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Bharatiya Nagarik Suraksha Sanhita - India's New Legal Code

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The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023¹, heralds a meaningful transformation of India's legal framework, addressing the gamut of criminal offenses and the mechanisms governing their resolution. The bill aims to inject clarity and efficacy into the judicial process by meticulously delineating crimes and corresponding penalties. Additionally, it introduces provisions geared towards fortifying protections for victims and streamlining trial procedures, aiming to rectify systemic deficiencies like prolonged litigation, dismal conviction rates, and inadequate victim assistance. This legislative endeavour has sparked diverse reactions, reflecting the spectrum of perspectives within society. While some applaud the initiative's ambition to supplant outdated colonial laws, others voice concerns about potential repercussions. The timing of these legislative proposals coincides with an era marked by rapid technological advancements, shifting societal norms, and evolving global benchmarks. Against the backdrop of laws inherited from the British colonial era, often criticized for their antiquity, these reforms signify the government's determination to modernize the legal framework, placing a premium on responsiveness to citizens' needs, gender equality, digitalization, and a pivot towards a justice-centred approach that prioritizes equitable resolution over punitive measures.

Furthermore, the Bharatiya Nagarik Suraksha Sanhita stands as a significant stride towards harmonizing India's legal system with contemporary exigencies and international standards. In a society undergoing rapid transformation, where traditional notions of justice are undergoing reevaluation, these legislative changes aspire to cultivate a legal milieu that is more

¹ Bharatiya Nagarik Suraksha Sanhita 2023

equitable and accessible. By embracing principles of gender neutrality and accentuating the protection of victims, the bill acknowledges the shifting dynamics of power and vulnerability in modern society. This article will dwell on the major and key changes in contrast with the existing bill along with highlighting the areas where the bill lacks and creates ambiguity and loopholes which the makers need to define before its complete implementation.

Keywords: BNSS, crime, imprisonment, law.

INTRODUCTION

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 introduces significant modifications to the Criminal Procedure Code (CrPC) 1973², primarily focusing on three key aspects: consolidating and simplifying the law, strengthening the rights of the accused, and improving the efficiency of the criminal justice system.

Firstly, the BNSS consolidates and simplifies the legal framework by repealing and amending various provisions of the CrPC. This aims to enhance the accessibility and comprehension of the law, facilitating its application.

Secondly, the rights of individuals accused of crimes are fortified under the BNSS. It introduces safeguards such as the right to legal representation, the right to remain silent, and the right to a fair trial. These provisions are designed to ensure that the accused receive fair treatment and are not unjustly denied justice.

Thirdly, the BNSS endeavours to enhance the efficiency of the criminal justice system by streamlining procedures and reducing delays. This is intended to expedite the overall legal process, benefiting both victims seeking justice and accused individuals awaiting resolution.

Specific changes implemented by the BNSS include the mandatory requirement for forensic investigation in cases punishable by seven years of imprisonment or more. This measure is intended to bolster the accuracy of investigations and prosecutions. Furthermore, the BNSS allows electronic evidence, including data from devices like computers, mobile phones, and surveillance cameras, to be admissible in court. In addition, the BNSS streamlines bail procedures, making it more accessible for accused individuals to secure bail. Moreover, it expands the scope of property seizure, empowering law enforcement to confiscate property

² Code of Criminal Procedure 1973

suspected to be connected to a crime. In essence, the BNSS represents a comprehensive reform aimed at simplifying the legal landscape, safeguarding the rights of the accused, and optimizing the efficiency of the criminal justice system through various specific measures.

