

**Bharatiya Nagarik Suraksha
Sanhita, 2023**

Introduction

- 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 independent.
- The BNSS retains most of the provision of the Cr.PC.

Timeline to Implement

- 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.
- Union Govt. has notified that the new criminal laws will come into effect from 01/07/2024.

Objective

- The Bharatiya Nagarik Suraksha Sanhita, 2023 (“**BNSS**”) is an Act to consolidate and amend the law relating to Criminal Procedure and has been given assent by the President of India on 25th December 2023.
- It shall come into force on 01/07/2024.

Definitions

- a) Section 2(a):- “audio-video electronic means” shall include use of any communication for the purpose of video conferencing, recording of processes of identification, search and seizure or evidence, transmission of electronic communication and for such other purposes and by such other means as the State Government may, by rules provide;

Section 2(i):- “electronic communication” means the communication of any written, verbal, pictorial information or video content transmitted or transferred (whether from one person to another or from one device to another or from a person to a device or from a device to a person).

by means of an electronic device including

a telephone,

mobile phone or other wireless telecommunication device,

a computer

or audio-video player

or camera

or any other electronic device

or electronic form as may be specified by notification, by the Central Government.

Hierarchy of Courts

- The CrPC empowers the state governments to notify any city or town with a population of more than one million as a metropolitan area(Section 8 of Cr.PC). Such areas have Metropolitan Magistrates (Section 16 Cr.PC).
- The BNSS removes the classification of metropolitan areas and Metropolitan Magistrates.

Establishing a Directorate of Prosecution

- In Section 20 of the BNSS, the concept of Directorate of Prosecution has been introduced for each of the states to establish (with a prescribed hierarchy) with the stated purpose of monitoring cases by scrutinizing police reports, expediting proceedings, and providing opinions on filing of appeals, wherever applicable.
- Director of Prosecution shall monitor cases in which offences are punishable for 10 years or more, or with life imprisonment, or with death: to expedite the proceedings and to give opinion on filing of appeals.

In Relation to Arrest

- Section 35 of the BNSS now consolidates Sections 41 and 41A of the CrPC² into one section. In case of an offence punishable for less than 3 years, and where a person is infirm or above 60 years of age, an arrest can be made only if an officer not below the rank of Deputy Superintendent of Police grants prior permission for such arrest.

- As regards arrest by a private person(Section 40 of BNSS), a time limit of six hours has now been introduced within which the private person will have to make over such person so arrested to the Police.

Arrest how made/handcuffing

- Under Section 43 of the BNSS, provides that a police officer may, keeping in view the nature and gravity of offence use handcuff while making the arrest of a person or while producing such person before the court, who is a habitual or a repeat offender, or who escaped from custody, or who has committed offence of organized crime, terrorist, drug related crime or illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency notes, human trafficking, sexual offence against children or offence against state.
- The BNSS, contradicting the Hon'ble Supreme Court direction in Sunil Batra Vs Delhi administration and Prem Sankr Shukla Vs. Delhi Administration, formally brings back the usage of handcuff.
- Section 43 of the BNSS dealing with manner in which an arrest is to be made, provides the police with discretionary powers to handcuff accused persons for serious offences.

- **As regards arrest of a woman**, in Section 43(1) of the BNSS, an obligation has been cast on the police to effectuate the arrest of a woman only by a female police officer or unless the circumstances so require.

Medical Examination

- While the Cr.PC mandates the medical examination of the accused in specific cases, including rape, carried out by a registered medical practitioner upon the request of a Sub-inspector level police officer.
- Section 51 of the BNSS expands this authority to any police officer. Now any police officer can request for the medical examination of the accused.

Identification and Attachment of Property of Proclaimed Person

- Section 86 of BNSS provides that the Court may, on the written request from a police officer not below the rank of Superintendent of Police or Commissioner of Police, initiate the process of requesting assistance from a Court or an authority in the contracting State for identification, attachment and forfeiture of property belonging to a proclaimed person.
- The intention behind this provision seems to be either to secure the presence of fugitives or confiscate properties of fugitives who are evading summons/investigation/trial and have properties outside the country.

