

PAPER PRESENTATION ON THE TOPIC OF INTERPLAY
BETWEEN THE CODE OF CRIMINAL PROCEDURE, 1973 AND
BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS) WITH A
FOCUS ON

A. Cognizance and Registration Stage.

B. Investigation Stage

C. Bail Stage.

D. Trial Stage.

E. Judgment Stage.

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INTERPLAY BETWEEN THE CODE OF CRIMINAL PROCEDURE, 1973 AND BHARATIYA NAGARIK SURAKSHA

SANHITA (BNSS) WITH A FOCUS ON:

A. Cognizance and Registration stage

The transition from the code of Criminal Procedure, 1973, (CrPC) to the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) marks a significant shift towards technology-driven, time-bound, and more structured procedures at the registration and cognizance stages. While the foundational principles remain similar, the BNSS introduces mandatory preliminary inquiries for specific offenses, legal recognition of zero FIRs/e-FIRs, and enhanced rights for the accused at the pre-cognizance stage.

Key Interplay in Registration of FIR (Stage I)

The Registration stage is governed by Section 154 CrPC and Section 173 of BNSS.

Mandatory Registration: Both codes, following Lalita Kumari V. Govt. Of U.P., mandate registration of FIR for cognizable offenses.

Preliminary Inquiry (New): Section 173 (3) of BNSS reads as follows:

Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed, may be given orally or by electronic communication to an officer in charge of a police station, and if given,

173 (3) of BNSS Without prejudice to the provisions contained in section 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence, - (i) proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or (ii) proceed with investigation when there exists a prima facie case.

The above said Section introduces a significant change: for offences punishable with 3 to 7 years imprisonment, a preliminary inquiry may be conducted within 14 days to determine if a prima facie case exists before registering an FIR.

Zero FIR and E-FIR (Codified): BNSS legally recognizes “Zero FIR” (registration at any police station regardless of jurisdiction) and

electronic FIR (e-FIR), which were previously recognized only through judicial Precedents.

Acknowledgments: BNSS mandates that the police provide an acknowledgment receipt to the informant (physical or digital).

Victim Information: BNSS specifically ensures the victim is provided with a copy of the FIR, and Police must report the progress of the investigation within 90 days.

Key interplay in Cognizances Stage (Stage II)

The Cognizance stage is governed by Section 190 Cr.P.C and Section 210 BNSS

Pre- Cognizance Hearing (New): A crucial addition is the proviso to Section 223(1) BNSS: (corresponding to Section 200 CrPC), which mandates that a Magistrate Shall afford the accused an opportunity to be heard before taking cognizance of a complaint.

Digital Records: Section 210(1)(b) of the BNSS allows the Magistrate to take cognizance of an offense upon receiving a police report in electronic form.

Sec. 223 (1) of BNSS reads as follows:-

A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall

be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate.

Magistrate – Ordered Investigation (Section 156 (3)

CrPC vs.175(3) BNSS):

Prior Approach: Under BNSS. It is mandatory to exhaust the remedy of approaching the Superintendent of Police (Section 173(3) BNSS) before filing a complaint to the Magistrate (Section 175 BNSS)

Affidavit Requirement: The application to the Magistrate must be supported by an affidavit. Earlier it was mandated by the Hon'ble Apex Court/Supreme Court of India.

Police Input: Section 175(3) BNSS reads as follows:

Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV:

Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned. It requires the

Magistrate to consider the submission of the police officer before ordering an investigation, providing a check against frivolous complaints.

Comparative Table : CrPC vs. BNSS

Aspect	CrPC(1973)	BNSS(2023)
Fir Registration	Sec 154	Sec 173
Preliminary Enquiry	Limited (via Lalita Kumar)	Statutory (3-7 year cases, 14 days)
Zero/E-FIR	Through Precedents	Codified
Cognizance by Mag.	Sec 190	Sec 210
Accused Hearing	Not Mandatory at cognizance	Mandatory at pre-prelim stage
Mag. Investigation	Sec156(3) (Directly)	Sec 175(3) (Post- SP approach & Affidavit)

Transitional Provisions

If an FIR was registered before July 1, 2024, the investigation and subsequent proceedings will continue under the CrPC, as held by various High Courts.

