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JOINDER OF CHARGES AND JOINT TRIAL OF ACCUSED PERSONS UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: A STUDY OF PROCEDURAL FAIRNESS AND JUDICIAL DISCRETION

Abstract

The rules governing joinder of charges and joint trial determine how criminal allegations involving multiple offences or multiple accused persons may be adjudicated in one proceeding. Proper joinder can reduce repetitive evidence, protect witnesses from unnecessary recall, conserve judicial resources and reduce the risk of inconsistent findings. Improper joinder, however, may confuse the evidentiary issues, obscure the individual role of each accused and compromise the fairness of the defence. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), principally addresses these questions through Sections 241 to 247, while the constitutional requirement of a fair trial is informed by Article 21 and principles developed under the former Code of Criminal Procedure, 1973. This paper adopts a doctrinal method, examining the statutory text and Supreme Court decisions including *State of Andhra Pradesh v. Cheemalapati Ganeswara Rao*, *Nasib Singh v. State of Punjab*, *Mamman Khan v. State of Haryana* and *Lakshmanan v. State through the Deputy Superintendent of Police*. It analyses the same-transaction test, the limits of statutory exceptions, judicial discretion and

the consequences of procedural prejudice. The paper argues that joinder should be decided at the threshold of trial through a reasoned, case-specific assessment. Courts must consider the relationship between the allegations and the likely effect of consolidation on the defence, witnesses and judicial time. The objective should not be consolidation at any cost, but a legally authorised and fair trial that determines each accused's liability on admissible evidence.

Keywords: Joinder of Charges; Joint Trial; BNSS; Same Transaction; Fair Trial; Judicial Discretion.

Introduction

Criminal procedure does more than prescribe the sequence by which a prosecution moves from investigation to judgment. It also determines the shape of a trial: which allegations may be considered together, which persons may be tried in the same proceeding, and when separation is necessary to protect a fair determination. These questions become important where an alleged criminal event involves several participants, where one accused is said to have committed multiple offences, or where separate occurrences are connected by an alleged motive or continuing dispute.

Joinder of charges and joint trial are related but distinct concepts. Joinder of charges concerns the circumstances in which several charges may be framed and tried together, usually against one accused. Joint trial concerns the circumstances in which two or more accused persons may be tried together. A case may raise both questions, but the legal foundation for joining charges and the legal foundation for joining persons must each be identified. A court cannot assume that because several accused are named in the same investigation, every charge against them can automatically be tried together.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), in force from 1 July 2024 subject to applicable saving and transitional provisions, provides the current statutory framework for these matters. Sections 241 to 247 deal with joinder of charges. Section 241 establishes the general rule of separate charges and separate trials, while the following provisions recognise limited exceptions and connected procedural situations. Section 246 specifically addresses categories of persons who may be charged and tried jointly. The scheme substantially carries forward the architecture of the Code of Criminal Procedure, 1973 (CrPC), but the current statutory text must be applied as enacted. [1]

The policy behind these provisions is two-sided. A joint trial may prevent repeated testimony, avoid repeated attendance by victims and witnesses, reduce public expenditure and allow a court to evaluate connected evidence coherently. Yet consolidation may also enlarge a trial beyond manageable limits. Evidence relevant to one accused may have little bearing on another; distinct defences may become difficult to present; and the gravity of one accusation may improperly colour the assessment of another. The procedural decision must therefore be informed by both efficiency and fairness.

This paper examines the statutory rules and their judicial interpretation, with particular attention to the phrase “same transaction”, the difference between legal permission and judicial compulsion, and the consequences of prejudice. Its central argument is that joinder is not an administrative shortcut. It is a statutory option that must be exercised for cogent reasons, at the appropriate stage, after examining the factual relationship between the allegations and the likely effect on the accused’s ability to defend the case.

Research Methodology And Scope

This paper uses a doctrinal legal research method. The principal statutory provisions are Sections 241 to 247 of the BNSS. Because the new provisions are structurally related to the former CrPC provisions, earlier judgments interpreting materially corresponding language are considered where their reasoning remains relevant. The paper distinguishes statutory text, judicial holdings and the author’s analysis.

