
COMMITTAL PROCEEDINGS: THE PURPOSE, THE PRACTICE, AND THE LAW OF PROCEDURAL LAPSE

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ABSTRACT

Committal proceedings are the preliminary hearing in a magistrate's court before a case is sent to be tried before a jury or a Court of Sessions. This is used to screen out groundless or mala fide prosecutions, to protect an innocent person from an unnecessary trial. Committal proceedings in the Indian jurisprudence is regulated by S. 232 of the Bharatiya Nagarik Suraksha Sanhita. S. 232, BNSS requires establishment of a prima facie case basing solely on non-examined evidence and witness statements. This article poses the question of whether this mere establishment of prima facie case fulfils the purpose of committal proceedings. As per multiple English law journals, articles and legislations, the purpose of committal proceedings is ensuring fair trial by preventing unnecessary harassment towards accused without evidence with sufficient merit. However, cases such as *Pulen Phuken v. State of Assam*, etc., showcase that multiple criminal cases in India, in which the Magistrate affirmed the existence of a prima facie case, are dismissed at High Courts or Supreme Court due to fabricated evidence and false witnesses. This highlights the gap between the law of committal proceedings and the purpose for which it was introduced. This article primarily argues that the narrow scope of S. 232, BNSS, which prohibits the examination and cross-examination of statements and evidences, creates a legislative lacuna that actually fails to actualise the purpose for which committal proceedings were introduced into the judicial system. This article establishes that the narrow scope of S. 232, BNSS and the requirement of mere establishment of a prima facie case essentially produces a statutory and legislative deficiency that prevents it from achieving the purpose of committal proceedings, hence leading to the procedural lapses of large percentages of pre-trial detentions, low conviction rates and wrongful convictions.

“100 guilty, 1 innocent.” - Benjamin Franklin¹

I. Introduction

Historically, judicial systems of multiple countries have based themselves on the legal principle of “100 guilty, 1 innocent”. This phrase signifies that it is better to let one hundred guilty people go free than to wrongfully convict one innocent person. One of the primary ways to protect this legal principle is to ensure that no accused is put to trial, imprisoned or convicted without adequate and veracious evidence. The key legal tool to ensure this is ‘committal proceedings.’

Committal proceedings are the preliminary hearing in a magistrate’s court before a case is sent to be tried before a jury or a Court of Sessions. This is used to screen out groundless or mala fide prosecutions, to protect an innocent person from an unnecessary trial.²

Though the definition and purpose of committal proceedings are same across international borders, the Indian provision on committal proceedings, S. 232 of Bharatiya Nagarik Suraksha Sanhita, requires establishment of a prima facie case basing solely on non-examined evidence and witness statements.³ This article poses the question of whether this mere establishment of prima facie case fulfils the purpose of committal proceedings. The main argument of this article is that the narrow scope of S. 232, BNSS, which prohibits the examination and cross-examination of statements and evidences, creates a legislative lacuna that actually fails to actualise the purpose for which committal proceedings were introduced into the judicial system.

In contending so, this article firstly traces the historical advent of committal proceedings. Next, it explores how the law and procedure of committal proceedings in Indian jurisprudence, as per S. 232, BNSS, departs from that of the English jurisprudence, despite having the same objectives. The article then, through multiple cases, establishes that the narrow scope of S. 232, BNSS fails to incarnate the purpose of committal proceedings and leads to procedural lapses like crowded prisons due to large numbers of pre-trial inmates, wrongful conviction, etc.

¹ Vol. 2, SIR WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND IN FOUR BOOKS (J.B. Lippincott Co. 1893).

² P. J. Hidden, *The benefits of committal proceedings*, 2(2) CURR. ISSUES CRIM. JUSTICE, 19, 19-25 (1990).

³ Bharatiya Nagarik Suraksha Sanhita, 2023, S. 232, No. 46, Acts of Parliament, 2023 (India).

