

An Integrated AI Platform for ATS-Aware Resume Building, Real-Time Job Matching and Career Guidance

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Abstract:

Withdrawal from prosecution occupies a distinctive position in criminal procedure because it permits termination of criminal proceedings before judgment, while simultaneously requiring judicial consent. Under the Code of Criminal Procedure, 1973 (CrPC), this power was contained in Section 321 and was interpreted through a substantial body of Supreme Court jurisprudence. Beginning with *State of Bihar versus Ram Naresh Pandey*, the Supreme Court established that the initiative to seek withdrawal belongs to the Public Prosecutor, while the court exercises a judicial supervisory function. Later decisions, particularly *Sheonandan Paswan versus State of Bihar*, *Rajendra Kumar Jain versus State*, and *State of Kerala versus K. Ajith*, refined the principles governing prosecutorial independence, public interest, good faith and judicial scrutiny. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the CrPC framework, substantially carries forward the previous Section 321 framework through Section 360. The principal textual innovation is the mandatory opportunity of hearing to the victim before the court permits withdrawal. This paper examines whether these changes have actually strengthened the Public Prosecutor or instead strengthened judicial and victim-oriented safeguards. It argues that the BNSS has not materially enlarged the substantive discretion of the Public Prosecutor. Rather, it has preserved the traditional prosecutorial initiative while adding a significant victim-participation requirement.

Keywords: BNSS; Section 360; withdrawal from prosecution; Public Prosecutor; Section 321 CrPC; Ram Naresh Pandey; K. Ajith; judicial consent; victim rights; prosecutorial discretion.

Introduction:

Criminal prosecution is ordinarily instituted and conducted in the public interest because a criminal offence is considered a wrong against society as a whole, and not merely against the individual victim. Once criminal proceedings have commenced, their continuation is generally not dependent upon the wishes of the complainant or the accused. A complainant cannot ordinarily withdraw a criminal case simply because they have changed their mind or reached a private settlement, particularly where the offence is not legally compoundable. Similarly, the political executive cannot terminate criminal proceedings merely according to its personal or political preference. The prosecution must be conducted fairly and in accordance with law. However, the criminal justice system must also remain flexible enough to prevent injustice or abuse of the legal process. In appropriate cases, the law therefore permits proceedings to be withdrawn, compounded, quashed, or otherwise terminated through recognized legal

procedures. Such powers are subject to statutory requirements and, where necessary, judicial supervision. The ultimate objective is to balance society's interest in effective prosecution with the need to prevent the unjust continuation of criminal proceedings.

The statutory mechanism for such termination was Section 321 of the Code of Criminal Procedure, 1973. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the CrPC framework, reproduces this mechanism substantially in Section 360. Section 360 permits the Public Prosecutor or Assistant Public Prosecutor in charge of a case to seek withdrawal before judgment, subject to the consent of the court.

The subject is significant because withdrawal from prosecution lies at the intersection of the Public Prosecutor, the executive government and the judiciary. It also affects the victim, whose procedural position has become increasingly important. The principal research question is therefore whether Section 360 BNSS has given greater substantive power to the Public Prosecutor, or has instead reorganised the balance between prosecutorial discretion, judicial control and victim participation.

Research Objectives:

1. To examine the statutory framework governing withdrawal from prosecution under Section 360 BNSS.
2. To trace the judicial development of the corresponding power under Section 321 CrPC.
3. To analyse the principles laid down in *State of Bihar v. Ram Naresh Pandey*.
4. To examine the development of prosecutorial independence and judicial supervision.
5. To analyse the significance of *State of Kerala v. K. Ajith*.
6. To identify the changes introduced by Section 360 BNSS.
7. To assess whether these changes have strengthened the institutional position of the Public Prosecutor.

Research Methodology:

The paper adopts a doctrinal legal research methodology. It examines the statutory text of Section 360 BNSS and its predecessor, Section 321 CrPC, together with leading Supreme Court decisions concerning withdrawal from prosecution. Primary judicial decisions and official government materials constitute the principal sources.

Statutory Framework:

(A) Section 321 CrPC:

Section 321 CrPC provided that the Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, withdraw from prosecution before judgment was pronounced. The provision contemplated discharge where withdrawal occurred before framing of charge and acquittal where withdrawal occurred after framing of charge, or where no charge was required.

The provision therefore did not create an unconditional power in the Public Prosecutor. The prosecutor could initiate the process, but withdrawal depended upon judicial consent.

(B) Section 360 BNSS:

Section 360 BNSS substantially retains this framework. It permits the Public Prosecutor or Assistant Public Prosecutor in charge of a case to seek withdrawal before judgment, subject to the consent of the

court. The consequences of withdrawal remain discharge before charge and acquittal after charge, subject to the statutory scheme.

