

## BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS), 2023 PROCEDURES AND ANALYSIS OF CONSTITUTIONAL RIGHTS

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### ABSTRACT: -

The “Bharatiya Nagarik Suraksha Sanhita (BNSS) ,2023” replaces the “Code of Criminal Procedure, (CrPC) 1973”. The plan’s stated goals include ensuring the timely consideration of cases, digitalizing legal proceedings, and improving the human rights’ protection. The study implies a comprehensive, multi-tiered analytical approach to compare the BNSS with its predecessor across several core dimensions of the criminal justice process. Primary areas of investigation encompass arrest procedures and safeguards against arbitrary detention, utilization of digital technology in criminal proceedings, time-bound trial mechanisms, forensic evidence collection protocols, and victim protection measures. The study looks at whether the BNSS respects constitutional values such as natural justice, proportionality and rule of law, or whether its procedures innovations risk interrupting and infringing fundamental rights. By assessing the law’s wording, intent, and practicality, this study seeks to establish whether BNSS would fulfil the constitutional promise of liberty and fairness in a modern democracy by enhancing access to justice. This research examines the constitutional ramifications of BNSS to determine if its provisions are compatible with Part III of the Constitution, particularly Articles 14, 19, 20, 21, and 22.

**KEYWORDS:** –Criminal Procedure Reform, Constitutional Rights, Comparative Legal Analysis, Judicial Accountability, Police Discretion, Legal Modernization, Access to Justice, Colonial Legacy in Law.

### INTRODUCTION: -

The framework of criminal justice system is the basis of democratic society in that it is based on the system of laws manipulated to protect the state from perceived threats while allowing individuals liberty. In India, this framework was once governed by the Code of Criminal Procedure, 1973 (CrPC), a colonial legislation that echoed a colonial form of governance that was present in the country. To improve this system, the Government of India has launched the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which is meant as a revolutionary, transformative move towards faster justice, dependence on technology, and reforms with citizens at the core. BNSS posits several novel

features, such as e-FIRs, video-conferencing trials, expanded police custody, and legislating timelines for investigations and trials. Ideally, the provisions aim to lessen delays and enrich efficiency, however, they also raise crucial constitutional considerations. Every right in Part III of the Constitution of India is a fundamental right, and includes right to equality before the law (Article 14), freedom of speech and expression (Article 19), (Article 20) addresses self-incrimination and double jeopardy, (Article 21) address right to life and personal liberty, and Article 22 protects from arbitrary arrest and detention. In order for any procedural law to be

constitutionally valid, it must respect those rights.<sup>1260</sup>

Accordingly, this research is intended to critically assess the interaction of BNSS processes with constitutional safeguards to assess whether the new legal architecture facilitates natural justice, proportionality and due process. It will also assess whether the changes are accompanied by substantive reform or are merely modernising coats of paint, and the ramifications of both on access to justice, rights of the individual, and democratic governance in India.

#### **METHODOLOGY: -**

The research methodology consists of doctrinal analysis of statutory provisions and empirical evaluation of the practical problems that arise in implementation. The thesis examines the effectiveness of the BNSS in bringing a precarious constitutional balance between the state exercising its lawful power of maintaining peace and order and the fundamental rights of citizens. The idea behind the thesis was to determine whether the new processes reinforce or undermine due process rights, access to legal counsel, or protections from prosecutorial abuse. Moreover, this study investigates the promise of technological integration in the criminal justice system, and whether the BNSS's digital possibilities will actually increase efficiency and transparency, or simply open up new opportunities for breaches of procedural fairness and rights violations. The study evaluates the constitutional implications of electronic evidence collection, digital case management systems, and virtual hearings, with regard to the objectives of open justice and the rights to a fair trial. The research also scrutinizes the BNSS's approach to ameliorating entrenched systemic issues in India's broader criminal justice system like case backlogs, delays in the judicial process, and the unequal access to justice across societal resources. The research will examine if the BNSS represents a

meaningful institutional shift towards delivering on the promise of justice to all citizens or if it simply maintains the existing inequalities under a different legislative facade through an analysis of both the text of the new law and the socio-legal context of care it exists in. This study seeks to clarify whether the Bharatiya Nagarik Suraksha Sanhita genuinely enhances constitutional values of justice, liberty and equality in reality, or is a lost opportunity for real reform in criminal justice. The results will contribute to ongoing discussion about law reform, interpretation of constitutional rights, and the dynamics of state power and citizen rights in contemporary India.

#### **TRANSFORMATIONS IN BNSS: -**

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) introduces structural, procedural and technical reforms to revitalize India's criminal justice system. While some of these provisions echo the previous Code of Criminal Procedure 1973 (CrPC), others signify a distinct shift in both spirit and substance. This section presents a summary of the significant reforms in the BNSS, which will serve as the basis for the comparison study.