The scope is limited to joinder of charges and joint trial under ordinary criminal procedure. It does not attempt a comprehensive treatment of every special statute that may prescribe its own procedural regime, nor does it analyse every exception to the general law of charges. The selected decisions explain the same-transaction test, the discretion to order joint or separate trials, and the need to establish prejudice before disturbing a trial outcome. The research is qualitative and doctrinal; it does not rely on interviews, surveys or statistical data.

The research questions are: (i) what is the general rule and what statutory exceptions permit joinder; (ii) how should courts determine whether offences or accused persons form part of the same transaction; (iii) when should a court prefer separate proceedings even though a joint trial is legally possible; and (iv) what role should prejudice, delay and judicial economy play in the decision?

Conceptual Distinction: Joinder Of Charges And Joint Trial

Joinder of charges means trying more than one charge in the same proceeding where the statute permits. It may arise where a single course of conduct gives rise to several offences, where offences of the same kind fall within a statutory time limit, or where the facts make it appropriate to frame alternative charges. Each charge remains distinct, and the court must determine whether the prosecution proves the ingredients of each offence.

Permission to try several charges together does not relieve the prosecution of proving each charge independently. Nor does it authorise the court to use evidence relevant to one charge as proof of another without a legal basis under the law of evidence. The trial remains a determination of distinct allegations, even when the procedure permits them to be heard together.

A joint trial concerns the persons who may be tried together. It may be justified where multiple accused are alleged to have committed the same offence, where different offences are said to have arisen in the course of the same transaction, or where another statutory category applies. The provision governing joint trial is a separate legal gateway, not simply an extension of the rule on multiple charges.

For example, if several persons are alleged to have acted together during one robbery, a joint trial may avoid repeated testimony from the same eyewitnesses and permit the court to assess the alleged roles in context. If two accused are implicated in separate offences committed years apart, and the evidence and witnesses are unrelated, the fact that they know one another or share a common adversary will not by itself justify a joint trial.

Confusing the concepts can lead to errors at the framing-of-charge stage. The court may correctly conclude that one accused can face several charges together but still need to decide whether another accused should be included in that trial. A sound order should identify the statutory provision applicable to each aspect of the proposed joinder.

Statutory Framework Under The Bnss

Section 241 ensure the general principle that every distinct offence should ordinarily be charged separately and each charge should be tried separately. It preserves the operation of the statutory exceptions that follow. Its proviso permits a Magistrate, upon a written application by the accused and where the Magistrate considers that no prejudice is likely, to

try all or some charges together. Separate trial is the starting point; combined treatment requires a recognised legal basis.

The separate-charge rule serves clarity and fairness. It helps ensure that the accused understands the case to be met, that evidence is assessed against the relevant allegation, and that the court's reasons for conviction or acquittal remain traceable to each charge. The rule is not formalism for its own sake. It guards against the risk that a collection of allegations may create an overall impression of guilt that substitutes for proof of each offence.

Section 242 allows a person accused of more than one offence of the same kind, committed within twelve months from the first to the last offence. He/ She must be charged with and tried at one trial for up to five such offences. It defines offences of the same kind by reference to punishment under the same section of the Bharatiya Nyaya Sanhita, 2023, or a special or local law, subject to its express proviso. The five-offence ceiling differs from the former CrPC rule, which generally permitted up to three offences of the same kind.[2]

Section 243 permits several offences committed by the same person to be charged and tried together where they are committed through a series of acts so connected as to form the same transaction. It also addresses specified cases involving criminal breach of trust or dishonest misappropriation of property and falsification of accounts connected with those offences. The central requirement is a sufficient factual and legal connection between the acts.

Section 244 addresses situations in which the facts make it doubtful which of several offences they constitute. It permits alternative charges, or multiple charges where authorised, so that uncertainty about the precise legal character of proved facts does not necessarily defeat a prosecution. This is not permission to frame speculative allegations without a factual foundation; the uncertainty must arise from the facts and their legal character. Section 245 concerns conviction for a minor offence included within the offence charged, an offence to which the proved facts reduce the original offence, or an attempt to commit the charged offence, subject to statutory conditions. It reflects the principle that the court should consider what the evidence actually establishes rather than allowing a difference between the charge and a proved lesser offence to produce an unjust result. The provision must be applied consistently with notice of the case and the opportunity to defend.