SOME POSITIVE CHANGES

1. When referring to differently-abled persons, CrPc had very insensitive and venerable terminology using words such as Lunatic Person or Person of Unsound Mind. All of such references have been replaced with more sensitive terms like ‘Having Intellectual Disability’ or ‘Person with Mental Illness’. This change can be found under Section 219(1)(a)³ of BNSS in correspondence with Section 198 of CrPC.⁴
2. With references to the Mental HealthCare Act 2017⁵, the term Lunatic Asylum has been suitably changed to Mental Health Establishment.⁶
3. Other obsolete references that have been removed include the category of Assistant Session Judges by deletion of Section 10⁷. Similarly, all mentions of the term ‘Pleader’ have been replaced with ‘Advocate’ and references to ‘Thug’ have been eliminated.
4. Judicial Magistrates in metropolitan cities will no longer be called Metropolitan Magistrates under the new act.
5. The provision under Section 153 of CrPC giving the police the power to search any place without a warrant has been removed. The word ‘male’ has been dropped under section 66⁸ and section 474 of BNSS⁹ which was there under section 64 of CrPc¹⁰ where the summons could only be served by a male member of the family and section 432 of CrPC¹¹ where suspension/remission petitions by males above 18 only were subject to higher scrutiny.

³ Bharatiya Nagarik Suraksha Sanhita 2023, s 219(1)(a)

⁴ Code of Criminal Procedure 1973, s 198

⁵ Mental Healthcare Act 2017

⁶ *Ibid*

⁷ Bharatiya Nagarik Suraksha Sanhita 2023, s 10

⁸ Bharatiya Nagarik Suraksha Sanhita 2023, s 66

⁹ Bharatiya Nagarik Suraksha Sanhita 2023, s 474

¹⁰ Code of Criminal Procedure 1973, s 64

¹¹ Code of Criminal Procedure 1973, s 432

6. Victim Safeguards:

- Victims and their advocates receive copies of relevant documents, enhancing transparency (Section 207¹²).
- Victim compensation schemes are introduced, largely administrative schemes (like the Nirbhaya Scheme) given at the discretion of State Governments.

7. Complainant and Accused Rights:

- Under Section 272¹³, the complainant is given 30 days to appear in court before the accused can be discharged from the case.
- As per Section 360¹⁴, the victim's perspective is considered when considering the withdrawal from prosecution.

According to Section 223¹⁵, the accused must be allowed to be heard before the court takes cognizance of a complaint in criminal cases

8. Bail Provisions:

- Section 483¹⁶, mandates that the accused must execute a bond before the conclusion of a trial or appeal, ensuring their presence at subsequent court proceedings and compliance with the conditions set by the court.
- Section 484¹⁷ simplifies anticipatory bail provisions by removing burdensome conditions, making it easier for individuals to secure bail in anticipation of arrest.

9. Legal Aid and Reforms: Section 341¹⁸ expands the scope of legal aid to include representation during trials and appeals before any court, ensuring broader access to justice for those in need.

¹² Bharatiya Nagarik Suraksha Sanhita 2023, s 207

¹³ Bharatiya Nagarik Suraksha Sanhita 2023, s 272

¹⁴ Bharatiya Nagarik Suraksha Sanhita 2023, s 360

¹⁵ Bharatiya Nagarik Suraksha Sanhita 2023, s 223

¹⁶ Bharatiya Nagarik Suraksha Sanhita 2023, s 483

¹⁷ Bharatiya Nagarik Suraksha Sanhita 2023, s 484

¹⁸ Bharatiya Nagarik Suraksha Sanhita 2023, s 341

10. Offense Disposal and Punishments:

- Section 293¹⁹ introduces reduced punishments for first-time offenders who engage in plea bargaining, encouraging a more lenient approach for those willing to admit guilt and resolve the matter swiftly.
- Section 532²⁰ provides for legal proceedings electronically, promoting efficiency and modernizing the judicial process.

BNSS v CRPC: KEY CHANGES

Zero FIR: Under the new act, the concept of registration of FIR has been widened with the introduction of 'ZERO FIR'. It is an FIR that can be registered at any Police Station regardless of its concerned jurisdiction or not. Once the Zero FIR has been registered the Police station needs to transfer the said FIR to the concerned Police Station for further investigation of the case. This was recommended by Justice J.S Verma Committee on Anti-Rape Laws in the aftermath of the Nirbhaya Incident²¹. FIR can now be registered online or electronically and will be recorded within 3 days after being signed by the informant. One crucial step to implement this provision is to update, upgrade, and invest in the digitization of Police Stations.