##### A] Provision for Zero and Uniform FIR Registration (Section 173 BNSS)

The Zero FIR principle has been codified whereby FIRs can be filed at every police station regardless of jurisdiction. Courts have recognized before, but the CrPC does not formally<sup>1261</sup> recognize the flexibility of the established practices. The BNSS codifies this important victim-friendly policy.

##### B] Time-bound Procedures for Timely Justice (Section 193)

The BNSS calls for reforms to enhance the speed of criminal investigations and trials. The Sanhita law says the police must file a charge sheet no later than 90 days after the arrest. However, this timeframe can be extended to 180 days for

<sup>1260</sup> Indian Code; *Bharatiya Nagarik Suraksha Sanhita, 2023*, Bill No. 152 of 2023, Lok Sabha.

<sup>1261</sup>[https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023?utm\\_](https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023?utm_)

substantial offenses relating to national security or terrorism. Also, the Sanhita law requires judgments to be given within 45 days of the trial, which responds to the delays present in the criminal judicial system. While the CrPC established time frames, they were often poorly enforced by courts' interpretations of the statute or the administrative inefficiency to manage cases within the established time frames. The BNSS wants these time frames to become formal procedural obligations.

C] Advancement in technological used for procedures in BNSS:( Sections 4,105,176(3), 183,185,355,530)

The BNSS has appropriately recognized the evolution of technology and therefore introduced legally enforceable provisions to utilize electronic and digital methods, where applicable. This promotes enhanced speed, function and accuracy of process and results. When an event is recorded on video, the potential for tampering or false manual records is dramatically diminished. The new law specifically notes the role of audio video technology in aiding police investigation of crime scenes. "Audio-visual electronic means" means video conferences, records of identification procedures, searches and seizures, transmissions of electronic communications, and anything else that the state government deems appropriate. (Bar and Bench) These new provisions will modernize India's law regulating criminal procedure and in process, contribute specifically to increased transparency, accuracy and accountability in police investigations and standardize the mandatory use of technology in investigative procedures.

D] Community Policing and Preventive Powers: – (Section 23,170)

Community Service as Punishment: Community service has been provided as a punishment under the new criminal laws. Community service is a punishment that requires the offender to do some unpaid work for the benefit

of the community as part of their punishment. Community-Based Policy Approaches: The BNSS notes community policing frameworks as preventative measures. Community policing models, including conflict resolution models, are highlighted as alternatives to administrative detention and limiting options to sanctions, and approaches that address the underlying issues not the punishment. Preventive Detention under the Section 170: The BNSS provides a police officer authority to arrest without a magistrate's order if the police officer believes that the offense is one that eventually cannot be cautioned. Enhanced Power: The BNSS maintains this provision and additionally states that police may detain and/or remove any person where police have given an officer direction to detain or is also an offense to prevent a cognisable offense.

E] Victims' Rights and Role in proceedings: – (Sections 173(2), 176,193(3),396)

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) incorporates a victim-centric approach to criminal justice, promoting the rights, participation, and protection of victims at all stages of the criminal process. While the CrPC, 1973 emphasizes the role of the State and the accused, BNSS treats the victim as an active participant in the justice delivery system.

**CONSTITUTIONAL ANALYSIS: –**

Procedural criminal laws should be evaluated not just for their mechanics, but also for their alignment with constitutional values.

Article 14 Equality before Law: – Possible breach; because of discriminatory application or misuse, it could infringe the discernment of fairness embedded in Article 14. b) Electronic FIR and digital processing. The electronic FIR helps only residents who live in urban places and have a lot of technology experience, and further alienates rural or digitally disconnected victims. Possible Article 14 issue, electronic <FIR> means there is a barrier to access and therefore obstructed access to equal justice. Zero FIR Positive step towards equality as victims may

file a FIR at any police station, allowing for non-discriminative and non-jurisdictional access. This upholds the Article 14 requirements giving fair and equal application. In-Absentia Trials When someone accused of a crime decides to run away, the BNSS allows for trials and verdicts to take place even if they're not physically there. While this approach aims to keep things moving and avoid delays, it might create an uneven playing field for those who are present and able to defend themselves. Article 14 Check: Courts need to ensure that these requirements aren't arbitrary or disproportionate. Mandatory forensic investigation for serious offenses Under the BNSS, serious crimes that carry a punishment of seven years or more must have forensic evidence. This requirement promotes scientific investigation, but in some areas where the infrastructure is lacking, it could lead to inconsistent application, which goes against the consistency mandated by Article 14. Victim rights The BNSS does enhance the rights of victims, but differences in how various governments enforce these rights can lead to unfair outcomes. For instance, access to legal aid and victim compensation often depends on government resources, which could infringe on the principle of equal protection.

