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**PAPER PRESENTATION ON**

**Decipher The Bharatiya Nagarik Suraksha Sanhita :  
Explore Changes And Beyond**

**Bharatiya Nagarik**  
**Suraksha Sanhita**  
**(No. 46 of 2023)**

भारतीय नागरिक सुरक्षा संहिता (सं. 46, 2023)

Came into force w.e.f. 1<sup>st</sup> day of July, 2024

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## **INTRODUCTION**

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 represents a significant legislative reform aimed at overhauling India's criminal procedural framework. This new code has replaced the Code of Criminal Procedure (CrPC) of 1973, addressing its limitations and modernizing the system to meet contemporary needs.

**The Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as BNSS) has replaced the Criminal Procedure Code, 1973 (CrPC) and came into force on July 01, 2024.**

### **Background and Need for Reform**

The CrPC 1973, which has governed criminal procedures in India for decades, has been criticized for its outdated provisions, procedural delays, and inefficiencies. With societal changes, advancements in technology, and evolving legal standards, there was a pressing need to revamp the criminal procedural laws to ensure they are in line with current realities and future needs.

Delay in delivery of justices due to complex legal procedures, large pendency of cases in the Court, low conviction rate, insufficient use of technology in legal system, delays in investigation system, inadequate use of forensics are the biggest hurdles in speedy delivery of justice.

In view of the object and reasons, the government of India on 11/08/2023 introduced BNSS in the Lok Sabha with the objective to repeal the Cr.PC, 1973 as a mark of the 74th years of independence. The BNSS retains most of the provision of the Cr.PC. The Lok Sabha passed the bill on 20/12/2023 and Rajay Sabha passed the bill on 21/12/2023; Received the assent of the President on 25/12/2023. New criminal law came into effect from 01/07/2024.

**OBJECTIVE****The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeks to**

- ensure speedy justice.
- bring transparency and accountability in investigation.
- make criminal justice system more victim centric.

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, aims to overhaul and modernize the procedural aspects of criminal law in India.

**The key objectives of BNSS 2023 include:**

1. **Streamlined Criminal Procedures:** Simplifying and streamlining criminal procedures to make the legal process more efficient and user-friendly for all stakeholders, including victims, witnesses, and the accused.
2. **Victim Rights and Protection:** Strengthening the rights and protection mechanisms for victims, ensuring they receive timely justice, support, and restitution.
3. **Efficient Investigation and Prosecution:** Enhancing the efficiency of investigation and prosecution processes to ensure swift justice and reduce the backlog of cases in the judicial system.
4. **Transparency and Accountability:** Increasing transparency and accountability in law enforcement

and judicial processes to build public trust and ensure fairness.

5. **Use of Technology**: Integrating modern technology in criminal procedures, including digital record-keeping, electronic filing of chargesheets, and use of video conferencing for court proceedings, to improve efficiency and accessibility.
6. **Alternative Dispute Resolution**: Promoting alternative dispute resolution mechanisms, such as plea bargaining, mediation, and restorative justice, to reduce the burden on courts and provide quicker resolutions to disputes.
7. **Human Rights Protection**: Ensuring the protection of human rights within the criminal justice process, including safeguards against arbitrary arrests and detention, and upholding the rights of the accused to a fair trial.
8. **Witness Protection**: Establishing robust witness protection programs to ensure the safety and security of witnesses, thereby encouraging them to come forward and testify without fear of retaliation.
9. **Police Reforms**: Implementing comprehensive police reforms to improve the functioning, accountability, and responsiveness of law enforcement agencies.
10. **Community Policing**: Encouraging community policing initiatives to foster better relations between

the police and the public, and to involve communities in maintaining law and order.

11. **Consistency with Constitutional Values**: Ensuring that the procedural laws align with the constitutional values of justice, liberty, equality, and fraternity.

12. **Capacity Building**: Investing in capacity building and training for law enforcement and judicial officers to effectively implement the new procedural laws.

Thus the objectives of BNSS 2023 aim to create a more effective, transparent, and just criminal procedure framework, enhancing the overall efficiency of the criminal justice system in India.

## **SALIENT FEATURES OF BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS) 2023**

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 brings several key changes aimed at modernizing India's criminal procedural framework.

### **1. Simplification and Modernization of Language**

- **Simplified Language:** The BNSS uses simpler, more accessible language compared to the archaic legalese of the CrPC 1973, making the laws easier to understand for the general public and legal practitioners.

### **2. Enhanced Victim Rights and Support**

- **Victim Compensation:** Provisions for timely compensation and support to victims of crime, ensuring their active participation and consideration in the justice process.
- **Victim Representation:** Enhanced mechanisms for victim representation in legal proceedings.

### **3. Technological Integration**

- **Digital Records:** Mandatory digital record-keeping and electronic filing of documents, chargesheets, and other legal papers to streamline processes.
- **Video Conferencing:** Expanded use of video conferencing for court proceedings, reducing the need for physical presence and expediting trials.

#### 4. Speedy Investigation and Trial

- **Timelines:** Imposition of stricter timelines for the completion of investigations and trials to reduce delays and backlog.
- **Fast-Track Courts:** Strengthening and expanding the network of fast-track courts for handling specific categories of cases, such as sexual offenses and corruption.

#### 5. Alternative Dispute Resolution

- **Plea Bargaining and Mediation:** Promotion of plea bargaining, mediation, and other alternative dispute resolution mechanisms to provide quicker resolutions and reduce court caseloads.
- **Restorative Justice:** Introduction of restorative justice practices that focus on reconciliation between the offender and the victim.

#### 6. Strengthened Witness Protection

- **Witness Protection Programs:** Establishment of robust witness protection programs to ensure the safety and security of witnesses, thereby encouraging their cooperation in legal proceedings.

