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A COMPARATIVE ANALYSIS OF THE CrPC 1973 AND THE BNSS 2023 FOR MODERNIZING CRIMINAL PROCEDURE IN INDIA

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ABSTRACT

India's criminal justice system saw major procedural changes when the 1973 Code of Criminal Procedure (CrPC) was replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Faster investigation and trial, increased victim protection, and increased use of technology are the goals of the new law. Important clauses include E-FIR (Section 173), stricter deadlines for charge sheet filing and judgment rendering (Sections 193, 258, 262), provisions for extended custody (Section 187), the acceptance of digital evidence (Sections 176, 356, 530), and the use of community service as a form of punishment (Section 23). For offenses against women and children, a distinct chapter has been included (Sections 280–303), which calls for expedited trials and considerate treatment of victims. This study compares the BNSS and the CrPC, emphasizing their advantages, disadvantages, and potential implementation issues. It offers recommendations for guaranteeing an equitable and efficient justice system while also looking more closely at the reforms' constitutional and judicial background.

KEYWORDS

BNSS, CrPC, Criminal Procedure, Speedy Trial, Victim Rights, E-FIR, Digital Evidence, Custody, Community Service, Criminal Justice Reform.

INTRODUCTION:-

The criminal justice system in India has always worked through three main pillars: the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872. While the Penal Code defined offences and punishments, the CrPC laid down the procedure for investigation, trial, and punishment. After 50 years of the CrPC and criticism for its delays, convoluted procedures, and lack of victim protection, the Indian government replaced it with the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

In order to ensure "justice at speed with fairness," harmonizing the rights of the accused with those of victims and society, the BNSS seeks to modernize criminal procedure and make it more victim-friendly, time-bound, and technology-driven. Among its main goals are

the recognition of digital evidence, the introduction of e-FIR, special protection for women and children, community service as a new form of punishment, and stringent timelines for investigation and trial.

This research paper makes a comparative analysis of the BNSS and the CrPC, examining their provisions, judicial interpretations, and practical challenges. It also studies whether the BNSS addresses the long-standing issues of delay and pendency in criminal trials, and whether it strengthens constitutional rights under Articles 20, 21, and 22.

HISTORICAL CONTEXT:-

The primary legislation governing India's criminal justice system for fifty years was the Code of Criminal Procedure, 1973 (CrPC). Although it replaced the previous Code of 1898,

it retained several colonial characteristics, such as drawn-out processes, frequent delays, and copious amounts of police discretion. Courts and commissions have stated over time that these regulations frequently resulted in delays and prevented victims from receiving justice promptly.

The Supreme Court in ¹³⁷⁹Hussainara Khaton v. State of Bihar (1979) held that the right to a speedy trial is part of Article 21 of the Constitution. Similarly, in ¹³⁸⁰Maneka Gandhi v. Union of India (1978), the Court expanded the meaning of ¹³⁸¹“procedure established by law” to include fairness and reasonableness. These cases highlighted the need for reform in procedural law.

In a number of its recommendations, the Law Commission of India suggested improvements to victim protection, technology utilization, and criminal procedure modernization. However, the CrPC grew long and complicated due to its more than 560 sections and several revisions.

A more straightforward and citizen-friendly law, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), was implemented to replace it. Significant reforms are introduced by the 531-section BNSS, including e-FIR (Section 173), harder deadlines (Sections 193, 258, 262), digital evidence recognition (Sections 176, 356, 530), and a special chapter for women and children (Sections 280–303). With these changes, the criminal justice system will no longer be colonial but will instead be victim-centered and technology-driven.

SUBSTANTIVE VS. PROCEDURAL LAW:-

The difference between substantive and procedural law is crucial in criminal law.

- Substantive law defines offences and prescribes punishments. In India, this role was earlier played by the Indian Penal

Code, 1860 (IPC), which is now replaced by the Bharatiya Nyaya Sanhita, 2023 (BNS). For example, the offence of murder and its punishment were given under Section 302 of IPC, which is now provided under Section 101 of BNS.

- Procedural law lays down the process by which crimes are investigated, tried, and punished. This is presently governed by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the Code of Criminal Procedure, 1973 (CrPC). For example, Section 173 BNSS now covers the filing of a FIR under Section 154 CrPC.
- The procedures for establishing guilt or innocence in court are provided by the law of evidence. These days, the Bharatiya Sakshya Adhinyam, 2023 (BSA) takes the place of the Indian Evidence Act, 1872. For instance, Section 61 of the BSA now recognizes the admission of electronic records, which were previously allowed under Section 65B of the Evidence Act.

The three laws that make up the foundation of India’s criminal justice system are BNS (substantive), BNSS (procedural), and BSA (evidence). A transition from colonial-era legislation to a framework created for the demands of speed, justice, and technological integration is marked by the change from the IPC, CrPC, and Evidence Act to the BNS, BNSS, and BSA.