- As per Section 82(4) of Criminal Procedure Code as per 2005 Amendment, someone can be declared as a ‘Proclaimed offender’ for only nineteen specified offences under IPC namely, “302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460”.

- This led to situations when someone repeatedly evading legal processes of summons/warrant for any other offence under general penal code of IPC or any other special law could not be declared as a Proclaimed offender.
- By removing the arbitrary list of sections, any accused of an offence with more than 10 years of imprisonment or other special offences could be declared a proclaimed offender.

- Significant defaults are being committed by many loan defaulters who escape justice by fleeing abroad.
- Section 356 has been added to the BNSS which provides for a detailed procedure for conducting a trial/inquiry in the absence of a person declared as 'Proclaimed offender'.

Additional power for attachment and for forfeiture of property

- Section 107 of BNSS gives magistrate power to attached property identified as “proceeds of crime”
- The magistrate may upon an application of an I.O. giving reasons to believe that property is derived from a criminal activity, pass the following orders:-
 - a) Direct attachment of property found to be “proceeds of crime” after hearing all parties concerned:
 - b) Pass an ex-parte interim order attaching property:- 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: and
 - c) 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 are affected by such crime.

- Notably, as per the explanation to this section, the word ‘proceeds of crime’ is defined in Section 111 of the BNSS and is akin to the definition of the term under the Prevention of Money Laundering Act, 2002.
- The exercise of powers granted under BNSS is not restricted to schedule of offences but may cover all offences under the IPC

- The power includes not just tracing the property but also attaching any equivalent of the property.
- The intention behind this provision seems to be either to secure the presence of fugitives or confiscate properties of fugitives who are evading summons/investigation/trial and who have properties outside the country.
- However, there is a possibility of overlap between this provision and the Fugitive Economic Offender Act, 2018, which also provides for requesting contracting states for execution of order of confiscation of property of fugitive offenders.

Seizure of Immovable Property

- The BNSS broadens the scope of the CrPC's police power in property seizure. While the CrPC initially allowed the seizure of movable properties suspected to be stolen or found under suspicious circumstances.
- The BNSS extends this authority to include immovable properties as well.

Power to remove obstructions by a police officer

- Section 172 of the BNSS is a newly inserted provision which casts an obligation on persons to conform to the lawful directions of a police officer in the fulfillment of any of his duty under the relevant chapter pertaining to the preventive action of the Police.
- Further, the Police officer has the power to detain or remove any person resisting, refusing, ignoring, or disregarding to conform to any direction given by such police officer.
- The police officer may either present such person before a Magistrate or in petty cases, release him within a period of 24 hours.

ZERO FIR

- It is mandatory for police to register a FIR where information regarding commission of a cognizable offence is received either orally or through electronic communication irrespective of whether it has jurisdiction or not(Section 173 of BNSS).
- Once the zero FIR register, the concerned Police Station can transfer such FIR to the Police Station which has jurisdiction to investigate the case.

Introduction of timelines Preliminary enquiry and investigation

- One of the more significant changes sought to be brought about through the BNSS is the attempt to address the delays in investigation and trial. Specified timelines have been prescribed for various stages of the criminal process including to complete the investigation and file a final report and for trial of the offence.
- For instance, it is mandatory for a Magistrate to decide whether to take cognizance of the charge sheet within a period of 14 days.

- In Section 173(3) of the BNSS (which corresponds to Section 154 of the CrPC), for offences punishable for 3 years or more but less than 7 years, the officer in charge may with the prior permission of the Deputy Superintendent of Police proceed to conduct a preliminary enquiry within 14 days to ascertain if there exists a prima facie case and proceed with the investigation where there exists one.