The most notable addition is the mandatory requirement that no court shall allow such withdrawal without giving an opportunity of being heard to the victim in the case. This makes victim participation an express statutory component of the withdrawal process.

State of Bihar v. Ram Naresh Pandey: The Foundational Principle

The starting point of the modern law is *State of Bihar v. Ram Naresh Pandey*. The case concerned withdrawal from prosecution under the predecessor provision in the Code of Criminal Procedure, 1898. The Supreme Court recognised the provision as an enabling mechanism under which the Public Prosecutor could approach the court for consent.

The Court established two fundamental propositions: first, the initiative belongs to the Public Prosecutor; and second, the court's consent is essential and involves a judicial function. The significance of the decision is institutional. The Public Prosecutor is not merely a mouthpiece of the executive government, while the judge is not a rubber stamp.

The statutory arrangement consequently creates a division of functions: the Public Prosecutor initiates withdrawal, while the court independently considers whether consent should be granted.

Public Prosecutor: Discretion or Executive Instrument?

The question of prosecutorial independence has historically been at the centre of Section 321 jurisprudence. A Public Prosecutor is an officer of the court entrusted with the responsibility of conducting criminal prosecutions in the public interest. Consequently, an application for withdrawal cannot be treated as an administrative order of the government merely because the government may have communicated its views to the prosecutor.

The Supreme Court's jurisprudence has consistently required the Public Prosecutor to exercise independent judgment. The purpose of requiring the prosecutor to initiate the application is significant: it prevents the executive government from directly terminating criminal proceedings merely through an administrative command.

At the same time, the Public Prosecutor does not possess an absolute power to end a criminal case. The court retains its statutory power to refuse consent. This produces a balance between executive policy, prosecutorial independence and judicial control.

Judicial Development after Ram Naresh Pandey:

The Supreme Court subsequently developed the principles relating to Section 321 in several decisions. A particularly important authority is *Sheonandan Paswan v. State of Bihar*. The jurisprudence recognises that withdrawal is not equivalent to an ordinary private compromise. It involves a public-law decision concerning continuation of criminal proceedings.

The court's role is neither to mechanically approve every prosecutorial request nor to conduct a full trial at the withdrawal stage. Judicial scrutiny is directed toward whether the prosecutor has applied an independent mind, whether the application is made in good faith, whether withdrawal serves public interest, whether the process is being used for an improper purpose, and whether permitting withdrawal would frustrate the administration of criminal justice.

The Supreme Court has also cautioned against turning a withdrawal application into a mini-trial. Questions concerning the sufficiency or admissibility of evidence ordinarily belong to the trial process rather than being conclusively determined at the withdrawal stage.

State of Kerala v. K. Ajith (2021):

State of Kerala v. K. Ajith is particularly relevant because it consolidates principles developed under Section 321 CrPC. The Supreme Court considered the nature and limits of withdrawal from prosecution and examined earlier authorities, including Ram Naresh Pandey. The Court reaffirmed the importance of the Public Prosecutor's independent role. It also emphasized that withdrawal is an exception to the ordinary continuation of criminal proceedings and therefore requires careful scrutiny.

An important aspect of K. Ajith is its rejection of the idea that the withdrawal court should conduct a detailed examination of evidentiary issues that properly belong to the trial. The court's task is principally to examine the legitimacy of the withdrawal request, not to determine the accused's ultimate guilt or innocence through a premature evaluation of the entire evidentiary record.

What Has the BNSS Changed?**The basic prosecutorial power remains substantially unchanged:**

Section 360 continues to provide that the Public Prosecutor or Assistant Public Prosecutor may seek withdrawal, but only with the consent of the court. The BNSS therefore does not transform withdrawal into an autonomous prosecutorial power.

Judicial consent remains indispensable:

The court continues to occupy the position of statutory gatekeeper. The Public Prosecutor cannot unilaterally terminate a prosecution simply by filing an application.

Victim participation has been expressly strengthened:

The clearest procedural change is that the court cannot allow withdrawal without giving the victim an opportunity of being heard. This gives the victim a statutory procedural voice at a stage that directly affects the continuation of the prosecution.

Central Government-related cases:

Section 360 also updates the previous framework relating to certain offences involving Union executive power, Central Government property, Central legislation and Central Government employees. The statutory language has been adapted to the new criminal-procedure framework.

Has BNSS 'Given Teeth' to the Public Prosecutor?

If 'teeth' means greater independent authority to decide whether a prosecution should terminate, Section 360 does not produce a major transformation. The Public Prosecutor remains subject to the statutory requirement of judicial consent, the obligation of independent application of mind, the principles developed by the Supreme Court, public-interest considerations and the express requirement of victim participation.

