criminal procedure. The treatment of joinder of charges, commencement of proceedings, cognizance and procedural powers of criminal courts provides the doctrinal background necessary for understanding the power to add persons to criminal proceedings.

Research relevance: Useful for examining Section 319 CrPC within the broader structure of criminal procedure and for comparing the procedural philosophy underlying the old Code with BNSS.

6.2.2 Ratanlal & Dhirajlal, *The Code of Criminal Procedure*

Ratanlal & Dhirajlal, *The Code of Criminal Procedure, 1973*, LexisNexis, is a leading commentary dealing extensively with the procedural powers of Magistrates and Sessions Courts, including Section 319 CrPC.

The commentary is valuable because it places Section 319 within the larger framework of cognizance, inquiry, trial, joinder of accused and procedural safeguards.

Research relevance: It provides doctrinal material for understanding the historical development and interpretation of Section 319, which is essential for analysing its transition into Section 358 BNSS.

6.2.3 Sarkar, *Sarkar's Criminal Procedure*

Sarkar's commentary on criminal procedure provides extensive treatment of judicial powers during investigation and trial and discusses the principles governing addition of accused under Section 319 CrPC.

Research relevance: It is particularly useful for identifying the development of case law concerning the evidentiary threshold, judicial discretion and the procedural consequences of adding an accused after commencement of trial.

6.2.4 C.K. Takwani, *Criminal Procedure*

C.K. Takwani, *Criminal Procedure*, Eastern Book Company, provides an academic treatment of the criminal procedural system and the powers of criminal courts.

Research relevance: The work is useful for placing Section 319/358 in the context of the larger principles of fair trial, judicial discretion and criminal adjudication.

6.3 Articles and Online Legal Literature

The judicial interpretation of Section 319 has also generated substantial legal commentary. Contemporary legal publications have analysed the Constitution Bench decision in *Sukhpal Singh Khaira*, particularly the twelve guidelines formulated by the Supreme Court concerning the exercise of Section 319 power. These discussions focus on the stage of summoning, bifurcated trials, re-hearing of witnesses and de novo proceedings.

Legal commentary following *Hardeep Singh* has also concentrated on the evidentiary threshold. The central proposition emerging from the literature is that the evidence must be stronger than a mere probability of involvement, but the court is not required to reach the level of satisfaction necessary for recording a final conviction.

Recent legal commentary has further examined whether an additional accused may be summoned on the basis of a witness's examination-in-chief without waiting for cross-examination. This reflects an important continuing controversy concerning the meaning of "evidence" and the point at which the court's power under Section 319 can be invoked.

6.4 Research Thesis Literature

The subject has also been examined indirectly through postgraduate and doctoral research dealing with:

- powers of criminal courts during trial;
- judicial discretion in criminal procedure;
- rights of accused persons;
- fair-trial jurisprudence;
- investigation and charge-sheet;
- addition and deletion of accused;
- judicial control over police investigation; and
- constitutional safeguards in criminal trials.

However, a significant research gap remains in relation to Section 358 BNSS specifically. Most earlier research was necessarily centred upon Section 319 CrPC because the BNSS had not yet come into force. Therefore, there is considerable scope for a dedicated study examining whether the principles evolved under Section 319 should be treated as binding interpretative continuity or reconsidered in the context of the BNSS.

6.5 Comparative Review of the Existing Literature

The literature may broadly be divided into four categories:

First, the constitutional and Supreme Court jurisprudence represented by *Hardeep Singh (Supra)* establishes the basic doctrinal foundation concerning the nature of the power and evidentiary threshold.

Second, decisions such as *Brijendra Singh (Supra)* impose practical limitations by insisting that the power must be founded upon substantive and reliable evidence rather than merely on the FIR or investigative allegations.

Third, *Sukhpal Singh Khaira (Supra)* develops the procedural and temporal dimensions of the power, including the stage before which Section 319 must be invoked and the consequences of adding an accused during or after the trial process.

Fourth, academic commentaries and criminal-procedure textbooks provide the conceptual framework within which the statutory provision can be understood.

7. Research Gap

The review of existing literature reveals a significant gap. The overwhelming majority of authoritative literature and judicial decisions concerns Section 319 CrPC, whereas Section 358 BNSS, 2023 has emerged only with the commencement of the new procedural regime.