MAJOR FEATURES OF BNSS, 2023:-

The Code of Criminal Procedure, 1973 (CrPC) is replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which makes a number of changes to India’s procedural legislation. It emphasizes victim protection, technological use, and prompt justice. Among the most important clauses are:

1. ¹³⁸²First Information Report (FIR) – Section 173 BNSS:

- ¹³⁸³Section 154 of the CrPC governs a FIR.

¹³⁷⁹ Hussainara Khaton vs. State of Bihar is 1979 AIR 1369 and 1979 SCR (3) 532.

¹³⁸⁰ Maneka Gandhi v. Union of India has the following citations: 1978 2 S.C.R. 621, AIR 1978 SC 597, (1978) 1 SCC 248, and 1978 INSC 16.

¹³⁸¹ Maneka Gandhi v. Union of India has the following citations: 1978 2 S.C.R. 621, AIR 1978 SC 597, (1978) 1 SCC 248, and 1978 INSC 16.

¹³⁸² Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

¹³⁸³ Section 154 of CrPC 1973.

- BNSS presents the idea of e-FIR, which is filed electronically, and Zero FIR, which may be lodged at any police station.
- This facilitates victims' access to justice, particularly during emergencies.

2. ¹³⁸⁴Timeline for Filing Charge Sheet – Section 193 BNSS:-

- Under CrPC, the general limit was 90 days (extendable in some cases).
- BNSS allows 180 days for completion of investigation, extendable to 90 more days with court permission.
- This gives police more time for complex cases but also ensures judicial oversight.

3. Delivery of Judgments – Section 258 BNSS:-

- Compared to the CrPC, which had no set timeframe, this ensures that cases are resolved more quickly because courts are required to deliver decisions within 30 days of the trial's conclusion, with the option to extend that period up to 45 days with reasons documented.

4. Detention and Custody – Section 187 BNSS:-

- Section 167 of the CrPC limited police custody to 15 days.
- BNSS allows 15 days of police custody for the first 40 or 60 days of the 60 or 90-day term.
- This gives investigative agencies some leeway while avoiding continuous custody.
- Section 167 of the CrPC set a maximum police custody period of 15 days.

5. ¹³⁸⁵Evidence and Technology – Sections 176, 356, 530 BNSS:-

- BNSS broadens the acceptance of digital and electronic evidence;
- Video conferencing, digital signatures, and electronic recordings are admissible;
- This aligns with Supreme Court rulings, including ¹³⁸⁶Anvar P.V. v. P.K. Basheer (2014).

6. Victim Rights – Section 193(3) BNSS:-

- In order to guarantee a victim-centric system lacking in the CrPC, victims are required to be updated on the investigation's status and are granted copies of the charge sheet, FIR, and other documents.

7. Women and Children – Chapter XVII (Sections 280–303 BNSS):-

- This demonstrates a move towards sensitive handling of vulnerable groups.
- A distinct chapter addresses offenses against women and children.
- It offers time-bound trials and particular protective measures.

8. Community Service – Section 23 BNSS:-

- Community service is used as a type of punishment for small offenses, which encourages restorative justice, avoids jail overcrowding, and enables criminals to change.

Comparative Analysis of BNSS, 2023 and CrPC, 1973:-

AREA	CrPC 1973	BNSS 2023	Remarks
FIR	Section 154 FIR registered at concerned police station only	Section 173 Allows Zero FIR (any police station) and e-FIR	Easier access for victims, faster registration
Investigation timeline	Section 167 90 days for serious offences (extendable to 180)	Section 193 – 180 days, extendable to 270 days with court approval	Gives police more time but keeps judicial check
Custody	Section 167 – 15 days continuous police	Section 187 – 15 days custody, but can be	Balances rights of accused

¹³⁸⁴ Section 193 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

¹³⁸⁵ Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

¹³⁸⁶ Sandra Jini Saju, Anvar P.V. v. P.K. Basheer & Ors (2014 10 SCC 473)

	custody	split within 40/60 days	d with needs of police
Judgment timeline	No fixed time for pronouncement of judgment	Section 258- Must be delivered within 30 days (extendable to 45 days)	Ensures speedy trial
Women and children	No dedicated chapter	Chapter XVII (Sections 280-303) Special procedures and protections	Victim-sensitive approach
Victim rights	Limited, no obligation on police to update victims	Section 193(3) Police must inform victims of progress	Victim-centric reform
Evidence (Digital)	Section 65B, Evidence Act - Digital records admissible with certificate	Sections 176, 356, 530 Electronic/digital records fully recognized	Stronger tech adoption
Community service	Not recognized	Section 23 Community service introduced as punishment for minor offences	Shift towards restorative justice
Colonial legacy	Based on colonial framework	Designed as citizen-centric,	Structural shift in

	of 1898 CrPC	modern law	criminal procedure
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CRITICAL ANALYSIS OF BNSS, 2023:-

Although the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been hailed as a long-overdue reform, there are some issues with it as well. A balanced perspective necessitates analyzing its advantages and disadvantages as well as any potential implementation issues.