#### 7. Police Reforms

- **Accountability Measures:** Introduction of stricter accountability measures for law enforcement agencies to enhance their efficiency and public trust.

- **Community Policing:** Encouragement of community policing initiatives to foster better relationships between the police and the public and involve communities in maintaining law and order.

### 8. Human Rights Safeguards

- **Rights of the Accused:** Reinforcement of safeguards to protect the rights of the accused, including protection against arbitrary arrests and detention and ensuring fair trial procedures.
- **Humane Treatment:** Emphasis on the humane treatment of all individuals within the criminal justice system.

### 9. Transparency and Accountability

- **Public Access to Information:** Enhanced transparency in legal procedures and public access to information regarding case status and judicial decisions.
- **Accountability Mechanisms:** Strengthened mechanisms to hold law enforcement and judicial officers accountable for their actions.

### 10. Capacity Building

- **Training Programs:** Implementation of comprehensive training programs for law enforcement and judicial officers to ensure effective implementation of the new procedural laws.

- **Capacity Building Initiatives:** Focus on building the capacity of the criminal justice system to handle the new processes and technologies.

11. **Consistency with Constitutional Values**

- **Alignment with Constitutional Rights:** Ensuring that all procedural changes align with the constitutional values of justice, liberty, equality, and fraternity.
- **Human Rights Compatibility:** Making sure that the procedural framework is compatible with contemporary human rights standards.

12. **Specific timelines for investigation and trial**

- BNSS prescribes specific timelines for different aspects of investigation and trial in order to ensure speedy justice.

13. **Audio-Video recording of search**

- BNSS mandates audio-video recording of search and seizure to bring in greater transparency during investigation.

14. **Attachment of Property during investigation**

- The property of criminals, which is deemed to be proceeds of crime, can be attached by the Court. Such proceeds of crime shall be distributed among the victims. This would not only create greater deterrence for crime but would also

provide some pecuniary relief to the victims of crime.

15. **In-absentia trial of Proclaimed offender**

- BNS provides for in-absentia trial of proclaimed offenders.

**BNSS CHANGES IN COMPARISION TO CrPC**

- There are **531 Sections in BNSS** (484 Sections in CrPC)
- There are 39 Chapters in BNSS (37 Chapters in CrPC)
- 9 new sections have been added
- 39 sub-sections/clauses have been added.
- 40 new provisos have been added.
- 38 Timelines have been introduced.
- 5 New Explanations added.
- 14 sections have been Excluded.
- 177 sub-sections have been modified.
- Section 531: Repeal and Savings

**RE-ORGANISATION OF SECTIONS**

| <b>S. NO.</b> | <b>Description</b>  | <b>CrPC</b> | <b>BNSS</b> |
|---------------|---|-------------|-------------|
| <b>I</b>      | <b>Original sections –</b>  | 484         | 531         |
| <b>II</b>     | <b>Inserted sections [within the original numbering scheme]</b>                 | 51          | ---         |
| <b>III</b>    | <b>Total number of existing sections [within the original numbering scheme]</b> | 535         | ---         |
| <b>IV</b>     | <b>CrPC Sections not included in BNSS [excluded]</b>                            | 11          | ---         |
| <b>V</b>      | <b>CrPC Sections Included in BNSS</b>   | 524         | ---         |
| <b>VI</b>     | <b>CrPC Sections included as individual sections of BNSS</b>                    | 520         | 520         |
| <b>VII</b>    | <b>Contents of 4 sections of CrPC reorganised within 2 sections of BNSS</b>     | 4           | 2           |

|             |                                   |     |     |
|-------------|-----------------------------------|-----|-----|
| <b>VIII</b> | <b>New Sections added in BNSS</b> | --- | 9   |
| <b>IX</b>   | <b>Number of Sections in BNSS</b> | --- | 531 |

**PROVISIONS IN BNSS WITH RESPECT TO  
INVESTIGATIVE PROCESS :-**

**i. Registration of FIR irrespective of jurisdiction [Sec. 173 (1) BNSS]**

FIR can be registered at any Police station irrespective of the area, where the offence is committed.

**ii. FIR through electronic means [Sec.173 (1) (ii) BNSS]**

FIR can be registered through electronic means (E-FIR). However the same has to be signed by the informant within 3 days.

**iii. Conditions for conducting Preliminary enquiry [Sec.173 (3) BNSS]**

In offences punishable with imprisonment between 3 to 7 years, the Officer in-charge of the police station may with the permission of Deputy Superintendent of Police conduct preliminary enquiry to ascertain whether there is any prima facie case, for proceeding in the matter. Such preliminary enquiry must be completed in 14 days.

**Note: There was no such provision under CrPC.**

**iv. Forwarding Daily Diary Reports to Magistrate once in 14 days [Sec. 174 BNSS]**

Officer in charge shall forward the daily diary reports of information regarding non- cognizable cases once in 14 days to the Magistrate.

**Note: There was no specific timeline for this under CrPC.**

**→ Changes with respect to recording of statements****[Sec. 176, 179–183 BNSS]****i. Recording of rape victim statement at her residence****[Sec.176 BNSS]**

In relation to the offence of rape, the recording of the statement of victim shall be conducted at the residence of victim or at the place of her choice by a woman police officer in the presence of her parent or guardian or near relative or social worker of the locality. Such statement may also be recorded by audio–video electronic means including mobile phone.

**Note: CrPC did not have any provision for recording the statement of victim of sexual assault through mobile phone.**

**ii. Woman Police officer to record the statement of victim of sexual assault****[Sec. 180 BNSS]**

The statement of a woman, against whom sexual assault is alleged to have been committed or attempted, shall be recorded by a woman police officer or any woman officer. Such statements may also be recorded by audio–video electronic means.