The BNSS is a significant step forward as it sought to legally support the idea of Zero FIR, making it compulsory for a police station to file an FIR upon receiving information about a cognizable offense, regardless of its jurisdiction. This is a critical measure taken by the government to address delays in apprehending suspects and recovering evidence, particularly in cases involving forensic evidence or where there is a risk of document tampering or destruction.

Preliminary Inquiry: Under Section 173(3) of the BNSS, preliminary inquiry is given statutory force, a provision previously found only in some police regulations/manuals. Preliminary Inquiry is limited to cognizable offenses punishable with imprisonment up to three years or more but less than seven years. It has to be carried out in a time-bound manner i.e. within 14 days from receipt of information. The Supreme Court in *Lalita Kumari v/s*

¹⁹ Bharatiya Nagarik Suraksha Sanhita 2023, s 293

²⁰ Bharatiya Nagarik Suraksha Sanhita 2023, s 532

²¹ Sunishth Goyal, 'An Exhaustive Comparative Analysis of Code of Criminal Procedure, 1973 and Bharatiya Nagarik Suraksha Sanhita, 2023' *Bar and Bench* (20 August 2023)

<<https://www.barandbench.com/columns/comparative-analysis-of-code-of-criminal-procedure-1973-and-bharatiya-nagarik-suraksha-sanhita-2023>> accessed 10 June 2024

Government of India²² had held that when information relating to a cognizable offense is received, the police must register an FIR.

However, The BNSS provides that preliminary inquiry can be conducted to determine if a prima facie case can be made out or not for registration of FIR even upon receipt of information of commission of Cognizable offence which goes against the direction of the Supreme Court. This would allow the police to refuse registration of FIR at their discretion even upon disclosure of cognizable offence. This provision can be easily misused to harass victims and informants by giving wide power to investigation agencies, which may result in outdated FIRs.

Additional Powers for Attachment and Forfeiture of Property: It is noteworthy that BNSS aims to empower Magistrates with the authority to seize property identified as 'proceeds of crime'. These powers resemble those conferred upon the Directorate of Enforcement and Adjudicating Authority by the Prevention of Money-Laundering Act 2002²³ (PMLA), albeit without the safeguards provided under the PMLA. The Magistrate has the authority to seize or take control of properties under the CrPC. They can also do this if an investigating officer provides reasons to believe that the property is linked to criminal activity or the commission of an offense given the safeguards provided.

BNSS provides unrestrained power to both attach and dispose of such property before arriving at any decision on the accused. The Hon'ble Supreme Court in *Vijay Madanlal Chaudhary v/s Union of India*, 2022²⁴ has upheld the provisions given under PLMA because the attachment can only be done after following these safeguards.

PRE-2022

Judicial Protocols, Arrests & Cognizance under Crpc Section 170: Before 2022, courts typically refrained from arresting the accused at the time of filing the charge sheet by the police, as per the interpretation of judicial precedents under section 170 of CrPc. This precedent specified that if there is sufficient evidence or valid reasons, the officer must present the accused before a Magistrate, who has the authority to acknowledge the offence, conduct the trial, and send the accused for trial. The Supreme Court later clarified and provided a correct stance on section

²² *Lalita Kumari v Government of UP and ors* (2012) AIR 2012 SC 1515

²³ The Prevention of Money-Laundering Act 2002

²⁴ *Vijay Madanlal Choudhary v Union of India* (2022) SCC OnLine SC 929

170 of CrPC in the *Siddharth v State of UP*²⁵ and *Satender Kumar Antil v CBI*²⁶. According to these judgments, the term ‘custody’ in Section 170 doesn't specifically mean police or judicial custody; it only refers to presenting the accused before the Magistrate when filing the charge sheet. The court clarified that it was not obligatory to arrest the accused at the charge-sheet filing, especially if the person had not been arrested during the investigation.

The BNSS has wisely embraced this clarification. Specifically, Section 190 proviso, makes it clear that taking an accused into custody is not obligatory. The clause stipulates that if the person hasn't been arrested, the police officer should obtain a commitment from them to appear before the Judicial Magistrate. Additionally, it asserts that the Judicial Magistrate receiving such a report should not reject it solely because the accused has not been taken into custody.