BNSS vs CrPC: Changes in taking cognizance of an offence

Difference of Cognizance between CrPC and BNSS

Unlike the Code of Criminal Procedure, the BNSS mandates that the complainant must be heard (But it is not mandatory in Sec.138 and 142 of NI Act) before taking cognizance of an offence. The provision for

examining the complainant and witnesses on oath remains almost the same, with added procedural safeguards for public servants. The BNSS clearly specifies the Magistrate “having jurisdiction” in the starting line of Section 223 of BNSS. The process of taking cognizance has undergone a shift. Under the BNSS, the Magistrate first examines the complaint and witnesses on oath, issues notice to the accused, hears the accused after their appearance, and then takes cognizance. These changes aim to provide a more structured approach to handling criminal complaints and ensure procedural fairness, especially for public servants and accused individuals. Now the arraigned Accused gets chance to refute the contentions prima facie laid in the complaint without giving impetus to trial.

II INTERPLAY BETWEEN THE CODE OF CRIMINAL PROCEDURE, 1973 AND BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS) WITH A FOCUS ON:

B. Investigation stage.

The transition from the Code of Criminal Procedure, 1973 (CrPC) to the Bharaitya Nagari Suraksha Sanhita, 2023 (BNSS) marks a significant shift towards modernization, technology, and strict timelines in the investigation stage. While the BNSS retains the core structure of investigation from the CrPC, it introudces major changes designed to accelerate the process and increase accountability.

Here is the key interplay between the CrPC and BNSS during the investigatin stage, effective from July 1, 2024.

Temporal Scope: Ongoing vs. New Investigations

Pending Investigation (Before July1, 2024): Investigatin, inquiries, or trials pending before 1-7-2024, continue to be governed by the CrPC.

New Investigations (On/ or After July 1, 2024):

Any FIR registered on or after 1-7-2024, even for an offence committed prior to this date, is governed by the BNSS.

Transition Conundrum: If a charge sheet is filed after 1-7-2024 in an investigation that began under CrPC, the subsequent proceedings (cognizance/trial) generally shift to BNSS.

Key Changes in Investigation Procedure

Digitalization: The BNSS mandates recording of statements, confessions, and evidence electronically, including via video conferencing.

Forensic Evidence: Section 176 of the BNSS makes it mandatory for forensic experts to visit crime scenes and collect evidence for offences punishable by 7 years or more.

Sec.176 of BNSS reads as follows:-

If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 175 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender: Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case: Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality and such statement may also be recorded through any audio-video electronic means including mobile phone.

(2) In each of the cases mentioned in clauses (a) and (b) of the first proviso to sub-section (1), the officer in charge of the police station shall state in his report the reasons for not fully complying with the requirements of that sub-section by him, and, forward the daily diary report fortnightly to the Magistrate and in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by rules made by the State Government.

(3) On receipt of every information relating to the commission of an offence which is made punishable for seven years or more, the officer in charge of a police station shall, from such date, as may be notified within a period of five years by the State Government in this regard, cause the forensic expert to visit the crime scene to collect forensic evidence in the offence and also cause videography of the process on mobile phone or any other electronic device: Provided that where forensic facility is not available in respect of any such offence, the State Government shall, until the facility in respect of that matter is developed or made in the State, notify the utilisation of such facility of any other State.

Preliminary Inquiry: Before registering a formal FIR for offences punishable with 3 to 7 years, police may conduct a preliminary inquiry to determine if a prima facie case exists (Section 173(3) BNSS).

Zero FIR: The concept of filing an FIR at any police station regardless of jurisdiction is codified in the BNSS.

Arrest and Custody (Section 167 CrPC vs. Section 187 BNSS)

Police Custody (PC): Under CrPC, police custody was generally limited to the first 15 days of the total remand period. The BNSS (Section 187) allows 15 days of police custody to be taken in parts over a longer initial 40 or 60 days of judicial custody. This allows

police to seek custody later in the investigation, extending the potential for total detention.

Sec.187 of BNSS reads as follows:-

Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.

Arrest Safeguards: Section 35 of the BNSS (corresponding to Section 41A CrPC) mandates recording reasons for arrest, particularly for offences punishable with less than 7 years, reflecting the arrest is an exception” rule. Arnesh Kumar vs State of Bihar (2014).