II. Committal Proceedings: The Law

The historical advent of committal proceedings began in 1554s,⁴ where judges examined the accused and those who brought him to trial concerning the facts and circumstances of the case.⁵ The purpose of the committal proceedings was to ascertain if there was a prima facie case to be made against the accused.⁶

Committal proceedings, in common law, occurs between an accused's first appearance in the court when, and the actual trial by jury of the case against him.⁷ English Criminal Justice Act, 1967,⁸ states that the procedure for committal proceedings shall involve a full oral hearing of the accused, an enquiry into the evidence provided by both the prosecution and the accused, and an examination and cross-examination of the witness statements during the hearing.⁹

Indian provision on committal proceedings, S. 209 Code of Criminal Procedure,¹⁰ laid down the process through which a magistrate, after a preliminary reviewing of evidence of a case, could commit the case to the Court of Sessions.¹¹ The corresponding provision of S. 209 of the CrPC is Section 232 of the BNSS, codified in 2023, aimed to be a replacement for CrPC.¹²

S. 232 of BNSS states:

“When in a case instituted on a police report or otherwise,...it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall— (a) commit...the case to the Court of Session, and...remand the accused to custody until such commitment has been made; (b)...remand the accused to custody during, and until the conclusion of, the trial...”¹³

⁴ 1 & 2 Phil. and M. c. 13, (1554), and 2 & 3 Phil. and M. c. 10, (1555).

⁵ John B. Bishop, *The Abolition of Committal Proceedings*, 2(2) CURRENT ISSUES CRIM. JUST. 37, 37-51 (1990).

⁶ <https://www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/download/620/620/4445?inline=1> (last visited July 21st, 2025).

⁷ Id.

⁸ English Criminal Justice Act, 1967, Chapter 80, Parliament of the United Kingdom, 1967.

⁹ P. J. Hidden, *The benefits of committal proceedings*, 2(2) CURRENT ISSUES CRIM. JUST. 19, 19-25 (1990).

¹⁰ Code of Criminal Procedure, 1973, S. 209, No. 2, Acts of Parliament, 1974 (India).

¹¹ Vol. 1 RATANLAL DHIRAJLAL, THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 1163 (23rd Edition LexisNexis 2024).

¹² Arushi Bajpai, Akash Gupta, and Akshath Indusekhar, *Revisiting Criminal Law Bills: An In-Depth Critical Analysis of Bharatiya Nyaya Sanhita Bill and Bharatiya Nagarik Suraksha Bill*, 45(3) Stat. L. R. 1, 2 2024, <https://academic.oup.com/slr/article/45/3/hmae043/7758840>.

¹³ Bharatiya Nagarik Suraksha Sanhita, 2023, S. 232, No. 46, Acts of Parliament, 2023 (India).

III. The Purpose and The Procedure

The objective of English jurisprudence in introducing committal proceedings into the judicial system was for it to act as a screening mechanism, in which Magistrates in lower tribunals consider the evidence provided by the prosecution to screen out groundless or speculative prosecutions, ultimately aimed at saving the time of trial courts and protecting an innocent person from the harassment of an unnecessary trial.¹⁴

The objective of the provision for committal proceedings in Indian jurisprudence is to prevent commitment of cases without any reasonable ground for conviction of the accused, and abuse of power by the police by discouraging irrational or mala fide cases.¹⁵

Though the objective of criminal proceedings is similar in both Indian and English jurisprudence, the law and practice of committal proceedings in Indian jurisprudence departs from English law primarily by the virtue of its procedural scope.