**iii. Recording of statement of victim of sexual assault by female Judicial Magistrate****[Sec. 183 BNSS]**

Section 183 (6) (a) mandates that the statement of the victim of the rape shall be recorded only by a woman Judicial Magistrate and in her absence, by a male Judicial Magistrate in the presence of a woman.

**iv. Women, persons above 60 or with acute illness not bound to attend Police station**

**[Sec. 179 BNSS]**

- a) no male person under 15 years or above 60 years of age
- b) no woman
- c) no mentally or physically disabled person
- d) no person with acute illness

shall be called to police station for recording of their statement. However, if the said person is willing to attend the police station he or she may be permitted to do so.

**v. Recording of statement by Judicial Magistrate of witness in offences punishable with imprisonment for 10 years or more [Sec. 183 (6) BNSS]**

In cases relating to the offences punishable with imprisonment for 10 years or life or death, the Judicial Magistrate shall record the statement of the witness brought before him by the police officer.

**Note: CrPC did not have any provision like this.**

If the person making the statement is temporarily or permanently, mentally or physically disabled, the statement made by the person with the assistance of an interpreter or a

special educator, shall be recorded through audio-video electronic means, preferably by mobile phone.

➔ **Arrest [Sec. 35 BNSS]**

**i. No arrest of aged or infirm person without permission of DySP in offences punishable with less than 3 years imprisonment [Sec. 35 BNSS]**

In case of offences punishable with less than 3 years of imprisonment no arrest of a person, who is infirm or  above 60 years of age shall be made without the prior permission of DySP.

**ii. Appointment of Designated Police Officer in every Police station for maintaining the record of arrested persons and displaying it in digital mode [Sec. 37 BNSS]**

An officer, not below the rank of ASI, shall be appointed as Designated Police Officer in every Police station, who shall maintain and display, in digital mode, the information regarding name, address, nature of the offence of the arrested person at Police Station and District Headquarter.

**iii. Information of arrest to Designated Police Officer [Sec. 48 BNSS]**

Police officer effecting arrest is required to inform about arrest of person to

- a) Relatives or friends and
- b) Also to designated Police officer

**iv. Arrest by Private person [Sec. 40 BNSS]**

In case of arrest by private person, the arrested person must be handed over to the police within 6 hours of arrest.

**v. Use of handcuffs allowed in certain cases [Sec.43 (3) BNSS]**

The use of handcuffs on the accused is permitted in the following cases:

- in case of habitual or repeat offender or
- in case of a person who has escaped from custody or
- in case of organised crime, terrorist act, drug related crime, illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency notes, human trafficking, sexual offences against children or offences against State.

➔ **Changes with respect to Search [Sec. 103, 105, 185, 186 BNSS]**

BNSS has introduced major changes regarding the search proceedings as compared to CrPC. It has mandated audio-video recording of the entire process of search. The following procedure has to be followed while conducting search :

**Action before proceeding for search in person & deputing subordinate Police Officer for search.**

**a) Recording of reasons for search in Case diary:**

The Officer in-charge of Police Station or IO is required to record the grounds of his belief for conducting search and also record the reason for not conducting search in person in the case-diary. **[Sec 185 (1) BNSS]**

**b) Conducting search in person:**

The Officer incharge of Police Station or IO shall, if practicable, conduct the search in person. **[Sec. 185 (2) BNSS]**

**c) Deputing subordinate Police officer for conducting search:**

If the Officer in-charge of Police Station or IO is unable to conduct search in person, he may after recording the reasons, depute any subordinate Police officer for conducting the search. **[Sec. 185 (3) BNSS]**

→ **Procedure during Search**

**Recording of search and seizure through audio–video electronic means [Sec. 105 and Proviso to Sec. 185 (2) BNSS]**

The Officer Incharge of Police Station or IO shall record the whole process of search by any audio–video electronic means preferably by mobile phone.

Search to be conducted in the presence of two independent witnesses [**Sec.103 (4) BNSS**]

**As per Sec. 103 (4) of BNSS**, before making search, Police officer is required to call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated.

**Refusal to become witness for search amounts to an offence [Sec.103(8) BNSS]**

Any person who, without reasonable cause refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 222 of Bharatiya Nyaya Sanhita, 2023.

→ **Action after search**

Audio–video recording of search to be sent to DM, SDM or JMFC [**Sec. 105 BNSS**]

The police officer shall without delay forward audio-video recording to the DM, SDM or JMFC.

IO to send record regarding search to Magistrate within 48 hours [**Sec.185 (5) BNSS**]

The IO shall send the copies of the following record **within 48 hours** to the competent Magistrate:

- a) Reasons for conducting search
- b) Reason for not conducting search in person and deputing subordinate police officer in case someone else is deputed by IO to conduct search
- c) The details of search proceedings.

➔ **Attachment, Forfeiture or Restoration of Property [Sec. 107 BNSS]**

BNSS lays down the following procedure for attachment of property of criminals, derived from criminal activity and its distribution:

**(i) Application by IO for attachment of property made from criminal activity**

**[Sec. 107 (1) BNSS]**

The investigating officer may, with the approval of Superintendent of police or Commissioner of police, make an application before the competent Magistrate for the attachment of property made from criminal activity or from the commission of any offence.

**(ii) Show cause notice by Magistrate [Sec. 107 (2) BNSS]**

Magistrate may issue notice to the person, to whom the property belongs, to show cause within the period of 14 days as to why an order of attachment shall not be made.