Timelines and Accountability

Investigation Limits: The BNSS introduces stricter timelines for filing charge sheets, intended to reduce delays, which were not as rigidly defined under the CrPC.

Further Investigations: Section 193(9) of the BNSS, which corresponds to Section 173(8) of the CrPC, now requires prior permission for further investigation and imposes a 90 day time limit on it.

Sec. 193 (9) of BNSS reads as follows:-

193 (9) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (3) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form as the State Government may, by rules, provide; and the provisions of sub-sections (3) to (8) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (3):

Provided that 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 ninety days which may be extended with the permission of the Court.

Victim Rights: The BNSS introduces a more victim-centric approach, requiring police to keep victims informed about the progress of the investigation.

Judicial Oversight

Magisterial Power: Similar to Section 156(3) CrPC, Section 175(3) BNSS empowers a Magistrate to order an investigation. However, the BNSS requires the Magistrate to consider an affidavit and hear the police officer before passing such an order, introducing a higher threshold for intervention.

Summary Table of Key Changes:

Feature	CrPC,1973	BNSS, 2023
Police Custody	Generally first	15 days in parts,
within	15 days only.	40/60 days.
Forensic Evidence	Discretionary/Limited	Mandatory(>=7 years) & Videography.
Statement Recording	Physical, Written.	Electronic/Video Enabled.
Preliminary Inquiry	Limited scope.	Codified (3-7 year offences)
Time Limits	Often Vague/implied	Explicitly defined for stages.

In short, the interplay is one of continuity in principle but strict modernization in procedure, aiming for a faster and digitally enabled, yet potentially more punitive, investigation framewor

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C. Bail Stage

The transition from the **Code of Criminal Procedure (CrPC), 1973 to the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023** (effective July 1, 2024) has introduced significant changes to bail jurisprudence in India. While the fundamental principles of bail remain rooted in Article 21 of the constitution (right to life and liberty), the BNSS alters the procedural timelines, custody rules, and eligibility for mandatory release to promote faster justice and stricter control over recidivism (to move back or away).

The core interplay between CrPC and BNSS on bail is governed by the prospective application of the new law, cases initiated before July 1, 2024, are generally governed by CrPC, while new cases fall under BNSS.

Key Changes and Interplay (CrPC vs. BNSS)

Police Custody and Default Bail (Section 167 CrPC vs. Section 187 BNSS):

CrPC: Police custody (PC) was restricted to the first 15 days of remand, followed by judicial custody(JC).

BNSS. Section 187 allows for “split custody” The 15 day police custody can now be authorised in parts throughout the initial 40 or 60 days of the total 60/90 days of detention.

Interplay: This shift makes it harder to secure bail early on, as police can take the accused back into custody later in the investigation, potentially reducing the chances of default (statutory) bail.

Mandatory/Default Bail (Section 167 CrPC vs. Section 187 BNSS):

CrPC: An undertrial has an absolute right to bail if they have served half the maximum imprisonment for the offence (non-life imprisonment).

BNSS: 479 (formerly 436A) expands on this, mandating release on personal bond for first-time offenders who have served one-third of their maximum sentence.

Restriction: However, this mandatory bail is now denied if the person is facing multiple charges or if the investigation/trial is pending in more than one case, a tighter constraint than the CrPC.

Bailable offences (Section 436 CrPC vs. Section 478 BNSS):

BNSS: Section 478 strengthens the right to bail in bailable offences, explicitly allowing for release on a personal bond without

sureties if the person is indigent (cannot furnish bail within a week).

Anticipatory Bail (Section 438 CrPC vs. Section 482 BNSS):

BNSS: Section 482 retains the power of the High Court and Sessions court to grant bail in apprehension of arrest. However, it removes some specific, older procedural guidelines present in the CrPC, giving courts wider, potentially more discretionary power.

Restriction: It has also introduced restrictions on granting bail in specific serious offenses, such as certain aggravated forms of rape.

Timeline for Bail Disposal (New Provision in BNSS):

BNSS: Unlike the CrPC, which did not have strict timelines, BNSS encourages or implies that bail applications should be decided within specific timeframes (e.g., 7 days) to speed up the process and reduce the backlog of undertrials.

Bail for Non-Bailable Offences (Section 437 CrPC vs. Section 480 BNSS):

BNSS: Section 480 defines the criteria for bail in serious, non-bailable offences, providing special consideration for women, children and the sick or infirm, similar to the CrPC, but with an increased focus on the potential for tampering with evidence including digital evidence.