As per S. 232, BNSS, the Magistrate is competent to inquire into the prima facie case for the purpose of commitment to the Court of Sessions.¹⁶ However, in the process of committal, the Magistrate is limited to the prima facie examination of police reports and other evidences. The Magistrate need not weigh and balance the evidence based on their merit.¹⁷ The Supreme Court, in *Kewal Krishan v. Suraj Bhan*,¹⁸ stated that it would be in excess of a Magistrate's jurisdiction to weigh the evidence on their merit and do a detailed inquiry. Unlike what is usually followed in other common law countries, courts in India have held that the Magistrate need not hear the accused during committal proceedings and can choose to decide on the basis of the substantive evidence submitted by the prosecution, which does not include evaluating the merit of the evidence.¹⁹

Now, as the difference between the two provisions has been highlighted, it needs to be

¹⁴ <https://www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/download/620/620/4445?inline=1> (last visited July 21st, 2025).

¹⁵ *Sunderlal v. State*, 1983 Cr LJ 736, (All-FB).

¹⁶ Vol. 1 RATANLAL DHIRAJLAL, *THE BHARATIYA NAGARIK SURAKSHA SANHITA*, 2023 1165 (23rd Edition LexisNexis 2024).

¹⁷ *Bajrang Lal v. State of Rajasthan* (2003) 2 Raj LR 610, *Inspector of Police v. R Jeeva Jothi* 2007 Cr LJ (3003) (3007).

¹⁸ *Kewal Kishan v. Suraj Bhan* AIR 1980 SC 1780.

¹⁹ Vol. 1 RATANLAL DHIRAJLAL, *THE BHARATIYA NAGARIK SURAKSHA SANHITA*, 2023 1163-1168 (23rd Edition LexisNexis 2024).

reiterated that the primary purpose of committal proceedings was to “...ensure that accused will not be brought to trial unless a prima facie case is shown or there is sufficient evidence to warrant his being put on trial or the evidence raises a strong or probable presumption of guilt... committal proceedings constitute an important element in the protection which the criminal process gives to an accused person.”²⁰

This objective of committal proceedings, analysed in light of S. 232, BNSS, raises the question of whether the mere establishment of prima facie case that is to be exclusively triable by Court of Sessions, without the Magistrates examining the evidence and witnesses based on their substantial merit, fulfils the purpose that committal proceedings were originally introduced for in the judicial system. This article explores this question by analysing multiple Indian cases, like *Pulen Phuken v. State of Assam*,²¹ *Vinobhai v. State of Kerala*,²² etc., wherein the mere consideration of the existence of a prima facie case, without considering the evidence based on their merit nullified the effect of the speculated objective of committal proceedings.

IV. Case Analysis: The Practice

In *Pulen Phuken v. State of Assam*,²³ Pulen Phuken and 10 others were arrested, convicted and sentenced to rigorous imprisonment under Sections 147/148/447/323/302/149 of the Indian Penal Code by Trial Court. Herein, an FIR was lodged, stating that thirteen residents had come to the house of the complainant, caused grievous bodily harm to the complainant's brother-in-law, and committed murder of another person.

After filing of the charge sheet by police, it was held by the Magistrate that there was a prima facie case for trial under Section 147, 302, etc. of the IPC. After due completion of committal proceedings, the case was transferred to Trial Court and the accused were sentenced to imprisonment. However, after appeal was dismissed by High Court, the accused further appealed to the Supreme Court, contending:

- a. Discrepancies in the FIR and statement of first informant.
- b. Presence of police personnel with accused people at the time the incident took place.

²⁰ *Barton v. the Queen* [1980] HCA 48.

²¹ *Pulen Phuken v. State of Assam* Criminal Appeal No. 906 of 2016 (INSC, 28 March 2023).

²² *Vinobhai v. State of Kerala* 2025 INSC 119 CRIMINAL APPEAL NO. 1730 OF 2017.

²³ *Pulen Phuken v. State of Assam* Criminal Appeal No. 906 of 2016 (INSC, 28 March 2023).

- c. The witnesses were assaulted by the police personnel while being accompanied to the police station.