- This seems to contradict the direction of the Hon'ble Supreme Court in *Lalita Kumari Vs Govt. of Uttra Pardesh* which mandated the police to record information of a cognizable offence as FIR and investigate the offence regardless of what the police felt about the credibility of the information.
- Another change is found in Section 173(4) (corresponding to Section 154(4) of the CrPC) which provides that the complainant may file an application to the Magistrate to register an FIR only if the Superintendent of Police does not investigate the case or direct a subordinate police officer to investigate, in accordance with the BNSS.

- Section 155 of the CrPC (under Section 174(1) of the BNSS) has been augmented by introducing a time period of a fortnight for a police officer to forward the daily diary report to the Magistrate.
- As regards the police officer's power to investigate cognizable offences, the BNSS now provides that the Superintendent of Police may require the Deputy Superintendent of Police to investigate the offence. The BNSS further provides that a Judicial Magistrate may take cognizance of a complaint against a public servant.

Report of police officer on completion of investigation

- Crucially, Section 193 of the BNSS (corresponding to Section 1736 of the CrPC) now casts an obligation on the Police to inform the victim or informant of the progress of the investigation including by electronic communication within a period of 90 days. Further, the BNSS also permits further investigation after the chargesheet has been submitted to the Magistrate but now requires that such further investigation shall be completed within 90 days, but which may be extended with the permission of the Court.

Sanction for Prosecution

- Section 218 of the BNSS (corresponding to Section 197 of the CrPC) now provides that the Government shall take the decision of whether to grant sanction for prosecution of judges or public servants within 120 days from the date of receipt of the request for sanction and if it fails to do so, the sanction shall be deemed to have been accorded.

Committal to the Sessions Court

- In cases involving offences which are triable exclusively by a sessions court, which are required to be committed by the Magistrate under Section 209 of the CrPC, the corresponding Section 232 of BNSS stipulates a time period of 90 days to commit the offences to the sessions court, which may be extended for a period not exceeding 180 days for reasons to be recorded in writing.

Framing of charge, trial, and Judgment

- In relation to framing of charges, a timeline of 60 days has been specified (in Section 251(1)(b) of the BNSS) for the Sessions judge from the date of the first hearing to frame in writing a charge against the accused.
- Section 258(1) of the BNSS (corresponding to Section 235(1)9 of the CrPC) provides that after hearing arguments and points of law, the judge shall give a judgment within 30 days from the completion of arguments, which may for specific reasons extend to a period of 45 days, for reasons to be recorded in writing.
- Finally, the BNSS under Section 392, provides that the Court shall upload a copy of the judgment on its portal within 7 days from the date of judgment “No Such Provision in Cr.PC”.

Discharge

- Section 262 of the BNSS (corresponding to Section 239 of the Cr.PC) provides a time limit to the accused to prefer an application for discharge within a period of 60 days from the date of supply of copies of documents under Section 230 of the CrPC.
- Section 274 of the BNSS has a newly inserted proviso providing 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 discharge.

Summary trial

- The BNSS now provides that the Magistrate may, after giving the accused a reasonable opportunity of being heard, for reasons to be recorded in writing, try in a summary way, all or any of the offences not punishable with death or imprisonment for life or imprisonment for a term exceeding 3 years, provided that no appeal shall lie against any such decision of a Magistrate (Section 283).

Signature and finger impression

- The Cr.P.C. authorizes Magistrate to demand specimen signature or handwriting from individuals.
- Section 349 of the BNSS broadens this scope and further empowers the magistrate to demand collection of finger impressions and voice samples too.
- This provision extends to individuals who have not been arrested under any investigation.

Use of electronic communication and video conferencing in investigation, inquiry and trial

- The BNSS has sought to adopt electronic communication and video conferencing facilities at various stages including at the time of inquiry, investigation, and trial. For instance, the BNSS permits giving information as regards commission of a cognizable in electronic form.