STRENGTHS OF BNSS

1. Victim-Centric Reforms

For the first time, the law requires victims to be updated on the status of the investigation (Section 193(3)). This reinforces the right to life and dignity guaranteed by Article 21 in *Maneka Gandhi v. Union of India* (1978).

2. Speedy Trial Measures

The issue of delay is intended to be addressed by stringent time-bound investigations and fixed timetables for decisions (Section 258). This is consistent with the Supreme Court’s ruling in *Hussainara Khatoun v. State of Bihar* (1979) that a quick trial is a fundamental right.

3. Use of Technology

The statute is updated to reflect contemporary reality with provisions for digital evidence, video conferencing, and e-FIR. The ruling in *Anvar P.V. v. P.K. Basheer* (2014), which supported electronic evidence, is supported by this.

4. Dedicated Chapter for Women and Children

In recognition of women’s and children’s vulnerability, the law established a specific chapter (Sections 280-303). This embodies the spirit of the 1996 case *Bodhisattwa Gautam v. Subhra Chakraborty*, in which the Court placed a strong emphasis on defending the dignity of women.

5. Restorative Justice

Section 23 provides community service as an alternative to incarceration for infractions of a

minor nature. This minimizes jail congestion and conforms to international best practices.

Weaknesses and Concerns

1. Extended Investigation Timeline

Extending police investigation to 180-270 days may weaken the right of accused persons against prolonged detention.¹³⁸⁷ Critics argue this could contradict the principles of fairness under *Kartar Singh v. State of Punjab* (1994), the importance of criminal law protections was.

2. Police Powers and Custody

The accused may be harassed during the 40/60 days of shared custody allowed by BNSS under Section 187. This could lead to police power abuse if there aren't strong limits in place.

3. Implementation Challenges

Effective utilization of e-FIR and digital evidence necessitates robust cyber-security and infrastructure. Due to the continued absence of digital connectivity in many rural areas, access to justice may be unequal.

4. Judicial Capacity Issues

Setting deadlines for rulings won't work until there are more judges and courts. Since India already has more than 4 crore cases backlogged, procedural timelines might stay "on paper" unless infrastructure is in place to support them.

5. Risk of Superficial Speed

Courts may be under pressure to render decisions within 30 days, which could lower the standard of justice. Investigating the evidence thoroughly must not be sacrificed for speed.

Scholarly Criticism

Systemic issues cannot be resolved by procedural reforms alone, as legal academics have noted. If BNSS is not paired with police accountability, judicial reforms, and legal aid, it could replicate the inadequacies of CrPC.

SUGGESTIONS FOR REFORM:-

While the BNSS, 2023 introduces significant improvements, further reforms are necessary to make it effective in practice. The first priority should be strengthening judicial infrastructure by appointing more judges, creating additional fast-track courts, and ensuring proper case management systems to reduce delays. Equally important is specialized training for police, prosecutors, and judicial officers on handling electronic evidence, e-FIRs, and victim rights so that the law is applied uniformly and fairly. The inclusion of community service as punishment is progressive, but it requires clear statutory guidelines to prevent arbitrariness and to ensure it functions as a genuine tool of restorative justice. Similarly, safeguards must be built around provisions like extended investigation timelines and split custody to prevent their misuse, with strict judicial oversight. For the digital provisions to succeed, the State must ensure technological infrastructure and cyber-security, particularly in rural and semi-urban areas where resources remain limited. Finally, reforms should focus on access to justice, by strengthening free legal aid services and spreading awareness so that victims and accused persons can actually exercise the rights provided under BNSS. These reforms, if implemented in parallel, will ensure that BNSS does not remain only a procedural change but becomes an instrument for delivering speedy, fair, and citizen-centric justice.

CONCLUSION:-

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) marks a decisive shift from the colonial legacy of the Criminal Procedure Code, 1973 (CrPC) towards a framework that seeks to be more citizen-centric, technology-driven, and responsive to the needs of victims. By introducing provisions such as e-FIR, admissibility of digital evidence, time-bound investigations, community service, and a dedicated chapter for women and children, the BNSS attempts to modernize

¹³⁸⁷ *Kartar Singh v. State of Punjab* (1994) 1994 SCC (3) 569 JT 1994 (2) 423 1994

criminal procedure in line with constitutional guarantees under Articles 20 – 22. At the same time, it carries forward the fundamental principles of fairness and due process emphasized by the Supreme Court in cases like *Maneka Gandhi v. Union of India* (1978) and *Hussainara Khatoon v. State of Bihar* (1979). However, the success of these reforms will depend on their practical implementation, including adequate infrastructure, judicial capacity, and safeguards against misuse of police powers. If these challenges are addressed with seriousness, the BNSS has the potential to transform India's criminal justice system from one criticized for delays and inefficiencies to one that truly ensures speedy, fair, and accessible justice for all citizens.

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