Section 246 identifies categories of persons who may be charged and tried together. These include persons accused of the same offence committed in the course of the same transaction; persons accused of an offence and those accused of abetment or attempt in relation to it;

persons accused of qualifying offences of the same kind committed jointly within the statutory period; and persons accused of different offences committed in the course of the same transaction. It also addresses specified categories involving property-related offences and connected conduct.

Section 246 includes a further route for joint trial in certain other cases where the accused apply in writing, the court is satisfied that they are not likely to be prejudiced, and a joint trial is considered expedient. This is not a blanket power to combine cases. The court must make the statutory findings required by the provision and explain why the arrangement is appropriate.

Section 247 deals with withdrawal of remaining heads of charge in specified circumstances after conviction on one or more charges, with the court's consent or the court's decision to stay inquiry or trial on a remaining charge. Withdrawal ordinarily operates as an acquittal on the withdrawn charge, subject to the statutory consequence if the conviction is subsequently set aside. It must be applied according to its exact terms.

The “Same Transaction” Test

The same-transaction test is central to joinder of offences and joint trial. It recognises that criminal conduct may consist of connected acts rather than one isolated act. It also imposes a limit: the court must find a real relationship between the alleged acts, not merely a common background or a broad narrative linking the parties.

Relevant considerations may include proximity of time and place, continuity of action, unity of purpose, cause and effect, and overlap in evidence. These are indicators rather than independent mandatory conditions. No single factor should be decisive in every case. A transaction can extend beyond one place or moment, but the connection must be sufficiently strong to justify hearing the allegations together.

In *State of Andhra Pradesh v. Cheemalapati Ganeswara Rao*, the Supreme Court explained the practical basis for a joint trial where several persons are alleged to have participated in a connected occurrence. Separate trials for the same act may be inconvenient and wasteful, particularly where the same witnesses and evidence must be repeated. At the same time, where several offences are alleged against several accused, separate trials may be more reasonable unless the offences form part of the same transaction. [3]

A common motive does not automatically establish one transaction. Two offences may be motivated by the same dispute but still arise from distinct incidents requiring different evidence. Similarly, a later offence against a witness in an earlier case may have a narrative connection with the earlier prosecution, yet that connection does not automatically satisfy the statutory test. The court must ask whether the legal and evidentiary relationship is sufficient and whether consolidation would produce a fair, workable trial.

Supreme Court Jurisprudence

In *State of Andhra Pradesh v. Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850, the Supreme Court examined the concept of a transaction under the earlier procedural law. The decision remains relevant because the core procedural problem and materially corresponding language continue in the BNSS framework. The Court recognised the difficulty of conducting separate trials where the same act is alleged to have been committed by several persons. Repeated trials may inconvenience witnesses and consume judicial time without a corresponding benefit to the defence.

The decision does not support automatic consolidation. Where multiple offences and multiple accused are involved, the court must consider whether the offences are connected or wholly unconnected. If they form part of the same transaction, a joint trial may be appropriate unless the combined proceeding would cause embarrassment or difficulty in defending the case. The judgment balances efficiency against the accused's ability to defend the allegations fairly. [3]

In *Nasib Singh v. State of Punjab*, (2022) 2 SCC 89, the Supreme Court surveyed the principles governing joint and separate trials and considered when a procedural decision could justify interference with the result of a criminal case. It explained that separate trials are ordinarily the rule, while joint trial is permitted under specified statutory exceptions. The question should be considered at the beginning of the trial rather than decided retrospectively by reference to the result.

The Court identified a practical two-part inquiry: whether the chosen procedure would prejudice the defence, and whether it would cause delay or waste judicial time. A joint trial may be undesirable even where legally possible if it would prolong proceedings, confuse the issues or prejudice an accused whose alleged role is limited. Conversely, the possibility that a joint trial could have been held does not automatically invalidate separate proceedings. An

appellate court must examine whether the procedural choice caused prejudice or a failure of justice. [4]

In *Mamman Khan v. State of Haryana*, 2025 SCC OnLine SC 1975, the Supreme Court reiterated that separate trials are the norm and joint trial is permitted where statutory conditions are met, including the relevant same-transaction categories. Even when those conditions are satisfied, the decision to hold a joint trial remains a matter of judicial discretion rather than an automatic consequence. [5] The principal considerations include possible prejudice to the accused, delay, waste of judicial time and the risk that the combined proceeding will become unwieldy. The decision also cautions against relying on a person's status or other irrelevant considerations to determine trial structure. Procedural choices should be made by applying the statute consistently. A common background or shared accused does not dispense with the statutory requirements for joinder.