Issuance of process

- A summons issued by a Court under Section 63 (corresponding to Section 61 of the CrPC), or a witness under Section 71, or a warrant may also be in the form of electronic communication.
- Section 94 of the BNSS (corresponding to Section 91 of the CrPC) now permits a Court or an officer in charge of a police station to summon electronic communication which is likely to contain digital evidence.
- Section 231 of the BNSS provides that supply of copies of statements and documents to accused in other cases triable by Court of Session are permitted to be issued by the Magistrate in an electronic form.

Use of audio-visual electronic means in investigations

- Under Section 176 of the BNSS providing for procedure for investigation of cognizable offence (corresponding to Section 157 of the CrPC), the statement of the victim may also be recorded through audio-video electronic means including a cell phone, as also that of a witness under Section 265(3) of the BNSS.
- Similarly, Section 185 of the BNSS (dealing with search by a police officer corresponding to Section 165 of the CrPC) requires the search to be recorded through audio-visual electronic means preferably by cell phone.

Production of Devices Containing Digital Evidence

- A Court or an officer in charge of a police station can compel production of communication devices which are likely to contain digital evidence from the person who is in possession of such digital evidence.
- This provision may give the investigating authority unrestricted use of electronic device in complete breach of right to privacy as well as privilege.
- The positive aspect of having such a provision is that the production of original devices will ensure the genuineness of the digital evidence.
- If such digital evidences have been deleted, with the aid of technology, such evidences can be retrieved.

Conduct of proceedings through electronic means

- Section 355 of the BNSS (corresponding to Section 317 of the CrPC) now inserts a new explanation to subsection (2) providing that personal attendance of the accused includes attendance through audio video electronic means.
- On the same vein, Section 530 of the BNSS now allows that all trials, inquiries and proceedings including issuance, service and execution of summons and warrant; examination of complainant and witnesses; recording of evidence in inquiries and trials; and all appellate proceedings or any other proceeding may be held in electronic mode, by use of electronic communication or use of audio-video electronic means.

Forensic Experts

- As per section 176 of BNSS offences carrying a minimum of punishment of 7 year imprisonment necessitate forensic investigation.
- In these instances, forensic expert are required to visit crime scenes for evidence collection, documenting the process using electronic devices a like mobile phone.
- These expert are responsible for both evidence collection and documenting there processor.

Cheating through electronic means

- From the perspective of economic offences, particularly in relation to the offence of cheating, Section 202(1) of the BNSS corresponding to Section 182 of the CrPC now includes cheating by electronic communications and a Court within whose local jurisdiction such electronic communications or letters or messages were sent or were received has been empowered to try such offence.

Custody of an accused

- Under Section 187(2) of the BNSS (corresponding to Section 167(2) of the CrPC), a Magistrate to whom an accused is forwarded, may authorize detention of custody of the accused for a term not exceeding 15 days in the whole, or in parts at any time during the initial 40 days out of 60 days or 60 days out of 90 days.
- The Magistrate may now authorize detention in police custody beyond the period of 15 days if there exist adequate grounds for doing so. However, such detention shall not exceed 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of 10 years or more, or 60 days in case of any other offence.

- The BNSS provides that if the accused is not in custody (corresponding to Section 170 of the CrPC), the police officer shall take the security from such person for his appearance before the Magistrate and the Magistrate to whom such report is forwarded shall not refuse to accept the same on the ground that the accused is not taken in custody.

Bail and Anticipatory Bail

- The definitions of bail, bond, and bail bond have also been added to Section 2 of the BNSS. The BNSS now provides that 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.
- More importantly, with regard to anticipatory bail under Section 438 of the CrPC, the new Section 482 of the BNSS omits the factors contained in Section 438(1) for grant of anticipatory bail. Further, Section 438(1A) and (1B) stand omitted.