Article 20 Protection in respect of conviction for offences: The Bharatiya Nagarik Suraksha Sanhita, 2023, brings up some important issues related to Article 20(3). 1. Mandatory Forensic and Biological Evidence The BNSS gathers fingerprints, handwriting samples, voice recordings, and biological materials. Judicial Position: Physical evidence isn't seen as testimonial, so it's allowed under Article 20(3) (Kathi Kalu Oghad). However, forcing someone to provide voice samples or digital passwords could breach Article 20(3). 2. <sup>1262</sup>Digital Evidence and Password Disclosure The BNSS gives the police broad powers to use electronic evidence as primary proof. If law enforcement pressures someone to hand over passwords or unlock

devices, that's considered testimonial compulsion, which goes against Article 20(3). This is backed by the Selvi v. State of Karnataka (2010) case, which ruled that narco-analysis and brain mapping are unlawful because they extract personal knowledge without consent. 3. Prolonged Police Custody The BNSS allows for segmented police custody, which can last up to 15 days within the first 40/60 days. The concern here is that extended custody increases the chances of coerced statements or confessions, indirectly impacting Article 20(3). While police confessions are inadmissible under Section 25 of the Evidence Act, any compelled admissions could violate Articles 20(3) and 21. 4. Confession and Video Statements The BNSS mandates that statements be recorded on video. If these statements are obtained under pressure, they would still violate Article 20(3), even with the technical safeguards in place.

Article 21 and the Right to Life and Personal Liberty: The CrPC, despite its colonial roots, has laid down judicial safeguards to protect against arbitrary state power. Over time, Indian jurisprudence has broadened the interpretation of "personal liberty" under Article 21 to encompass rights against unlawful detention, custodial violence, delayed trials, and the absence of legal representation. While the BNSS keeps these protections on paper, the expansion of custodial powers—allowing for 15 days of police custody over a span of 60 or 90 days—might weaken these safeguards. Although this flexibility is intended to assist in complex investigations, it can easily be misused without strong judicial oversight, raising the risk of custodial torture or extended detention without trial. Additionally, while the push for speedy trials is a positive move, it only holds constitutional weight if due process isn't sacrificed for the sake of speed. Without enough judges, prosecutors, and forensic resources, these deadlines could pressure courts into prioritizing quick resolutions over justice.

Article 22 Protection of certain Rights related to Arrest and Detention: Article 22(1)(2) ensures

<sup>1262</sup> Constitution of India: Article 14, Article 20 & 20(3).  
[https://www.indiacode.nic.in/bitstream/123456789/19150/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/19150/1/constitution_of_india.pdf)

that anyone who gets arrested is informed about the reasons for their arrest, has the right to legal representation, and must be brought before a magistrate within 24 hours. The Criminal Procedure Code (CrPC) puts this into action through Sections 41 to 60, but unfortunately, there have been numerous reports of misuse. The BNSS adds a new requirement for police to document the reasons for an arrest in writing (Section 35), which aligns with the judicial guidelines established in the case of *Arnesh Kumar v. State of Bihar*. However, some critics point out that this safeguard lacks clear enforcement, particularly in rural areas or places with low literacy rates where judicial oversight might be limited. Additionally, the Sanhita keeps provisions that allow for arrests without a warrant in various situations, reflecting a “police-first” mindset rather than prioritizing citizens' rights. While these powers can be essential in certain scenarios, their broad application could potentially violate Article 22 rights if not closely monitored.<sup>1263</sup>

#### CONCLUSIONS: -

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is a significant legislative reform designed to modernize and decolonize India's criminal procedure laws. This new framework aims to replace the outdated 1973 Code of Criminal Procedure (CrPC) by aligning with constitutional goals, boosting efficiency, updating court and police systems, and emphasizing public rights and participation. When we look at it from a comparative and constitutional perspective, the BNSS presents a complex legal document that embodies a forward-thinking vision, though its implementation may be limited. Adopting these technologies could enhance the criminal justice system and help rebuild public trust. Yet, the law still retains some colonial elements, such as unchecked police discretion, preventative powers, and broad arrest provisions. The digital

transformation in India faces challenges due to insufficient infrastructure, training, and equitable access, which are crucial for its success. Therefore, the BNSS represents both continuity and change. Ultimately, its true impact will hinge on how the system adapts to deliver dignity and justice promptly, rather than just the specific provisions it contains.

#### RECOMMENDATIONS: -

- 1] Public Awareness Campaigns.
- 2] Strengthening Digital and Physical Infrastructure.
- 3] Legislative Clarity and Uniformity.
- 4] Comprehensive Police and Judicial Training.
- 5] Periodic Review and Feedback Mechanism.
- 6] Institutional Accountability Mechanisms.

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<sup>1263</sup> Constitution of India: Articles 21 & 22.

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