PERIOD OF CUSTODY IN FAVOUR OF POLICE

In *CBI v Anupam J Kulkarni (1992)*²⁷, the question regarding the arrest and detention of a person was dealt with. The Court stated that under **Section 167 (2) of the CrPC**²⁸, a Magistrate has the power to grant police custody, but again, the police custody should not exceed the time limit of 15 days as a whole.

Due to conflicting opinions from different benches The Supreme Court recently, in the case of *V. Senthil Balaji v State (2023)*²⁹, raised a question about whether the 15-day custody period for the police should only be within the first 15 days of remand or should extend over the entire investigation period i.e. either 60 or 90 days, depending upon the situation, referring this to a larger bench. BNSS clarifies this issue, stating that police custody can be requested for a maximum of 15 days. However, it allows the police to take this custody all at once or in separate periods. Additionally, the BNSS empowers the police to seek custody in stages for an extended period at any time during the initial forty days or sixty days, depending upon the case.

A significant issue that can be raised with this provision is that it allows the investigating agency to potentially undermine the granted bail for an accused by requesting custody in

²⁵ *Siddharth v State of Uttar Pradesh (2022) 1 SCC 676*

²⁶ *Satender Kumar Antil v CBI (2022) 10 SCC 51*

²⁷ *CBI v Anupam J. Kulkarni (1992) 3 SCC 141*

²⁸ Code of Criminal Procedure 1973, s 167(2)

²⁹ *V. Senthil Balaji v The State represented by Deputy Director and Ors (2023) LiveLaw (SC) 611*

stages. Further, the extension of the period during which police custody can be sought raises concerns, as there are no clear criteria or guidelines for the proper exercise of this power.

INTRODUCTION OF ELECTRONIC COMMUNICATION AND AUDIO-VIDEO ELECTRONIC MEANS

With the introduction of BNSS, one of the major highlights is of introduction of Section 2(a)(f)³⁰, electronic communication and means for various procedures within the bill. It has introduced new definitions defining terms like 'Audio-Video Electronic' and 'Electronic Communication'³¹. The Court in *Krishna Veni Nagam v Harish Nagam*³² held that the service to a litigant can be affected through e-mail/phone number. The court in *Amar Singh v Sanjeev Kumar*³³ passed an order allowing the service of summons through electronic means comprising applications such as WhatsApp. This now is part of BNSS. Investigators can now use audio-video methods to record statements. Additionally, after submitting the charge sheet or complaint, the investigating authority can also provide documents, like the police report, in electronic form.³⁴

In line with the bill's intent, BNSS Section 530³⁵ states that trials, inquiries, and proceedings can also happen online. This means using electronic communications or audio-video methods. It involves tasks such as issuing, serving, and executing summons and warrants, questioning complainants and witnesses, recording evidence in inquiries and trials, and managing all appellate or other proceedings.

PRODUCTION OF ELECTRONIC COMMUNICATION DEVICES CONTAINING EVIDENCE

Under Section 94 of BNSS³⁶, A person in possession of digital evidence can be coerced into the production of the same by a Court or an Officer in charge. Although it acknowledges technology, but raises concerns about the potential misuse of information by authorities, like fishing for unrelated information during investigations, providing unrestricted access to electronic devices, manipulating digital pieces of evidence etc.

³⁰ Bharatiya Nagarik Suraksha Sanhita 2023, s 2(a)(f)

³¹ Bharatiya Nagarik Suraksha Sanhita 2023, s 2(1)(a)

³² *Krishna Veni Nagam v Harish Nagam* (2017) 4 SCC 150

³³ *Amar Singh v Sanjeev Kumar* (2023) SCC OnLine P&H 525

³⁴ *Ibid*

³⁵ Bharatiya Nagarik Suraksha Sanhita, 2023, s 530

³⁶ Bharatiya Nagarik Suraksha Sanhita 2023, s 94

This rule violates privacy and privilege rights. In Writ Petition (Criminal) No. 138 of 2021, titled, *Ram Ramaswamy v Union of India*³⁷, the Supreme Court is presently deliberating on the lawful seizure of digital devices by investigating agencies. The focus lies on establishing the permissible circumstances for such seizures and identifying the necessary safeguards to safeguard personal and legally privileged information. The Supreme Court has temporarily suspended a summons issued by the Directorate of Enforcement, which requested all personal digital devices, pending the outcome of this case.

