

Section of BNSS

183(5)(6)

OFFICE OF THE DIRECTOR GENERAL OF POLICE Andaman & Nicobar Islands

Sri Vijaya Puram, dated the

Standard Operating Procedure for Recording of Confession Statement through a Magistrate

Introduction: This SOP elaborates the process of recording of confessions and statements by a Magistrate under Sec. 183 BNSS 2023 at any stage of investigation but before the commencement of the inquiry or trial.

Sec. 183 of BNSS: Recording of confessions and statements.

(1) Any Magistrate of the District in which the information about commission of any offence has been registered, may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards but before the commencement of the inquiry or trial:

Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 316 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:—

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.
Magistrate."

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(6) (a) In cases punishable under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023, the Magistrate shall record the statement of the person against whom such offence has been committed in the manner specified in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that such statement shall, as far as practicable, be recorded by a woman Magistrate and in her absence by a male Magistrate in the presence of a woman:

Provided further that in cases relating to the offences punishable with imprisonment for ten years or more or with imprisonment for life or with death, the Magistrate shall record the statement of the witness brought before him by the police officer:

Provided also that if the person making the statement is temporarily or permanently, mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided also that if the person making the statement is temporarily or permanently, mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be recorded through audio-video electronic means preferably by mobile phone;

(b) a statement recorded under clause (a) of a person, who is temporarily or permanently, mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 142 of the Bharatiya Sakshya Adhiniyam, 2023 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.

(7) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

Objective:

The object of section 183 of BNSS is to provide a method of securing a reliable record of statements or confessions made during the course of the Police investigation, which could be used, if necessary, during the enquiry or trial. Under section 23(1) of the Bharatiya Sakshya Adhiniyam, 2023, a confession to a Police officer is inadmissible in evidence, and hence when an accused person confesses during the Police investigation,

the Police frequently get it record by a Magistrate under section 183 of BNSS, and it can then be used to the extent to which it may be admissible under the Indian Evidence Act.

Some important features of section 183 BNSS are:—

Statements or confessions made in the course of an investigation can be recorded by any Judicial Magistrate of the district where the FIR has been registered. Earlier such geographical limit was not prescribed and such recording was possible even outside the district and State also.

A. General Guidelines

- i. The Prayer should be made before the Jurisdictional Magistrate or any Judicial Magistrate in the district where the case has been registered.
- ii. If a confession or statement is to be recorded by a Judicial Magistrate other than the Jurisdictional Magistrate, the reasons must be cited in the prayer.
- iii. Prior approval should be taken from concerned Superintendent of Police before applying for recording of confessional statement of accused.
- iv. Copy of the statement recorded under Sec 180 BNSS must be accompanied with the prayer of the I.O.
- v. Before praying for recording of statement u/s 183 BNSS, statements of witness or victim should be recorded under Sec. 180 BNSS, preferably in a question and answer format.
- vi. If the accused expresses unwillingness to confess, no efforts should be made to record his confession.
- vii. The investigating officer should collect a copy of the confession/statement in a sealed cover to incorporate in investigation.
- viii. Statements of physically/mentally disabled persons recorded U/s 183 BNSS will be considered in lieu of examination-in-chief and can be cross-examined.
- ix. I.O should arrange suitable translator or special educator for recording of statement.

B. Manner of Recording Statement of a Witness

- i. It should be mentioned in the petition that whether the person has given clear consent for such recording and whether any next friend is available with the accused/ witness/victim.
- ii. In case the witness is a minor, the parents/guardian or next friend of the minor should be allowed to accompany him.

C. Manner of Recording Confession

- i. The confession should be recorded immediately.
- ii. Prior approval should be taken from concerned Superintendent of Police before applying for recording of confessional statement of accused.

D. Manner of Recording Rape Victim's Statement

- i. In cases where offence is punishable under Sections 64 to 71, 74 to 79, 124 BNS, 2023, the Magistrate shall have to record the statement of the rape victim immediately after the offense is reported to the police.
- ii. It should be recorded by a woman Magistrate or, in her absence, by a male Magistrate in the presence of a woman.

E. Manner of Recording Disabled Persons' Statement

- i. If the witness is mentally or physically disabled, deaf or dumb or not understanding local language, I.O must arrange an interpreter or special educator.

F. Audio-Visual Recording

- i. Any confession statement made under Sec. 183(1) BNSS may be recorded by audio-video electronic means in the presence of the accused's advocate.
- ii. It is mandatory during the recording of statements from mentally or physically disabled persons, preferably using a mobile phone.

G. Timing of Recording

- i. Confessions or statements can be recorded during the investigation process but not during inquiry or trial.
- ii. It can also be recorded after the submission of the Final Form (Police Report) but before the commencement of the inquiry/trial.

H. Mandatory Recording in Certain Cases

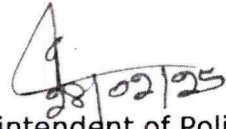
- i. The statement of victims subjected to offences punishable under Sections 64 to 71, 74 to 79, 124 BNS shall have to be recorded by the Magistrate.
- ii. Similarly in cases where the offence is punishable with imprisonment for ten years or more, life imprisonment, or death, the Magistrate shall have to record the statement of a witness produced before him.

Hence, all concerned are hereby directed for strict and meticulous compliance of this SOP.

This is issued with the approval of Competent Authority.

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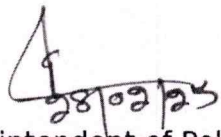
(Superintendent of Police)
Police Headquarters,
Andaman & Nicobar Islands.

To

1. All District Superintendents of Police
2. The Superintendent of Police (CID), Port Blair
3. Principal, PTS, Port Blair
4. All SDPOs/Dy.SsP
5. All SHOs and In-Charges Out Posts

Copy to:-

1. SO to DGP
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3. R to DIGP (HQ)
4. R to DIGP (L&O)
5. R to SP(HQ)
6. R to All District, SP's
7. R to Dy.SP(HQ)
8. R to All Dy.SP's
9. Home Inspector (PHQ)
10. In-charge, Computer Cell PHQ


(Superintendent of Police)
Police Headquarters,
Andaman & Nicobar Islands.