The existing literature does not yet adequately answer several important questions:

1. Whether the entire jurisprudence under Section 319 CrPC should automatically apply to Section 358 BNSS.
2. Whether the expression “it appears from the evidence” should receive exactly the same interpretation under the BNSS.
3. Whether the judicial standard of “strong and cogent evidence” remains appropriate under the new statutory framework.
4. Whether procedural safeguards under Section 358 provide any meaningful development over Section 319.
5. Whether the new criminal-procedure architecture of the BNSS affects the timing and manner of exercising this power.
6. Whether recent Supreme Court decisions under Section 319 should be regarded as continuing precedent for Section 358.
7. Whether Section 358 adequately balances truth discovery, victim rights, prosecution of the real offender and the fair-trial rights of the newly summoned accused.

The present research seeks to fill this gap by undertaking a doctrinal and critical analysis of Section 358 BNSS, 2023, while systematically examining the continuity and possible transformation of Section 319 CrPC jurisprudence.

7. Methodology

The study adopts a doctrinal and analytical research methodology. It is primarily based on the examination of Section 358 of the Bharatiya Nagarik Suraksha Sanhita, 2023, corresponding to Section 319 CrPC, along with relevant statutory provisions, Supreme Court and High Court judgments, legal commentaries, books, research articles, and academic literature. The study comparatively analyses the jurisprudence developed under Section 319 CrPC and examines its relevance to Section 358 BNSS. The research further identifies the legislative gaps relating to evidentiary threshold, judicial satisfaction, timing, judicial discretion, and procedural safeguards in summoning additional accused. The findings are derived through qualitative analysis of statutory provisions and judicial precedents, with the objective of suggesting appropriate legal and procedural safeguards..

8. Discussion of Objective No. 1 and Result of Hypothesis No. 1

Objective No. 1

To critically examine the scope and legal nature of the power conferred upon criminal courts under Section 358 of the Bharatiya Nagarik Suraksha Sanhita, 2023, with reference to the corresponding jurisprudence under Section 319 of the Code of Criminal Procedure, 1973.

Discussion

Section 358 BNSS, 2023 represents a significant judicial mechanism enabling the criminal court to proceed against a person who was not originally arraigned as an accused but whose involvement in the commission of an offence becomes apparent from the evidence during an inquiry or trial. The provision substantially corresponds to Section 319 CrPC and reflects the legislative policy that criminal proceedings should not fail merely because the investigating agency did not initially identify or charge every person allegedly involved in the offence.

The scope of Section 358 must, however, be understood as an extraordinary judicial power and not an ordinary procedural power. The court is required to exercise independent judicial discretion and cannot mechanically summon a person merely because that person's name appears in the FIR or because allegations have been made against him or her. The statutory expression “it appears from the evidence” makes evidence emerging during the inquiry or trial the foundation of the power.

The Constitution Bench decision in *Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92, provides the principal jurisprudential foundation. The Supreme Court held that the power under Section 319 CrPC is discretionary and extraordinary and should be exercised only where the evidence before the court provides a sufficiently strong basis for proceeding against the proposed accused. The Court distinguished the required standard from both the ordinary *prima facie* satisfaction at the stage of framing charge and the ultimate standard of proof beyond reasonable doubt.

The principle was further explained in *Brijendra Singh v. State of Rajasthan*, (2017) 7 SCC 706, where the Supreme Court cautioned against summoning persons merely on the basis of their implication in the FIR or materials collected during investigation. The decision demonstrates that the trial court must examine whether the evidence actually available before it justifies the exercise of this extraordinary power.

The Constitution Bench decision in *Sukhpal Singh Khaira v. State of Punjab*, (2022) 17 SCC 246, further established important limitations concerning the stage at which the power can be exercised and the procedural consequences of adding an accused during an ongoing trial. The judgment reinforces the proposition that Section 319—and consequently Section 358—cannot be treated as an unlimited power capable of being exercised at any stage irrespective of the procedural status of the trial.

The legislative transition from Section 319 CrPC to Section 358 BNSS does not appear to have fundamentally altered the underlying purpose of the provision. Its principal object remains the prevention of failure of justice by ensuring that a person whose involvement becomes evident during trial may be brought within the criminal proceeding. Nevertheless, the absence of an express statutory definition of the evidentiary threshold creates a continuing need for judicial standards.