Transitional Issues and Judicial Interpretation

FIR pre-July 1, 2024: If an FIR was registered before July 1, 2024, the investigation and subsequent bail applications are generally governed by the CrPC.

FIR Post-July 1, 2024: If the FIR is on or after July 1, 2024, BNSS provisions apply completely, even if the offense occurred earlier.

Bail Application Filing: If a bail application is filed on or after July 1, 2024, it must be under the BNSS, even if the case is old (pending).

Summary of Interplay

The BNSS acts as a modernizer that attempts to balance individual liberty with stricter investigative powers and faster, technology driven and time bound procedures. While it enhances rights for first-time offenders in minor cases, it provides stricter bail conditions for serious or multi case offenders.

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D. Trial Stage:

The transition from the Code of Criminal Procedure (CrPC), 1973 to the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, effective July 1, 2024, marks a shift toward digitisation, strict timelines, and victim-centricity in the trial stage. While the core structure of trials remains similar, the interplay involves significant changes to procedural efficiency and technological adoption.

Key Changes in the Trial Stage (CrPC vs. BNSS)

The BNSS introduces several enhancements to the trial process previously governed by the CrPC.

Timeline Mandates: BNSS introduces strict timelines that were largely absent in CrPC. For example, framing of charges must not occur within 60 days from the first hearing on charge.

Trials in Absentia: A major departure from CrPC is the introduction of trials in absentia (Section 356 BNSS), allowing trials to continue for proclaimed offenders in serious crimes even if they abscond.

Adjournment Restrictitins: Under Section 346 of BNSS (formerly 309 CrPC), courts are restricted to a maximum of two adjournments if circumstances are beyond a party's control, following which reasons must be recorded.

Evidence Handling: BNSS mandates the used of audio-video means for recording evidence, especially for sexual offence trials, and requires that trials for such offences conclude within 2 months of the charge sheet filing.

Disccharge Procedures: BNSS introduces a 60-day limit for filing discharge applications after the case's committal, aiming to curb delayed or frivolous applications.

Transitional Interplay (pending vs. New Cases)

The interplay between the two laws depends on when the criminal proceedings commenced, governed by Section 531 of the BNSS (Repeal and Savings clause).

Pending Trials: Any trial, investigation, or inquiry pending before July 1, 2024, continues to be governed by the CrPC.

New Trials: Any trial starting on or after July 1, 2024, is governed by the BNSS, even if the FIR was registered under the old law.

Appeals: Despite a trial being conducted under CrPC, an appeal filed after July 1, 2024, is governed by the provisions of the BNSS, as upheld by various High Courts.

Functional similarities

Despite the Charges, the foundational aspects of the trial remain consistent, including.

Role of Public Prosecutor: The trial is conducted by a prosecutor representing the state, ensuring a fair, impartial process.

Basic Structure: The sequence of opening the case, discharging (if applicable), framing charges, recording evidence, and judgment remains conceptually the same, though renumbered in BNSS.

Precedent Applicability: Old, established legal precedents still apply where the language of the law has not been substantially altered.

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E. Judgment Stage

The transition from the code of Criminal Procedure (CrPC), 1973 to the Bharatiya Nagarik Suraksha sanhita (BNSS), 2023, effective from July 1, 2024, introduces significant shifts in the judgment stage of criminal trials, focusing on speed, technology, and stricter timelines.

Here is the interplay between CrPC and BNSS at the judgment stage:

Key Structural and Procedural Changes

Judgment Timelines (Section 353 CrPC vs. Section 392 BNSS): While CrPC required judgment to be delivered “without unreasonable delay,” BNSS Section 392 explicitly mandates that judgment must be delivered within 30 days of the conclusion of arguments, extendable to 45 days for specific reasons.

Mode of Pronouncement (Section 353 CrPC vs. Section 392 BNSS): BNSS emphasizes modern technology, allowing the judgment to be pronounced via audio-video electronic means, moving away from strict physical presence requirements.

Victim Compensation: BNSS places greater emphasis on victim compensation, which must be addressed during the sentencing phase of the judgment.