If 'teeth' means that the statutory architecture more clearly recognizes the prosecutor as the institutional actor who initiates withdrawal, the answer is more nuanced. The Public Prosecutor continues to occupy the central initiating position. The court does not ordinarily substitute itself for the prosecutor, but that authority exists within a system of checks.

Accordingly, the BNSS is more accurately described as continuity with procedural modification rather than a radical expansion of prosecutorial power.

Comparative Analysis

Feature	Section 321 CrPC	Section 360 BNSS
Initiating authority	Public Prosecutor/APP	Public Prosecutor/APP
Court's consent	Required	Required
Withdrawal before charge	Discharge	Discharge
Withdrawal after charge	Acquittal	Acquittal
Independent prosecutorial judgment	Judicially developed	Continues
Public-interest scrutiny	Judicially developed	Continues
Victim's express right to be heard	Not expressly mandated in Section 321	Expressly mandated
Central Government safeguards	Present	Retained/updated
Overall prosecutorial power	Discretion subject to judicial control	Substantially the same

Theoretical Tension: Executive Control versus Prosecutorial Independence:

Criminal prosecution is conducted in the name of the State, and the government necessarily possesses legitimate interests in criminal policy. Yet the Public Prosecutor is expected to act as an officer of justice rather than as an unquestioning representative of the political executive.

This tension explains why the statutory requirement of judicial consent is important. If the executive could directly terminate prosecution, politically sensitive prosecutions could theoretically be discontinued without meaningful judicial scrutiny. Conversely, if courts were permitted to reject every withdrawal merely because they disagreed with the prosecutor's assessment, prosecutorial discretion would become largely meaningless.

The jurisprudence attempts to avoid both extremes by maintaining prosecutorial initiative alongside judicial supervision.

Victim Participation under BNSS:

The most significant innovation of Section 360 is arguably not connected with prosecutorial 'teeth' at all. It concerns the victim's procedural position. The statutory requirement that the victim be given an opportunity of being heard before withdrawal reflects the broader movement towards victim-centric criminal procedure.

The victim does not acquire a statutory veto over withdrawal merely because an opportunity of hearing is provided. However, the victim is no longer structurally absent at this procedural stage. A right to be heard is therefore distinct from a right to determine the outcome.

Critical Evaluation:

Section 360 BNSS should be understood as a provision of continuity rather than revolution. The core architecture remains prosecutorial initiative plus judicial consent. The Supreme Court's pre-BNSS jurisprudence remains highly relevant because the language and structure of Section 360 substantially reproduce Section 321.

Consequently, principles concerning independent application of mind, good faith, public interest, improper governmental influence, judicial supervision and the limits of evidentiary inquiry continue to provide the doctrinal background against which Section 360 must be interpreted.

The new victim-hearing requirement nevertheless changes the procedural environment in which withdrawal occurs. The BNSS arguably strengthens accountability surrounding withdrawal rather than simply strengthening the power of the Public Prosecutor.

Findings:

- Section 360 BNSS is the relevant statutory provision governing withdrawal from prosecution; Section 232 BNSS concerns commitment of a case to the Court of Session.
- The foundational principle from *Ram Naresh Pandey* remains relevant: the initiative lies with the Public Prosecutor, while the court performs a judicial function in deciding whether consent should be granted.
- *K. Ajith* reinforces the requirement that withdrawal must not become a mechanism for improperly terminating criminal proceedings and confirms that the withdrawal court should not transform the proceeding into a full-scale adjudication of evidence.
- BNSS Section 360 does not substantially enlarge the Public Prosecutor's substantive withdrawal power because judicial consent remains mandatory.
- The most important statutory innovation is the mandatory opportunity of hearing to the victim, making the process more participatory and accountable.

Conclusion:

The journey from *State of Bihar v. Ram Naresh Pandey* to *State of Kerala v. K. Ajith* demonstrates that Indian criminal procedure has consistently attempted to maintain a delicate equilibrium between prosecutorial discretion and judicial supervision. Section 360 BNSS continues this tradition. It does not make the Public Prosecutor an unrestricted decision-maker. Nor does it reduce the prosecutor to a mere agent of the executive. Instead, the Public Prosecutor remains the institutional actor who must independently determine whether withdrawal should be sought, while the court retains the power to consent or refuse consent. The principal innovation of the BNSS is the express statutory recognition of the victim's right to be heard before withdrawal. This represents a movement towards greater procedural participation and accountability.

Accordingly, the proposition that 'BNSS 2023 has given teeth to the Public Prosecutor' requires qualification. The BNSS has not given the Public Prosecutor substantially greater substantive power to withdraw prosecutions. Rather, it has preserved the prosecutor's central initiating role while strengthening the procedural framework of judicial scrutiny and victim participation. The more accurate conclusion is that Section 360 BNSS has not transformed the Public Prosecutor's power; it has strengthened the procedural framework within which that power is exercised.

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