The study therefore finds that the legal nature of Section 358 is corrective, extraordinary and evidence-based. It functions as a judicial safeguard against investigative omissions while simultaneously requiring protection against arbitrary implication. Its proper application requires a balance between two competing objectives: bringing the real offender to justice and protecting an innocent person from unwarranted prosecution.

Result of Hypothesis No. 1

Alternative Hypothesis (H₁): *Section 358 BNSS, 2023 provides an effective judicial mechanism for bringing persons whose involvement emerges during inquiry or trial within the criminal process, and the principles developed under Section 319 CrPC substantially continue to govern its interpretation.*

Null Hypothesis (H₀): *Section 358 BNSS, 2023 does not provide a materially effective mechanism beyond the ordinary criminal process for bringing additional accused before the court, and the jurisprudence developed under Section 319 CrPC cannot be applied without substantial modification.*

Finding

On the basis of the doctrinal examination of the statutory provision and the leading Supreme Court jurisprudence, the Alternative Hypothesis (H_1) is accepted and the Null Hypothesis (H_{01}) is rejected.

The research establishes that Section 358 BNSS is an effective statutory mechanism for preventing a person whose involvement becomes apparent during inquiry or trial from escaping prosecution solely because that person was not originally arraigned as an accused. The provision also substantially carries forward the legal philosophy and operative framework of Section 319 CrPC.

The principles laid down in Hardeep Singh, Brijendra Singh, and Sukhpal Singh Khaira therefore provide an important interpretative foundation for Section 358 BNSS, particularly concerning the extraordinary nature of the power, the evidentiary basis required for its exercise, judicial discretion, timing and procedural safeguards.

However, acceptance of the hypothesis does not mean that Section 358 should be treated as an exact procedural replica of Section 319. The BNSS is a new statutory framework, and future judicial decisions may clarify whether any modifications are necessary in light of its distinct legislative structure. Accordingly, the study concludes that the core jurisprudence of Section 319 substantially continues under Section 358, subject to appropriate adaptation to the statutory scheme and terminology of the BNSS.

Thus, Objective No. 1 is successfully achieved, and Hypothesis No. 1 is supported by the findings of the study.

9. Discussion of Objective No. 2 and Result of Hypothesis No. 2

Objective No. 2

To analyse the evidentiary threshold, judicial standards and limitations governing the summoning of additional accused under Section 358 BNSS, 2023, particularly with reference to “prima facie,” “strong and cogent evidence,” and the expression “it appears from the evidence.”

Discussion

The second objective of the study focuses on the most important judicial question arising under Section 358 BNSS, namely, the nature and degree of evidence required before a criminal court can summon a person who was not originally arraigned as an accused. Section 358 uses the expression “it appears from the evidence” but does not expressly prescribe the precise standard of satisfaction required from the court. Consequently, the jurisprudence developed under Section 319 CrPC assumes considerable importance.

In *Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92, the Constitution Bench explained that the power to summon an additional accused is extraordinary and discretionary. The satisfaction required for exercising the power is not equivalent to the satisfaction required for recording a conviction. At the same time, it must be more than a mere prima facie case. The evidence should be sufficiently strong and cogent to justify the court in bringing a person into criminal proceedings.

This creates an important intermediate evidentiary threshold. A court exercising Section 358 does not conduct a mini-trial or finally determine the credibility of witnesses. Nevertheless, it cannot act merely on suspicion or conjecture. The court must examine whether the evidence before it provides a reasonable and substantial basis for concluding that the proposed accused appears to have participated in the offence.

The expression “it appears from the evidence” is therefore central to the operation of the provision. The source of the court's satisfaction must be evidence emerging during the inquiry or trial. A mere allegation contained in the FIR cannot, by itself, ordinarily constitute sufficient justification for exercising this power. Similarly, the court must distinguish between material collected by the investigating agency and substantive evidence brought before the trial court.

The principle was particularly significant in *Brijendra Singh v. State of Rajasthan*, (2017) 7 SCC 706. The Supreme Court examined the evidence against persons who had not been charge-sheeted and held that the extraordinary power could not be exercised merely because their names appeared in the FIR or because allegations had been made against them. The case demonstrates the importance of judicial scrutiny of the entire evidentiary context before an additional accused is summoned.

The judicial standard is therefore neither the lowest threshold of mere suspicion nor the highest threshold of proof beyond reasonable doubt. It occupies an intermediate position. The court must be satisfied that the evidence is sufficiently reliable and persuasive to justify subjecting the proposed accused to criminal prosecution.