**(iii) Order of attachment of proceeds of crime [Sec. 107 (4) BNSS]**

The Magistrate may, after hearing all parties concerned, direct attachment of the property found to be the proceeds of crime.

**(iv) Ex-parte interim order for attaching property [Sec. 107 (5) BNSS]**

If the Magistrate is of the opinion that issuing notice to the owner of the property for attachment will defeat the object of the attachment or seizure, he may pass an ex-parte interim order for attaching property.

**(v) Direction to the District Magistrate for rateable distribution of proceeds of crime to the victims [Sec. 107 (6) BNSS]**

Upon determination that the property in question falls under proceed of crime, the Magistrate will direct the District Magistrate to rateably distribute the property amongst those who were affected by the crime.

**(vi) Action by District Magistrate [Sec. 107 (7) BNSS]**

The District Magistrate shall within a period of 60 days distribute the proceeds of crime either by himself or authorise any other officer subordinate to him to effect such distribution .

**→ Medical Examination [Sec. 51 to 53, 184 BNSS]****i. Application for the medical examination by any police officer [Sec 51 and 52 BNSS]**

Any police officer can move an application for the medical examination of accused.

**Note:- Under CrPC only SI could move such an application.**

**ii. Medical report of Victim in Rape cases to be given in 7 days [Sec. 184 BNSS]**

The Medical Officer shall, within a period of 7 days, forward the Medico-Legal Report (MLR) to the investigating officer, who shall forward to it to the Magistrate with Police Report.

**iii. Medical examination report of accused to be given without delay [Sec. 52 BNSS]**

The Medical Officer shall without any delay forward the Medico-Legal Report (MLR) to the investigating officer.

➔ **Remand [Sec. 187 (2) BNSS]**

Police Remand can be sought even after the initial 15 days

**Remand of accused can be sought under BNSS**

(1) within first 40 days of arrest in cases where the offence is punishable with less than 10 years imprisonment.

(2) within first 60 days of arrest in cases where the offence is punishable for more than 10 years imprisonment.

**Note: Under CrPC the Police Remand of accused could be sought only during the initial 15 days after arrest.**

➔ **Bail, Bail Bond, and Bond**

While the Cr.P.C. doesn't define the terms bail, bail bond and bond, the BNSS has provided clarity by defining these terms. According to the definition clause under Section 2 of BNSS:

Clause (b) defines "bail" as:

*"bail" means release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or Court on execution by such person of a bond or a bail bond.*

Clause (d) defines "bail bond" as:

*"bail bond" means an undertaking for release with surety.*

Clause (e) defines "bond" as:

*"bond" means a personal bond or an undertaking for release without surety.*

→ **Changes brought with respect to Undertrial Prisoners**

It is worthwhile to mention that Section 436A Cr.P.C. inserted *vide* the Criminal Law (Amendment) Act, 2005 ('2005 Amendment') states that where an under-trial offender has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for the offence (not being an offence punishable with death), he shall be released on bail by the Court (with or without surety). The provision was added as a recognition of the right to fair and speed trial of the accused who is undergoing detention as an undertrial prisoner.

However, **Section 479** of BNSS, which is the counterpart of Section 436A Cr.P.C., has brought some crucial changes in the provision granting bail to the undertrial prisoners, such as:

1. **Early Release of First-Time Offender:** In the existing law there's no provision for the early release of the first-time offender i.e., who has never been convicted of any offence in the past, if it has spent certain amount of period in the prison as an undertrial prisoner. However, the new law has made a provision for the early release of such first-time offender if they have spent a period up to one-third of the sentence, prescribed for the offence, as an undertrial prisoner.
2. **Proviso 1 to Section 479** of BNSS<sup>2</sup> states as follows:

*"Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law."*

**2. Bail Note to be Granted If Multiple Cases are**

**Pending:** The existing law doesn't contain the provision denying bail to the under-trial prisoner where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person. However, the new law has added a stricter provision by denying bail to the under-trial prisoner if an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person. **Sub-clause 2 of Section 479** of BNSS<sup>2</sup> provides that:

*"Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court."*

**3. Bail can be granted on the report of**

**Superintendent of Jail:** The new law has made a provision mandating the Superintendent of Jail to submit an application in writing to the court to proceed to release the under-trial prisoner on bail who have completed one-third or the one-half of the sentence

as the case may be, prescribed for the offence in the 'Sanhita'. **Sub-clause 3 of Section 479** of BNSS2 provides that:

*"The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail."*

→ **Changes brought in Regular Bail Provision : Need for police custody beyond first fifteen days not a ground to deny bail**

It is worthwhile to mention that during the hearings on regular bail application of the accused, one of the prominent grounds taken by the prosecution to oppose the bail plea of the accused is that the accused custody is required by the investigative agencies to identify the witnesses during the investigation. The existing code in **Proviso 3 to Section 437** provides for the release of accused on regular bail by stating that:

*"Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court."*

However, the new law made a slight departure from the existing provision by adding a caveat that the accused shall be entitled to a regular bail if the court finds that the custody of the accused required for identifying the witnesses during the investigation is more than **first fifteen days**. **Proviso 3 of Section 480 of BNSS**, which deals with when bail can be taken in case of non-bailable offence, states that:

*"Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation or for police custody beyond the first fifteen days shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court."*

### ➔ **Changes Brought in Anticipatory Bail Provision**

When the person-accused of committing an offence apprehends arrest against the commission of a crime then an anticipatory bail application can be filed before the court in an anticipation of arrest. There is no major change made regarding anticipatory bail in the BNSS when compared to the Cr.P.C. except the change that the existing law disallows granting of anticipatory bail accused of committing a gang-rape on woman under sixteen (Section 376DA) and twelve years (Section 376 DB) of age as specified in sub-section 4 of Section 438 Cr.P.C., however the new law has made a provision that a person accused of committing a gang rape to

all woman who are under eighteen years of age can not seek the anticipatory bail. Thus, the new provision has enlarged the applicability of the provision by not allowing anticipatory bail to individuals who are accused of committing gang rape on a woman under eighteen years of age, which is sixteen years under the existing law.