Cognizance of special law and cases against public servants

- The BNSS, under Section 210(1) now permits a magistrate to take cognizance of any offence also in relation to a complaint filed by a person authorized under any special law which constitutes an offence.
- the Magistrate may also take cognizance against a public servant arising in the course of discharge of his official duties subject to (i) receiving a report containing facts and circumstances of the incident from the officer superior to such public servant; and (ii) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.

Trial against an absconding person

- Another significant addition through the BNSS is the introduction of Section 356, which provides for an inquiry, trial to be conducted or a judgment to be passed against a proclaimed offender, in absentia.
- In trying a proclaimed offender who has absconded to evade trial and where there is no immediate prospect of arresting him, it shall be deemed to operate as waiver of the right of such person to be present and tried in person, and the Court shall, after recording reasons in writing, in the interest of justice, proceed with the trial in the like manner and with like effect as if he was present, under this Sanhita and pronounce the judgment.
- Further, the proclaimed offender shall not prefer an appeal unless he presents himself before the Court of Appeal.
- Further, no appeal against conviction shall lie after the expiry of three years from the date of judgment.

Other relevant provisions In relation to trial

- Section 269(7) of the BNSS (corresponding to Section 246 of the CrPC) which is newly inserted provides that where despite giving opportunity to the prosecution and after taking all reasonable measures,, if the attendance of prosecution witnesses cannot be secured for cross examination, it shall be deemed that such witness has not been examined for not being available, and the Magistrate may close the prosecution evidence for reasons to be recorded in writing and proceed with the case on the basis of the materials on record.

- Section 336 of the BNSS provides that where any document or report prepared by a public servant, scientific expert, medical officer or investigating officer is purported to be used as evidence in any enquiry, trial or other proceeding under this Code and
 - (i) such public servant, expert or officer is either transferred, retired or died; or
 - (ii) such public servant, expert or officer cannot be found or is incapable of giving deposition or securing the presence of such public servant, expert or officer is likely to cause delay in holding the inquiry, trial or proceeding, the Court shall secure presence of successor officer of such public servant, expert or officer who is holding that post at the time of such deposition to give deposition on such document or report.
- However, the section also provides that no public servant, scientific expert, or medical officer shall be called to appear before Court unless their report is disputed by any of the parties to the trial or other proceedings.

Witness Protection Scheme

- By virtue of Section 398 of the BNSS, every State Govt. shall prepare and notify a Witness Protection Scheme for the State with a view to ensure protection of witnesses.

Withdrawal from Prosecution

- As per Cr.PC the Public Prosecutor or APP may with the concerned of the Court withdraw from the prosecution of any persons.
- As per BNSS no Court shall allow such withdrawal without giving an opportunity of being heard to the victim in case.

Compoundable Offences

- Section 359 of the BNSS (corresponding to Section 320 of the CrPC) now removes adultery for the table of compoundable offences.
- It provides for compounding with the permission of the Court for the offence of defamation, specified under Section 356(2) of the BNSS, as against
 - The President or
 - The Vice- President or
 - The Governor of a State or
 - The Administrator of a Union Territory or
 - A minister in respect of his public functions when instituted upon a complaint made by the public prosecutor.

Clarifications with respect to Limitation period and Superintendence of the High Court

- The BNSS now clarifies that (i) for computing the period of limitation, the relevant date shall be the date of filing complaint under Section 223 or the date of recording information under Section 173; and (ii) that every High Court shall so exercise its superintendence over Sessions Courts in the state.

Conclusion

- In a nutshell, in so far as the prescription of timelines for inquiry, investigation and trial and formal adoption of audio-visual and electronic means for to undertake various processes, the proposed changes are intended to introduce a more efficient and technologically aligned regime for administration of criminal justice and move away from the language of British-era criminal laws.
- However, its efficacy in the real world depends not only on the manner in which such provisions are implemented and adhered to in letter and spirit, but also on ensuring that all magistrates, law enforcement personnel, and allied agencies undergo the necessary training to implement the changes that the BNSS brings in its word and spirit.