Another important limitation is that the power should not be used to conduct a mini-trial. The court is not required to conclusively determine whether the proposed accused is guilty. Questions concerning the ultimate credibility of witnesses, contradictions, defences and appreciation of the entire prosecution case ordinarily remain matters for final adjudication. The purpose of Section 358 is only to determine whether the evidence emerging during the proceeding is sufficient to justify bringing the person within the trial.

The decision in *Sukhpal Singh Khaira v. State of Punjab*, (2022) 17 SCC 246 also demonstrates that judicial discretion under Section 319 is subject to procedural and temporal limitations. The power cannot be exercised without regard to the stage of the proceedings or the rights of the existing and newly added accused.

The study consequently finds that the expression “strong and cogent evidence” should be understood as requiring credible, relevant and sufficiently persuasive trial evidence, without converting the Section 358 proceeding into a determination of guilt. This standard protects the criminal justice system from two opposite dangers: allowing a genuine offender to escape prosecution on account of investigative omission and exposing an innocent person to criminal prosecution on the basis of weak or speculative material.

The absence of an express statutory definition of the evidentiary threshold under Section 358 is nevertheless a legislative gap. Judicial interpretation is therefore essential to ensure consistency and prevent arbitrary exercise of power. Courts should preferably record clear reasons demonstrating what evidence has emerged, how it connects the proposed accused with the alleged offence, and why the evidentiary threshold for invoking Section 358 has been satisfied.

Result of Hypothesis No. 2

Alternative Hypothesis (H₂): *The requirement of strong and cogent evidence, together with careful judicial scrutiny, is necessary to prevent arbitrary or mechanically exercised power under Section 358 BNSS, 2023.*

Null Hypothesis (H₀₂): *The requirement of a heightened evidentiary threshold under Section 358 BNSS is unnecessary, and the ordinary prima facie standard is sufficient for summoning an additional accused.*

Finding

On the basis of the examination of statutory provisions and the established judicial principles under Section 319 CrPC, the Alternative Hypothesis (H₂) is accepted and the Null Hypothesis (H₀₂) is rejected.

The study establishes that the ordinary prima facie standard is insufficient for the exercise of this extraordinary power. A higher degree of judicial satisfaction is necessary because Section 358 enables a person who was not originally accused to be brought into an ongoing criminal proceeding, potentially resulting in arrest, detention, trial and serious consequences to personal liberty and reputation.

The jurisprudence beginning with *Hardeep Singh* demonstrates that the evidence must be more substantial than a mere prima facie suspicion and should possess sufficient strength and cogency to justify the court's intervention. *Brijendra Singh* further confirms that mere implication in the FIR or reliance upon investigative allegations cannot automatically satisfy this standard.

Accordingly, the research concludes that “strong and cogent evidence” constitutes the appropriate judicial standard for exercising the extraordinary power under Section 358 BNSS, while recognising that the court is not required to establish guilt beyond reasonable doubt at this preliminary stage.

The objective is therefore achieved, and Hypothesis No. 2 is supported by the findings of the study. The requirement of a heightened evidentiary threshold serves as an essential safeguard against mechanical summoning, arbitrary implication and abuse of judicial discretion, while preserving the ability of the criminal court to bring an apparently involved person within the scope of the trial when credible evidence emerges.

10. Discussion of Objective No. 3 and Result of Hypothesis No. 3

Objective No. 3

To examine whether Section 358 BNSS, 2023 adequately balances the interests of effective criminal justice and truth discovery with the constitutional right to fair trial and procedural safeguards of a person summoned as an additional accused.

Discussion

The third objective of the present study is concerned with the fundamental tension between truth discovery and fair trial under Section 358 BNSS, 2023. The provision serves an important purpose in the criminal justice system by empowering the court to proceed against a person whose involvement in an offence emerges during inquiry or trial, even though such person was not originally arraigned as an accused. This power prevents investigative omissions from resulting in the permanent exclusion of an apparently involved person from the criminal process.

However, the exercise of this power directly affects the liberty and procedural rights of the newly summoned person. A person who was not originally an accused may suddenly become subject to arrest, detention, criminal prosecution and trial. Therefore, Section 358 must be interpreted consistently with the constitutional guarantee of a fair, just and reasonable procedure under Article 21 of the Constitution of India.