**Sub-section 4 of Section 482** of BNSS2 reads as:

*"Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 65 and sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023."*

Whereas **sub-section (2) of section 70** of the Bharatiya Nyaya Sanhita, 2023, reads as follows:

*"Where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death."*

➔ **Inquest Report [Sec. 194 – 196 BNSS]**

**i. Inquest report to be sent to SDM within 24 hours [Sec. 194 (1) BNSS]**

The inquest report shall be signed by Officer incharge/IO and other persons shall be forwarded to the DM or SDM by police **within 24 hours**.

**Note: CrPC did not have any specific timeline for this.**

**ii. Power to summon person for the purpose of Inquest [Sec. 195 BNSS]**

For the purpose of inquest proceedings, no male person under the age of 15 years or above the age of 60 years or a woman or mentally or physically disabled person or a person with acute illness shall be required to attend at any place other than the place where such person resides. If such person is willing to attend the police station he may be permitted to do so.

**→ Police Report [Sec. 193 BNSS]**

**i. Investigation in certain sexual offence cases under BNS and POCSO to be completed within 2 months from the date of recording of information**

The investigation in relation to an offence under sections 64, 65, 66, 67, 68, 70, 71 of the Bharatiya Nyaya Sanhita, 2023 or under sections 4, 6, 8 of the Protection of Children from Sexual Offences Act, 2012 shall be completed **within 2 months** from the date on which the information was recorded by the officer in-charge of the police station.

**ii. IO to supply of copies of Police report through electronic means to Magistrate [Sec 193 (8) BNSS]**

The investigating officer shall submit copies of the police report along with other documents duly indexed to the

Magistrate. The Magistrate shall supply these documents to the accused and victim as required under section 230 BNSS.

The Police Report and other documents supplied by electronic communication shall be considered as duly served.

→ **Victim-centric Provisions [Sec. 193 BNSS]**

**i. IO to inform the victim about the progress of investigation within 90 days [Sec. 193 (3) (ii) BNSS]**

The police officer shall, within a period of 90 days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim.

**ii. Further investigation to be completed within 90 days [Sec.193 (9) BNSS]**

Further investigation during the trial may be conducted with the permission of the Court trying the case and the same shall be **completed within a period of 90 days** which may be extended with the permission of the Court.

**iii. Victim to be heard before withdrawal from prosecution [Sec 360 BNSS]**

No court shall allow withdrawal from prosecution without giving an opportunity of hearing to the victim.

→ **Procedure in case of complaint case against Public Servant and others**

**[Sec. 175 BNSS]**

**i. Magistrate's power in complaint against Public Servant [Sec. 175 (4) BNSS]**

The Magistrate may take cognizance of a complaint against a public servant, regarding his official duties after : Receiving a report from senior officers of such officer about the fact and circumstances of the incident and consideration of assertions made by such Public Servant.

**ii. Magistrate to hear police officer before ordering investigation in a complaint case**

**[Sec. 175 (3) BNSS]**

Magistrate may consider the submission made by the Police Officer before ordering investigation in complaint cases.

→ **Speedy Trial [Sec. 175 BNSS]**

**i. Trial in-absentia of Proclaimed Offender [Sec. 356 BNSS]**

□ The BNSS has introduced provision for conducting trial in-absentia of Proclaimed Offender. This allows the trial and pronouncement of judgment in the absence of the accused, which was not provided under CrPC.

□ Section 356 of the BNSS mandates the court to proceed with the trial in-absentia when a person declared as a Proclaimed Offender has absconded to evade trial, and there is no immediate prospect of arresting him. It also specifies a mandatory waiting period of ninety (90) days from the date of framing of the charge before commencing the trial.

**Note: CrPC allowed evidence to be recorded in the absence of the accused u/s 299, but did not provide for trial to be completed or for judgment to be pronounced against Proclaimed offender.**

→ **Pre-requisite conditions to follow in absentia procedure of trial:**

(i) Issuance of two consecutive warrants of arrest within an interval of at least thirty days

(ii) Notice in a national or local daily newspaper requiring the absconding accused to appear before the trial court and warning that if he fails to within thirty days from the date of

publication of such publication, trial shall commence in his absence

(iii) Inform a relative or friend of the commencement of trial in absentia

(iv) Affix information of commencement of such trial in some conspicuous part of his house where he normally resides and

(v) Display information of commencement of such trial in the police station of the district of his last known address of residence

Proclaimed offender if unrepresented be appointed a defence lawyer at State expense

– Depositions of prosecution witnesses examined to be recorded ( both in written form as well as audio-video electronic means preferably mobile phone and preserved) and given in evidence during inquiry or trial against the proclaimed offender

– Access to the depositions recorded be given to the proclaimed offender when he gets arrested or produced before trial court

– Voluntary absence of accused after being declared as a proclaimed offender does not preclude the trial court from continuing with the trial including pronouncement of judgement even if the accused is produced or arrested or appears at the conclusion of the trial.

– Appeal to not lie from a judgment passed in absentia trial unless the accused presents himself before the Court of Appeal.

– **Limitation period to file an appeal against a judgment passed in absentia – Three years from the date of judgment.**

– State Governments by notification can extend part or complete provision to Proclamation for person absconding – S. 84

**ii. Framing of charge within 60 days [Sec. 263 BNSS]**

The Magistrate shall frame the charge against the accused **within period of 60 days** from the date of first hearing on charge.