This rule, along with Section 208 of Bharatiya Nyaya Sanhita, 2023³⁸, may lead to misuse for broad investigations. It poses concerns about Right to privacy³⁹ and privilege rights. This rule conflicts with Section 227 of the Companies Act⁴⁰, safeguarding privileged documents from disclosure to the Ministry of Corporate Affairs and Registrar of Companies. Similarly, it goes against Sections 126 to 129 of the Evidence Act, 1872⁴¹, now in Sections 132 to 134 of the Bharatiya Sakshya (Second) Bill, 2023⁴² (New Evidence Act), which also protects privileged communications. This raises concerns about the breach of these protective measures.

FRAMING AND DISCHARGE OF CHARGES

The Law concerning discharge in summon cases has been marked by uncertainty until recently when clarity was achieved through the judgment in *Re Expeditious Trial of Cases Under Section 138 of N.I. Act 1881*, 2023 SCC Online SC 1197⁴³. In this case, the Supreme Court definitively ruled that there was no provision for discharge in a summons case. The recent order by the Hon'ble Supreme Court in **Amit Sibal v Arvind Kejriwal**⁴⁴, brought to the forefront the extremely important question as to Whether the magistrate, in a 'summons case based on a complaint' has the power to drop proceedings and discharge an accused, or not. A single judge bench in Delhi High Court said that the Magistrate can decide if there's an offence during the explanation of the accusation. If no offence is found, the court can stop the proceedings right there, without going through a full trial in every case. The matter is pending in the Supreme Court in appeal on the ground that, **'The Magistrate, in a Summons Case,**

³⁷ Ministry of Home Affairs, *Unstarred Question No. 3453* (2021)

³⁸ Bharatiya Nagarik Suraksha Sanhita 2023, s 208

³⁹ *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1

⁴⁰ *Companies Act 2013*, s 227

⁴¹ Indian Evidence Act 1872

⁴² Bharatiya Sakshya Adhinyam 2023

⁴³ *Expeditious Trial of Cases Under Section 138 Of N.I. Act 1881* (2021) 16 SCC 116

⁴⁴ *Amit Sibal v Arvind Kejriwal & Ors* (2018) 12 SCC165

has no power to drop proceedings, in the absence of a specific provision in the CrPC to that effect.’

However, BNSS has introduced a noteworthy change by incorporating a provision for discharge specifically in summon cases under Section 274 of BNSS which says that- When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge: When there is no accuser present, compensation should be provided for baseless accusations. The substance of the accusation is to be stated. Provided that if the Magistrate considers the accusation as groundless, he shall, after recording reasons in writing, release the accused and such release shall have the effect of discharge⁴⁵.

SPEEDY TRIAL A FUNDAMENTAL RIGHT

One of the major objectives of the reforms in criminal laws was to provide speedy trials and the creation of a time-bound justice delivery system. The Supreme Court in *Vakil Prasad Singh v State of Bihar*,⁴⁶ acknowledged the prolonged delay and emphasized the importance of a speedy trial as a constitutional right.

BNSS promises to address such delays with specific timelines as, Committal proceedings must be completed within 90 days, with a possible extension of up to 180 days. Both the accused and the victim should receive a copy of the police report within 14 days of the accused's production. The accused can apply for discharge within 60 days of committal. Charges must be framed within 60 days of the first hearing. A verdict in a trial before a Court of Session should be given within 30 days of completing arguments, extendable by 45 days with specific reasons. The trial or inquiry should occur daily, with a maximum of two adjournments allowed.

NOTIFICATION OF WITNESS PROTECTION SCHEMES

Another significant change to the procedural law is the addition of Section 398⁴⁷ whereby all state governments are directed to notify a witness protection scheme.