The Supreme Court's decision in *Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92, establishes that the power under Section 319 CrPC is extraordinary and discretionary. Although the provision is designed to prevent a guilty person from escaping the criminal process, the court must exercise the power cautiously and on the basis of sufficiently strong evidence. This judicial restraint is itself an important safeguard against arbitrary implication.

The principle of fair trial assumes particular importance because the proposed accused was not a participant in the earlier stages of the trial. The statutory scheme therefore provides procedural protection after such person is brought before the court. Section 358(4) BNSS requires proceedings concerning the newly added accused to commence afresh and provides for the witnesses to be re-heard. This requirement is significant because it enables the newly summoned accused to understand the prosecution evidence and exercise the right of cross-examination effectively.

The principle was reinforced by the Supreme Court in *Sukhpal Singh Khaira v. State of Punjab*, (2022) 17 SCC 246, where the Constitution Bench considered the procedural consequences of exercising Section 319 power. The judgment emphasised the importance of following the prescribed procedure after an additional accused is summoned and recognised that the newly added accused must receive the procedural safeguards necessary for a fair adjudication.

The power under Section 358 therefore performs a dual function. First, it acts as a truth-discovery mechanism, enabling the court to bring an apparently involved person within the criminal process. Second, it incorporates procedural safeguards designed to prevent the newly summoned accused from being prejudiced by evidence recorded in proceedings in which that person was not previously an accused.

Another important safeguard is the requirement of judicial application of mind. The court should identify the evidence upon which it proposes to exercise the power and explain why that evidence justifies summoning the additional accused. A reasoned order serves two purposes: it demonstrates that the power has not been exercised mechanically, and it enables the affected person to challenge the order through the appropriate legal remedy.

The study further finds that the balance between prosecution and fair trial cannot be achieved merely by permitting the court to summon additional accused. It requires strict adherence to the evidentiary threshold, careful exercise of judicial discretion and restoration of procedural equality after summoning. The newly added accused should not be placed at a disadvantage merely because the prosecution has already examined some witnesses before his or her entry into the proceedings.

At the same time, an excessively restrictive interpretation of Section 358 would undermine its very purpose. If the court were required to establish guilt beyond reasonable doubt before summoning an additional accused, the provision would become practically ineffective. The court therefore has to maintain an intermediate position: sufficient evidence to justify bringing the person to trial, but not a final determination of guilt.

The study consequently concludes that Section 358 BNSS provides a reasonably balanced statutory framework. Nevertheless, the absence of express legislative guidance concerning the evidentiary threshold, requirement of reasons, treatment of persons previously discharged, and certain procedural aspects leaves considerable room for judicial interpretation. Clear and consistent judicial standards are therefore necessary to ensure that the power is used to advance justice rather than to cause unnecessary prejudice.

Result of Hypothesis No. 3

Alternative Hypothesis (H₃): *Section 358 BNSS can effectively balance the objective of discovering the truth and prosecuting the real offender with the newly summoned accused's constitutional and procedural right to a fair trial, provided that the power is exercised cautiously and with recorded reasons.*

Null Hypothesis (H₀₃): *Section 358 BNSS does not adequately balance effective prosecution with the fair-trial rights of the newly summoned accused, thereby creating a substantial risk of arbitrary or prejudicial criminal proceedings.*

Finding

On the basis of the doctrinal analysis, the Alternative Hypothesis (H₃) is accepted and the Null Hypothesis (H₀₃) is rejected.

The study establishes that Section 358 BNSS contains sufficient basic safeguards to reconcile the objective of bringing the real offender before the court with the fair-trial rights of the newly summoned accused. The requirement of evidence, the extraordinary nature of the judicial power, the requirement of judicial satisfaction, and the statutory provision for fresh proceedings and re-hearing of witnesses collectively provide significant protection against prejudice.

The jurisprudence developed in Hardeep Singh, Brijendra Singh and Sukhpal Singh Khaira further strengthens this balance by requiring cautious exercise of the power, adequate evidentiary foundation and compliance with procedural safeguards.

However, the study also finds that the statutory framework could be strengthened by providing greater legislative clarity regarding the evidentiary threshold, reasons to be recorded, treatment of previously discharged persons, permissible materials for summoning, and procedural rights immediately following addition of an accused.

Therefore, Section 358 BNSS should be regarded as a balanced but judicially dependent provision. Its effectiveness in protecting both the interests of justice and individual liberty will substantially depend upon disciplined judicial exercise and consistent application of the standards developed by the Supreme Court.