Transitional Interplay (Pending vs. New Cases)

The applicability of CrPC or BNSS depends on when the trial or investigation commenced (based on Section 531 of the BNSS).

Pending Trials (Before July 1, 2024): If a trial was pending before July 1, 2024, it continues to be governed by the CrPC.

New Trials (On or after July 1, 2024): All trials, even if the FIR was registered before July 1, 2024, are governed by the BNSS if the trial commences after that date.

Appeals from CrPC Trials: Even if a trial was conducted under the CrPC, any appeal or revision against that judgment filed on or after July 1, 2024, is governed by the BNSS.

Key Differences in Judgment Principles

Adjournments (Section 309 CrPC vs. Section 346 BNSS): The BNSS restricts adjournments to a maximum of two for a party if circumstances are beyond their control, aiming to ensure that the final judgment stage is not delayed.

Pronouncement in Absence (Absentia): BNSS introduces more stringent provisions for trials conducted in the absence of the

accused, including the proclamation of offenders, which directly impacts the ability to deliver a binding final judgment even without the physical presence of the accused.

Finality of Judgment: Section 362 of the CrPC, which restricted the alternation of judgments, finds its counterpart in the BNSS, maintaining the principle that criminal courts cannot review their own judgments except for clerical errors, ensuring finality.

Impact of Precedents

As established by various High Courts, while Procedural law changes with the BNSS, binding precedents from the CrPC are remain relevant in cases where the provisions are *pari materia* (similar in nature). However, where BNSS changes the process (e.g., in timelines or technology), the new code overrides the old precedents.

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F. Appellate stage

The transition from the code of Criminal Procedure (CrPC), 1973, to the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, effective from July 1, 2024, creates a complex interplay at the appellate stage. While CrPC governs trials and appeals pending before July 1, 2024, the BNSS governs all new proceedings initiated on or after that date, even if they arise from offenses committed earlier.

Here is a detailed breakdown of the interplay between CrPC and BNSS at the appellate stage:

The “Cut-off” Rule (Section 531 BNSS)

Pending Appeals: Any appeal, revision, or application filed before July 1, 2024, continues to be governed by the CrPC.

New Appeals: Any appeal filed on or after July 1, 2024, must be filed under the provisions of the BNSS, regardless of when the trial began or the crime occurred.

Trials concluding after July 1: If a trial was pending on July 1, 2024, but concluded afterward, the appeal or revision against the judgment will be governed by the BNSS

Key Procedural Changes in Appeals (BNSS vs. CrPC)

Terminology and Techonology: The BNSS Introduces modernized terms (“advocate” instead of “pleader”) and explicitly allows for electronic filing, hearing via video conferencing, and digital evidence handling, which can be utilized during appellate proceedings.

Victim Rights: The BNSS strengthens the rights of victims, potentially allowing greater participation during the appellate stage.

Trial In Absentia: The BNSS provides for trials in absentia (Section 356) For absconding offenders, which may create new types of appeals involving accused persons who were not present during the original trial.

Appellate Jurisdiction and Powers

Scope: The fundamental appellate structure remains similar to CrPC (appeals to High court from Sessions Courts, appeals from Acquittal, etc.)

Revisional Power: Under BNSS section 467 (corresponding to Sections 397? 401 CrPC), the High Court cannot convert an acquittal into a conviction directly, upholding a principle established by the Supreme court.

Suspension of Sentence: Procedures for suspension of sentence (bail) pending appeal are now guided by BNSS, particularly

Section 478-483 (corresponding to bail provisions), which now mandates faster disposal.

Interpretation of Old Precedents

While the BNSS has repealed the CrPC, judicial precedents established under the CrPC continue to be relevant. The Bombay High Court and others have noted that rulings on *pari materia* (similar) provisions in the CrPC remain valid, but new provisions in the BNSS will need to be interpreted by the courts.

Potential Conflicts

Investigative/Trial Discrepancy: If a trial was conducted under CrPC (old procedures) but the appeal is under BNSS (new procedural), the appellate court may have to reconcile different standards regarding evidence or procedural regularity.

Non – Maintainability: Any appeal filed under the old CrPC on or after July 1, 2024, will be considered non-maintainable and liable to be rejected.

In summary, the interplay is governed by the principle that procedural law (BNSS) changes apply to new appellate cases, while substantive rights and pending matters are protected under the old law (CrPC).

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