In *Lakshmanan v. State through the Deputy Superintendent of Police*, 2025 INSC 1483, decided on 19 December 2025, the Supreme Court considered a direction to conduct a joint trial of two cases arising from separate FIRs. The first case related to an alleged assault in 2020, while the second concerned the subsequent murder of an injured witness in 2022. The High Court had directed a joint trial while dealing with bail proceedings. The Supreme Court examined whether that direction was supported by the statutory framework. [6]

The Court observed that the cases involved different factual allegations, witnesses and evidentiary foundations. The offences were not of the same kind for the relevant statutory purpose and could not be treated as forming part of the same transaction on the material before the Court. The High Court had not adequately examined the dates of the alleged offences, the time gap, the nature and scope of the offences, the roles attributed to the accused or the stages of the proceedings.

The Supreme Court held that the direction for joint trial was legally unsustainable. It stressed that the decision whether to hold a joint or separate trial lies primarily within the domain of the trial court and must be made at the threshold of trial on a reasoned assessment of prejudice, convenience and judicial economy. A superior court dealing with bail should not pre-empt the trial court's statutory discretion by ordering consolidation without the necessary legal analysis. [6]

Lakshmanan should not be misunderstood as holding that cases arising from separate FIRs can never be tried together. Its narrower point is that a narrative link between incidents does

not, by itself, establish a statutory basis for joint trial. The court must apply the relevant provisions and record cogent reasons. The decision is particularly important for current BNSS practice because the Supreme Court expressly considered the corresponding provisions of the new Sanhita.

Judicial Discretion: Permission Does Not Mean Compulsion

An important proposition emerging from the authorities is that a joint trial may be legally permissible without being compulsory. Statutory provisions commonly use the word “may”, leaving the court discretion to consider whether the procedure is suitable. That discretion must be judicial, not arbitrary, and must be exercised for reasons connected with the statutory purpose.

The court should first determine whether the case falls within a statutory category. If it does not, administrative convenience cannot create jurisdiction to combine charges or accused persons. If the statutory threshold is met, the court should then consider whether the joint trial would be fair and manageable. This two-stage approach prevents the practical advantages of consolidation from replacing the statutory conditions.

The timing of the decision matters. If the issue is considered before evidence begins, the court can assess the witnesses, documentary material, scope of charges and individual roles. If the issue is left until after evidence has been recorded, a change in trial structure may cause further delay, duplication or confusion. The Supreme Court’s approach favours a reasoned determination at the outset. [4]-[6]

A trial court should record reasons identifying the statutory provision, describing the factual connection between the cases and explaining why the selected procedure is preferable. A bare statement that consolidation is convenient is inadequate where the decision affects procedural rights. Likewise, an order directing separate trials should explain why the allegations are unconnected or why a joint trial would create material difficulty.

Fair Trial, Prejudice And Article 21

Article 21 of the Constitution protects life and personal liberty and requires criminal procedure to be fair, just and reasonable. The decision to join charges or accused persons is therefore not merely docket management. It can affect whether the accused can understand the allegations, challenge the relevant evidence and present a coherent defence.

Prejudice may arise where a joint trial exposes an accused to a large body of evidence relating to other persons or incidents, increases the risk that the court will fail to separate individual allegations, or complicates cross-examination where defences conflict. It may also make a trial so lengthy that the practical ability to defend is impaired. The seriousness of one accusation must not be allowed to colour the assessment of another accused against whom the evidence differs.

Prejudice should not be assumed merely because several accused are tried together. In a genuinely common transaction, a joint trial may be the fairest and most coherent means of determining the case. Separate trials can force witnesses to repeat evidence, prolong the process for victims and increase the risk of inconsistent findings. Courts must assess actual and reasonably foreseeable prejudice rather than rely on general statements about consolidation.

