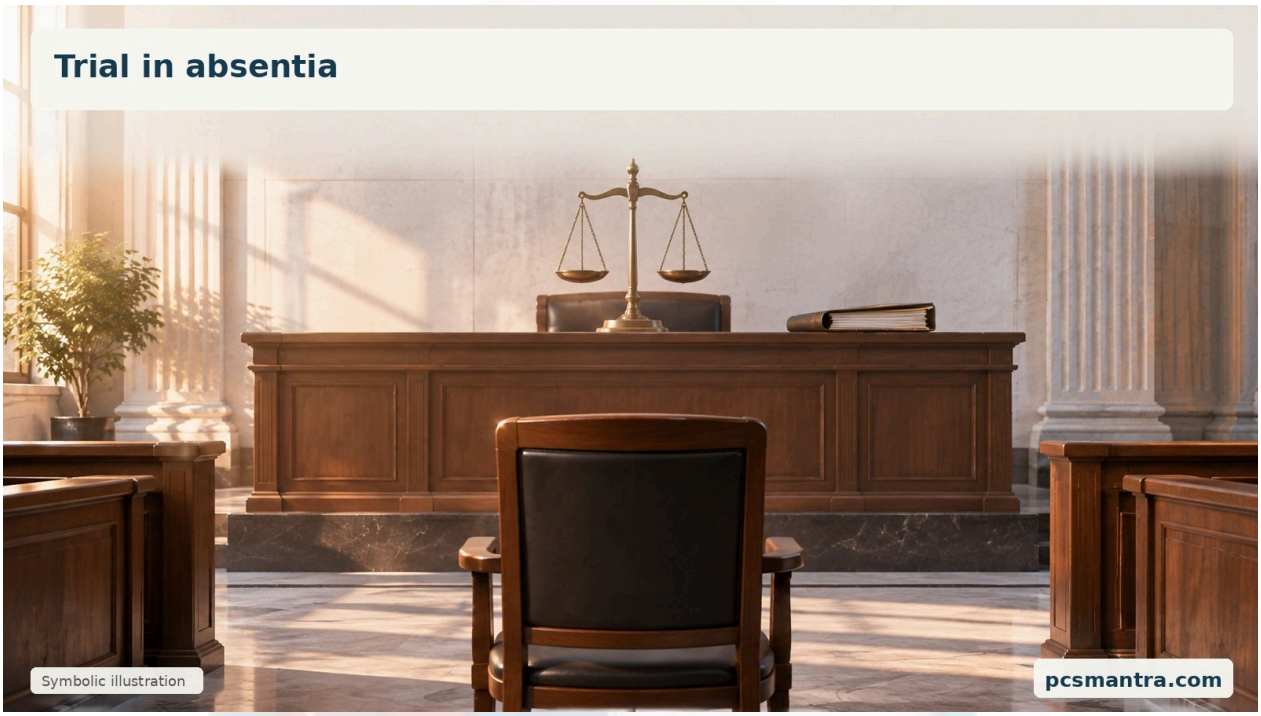
Trial in Absentia: Section 356 of the BNSS

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A Jammu court has issued a non-bailable warrant against Lashkar-e-Taiba chief Hafiz Saeed in the Pahalgam terror attack case; the NIA is now preparing to run a "trial in absentia" under Section 356 of the Bharatiya Nagarik Suraksha Sanhita (BNSS). This is the first major use-test of this provision of the new criminal procedure law.



Original symbolic illustration: trial in absentia. Not a photograph of the reported event.

Why in the News

In July 2026, a Jammu court issued an NBW against Hafiz Saeed; the NIA's supplementary chargesheet names him as an accused in his personal capacity and as the chief of the banned LeT and its front organisation TRF. Being in Pakistan, his presence is impossible - hence the Section 356 route. The Hindu (14 July) explained the law and the process. Section 356 is part of the BNSS (in force since 1 July 2024) - not a new provision, but a new use.

The Procedural Safety Chain of Section 356

Limit: only for serious offences (punishable with 10 years or more, life imprisonment or death) and proclaimed offenders. **Conditions:** trial only 90 days after framing of charges;

two consecutive arrest warrants at an interval of 30 days; publication in a newspaper of the last address plus a 30-day wait; notice to a relative/friend; affixation at the house and the police station. **Defence:** an advocate is provided at state expense. Witness statements recorded earlier are admissible in evidence. **Appeal:** only on appearing; appeal barred 3 years after conviction. Extension to other absconders under Section 84(1) is possible by state notification.