Supreme Court found contradictions in the accounts of the eyewitnesses and the FIR that was lodged by the complainant. Though this factual discrepancy was contended by the defendants during the committal proceedings, they were only admitted during the appeal in Supreme Court. This implies that the Magistrate, despite facing substantive discrepancy in the evidence, had found the existence of a prima facie case, since the examination of value of evidence is prohibited under S. 232, BNSS. This absence of weighing of evidences based on their substantive merit had allowed this case to be committed to the Court of Sessions.

A similar case is *Vinobhai v. State of Kerala*.²⁴ In *Vinobhai v. State of Kerala*,²⁵ it was alleged that the appellant stabbed the victim to death with a knife. The prosecution submitted a factual case of prior enmity between the accused and the victim, and a disclosure statement provided against the accused, leading to the recovery of the knife that was used for the homicide. This disclosure statement was provided under S. 27 of the Indian Evidence Act,²⁶ though it was not accompanied by any other supporting evidence. Though the established law is that a disclosure statement alone cannot serve as the sole basis for conviction,²⁷ the trial court had convicted the accused solely basing on the disclosure statement and the prima facie witness statement.

However, the Supreme Court found that the statements of the two key eyewitnesses had material omissions and were contradictory to each other. Even the weapon that was allegedly used to commit the murder, i.e., the knife could not be used as corroborated evidence.

Despite the evidence not having enough substantial value to establish the existence of a case, the Magistrate affirmed the existence of a prima facie case, as the Magistrate could only base their decision on the disclosure statement without considering whether it was corroborated by other valid evidence, and without cross-examining those witnesses. However, on the evaluation of sufficiency of evidence and cross examination of witness statements, after 12 years of incarceration of the accused, the Supreme Court had found the evidence given by the

²⁴ *Vinobhai v. State of Kerala* 2025 INSC 119 CRIMINAL APPEAL NO. 1730 OF 2017.

²⁵ *Id.*

²⁶ Indian Evidence Act, 1872, S. 27, No. 1, Acts of Parliament, 1872 (India).

²⁷ *Manoj Kumar Soni v. State of Madhya Pradesh*, 2023 SCC OnLine SC 984.

prosecution to be insufficient to form a case against the accused and quashed the conviction.

The Supreme Court, in *Sakhawat v. State of UP*,²⁸ set aside the convictions of accused in a 43-year-old murder case. In *Sakhawat v. State of UP*,²⁹ an FIR was lodged against the appellant and three other accused, on the charges of murder under S. 302, S. 206 and S. 34 of IPC. The FIR stated that one night, they heard a voice from the hut of the deceased and a firearm shot. When they reached the scene, they saw the appellant being in a scuffle with the deceased and PW-7 and the second accused caused grievous harm to PW-7, using his knife. The FIR stated that the accused fled, and the deceased was found injured near his hut and he eventually succumbed to the injuries.

Upon the filing of FIR, the existence of a prima facie case was established by the Magistrate; trial court had convicted the accused. However, upon appeal in the Supreme Court, the apex court acquitted the accused, stating that along with delayed witness statements and missing evidences, one of the key pieces of evidence, i.e., the murder weapon, was never recovered by the police. Here, despite police's inability to recover the weapon, which would have been evidence of sufficient value, Magistrate established the existence of a prima facie case solely basing on the FIR produced by the police and committed the case to the Court of Sessions. The accused had been convicted and imprisoned for 43 years, despite the evidence having little to no substantial value.

The mentioned cases, along with a plethora of other Indian criminal cases, despite insufficient or fabricated evidence, had been committed by Magistrates to Court of Sessions. This leads to the accused being imprisoned and wrongfully convicted for years on the basis of false or fabricated evidence, witness, FIR, etc., ultimately defeating the intention for which committal proceedings were introduced into the judicial system.

V. Committal Proceedings: The Law of Procedural Lapse

The object of committal proceedings, both in English and Indian jurisprudence are identical, i.e., prevention of commitment of cases in which there is no reasonable ground for conviction and to ensure that the accused is not committed for trial without being informed about the

²⁸ *Sakhawat v. State of Uttar Pradesh* 2025 INSC 777 Criminal Appeal No.4571 of 2024.