Accordingly, Objective No. 3 is achieved and Hypothesis No. 3 is supported. The research concludes that Section 358 BNSS is capable of achieving an appropriate balance between truth discovery and fair trial, provided that its extraordinary power is exercised on the basis of strong and cogent evidence, with recorded reasons and strict adherence to the procedural safeguards available to the newly summoned accused.

11. Overall Conclusion

- 1. Important Mechanism for Criminal Justice:** Section 358 BNSS, 2023 is an important provision to ensure that a person whose involvement emerges during inquiry or trial does not escape prosecution merely because he was not originally arraigned as an accused.
- 2. Correspondence with Section 319 CrPC:** Section 358 substantially corresponds to Section 319 CrPC and continues the principle of bringing an additional accused before the Court when involvement emerges from evidence during judicial proceedings.
- 3. Purpose of Preventing Failure of Justice:** The primary object of the provision is to prevent an offender from escaping prosecution because of an omission, error or incomplete assessment during investigation.
- 4. Extraordinary and Discretionary Power:** The power under Section 358 is extraordinary, discretionary and evidence-based. It cannot be exercised mechanically or as a routine procedural formality.

5. **Requirement of Evidence:** The expression “it appears from the evidence” requires the Court to base its satisfaction on evidence emerging during the inquiry or trial.
6. **Mere Suspicion Insufficient:** Mere suspicion, conjecture, FIR allegations or untested accusations, by themselves, cannot ordinarily constitute a sufficient basis for exercising the extraordinary power under Section 358.
7. **Relevance of Section 319 Jurisprudence:** The principles laid down in *Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92; *Brijendra Singh v. State of Rajasthan*, (2017) 7 SCC 706; and *Sukhpal Singh Khaira v. State of Punjab*, (2022) 17 SCC 246 provide an important interpretative foundation for understanding Section 358 BNSS.
8. **Higher Evidentiary Threshold:** The study concludes that the power under Section 358 should require something substantially stronger than a mere prima facie suspicion. The requirement of strong and cogent evidence serves as an important judicial safeguard.
9. **Guilt Need Not Be Finally Determined:** At the stage of exercising Section 358, the Court is not required to determine the guilt of the proposed accused beyond reasonable doubt. The question is whether the evidence is sufficiently persuasive to justify his inclusion in the criminal trial.
10. **Balance Between Truth and Fair Trial:** Section 358 seeks to balance the discovery of truth with the constitutional requirement of a fair trial.
11. **Procedural Safeguard for Newly Added Accused:** The requirement relating to fresh proceedings and re-hearing of witnesses after addition of an accused provides an important safeguard against prejudice to the newly summoned person.
12. **Legislative Deficiencies:** The study identifies legislative gaps concerning the precise evidentiary threshold, treatment of persons previously discharged or omitted from the charge-sheet, and the evidentiary value of different categories of material.
13. **Need for Judicial Clarification:** These unresolved issues require continued judicial interpretation to ensure consistency and uniformity in the application of Section 358.
14. **Need for Possible Legislative Intervention:** Where judicial interpretation cannot adequately resolve the statutory ambiguity, appropriate legislative clarification may be necessary.
15. **Final Conclusion:** Section 358 BNSS is a necessary and effective mechanism for preventing failure of justice, but its effectiveness depends upon disciplined judicial discretion, reliable and legally admissible evidence, reasoned judicial orders, and strict adherence to fair-trial safeguards.

12. Major Findings of the Study

Finding 1: Section 358 is an extraordinary judicial power: The power under Section 358 is extraordinary and discretionary. It should be exercised only when the statutory conditions are satisfied and not as a routine method of adding accused persons to a criminal case.

Finding 2: Section 319 jurisprudence substantially continues under Section 358: The study finds that the core principles developed by the Supreme Court under Section 319 CrPC remain highly relevant to the interpretation of Section 358 BNSS. In particular, *Hardeep Singh*, *Brijendra Singh* and *Sukhpal Singh Khaira* provide the principal jurisprudential framework.

Finding 3: Mere prima facie suspicion is insufficient: The ordinary prima facie standard is not sufficient for exercising this extraordinary power. The court must have a substantially stronger evidentiary basis before subjecting a person to criminal prosecution at a later stage.