**iii. Judgement within a period of 45 days on completion of trial [Sec. 392 BNSS]**

After the termination of trial the judgment shall be pronounced at subsequent time but not later than 45 days.

**iv. Judgement by Session Court within a period of 30 days after arguments (extendable to 45 days) [Sec. 258 BNSS]**

After hearing the arguments of prosecution and defence, Session Court shall give the Verdict within a period of 30 days extendable up to 45 days.

**v. Examination of a witness by audio–video electronic means [Sec. 265 BNSS]**

During trial, the statements of prosecution witnesses may be recorded by audio–video electronic means.

**vi. Prosecution Sanction in 120 days [Sec. 218 BNSS]**

Under Sec. 218 BNSS the Central or the State Government is required to decide request for sanction for prosecuting the public servant within 120 days. If the said Government fails to do so, the sanction will be deemed to have been accorded by the Government.

**→ Other Key Changes****i. Forensic aid in heinous crime investigation [Sec. 176 (3) BNSS]**

Sec. 176 (3) of BNSS mandates the collection of forensic evidence at the crime scene by a forensic expert for offences punishable by imprisonment of 7 years or more. The provision is to be implemented within 5 years during which such capacity is to be developed by the State Government.

The State Government shall also notify regarding utilization of forensic facility of any other State until State develops such facility.

**ii. Compensation to persons groundlessly arrested (Malicious arrest) [Sec 360 BNSS]**

Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the

case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one thousand rupees, to be paid by the person so causing the arrest to the person so arrested.

**iii. Minimum SP rank officer to be Special Executive Magistrate [Sec. 15 BNSS]**

In Police Commissionerate area, minimum Superintendent of Police rank officer may be appointed as a Special Executive Magistrate.

**Note: Under CrPC, Dy.S.P/A.C.P rank officer could be appointed as a Special Executive Magistrate.**

**iv. Service of summons through electronic communication [Sec 64 (2) BNSS]**

Summons may also be served through electronic communication.

**v. Summons to produce document or other things [Sec. 94 BNSS]**

Under Sec. 94 BNSS, any Court or office Incharge of Police station can demand production of electronic communication including communication device, which is likely to contain digital evidence.

**Note: CrPC did not have any provision for summoning the electronic record.**

**vi. SP can entrust investigation to DySP [Sec. 175 (1) BNSS]**

The Superintendent of Police may after considering the nature and gravity of the offence require the Deputy Superintendent of Police to investigate the offence.

➔ **APPEAL**

➤ A convicted person can no longer file an appeal against the decision of a High Court if a sentence of imprisonment for a term not exceeding **THREE MONTHS** or fine or both is awarded – **S. 417**

➤ The Central Government is empowered to file an appeal against a sentence when the investigation was done by an agency under any Central legislation other than BNSS through the Public Prosecutor – **S. 418(2)**

➔ The Central Government is empowered to file an appeal against an acquittal when the investigation was done by an agency under any Central legislation other than BNSS through the Public Prosecutor – **S. 419(2)**

➔ An appeal filed against a sentence passed for various categories of the offence of rape (Ss.64, 65, 66, 67,68,70 and 71 BNS, 2023) be disposed of within a period of SIX MONTHS from the date of filing of such appeal – **S. 415 (4)**

➔ Appeal against conviction from Judicial Magistrate of Second Class be heard and disposed of by a Chief Judicial Magistrate only – **Proviso to S. 422 (1)**

## → **Excluded Sections of Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023**

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 aims to modernize and streamline the criminal procedural framework in India. In doing so, certain sections from the Code of Criminal Procedure (CrPC) 1973 have been excluded or significantly modified. Here are some notable exclusions or repeals in the BNSS 2023:

### **1. Sedition and Related Offences:**

- **CrPC 1973:** Included provisions related to handling sedition cases.
- **BNSS 2023:** Provisions related to sedition (linked to Section 124A of IPC) have been repealed.

### **2. Adultery:**

- **CrPC 1973:** Had procedural guidelines for adultery cases.
- **BNSS 2023:** Reflects the exclusion of adultery following its decriminalization by the Supreme Court.

### **3. Anti-Begging Provisions:**

- **CrPC 1973:** Included provisions for criminalizing begging.
- **BNSS 2023:** Removes these provisions to adopt a more humane approach.

**4. Unnatural Offences:**

- **CrPC 1973:** Included procedures for unnatural offences.
- **BNSS 2023:** Excludes procedures following the decriminalization of consensual adult relationships (linked to Section 377 of IPC).

**5. Preventive Detention:**

- **CrPC 1973:** Detailed procedures for preventive detention.
- **BNSS 2023:** Revises or excludes overly broad preventive detention measures.

**6. Interrogation and Confession:**

- **CrPC 1973:** Detailed provisions on interrogation and confession, some of which were inconsistent with modern human rights standards.
- **BNSS 2023:** Modernizes these procedures to ensure better compliance with human rights norms.

**7. Bail Provisions:**

- **CrPC 1973:** Strict and sometimes restrictive bail provisions.
- **BNSS 2023:** Revises bail provisions to be more consistent with principles of justice and to reduce unnecessary pre-trial detention.

**8. Procedural Redundancies:**

- **CrPC 1973:** Included several procedural redundancies that complicated the legal process.
- **BNSS 2023:** Streamlines procedures to enhance efficiency and clarity in the criminal justice process.

**9. Colonial Terminology and Practices:**

- **CrPC 1973:** Contained several colonial-era terms and practices.
- **BNSS 2023:** Updates language and removes outdated practices.