²⁹ *Id.*

offences impugned against him and without being given the chance to meet them.³⁰

Despite this being the objective of committal proceedings, cases such as *Vinobhai v. State of Kerala*,³¹ *Pulen Phuken v. State Assam*,³² *Sakhawat v. State of UP*,³³ etc. are stark examples of committal proceedings failing to ensure that the case is not committed to the Court of Sessions before ascertaining whether there is any reasonable ground to convict the accused or not.

This failure of committal proceedings is not due to the failure to carry out the legislation, but rather due to the legislation itself. The reason why this paper contends that the law and practice of committal proceedings is unable to achieve its original intended purpose is because of the procedural lapse that occurs due to the nature of the legislation of committal proceedings, i.e., S. 232, BNSS.

S. 232, BNSS does not allow for a detailed enquiry to be done by Magistrates.³⁴ Courts have interpreted the power vested in Magistrates to be the discretionary power to consider the existence of a prima facie case solely for the purpose of commitment.³⁵ What Magistrates are to consider, as per the Statute, is limited to the apparent Police report, FIR or other evidences provided to him and decide whether there exists a prima facie case or not. The process of committal does not extend to Magistrates considering whether the Police report can be corroborated with other evidences, whether the evidence is fabricated, or whether the substantial content of the evidence has sufficient truth to it.

This leads to the acceptance of fabricated, insufficient and false evidence, witness statements. This is highlighted by the committal of the accused in *Sakhawat v. State of UP*³⁶ despite the absence of the weapon used for the crime from the evidence, the non-statutory dependence on disclosure statements by the Court in *Vinobhai v. State of Kerala*,³⁷ and the sole reliance on the FIR of the police without examining any of the corroborated evidence in *Pulen*

³⁰ Vol. 1 RATANLAL DHIRAJLAL, THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 1163 (23rd Edition LexisNexis 2024).

³¹ *Vinobhai v. State of Kerala* 2025 INSC 119 CRIMINAL APPEAL NO. 1730 OF 2017.

³² *Pulen Phuken v. State of Assam* Criminal Appeal No. 906 of 2016 (INSC, 28 March 2023).

³³ *Sakhawat v. State of Uttar Pradesh* 2025 INSC 777 Criminal Appeal No.4571 of 2024.

³⁴ Vol. 1 RATANLAL DHIRAJLAL, THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 1164 (23rd Edition LexisNexis 2024).

³⁵ Id at 1165.

³⁶ *Sakhawat v. State of Uttar Pradesh* 2025 INSC 777 Criminal Appeal No.4571 of 2024.

³⁷ *Vinobhai v. State of Kerala* 2025 INSC 119 CRIMINAL APPEAL NO. 1730 OF 2017.

Phuken v. State of Assam.³⁸ All of these are a direct result of the narrow scope of S. 232, BNSS. The acceptance of such evidence by the Magistrate leads to the assumption of truth of the evidences and witness statement provided by the prosecution. This leads to not just the committal of these cases to Court of Sessions but oftentimes results in the conviction of the accused by the trial court. Such convictions are only overturned at courts of Higher levels, i.e., either High Courts or the Supreme Court of India. Herein, the procedural lapse of committal proceedings not achieving the purpose that they were intended for, is not because of the difference in the law and practice of it, but rather because of the nature of the statute itself.

The limited power of enquiry vested in the Magistrate by S. 232, BNSS, creates a legislative and procedural lapse which essentially renders the process of committal proceedings futile as any and all accused, brought before the Magistrate by the police, are put to trial, often leading to pre-trial detentions. This pre-trial detention takes place because S. 232(2), BNSS mandates that if the Magistrate decides that the case is to be committed to the Court of Sessions, the accused is to be remanded to the police custody, and these accused are kept in the custody till their trial is over. The nature of S. 232, BNSS, creates a statutory vacuum, where, despite the presence of provision of committal proceedings, it, in consequence, has made the pursuit of objective of committal proceedings Sisyphean.