BNSS could have incorporated some guidelines as an interim measure within itself rather than leaving it entirely to individual states' discretion. The guidance could have been taken from the

⁴⁵ Bharatiya Nagarik Suraksha Sanhita 2023, s 274

⁴⁶ *Vakil Prasad Singh v State of Bihar* (2009) 3 SCC 355

⁴⁷ Bharatiya Nagarik Suraksha Sanhita 2023, s 398

Ministry of Home Affairs Draft Guidelines and the Hon'ble Supreme Court of India's verdicts such as *Mahender Chawla v Union of India*.⁴⁸

NEGATIVE CHANGES

- 1.** In Section 290 of BNSS⁴⁹ of the BNSS or Section 265B of CrPC⁵⁰, the application for plea bargaining must be submitted within 30 days of the 'framing of charges.' However, ideally, the application for plea bargaining should be made before the charges are framed. This issue was recently addressed by the Hon'ble Delhi High Court in 2019 in the case of *Gaurav Aggarwal v/s State (2019)*⁵¹. This ruling highlights a negative aspect of the BNSS, indicating that the timing for the application of plea bargaining may not align with the ideal stage of the legal process.
- 2.** A new subsection (3) in Section 43⁵² of BNSS reintroduces the use of handcuffs during arrests. While some argue that handcuffs are necessary for serious cases, this amendment may contradict a 1979 Supreme Court ruling *Sunil Batra v Delhi Administration*⁵³ that criticised the indiscriminate use of handcuffs.
- 3.** By changing Section 433 of CrPC⁵⁴, the BNSS limits the government's authority to reduce sentences. Earlier, a death sentence could be changed to any punishment, but now it can only be changed to life imprisonment. Similarly, life imprisonment or rigorous imprisonment could be converted to a fine previously, but now this option is not available.

CONCLUSION

The Bill seeking changes in the criminal justice system, BNSS has made strides in achieving its objectives, introducing timelines for investigations but falls short in fully replacing outdated colonial-era laws. The Bharatiya Nagarik Suraksha Sanhita (BNSS) of 2023 stands as a monumental endeavour in reshaping India's legal framework, particularly within the realm of criminal justice. With its multifaceted approach, the BNSS aims to modernize antiquated laws, enhance procedural efficiency, and ensure greater protection for both victims and the accused. While the bill has made notable strides towards achieving these objectives, it also faces challenges and criticisms that warrant careful consideration. On the positive side, the BNSS

⁴⁸ *Mahender Chawla v Union of India* (2019) 14 SCC 615

⁴⁹ Bharatiya Nagarik Suraksha Sanhita 2023, s 290

⁵⁰ Code of Criminal Procedure 1973, s 265

⁵¹ *Gaurav Aggarwal v State (2019)* 5 SCC 678

⁵² Bharatiya Nagarik Suraksha Sanhita 2023, s 43(3)

⁵³ *Sunil Batra v Delhi Administration* (1979) 2 SCR 557 (SC)

⁵⁴ Code of Criminal Procedure 1973, s 433

introduces significant reforms that address longstanding deficiencies within the legal system. It modernizes terminology, strengthens victim safeguards, and streamlines processes to expedite legal proceedings. Provisions such as 'Zero FIR,' electronic communication integration, and expeditious trial frameworks signify a progressive shift towards a more equitable and efficient justice system.

However, amidst these positive reforms, the BNSS is not without its shortcomings. Concerns have been raised regarding the timing of plea-bargaining applications, the reintroduction of preliminary inquiries for cognizable offences, and the discretionary nature of sentencing guidelines. These issues underscore the need for a more balanced approach that prioritizes justice over punishment and ensures the protection of fundamental rights for all parties involved. Furthermore, while the BNSS represents a step towards decolonizing India's legal framework, there remain lingering influences of colonial-era laws and practices. Efforts to fully break away from these influences must be accompanied by amendments that strengthen safeguards and allocate adequate resources to the criminal justice system.

In conclusion, the BNSS marks a significant milestone in India's legal evolution, heralding both progress and challenges in equal measure. As the nation continues on its path towards reform, it is imperative to address criticisms constructively, refine legislative measures, and uphold the principles of justice and fairness for all. Through concerted efforts and sustained commitment to improvement, the BNSS holds the potential to realize its objectives and usher in a more just, efficient, and rights-respecting legal landscape in India.