Fairness also requires individualised findings. Even where charges are tried together, each accused must be convicted only if the admissible evidence proves the relevant ingredients beyond reasonable doubt. Evidence recorded in one proceeding cannot automatically be imported into another merely because the cases are factually related. The trial structure must not dilute the rules governing admissibility, burden of proof or individual criminal responsibility. [4][6]

Efficiency, Witness Burden And Judicial Economy

Joint trials can produce procedural benefits when allegations are genuinely connected. Witnesses may be examined once rather than repeatedly; documentary evidence may be introduced in a coherent sequence; and the court can evaluate alleged roles against the same factual background. This can reduce travel and attendance burdens, particularly for victims, vulnerable witnesses and persons who must travel long distances to court.

Judicial economy, however, is not synonymous with combining the maximum number of cases. A joint trial involving many accused, numerous charges and unrelated evidence may become slower than separate proceedings. The court may have to address repeated applications, conflicting defences, disputes over relevance and difficulties in arranging the sequence of examination. A trial that appears economical at the outset may become inefficient in practice.

Witness protection also requires a balanced assessment. Where intimidation or interference is alleged, the fact that one incident occurred after another may be relevant to the background and risk assessment, but it does not automatically establish that the offences form the same transaction for joinder purposes. Lakshmanan illustrates why a serious connection in narrative terms must still be tested against statutory criteria. The gravity of allegations cannot substitute for the legal requirements governing trial structure. [6]

The most efficient procedure is the one that enables a reliable determination without unnecessary repetition or unfair complication. In some cases, this will be a joint trial. In others, separate trials will better protect the integrity of the evidence and the accused's ability to defend. Efficiency is relevant, but it is not a standalone justification.

Consequences Of Improper Joinder Or Separation

An incorrect decision about joinder does not necessarily invalidate the entire proceeding. The authorities distinguish between a procedural choice that was legally imperfect and one that caused material prejudice or a failure of justice. This distinction matters because automatic retrials can themselves cause delay, expense and hardship to victims, witnesses and accused persons.

Where charges are improperly combined, an appellate court should examine whether the error affected the fairness of the trial, the assessment of evidence or the outcome. Relevant questions include whether the accused had clear notice of each allegation, whether evidence was wrongly used across charges, whether the defence was materially impaired and whether the court's reasoning can be separated by charge. Corrective relief may be necessary if the defect caused a miscarriage of justice; if no prejudice is shown, the mere possibility of a different procedural arrangement may not justify setting aside the result.

Separate trials are not unlawful simply because a joint trial could have been ordered. The court must consider whether separation caused actual prejudice or an injustice requiring appellate intervention. This avoids turning procedural provisions into technical traps while preserving their function as safeguards of fair adjudication. The principles in Nasib Singh require attention to the consequences of the procedure rather than an abstract preference for joinder or separation. [4]

Improper consolidation can also produce practical complications that are difficult to reverse. Once evidence has been recorded in a combined proceeding, separating the cases may require

recalling witnesses or determining which parts of the record can lawfully be relied upon. Conversely, after separate trials have progressed substantially, combining them may create duplication and delay. This reinforces the need for an early decision supported by careful examination of the record.

A Practical Framework For Trial Courts

A workable judicial framework begins with identifying the precise statutory provision authorising the proposed joinder. The order should state whether the issue concerns distinct charges, offences of the same kind, a same-transaction series, alternative charges, or the joint trial of persons under Section 246. The court should then identify the facts establishing the statutory connection. General references to common motive, a common complainant or related civil disputes should not replace analysis of the alleged acts and evidence.

The next question is the likely impact on the defence. The court should consider whether the charges require substantially different evidence, whether individual roles can be clearly distinguished, whether inconsistent defences create genuine difficulty and whether the volume of allegations will obscure the issues. It should then examine the consequences for judicial time and witnesses, considering both the duplication associated with separate trials and the complexity associated with consolidation.