Finding 4: Strong and cogent evidence is an appropriate standard: The study supports the judicial requirement that the evidence should be strong and cogent. This standard occupies an intermediate position: it is higher than a mere prima facie case but lower than proof beyond reasonable doubt.

Finding 5: FIR alone cannot ordinarily justify summoning: The mere fact that a person has been named in the FIR does not automatically justify an order under Section 358. The court must examine the evidence emerging during the inquiry or trial.

Finding 6: The court must avoid a mini-trial: At the stage of exercising Section 358, the court should not undertake a detailed appreciation of evidence or finally determine the credibility of witnesses. The ultimate determination of guilt remains a matter for trial.

Finding 7: Judicial reasons are essential: Because Section 358 affects personal liberty, an order summoning an additional accused should demonstrate proper application of mind and identify the evidence that connects the proposed accused with the alleged offence.

Finding 8: Fair-trial safeguards are indispensable: The newly summoned accused must receive meaningful procedural protection. The statutory requirement concerning fresh proceedings and re-hearing of witnesses is therefore an important safeguard against prejudice.

Finding 9: Section 358 balances truth discovery and individual liberty: The provision attempts to reconcile two important objectives: preventing the real offender from escaping prosecution and preventing innocent persons from being subjected to arbitrary criminal proceedings.

Finding 10: Legislative clarification is desirable: The study identifies a legislative gap concerning the precise evidentiary threshold, treatment of discharged persons, evidentiary value of different forms of material and certain procedural aspects of summoning additional accused. Legislative clarification could improve uniformity and reduce inconsistent judicial application.

Finding 11: All three hypotheses are supported: On the basis of the doctrinal analysis undertaken in the study:

- **Hypothesis No. 1 is accepted** — Section 358 provides an effective mechanism for bringing additional accused into the criminal process and Section 319 jurisprudence substantially remains relevant.
- **Hypothesis No. 2 is accepted** — strong and cogent evidence and careful judicial scrutiny are necessary safeguards against arbitrary exercise of the power.
- **Hypothesis No. 3 is accepted** — Section 358 can balance truth discovery with fair-trial rights when exercised cautiously and in accordance with procedural safeguards.

13. Further Scope of the Study

1. **Empirical Study of Trial Courts:** Future research may examine the frequency of applications under Section 358 BNSS and the factors influencing their acceptance or rejection.
2. **Comparative Study of High Courts:** A comparative analysis of different High Courts may identify variations in the interpretation and application of Section 358.
3. **Future Supreme Court Jurisprudence:** Further research may examine post-BNSS Supreme Court decisions to determine whether the principles developed under Section 319 CrPC are fully adopted or modified.
4. **Relationship with Other BNSS Provisions:** Research may analyse the interaction of Section 358 with provisions relating to investigation, cognizance, discharge, framing of charge, examination of witnesses and trial.
5. **Status of Different Categories of Persons:** Future studies may examine the legal position of persons who are: named in the FIR but not charge-sheeted; discharged by the Court; or exonerated during investigation.

6. **Electronic and Digital Evidence:** Research may examine the role of CCTV footage, call-detail records, electronic communications, social-media material and other digital evidence in proceedings under Section 358.
7. **Victimology and Victims' Rights:** Future research may assess whether Section 358 adequately protects victims against investigative omissions and ensures an effective prosecution.
8. **Comparative Jurisprudence:** Comparative research may examine similar mechanisms in other jurisdictions for bringing additional persons into criminal proceedings after commencement of trial.
9. **Legislative Reform:** Future studies may consider whether Section 358 should be amended to expressly prescribe the evidentiary threshold, degree of judicial satisfaction, reasons to be recorded, procedural safeguards and treatment of previously discharged or omitted persons.
10. **Development of Uniform Standards:** Ultimately, further research may contribute to developing a clear, consistent and uniform legal framework for the exercise of power under Section 358 BNSS.

14. Concluding Observation

Section 358 BNSS occupies a crucial position at the intersection of judicial discretion, evidentiary law, investigative accountability, victim-oriented justice and constitutional fair-trial guarantees. Its proper application can prevent genuine offenders from escaping the criminal process while protecting innocent persons from arbitrary prosecution. The future development of Section 358 will therefore depend upon a consistent judicial methodology in which strong and cogent evidence, reasoned judicial satisfaction, procedural fairness and constitutional protection of personal liberty remain the guiding principles.

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