About 77% of the prison inmates are accused people who are under trial.³⁹ Despite such large number of pre-trial detainees, the conviction rates remain largely low, ranging from about 42% to 46% from 2005 to 2016.⁴⁰ These low conviction rates, put against the large percentage of pre-trial detention suggest that large numbers of accused, who are later not even convicted, are being put to trial by the Magistrate through S. 232, BNSS, and forced to stay in the police custody since the Magistrate committed their case to the Court of Sessions. This practice, the result of S. 232, BNSS, is repugnant to the actual objective of committal proceedings.

Along with pre-trial detention, the legislative vacuum produced by S. 232, BNSS also leads to wrongful convictions of the accused, as highlighted by the cases. Between 2016 and 2022, High Courts and Supreme Court have acquitted the accused in about 178 and 23 death

³⁸ *Pulen Phuken v. State of Assam* Criminal Appeal No. 906 of 2016 (INSC, 28 March 2023).

³⁹ National Crime Records Bureau ('NCRB'), 'Prison Statistics India 2021'

https://ncrb.gov.in/sites/default/files/PSI_2021_as_on_31-12-2021.pdf (last visited 27th July, 2025).

⁴⁰ Government of India, Ministry of Home Affairs, *Corrected Reply to Lok Sabha Unstarred Question No. 510*, 2025 <https://sansad.in/getFile/loksabhaquestions/annex/13/AU510.pdf?source=pqals> (last visited 27th July, 2025).

penalty cases, respectively.⁴¹ These accused were brought before Magistrates, put to trial based on insufficient evidence and later convicted by Trial Courts. The reason behind the committal of such cases is the non-examination of evidence and witness statements by the Magistrate. Often times, in such cases, accused are imprisoned for years during their pre-trial detention and then wrongfully convicted for more. Thus, the entire purpose of committal proceedings, i.e., “screening out groundless or speculative prosecutions, saving the time of the trial court and protecting an innocent person from the harassment of an unnecessary trial”,⁴² is rendered nugatory by the procedure of S. 232, BNSS.

VI. Conclusion

In conclusion, committal proceedings were originally introduced into the judicial system with the purpose to determine whether there is enough evidence against the accused for him to be put to trial. However, through S. 232 of BNSS, it has been reduced to the determination of whether the provided evidence is sufficient to put the accused to trial. It disallows examination of evidence and witness statements based on their merit and only provides the scope for the Magistrate to decide whether the provided evidence is sufficient, regardless of the authenticity, to commit the case to the court of Sessions. This allows the acceptance of false, fabricated and insufficient evidence by the Magistrate and often, the Magistrate’s sole reason for committing the case to the Court of Sessions is the police report presented to him. This creates a procedural lapse, wherein numerous accused are put to trial, convicted and imprisoned, without sufficiently genuine evidence and witnesses against them.

Thus, in response to the question posed earlier, i.e., whether the mere establishment of a prima facie case for the reason of committal by the Magistrate, as laid down by S. 232, BNSS, fulfils the purposes for which it was originally introduced into the judicial system, this article establishes that the narrow scope of S. 232, BNSS and the requirement of mere establishment of a prima facie case essentially produces a statutory and legislative deficiency that prevents it from achieving the purpose of committal proceedings, hence leading to the procedural lapses of large percentages of pre-trial detentions, low conviction rates and wrongful convictions.

⁴¹ Kent Roach, *Wrongful Convictions, Wrongful Prosecutions and Wrongful Detentions in India*, 35(1) NLSIR 250, 255 (2024), <https://repository.nls.ac.in/nlsir/vol35/iss1/12>.

⁴² <https://www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/download/620/620/4445?inline=1> (last visited July 21st, 2025).

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