The court should ordinarily resolve the question at the beginning of the trial, before evidence has been extensively recorded. If a later application is made, it should explain why the issue could not reasonably have been determined earlier and how the proposed change would affect proceedings. The order must preserve the independent assessment of each charge and accused: every charge must be proved on legally admissible evidence, and no accused may be held responsible merely because another accused faces a serious allegation.

This framework does not replace the statutory text. It is a method of applying it consistently with Supreme Court guidance. Its principal advantage is transparency: the parties can understand why joinder was permitted or refused, and an appellate court can assess whether discretion was exercised on relevant grounds.

Critical Analysis And Recommendations

The BNSS preserves a structured approach to joinder rather than granting courts an unlimited power to consolidate criminal allegations. That structure is appropriate because the decision

affects the architecture of the trial and the practical ability of the accused to defend. However, statutory categories alone cannot resolve every case. The same-transaction concept is necessarily fact-sensitive, and trial courts require a disciplined method for assessing the connection between incidents.

First, reasoned orders should be standard practice whenever joinder is contested. A short but clear order identifying the statutory basis, relevant facts and prejudice analysis would reduce uncertainty and improve consistency. This is particularly important where separate FIRs are proposed to be tried together, because the existence of separate FIRs is neither an automatic prohibition nor a sufficient justification for consolidation.

Second, courts should distinguish a factual relationship from the legal sufficiency of that relationship. Two offences may arise from the same long-standing dispute but still involve different incidents, witnesses and evidentiary foundations. The question is whether the acts satisfy the statutory test and whether consolidation is appropriate. Lakshmanan provides a recent illustration of this distinction. [6]

Third, courts should assess both forms of procedural cost. Separate proceedings can waste time and repeatedly burden witnesses, while joint proceedings can cause confusion and prejudice. The Supreme Court's two-pronged inquiry—prejudice to the defence and delay or waste of judicial time—offers a useful method for balancing these concerns. [4][5]

Fourth, the court should avoid deciding joinder as an incidental matter in a proceeding whose principal purpose is different, unless the governing law authorises such a direction. Lakshmanan cautions against issuing a substantive joint-trial direction at the bail stage without a proper statutory analysis. The decision should ordinarily be made by the trial court at the threshold of trial, with reasons grounded in the record. [6]

Finally, legal education and judicial training should give attention to differences between the BNSS and the former CrPC. Older precedents remain valuable where statutory language is materially corresponding, but numerical and textual differences must be respected. For example, the BNSS permits up to five offences of the same kind under Section 242, whereas the former CrPC generally permitted three under the corresponding provision. Practitioners should cite the current section and explain the relevance of earlier authority rather than copying obsolete statutory references without qualification.

Conclusion

Joinder of charges and joint trial are procedural mechanisms designed to make criminal adjudication coherent and efficient where the law permits. Their proper use can reduce repeated evidence, protect witnesses from unnecessary inconvenience and help courts assess connected allegations in context. Their misuse can obscure the individual case against each accused, complicate the defence and undermine confidence in the fairness of proceedings.

Sections 241 to 247 of the BNSS establish a general rule of separate charges and identify defined exceptions. Section 246 provides the principal statutory basis for trying specified categories of accused persons together. These provisions must be applied by identifying the relevant statutory category and examining the actual relationship between the alleged acts. The same-transaction test requires more than a common background or a general narrative link; it demands a connection sufficient under the statutory scheme.

The Supreme Court's decisions in *Cheemalapati Ganeswara Rao*, *Nasib Singh*, *Mamman Khan* and *Lakshmanan* support a practical and principled approach. A joint trial is not compulsory merely because it is legally possible, and a separate trial is not invalid merely because consolidation might have been available. The court should ordinarily decide the issue at the outset, give cogent reasons and consider prejudice, delay and judicial economy together. An appellate court should focus on whether the chosen procedure caused prejudice or a miscarriage of justice.

The central conclusion is that procedural efficiency and fair-trial rights are not necessarily competing goals. A properly reasoned decision can promote both. The appropriate course is the one that satisfies the statute, keeps the evidence and roles of each accused clear, avoids unnecessary duplication and enables a reliable determination of every charge. The ultimate measure of a criminal trial is not how many cases are disposed of in one proceeding, but whether justice is administered lawfully and fairly.

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The Constitution of India, Article 21.

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