Main Facts

Provision: BNSS Section 356: for a proclaimed offender who has fled trial and whose immediate arrest is not probable - treating the right to be present as waived (with recorded reasons), trial and judgment in absentia are possible; the CrPC had no equivalent.

Trigger event: the Pahalgam terror attack case: the Jammu court's NBW (July 2026); in the NIA supplementary chargesheet Hafiz Saeed is an accused personally and as LeT/TRF chief.

Safety valves: 90-day cooling period; double warrants; publication; notice; affixation; state advocate; on appearing, permission to re-examine the evidence taken in absentia (leading to Section 356(4)).

Appeal limit: appeal only when the convict appears; appeal barred 3 years after the conviction judgment - a clear signal of "stay absconding and judicial remedy stays limited".

Comparative context: in absentia trials are recognised in many democracies (France, Italy; limited in international courts); in India, after rebellion/special laws, this is the first time they are normalised in the general procedural law.

Extension power: Section 356(8): extension to absconders (non-proclaimed) under Section 84(1) is possible by state notification - a contentious point for the future.

Why This Provision Matters

End of the incentive to abscond: in the old system, fleeing was the most effective trick to stall a trial indefinitely - economic offenders (Mallya, Nirav Modi) and terror masterminds kept benefiting from this laxity.

Speed of victim justice: trial uncertainty gives victims a secondary punishment; a time-bound conclusion is now possible.

Evidence preservation: with time, witnesses become unavailable and memory fades; a trial begun after the 90-day plus two-warrant conditions preserves evidence quality.

Diplomatic-legal signal: formal completion of a trial for Pakistan-based accused strengthens India's case in international pressure (FATF-type) - not extradition, but a recorded judicial process.

Analysis and Way Forward

The balance will rest on three points. First, the quality of procedural compliance: Section 356's safety conditions (warrants, publication, notice) are easy to complete mechanically; courts will have to seriously test "no immediate prospect of arrest", otherwise the provision can weaken the right to be present. Second, the execution conflict: even after conviction in absentia, arrest/extradition is a separate battle - completing the trial creates international pressure, not imprisonment; keep expectations realistic. Third, the extension risk: if Section 356(8) extends the provision to ordinary absconders, the frequency of use will rise, and along with judicial resource pressure, allegations of misuse too; keeping the limit clear is essential. In the constitutional test (Article 21 - fair trial), its safety chain itself will be the defence.

Distinctions Within the Concept

Trial in absentia versus extradition: Section 356 completes a trial without the accused in court; extradition is the diplomatic-legal process of bringing the accused from abroad - one is not a substitute for the other. **Proclaimed offender versus ordinary absconder:** Section 356 applies only to a PO (leaving aside the 356(8) extension) - a PO declaration itself demands the formal process of Section 84.

Mains Angle

GS-II: criminal justice system, new criminal laws (BNS/BNSS/BSA), India-Pakistan relations, anti-terror mechanism. GS-III: internal security, NIA, legal measures against terrorism. Ethics/Essay: the right to be present versus the speed of justice.

UPSC CSE Mains Style: Original Practice Question

Section 356 of the BNSS removes the structural flaw that "rewards absconding". In the light of its procedural safety conditions, evaluate the balance between trial in absentia and the right to a fair trial (Article 21).

(Answer in 150 words) | 10 marks

Answer Outline: Introduction - Pahalgam/NBW July 2026; the first major use of Section 356. Flaw removal: the old problem of absconding = adjournment (examples); erosion of evidence; victim justice. Safety analysis: 90 days, two warrants, publication, state advocate, appeal limit; the seriousness of the "no immediate prospect" test; the 356(8) extension risk. Comparison: international practices. Conclusion - consistent with Article 21 if the conditions are meaningfully followed.

Sources

- BNSS 2023, full text of Section 356 (Indian Kanoon mirror)
- The Hindu Explained: What is trial in absentia? (14 July 2026)

Verification note: the full legal text of Section 356 was read and verified (sub-sections 1-8). The latest procedural status of the case (NBW/supplementary chargesheet) is as per July 2026 reporting; the court record alone is the final proof.

Also read: UAPA and the test of bail: security versus liberty | The judgment on the method of hanging: precedent, dignity and scientific evidence.

Remember: Section 356: after 90 days + two warrants + publication, a proclaimed offender's trial proceeds in his absence - absconding is now not a stop, only a distance.