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NIA Court Invokes Trial in Absentia Under BNSS Section 356

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CURATED & WRITTEN BY

**Bharat Choudhary**

UPSC Educator & Content Creator

[in linkedin.com/in/epicbharat](https://www.linkedin.com/in/epicbharat)**ALSO FROM THE CREATOR****BharatNotes**Free UPSC notes, MCQs, PYQ analysis. **100% Free.**bharatnotes.com →**ADVERTISE****Advertise with Ujiyari**

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NIA Court Invokes Trial in Absentia Under BNSS Section 356

15 July 2026 · 4 min read ·

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WHY IN NEWS

In , a **Jammu NIA court** issued a **non-bailable warrant** against Lashkar-e-Taiba chief **Hafiz Saeed** in connection with the **Pahalgam terror attack**, in which **26 people were killed**. The **National Investigation Agency (NIA)** is set to pursue a **trial in absentia**, the first major use of **Section 356 of the Bharatiya Nagarik Suraksha Sanhita (BNSS)**.

A NEW TOOL AGAINST ABSCONDING FUGITIVES

For decades, Indian courts could not conduct a full criminal trial against an accused who had absconded and placed himself beyond the reach of the justice system. Terror masterminds sheltering abroad, such as those behind cross-border attacks, could effectively stall proceedings indefinitely simply by refusing to appear. The **BNSS**, which replaced the colonial-era criminal procedure code, changes this by allowing a court to try, convict and sentence a **proclaimed offender** even in his absence.

The move against Hafiz Saeed in the **Pahalgam** case is the first prominent invocation of this power. The Government of India regards the **Pahalgam attack as an act of cross-border terrorism**, and the in-absentia route allows the Indian state to establish guilt on the record and build a legal foundation for extradition, asset action and international pressure, even while the accused remains outside its jurisdiction.

WHAT SECTION 356 BNSS PROVIDES

Section 356 permits a court to conduct a **complete trial, deliver judgment and pass sentence** against a proclaimed offender who has absconded and cannot be tried in the ordinary manner. Crucially, the law surrounds this power with strict **safeguards** so that in-absentia proceedings do not become a shortcut that erodes fair-trial rights.

The Safeguards

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SAFEGUARD	REQUIREMENT
Gravity of offence	Punishable with at least ten years , life imprisonment or death
Repeated warrants	Two arrest warrants issued at least 30 days apart
Waiting period	A 90-day wait after the proclamation
Public notice	A public notice requiring the accused to appear
Right to defence	A court-appointed defence counsel for the accused

These conditions ensure that the trial proceeds only after the state has made genuine, repeated and public efforts to secure the accused's presence, and only where the crime is grave. The mandatory appointment of defence counsel preserves the **adversarial** (<https://ujjayi.com/vocab/adversarial/>) character of the trial even when the accused is absent.

THE PAHALGAM CASE TIMELINE

The NIA has moved methodically. It **filed a supplementary charge sheet on 6 July 2026**, strengthening the evidentiary record against the accused. The issuance of a non-bailable warrant and the invocation of Section 356 follow from this, setting the stage for a trial where the court will test the prosecution's case even though Hafiz Saeed remains outside India.

THE CONSTITUTIONAL AND FAIR-TRIAL DIMENSION

Trial in absentia sits at a sensitive intersection of two principles. On one side is the **imperative** (<https://ujjayi.com/vocab/imperative/>) of **delivering justice** and not letting terror fugitives escape accountability by hiding abroad. On the other is the **fair-trial guarantee** flowing from **Article 21**, which protects life and personal liberty and has been read to include the **right to a fair trial**. The **right to be present at one's own trial** is ordinarily a core component of fair-trial rights.

The BNSS design attempts to reconcile the two. By requiring repeated warrants, a waiting period, public notice and defence counsel, the statute allows justice to proceed while preserving the essential procedural protections. The real test will lie in how courts apply these safeguards in practice, and whether in-absentia convictions withstand appellate and international scrutiny.

UPSC RELEVANCE

GS Paper 2: Structure, organisation and functioning of the judiciary; issues relating to the criminal justice system; and the balance between individual rights and the security of the state.

Prelims pointers:

- **Section 356 BNSS** allows a full **trial in absentia** of a proclaimed offender.
- The **BNSS** replaced the **Code of Criminal Procedure (CrPC), 1973**, and came into force on **1 July 2024**.
- It came into force alongside the **Bharatiya Nyaya Sanhita** and the **Bharatiya Sakshya Adhiniyam**.
- Safeguards: offence punishable with at least **10 years/life/death**; **two warrants 30 days apart**; **90-day wait** after proclamation; public notice; court-appointed defence counsel.
- The **NIA** filed a supplementary charge sheet on **6 July 2026** in the **Pahalgam** case (26 killed).
- **Article 21** protects life and personal liberty and includes the **right to a fair trial**.

Mains question: “Section 356 of the BNSS introduces trial in absentia into Indian criminal law. Examine how the statute balances the right to a fair trial with the need to deliver justice against absconding terror fugitives.” (15 marks, 250 words)

FACTS CORNER

★ FACTS CORNER, KNOWLEDGE PEDIA

Event (July 2026): Jammu NIA court issued a non-bailable warrant against Hafiz Saeed; NIA to pursue trial in absentia in the Pahalgam attack case (26 killed).

Legal basis: First major use of Section 356 BNSS (full trial of an absconding proclaimed offender).

BNSS: Replaced the CrPC, 1973; in force from 1 July 2024 with the Bharatiya Nyaya Sanhita and Bharatiya Sakshya Adhiniyam.

Safeguards: Offence of 10 years/life/death; two warrants 30 days apart; 90-day wait; public notice; court-appointed counsel.

Case step: NIA supplementary charge sheet filed 6 July 2026.

Rights context: Article 21 includes the right to a fair trial and presence at trial.

Sources: *National Investigation Agency* (<https://nia.gov.in/>), *Ministry of Home Affairs* (<https://mha.gov.in/>), *The Hindu*

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