**10. Outdated Investigation Procedures:**

- **CrPC 1973:** Included several outdated procedures for investigation.
- **BNSS 2023:** Replaces these with more advanced and technologically aligned methods.

**Timelines for various stages of Trial under BNSS**

| <b>S. No.</b> | <b>Stage</b> | <b>Provision</b>   | <b>CrPC</b>                                | <b>BNSS</b>  |
|---------------|--------------|--|--|--|
| 1.            | Charge       | Framing of charges by Magistrate (for offences the Magistrate is competent to try and punish)                              | No time prescribed<br>Sec. 240 (1)<br>CrPC | Within 60 days from first hearing on charge<br>Sec. 263 (1) BNSS |
| 2.            | Charge       | Procedure for an accused to file application for discharge (in cases triable by a Sessions Court)                          | No time prescribed<br>Sec. 227<br>CrPC     | Within 60 days from committal<br>Sec. 250 (1) BNSS               |
| 3.            | Charge       | Procedure for discharge by Magistrate in case of absence of complainant on date fixed for hearing in a complaint case, for | No time prescribed<br>Sec. 249<br>CrPC     | Granting 30 days opportunity to complainant to appear in court   |

|    |                 |  |  |  |
|----|-----------------|--|--|--|
|    |                 | offences that are non-cognizable and compoundable  |  | Sec. 272<br>BNSS   |
| 4. | Plea Bargaining | Procedure for application for plea bargaining by the accused, in court where trial for said offence is pending | No time prescribed<br>Sec. 265-B (1)<br>CrPC | Within 30 days from the date of framing of charge<br>Sec. 290 (1)<br>BNSS                    |
| 5. | Trial           | Procedure for admission and denial of genuineness of documents by the defence and prosecution                  | No time prescribed<br>Sec. 294 (1)<br>CrPC   | Soon after supply of documents, and no later than 30 days, unless the Court relaxes the time |

|    |       |  |                                     |   |
|----|-------|--|-------------------------------------|---|
|    |       |  |                                     | limit with written reasons<br>Sec. 330 (1) BNSS                                       |
| 6. | Trial | Procedure for examination of the accused in custody, through electronic means, by Magistrate or Sessions Court | No time prescribed<br>Sec. 281 CrPC | Signature of accused to be taken within 72 hours of such examination<br>Sec. 316 BNSS |
| 7. | Trial | Commencement of in absentia trial against proclaimed offenders by a court                                      | No time prescribed<br>Sec. 299 CrPC | After a period of 90 days has lapsed from the framing of charge                       |

|     |                       |   |                                   |  |
|-----|-----------------------|---|-----------------------------------|--|
|     |                       |   |                                   | Sec. 356<br>(1) BNSS   |
| 8.  | Trial                 | Issuance of two consecutive arrest warrants by a court against proclaimed offenders, before commencing in absentia trials | No time prescribed                | Execution of 2 consecutive arrest warrants within the interval of 30 days<br>Sec. 356 (2) (1) BNSS |
| 9.  | Trial                 | Publication of notice to proclaimed offender to appear before court, in a newspaper                                       | No time prescribed                | Notice period of 30 days<br>Sec. 356 (2) (ii) BNSS   |
| 10. | Judgment and sentence | Pronouncement of judgment after termination of trial in any criminal  | Immediately after the termination | Not later than 45 days<br>Sec.   |

|     |                                     |  |   |  |
|-----|-------------------------------------|--|---|--|
|     | e                                   | court  | on<br>of trial or<br>at<br>some<br>subseque<br>nt<br>time Sec.<br>353 (1)<br>CrPC | 392 (1)<br>BNSS  |
| 11. | Judgmen<br>t<br>and<br>sentenc<br>e | Judgment of acquittal or<br>conviction by Court of<br>Sessions | No time<br>prescribe<br>d<br>Sec.235<br>(1)<br>CrPC                               | 30 days<br>from the<br>completi<br>on of<br>argumen<br>ts.<br>Extenda<br>ble up to<br>45<br>days for<br>reasons<br>in<br>writing<br>Sec. 258<br>(1) BNSS |
| 12. | Uploadin<br>g<br>of<br>Judgmen      | Court to upload a digital<br>copy of the judgment              | No time<br>prescribe<br>d<br>Sec.353  | 7 days<br>from<br>pronoun<br>cement,   |

|     |                            |  |   |   |
|-----|----------------------------|--|---|---|
|     | t                          |  | (4)<br>CrPC                                   | as far<br>as<br>practicab<br>le<br>Sec. 392<br>(4) BNSS   |
| 13. | Disposal<br>of<br>property | Procedure for custody or<br>disposal of property<br>produced before a<br>Court/Magistrate during<br>investigation, inquiry or<br>trial. The Court is bound<br>to<br>prepare a statement of<br>property produced<br>before it | No time<br>prescribe<br>d<br>Sec. 451<br>CrPC | Within 14<br>days of<br>producti<br>on of<br>property<br>before<br>the court<br>Sec.<br>497 (2)<br>BNSS |

**Practical Challenges of Bharatiya Nagarik Suraksha  
Sanhita (BNSS) 2023**

**1. Implementation and Transition**

- **Training and Capacity Building:** Ensuring that law enforcement officers, judicial staff, and legal practitioners are adequately trained to understand and implement the new provisions effectively.
- **Transition Period:** Managing the transition from the old CrPC to the new BNSS smoothly, ensuring that ongoing cases are not disrupted and that stakeholders adapt to the new system without confusion.

**2. Technological Integration**

- **Infrastructure:** Developing the necessary digital infrastructure for electronic filing, digital record-keeping, and video conferencing, especially in remote and rural areas.
- **Technical Expertise:** Ensuring that all stakeholders, including police, judiciary, and legal practitioners, have the technical expertise to use new digital tools and systems effectively.

**3. Resource Allocation**

- **Financial Resources:** Allocating sufficient financial resources for the implementation of the new provisions, including setting up fast-track courts,

witness protection programs, and victim support services.

- **Human Resources:** Recruiting and training additional personnel to handle the increased workload and new responsibilities arising from the BNSS provisions.

#### 4. **Victim and Witness Protection**

- **Effective Implementation:** Ensuring that victim and witness protection programs are effectively implemented and that those in need of protection are aware of and can access these services.
- **Security Concerns:** Addressing potential security concerns and ensuring the safety of victims and witnesses in high-risk situations.

#### 5. **Public Awareness and Education**

- **Awareness Campaigns:** Conducting widespread awareness campaigns to inform the public about their rights and the new provisions under the BNSS.
- **Legal Literacy:** Enhancing legal literacy among the general population to ensure that citizens are aware of the changes and understand how to navigate the new legal framework.

#### 6. **Judicial Efficiency**

- **Case Backlog:** Addressing the existing backlog of cases while implementing the new provisions, ensuring that the new system does not lead to further delays.

- **Fast-Track Courts:** Ensuring that fast-track courts are adequately staffed and equipped to handle the anticipated increase in cases requiring expedited handling.

## 7. Resistance to Change

- **Institutional Resistance:** Overcoming resistance from various stakeholders, including police, judiciary, and legal professionals, who may be accustomed to the old system and hesitant to adopt new practices.
- **Cultural Shifts:** Promoting a cultural shift towards more transparent, victim-centric, and technology-driven practices within the criminal justice system.

## 8. Monitoring and Evaluation

- **Continuous Monitoring:** Establishing mechanisms for continuous monitoring and evaluation of the implementation of the BNSS to identify and address any issues promptly.
- **Feedback Mechanisms:** Creating feedback mechanisms for stakeholders to report challenges and provide suggestions for improvements.

## 9. Legislative and Procedural Clarity

- **Clarity in Provisions:** Ensuring that the new provisions are clear and unambiguous, minimizing the scope for varied interpretations that could lead to legal challenges and inconsistencies.

- **Harmonization with Existing Laws:** Ensuring that the BNSS provisions are harmonized with other existing laws and legal frameworks to avoid conflicts and ensure a cohesive legal system.

#### 10. **Capacity to Handle Increased Workload**

- **Increased Caseload:** Managing the potential increase in workload for police, prosecutors, and courts resulting from stricter timelines and additional responsibilities under the BNSS.
- **Efficient Case Management:** Implementing efficient case management practices to ensure timely handling and resolution of cases under the new procedural framework.

**CASE LAWS**

Recently, the Punjab and Haryana High Court rendered an interesting judgment in in **XXX v. State of UT Chandigarh** discussing the above provisions. Relying on the language in Section 358 of the BNS and Section 531 of the BNSS, it proceeded to hold that once the BNSS was brought into effect, it would apply to offences committed under the IPC, thus recognizing that the IPC can continue to be the substantive criminal law while the BNSS becomes the new procedural criminal law.

This interpretation is supported by Section 6(1) of the General Clauses Act, 1897, which states that the repeal of an Act would not affect anything duly done or suffered thereunder. Thus, when an offence is committed at a time when the IPC was in force, then only the IPC can be invoked for such offence.

Thus, the registration, investigation and subsequent procedural steps will be taken in accordance with the new procedural legislation (BNSS) but the relevant substantive penal code would continue to be the IPC.

Notably, the above position seems to have been accepted and adopted by the Telangana Police, as can be seen from a memorandum issued by the Office of the Director General of Police, Telangana. The memorandum contemplates the situation discussed above and states that when the date of the occurrence of the crime is prior to July 1, 2024, but the date of registration of the crime is after July 1,

2024, the provisions of the IPC would apply as the substantive law and the provisions of the BNSS would apply as the procedural law.

A related problem arises when an FIR is registered prior to July 1, 2024 but investigation continues after such date. The question then is whether the CrPC will apply for the entirety of the criminal procedure, given that the FIR was registered prior to July 1, 2024. The Punjab and Haryana High Court in **XXX v. State of UT Chandigarh** held that even if an FIR had been registered prior to July 1, 2024 under the CrPC, but a petition was filed after July 1, 2024 for quashing that FIR, the BNSS would apply to govern that petition.

On the other hand, **the Rajasthan High Court in Krishan Joshi v. State of Rajasthan** has held that if an FIR is registered prior to July 1, 2024, then the subsequent investigation as well as the trial would be governed by the CrPC.

The Kerala High Court, in the case of **Abdul Khader v. State of Kerala**, held that an appeal filed or after July 1, 2024 would be governed by the procedure under the BNSS, while all applications filed and steps taken in the appeals filed prior to July 1, 2024 shall be under CrPC.

This question has also come up before the Delhi High Court recently through the case of Shri S Rabban Alam v. CBI through its Director. The Court has left the question open and is yet to express a definitive opinion.

**CONCLUSION**

While the BNSS 2023 aims to modernize and improve India's criminal justice system, its successful implementation will depend on addressing these practical challenges effectively. Adequate training, resource allocation, public awareness, and continuous monitoring will be crucial to ensure that the reforms achieve their intended objectives and lead to a more efficient, fair, and transparent criminal justice system.

The laws are though a step in the right direction to break away from the colonial hangover and provide a touch of Indianness to the laws. However, it is too early to decide upon the effectiveness and the new set of complications that may arise out of the new laws. In order to better assess the impact of these laws they must be implemented and studied for a period of at least 10 to 12 months. The time shall decide whether the laws are a leap forward or a step backward.