

A CRITICAL ANALYSIS OF THE CONCEPT OF PROCLAIMED OFFENDER UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: BALANCING INDIVIDUAL RIGHTS AND THE STATE'S INTEREST IN CRIMINAL JUSTICE ADMINISTRATION

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BEST CITATION – V. BHAVYAA NACHAR & VAISHALI T, A CRITICAL ANALYSIS OF THE CONCEPT OF PROCLAIMED OFFENDER UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: BALANCING INDIVIDUAL RIGHTS AND THE STATE'S INTEREST IN CRIMINAL JUSTICE ADMINISTRATION, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (12) OF 2025, PG. 842-853, APIS – 3920 – 0001 & ISSN – 2583-2344

ABSTRACT

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has replaced the Code of Criminal Procedure, 1973 (CrPC), marking a significant reform in India's criminal justice system. One of the critical areas of change concerns the provisions relating to **proclaimed offenders**, aimed at addressing the challenge of absconding accused who evade trial and obstruct the administration of justice. While the BNSS retains much of the earlier framework under the CrPC, certain refinements raise important questions about their compatibility with constitutional safeguards and human rights. This research critically examines the concept and procedure of declaring a person as a proclaimed offender under the BNSS, 2023. It explores whether the new provisions successfully balance the **State's obligation to secure justice** with the **individual's right to due process and fair trial** under Articles 14, 19, and 21 of the Constitution of India. The study further investigates the potential for misuse of proclaimed offender provisions by law enforcement agencies, leading to harassment or deprivation of liberty without sufficient safeguards. Judicial interpretations from leading cases under the CrPC and their continued relevance under the BNSS are analyzed to assess the judiciary's role in preventing abuse of power.

Employing a doctrinal and comparative methodology, this research also situates Indian law within the broader global framework by examining how proclaimed offender-like mechanisms operate in other jurisdictions such as the United Kingdom and the United States. The study concludes that while the proclaimed offender provisions under BNSS are intended to strengthen criminal justice administration, there remain gaps in terms of procedural safeguards, accountability, and proportionality. The paper suggests reforms to ensure a **fair balance between the State's interest in curbing absconding** and the **individual's constitutional rights**, thereby promoting a more just and equitable criminal justice framework.

KEYWORDS: Proclaimed Offender, Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), Criminal Justice Administration, Constitutional Rights, Fair Trial.

INTRODUCTION

1. INTRODUCTION:

The administration of criminal justice is founded upon the principle that no accused person should be permitted to evade trial or obstruct the due process of law. However, in practice, the system frequently encounters the challenge of absconding accused, who deliberately avoid appearance before courts and thereby delay or defeat justice. To address this issue, Indian criminal procedure has long contained provisions for the declaration of such individuals as proclaimed persons or proclaimed offenders, a mechanism designed to compel attendance and safeguard the integrity of judicial proceedings.

Historically embedded in the Code of Criminal Procedure, 1973 (CrPC), these provisions empowered courts to issue a proclamation against individuals who absconded or concealed themselves to avoid arrest. Once declared proclaimed offenders, such individuals faced consequences such as property attachment, denial of anticipatory bail, and restrictions on legal remedies, thereby creating strong disincentives for evasion.

With the repeal of the CrPC and the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), India has entered a new phase of criminal procedure reform. While the BNSS retains much of the earlier framework, it introduces certain refinements. Yet, the proclaimed offender provisions under the BNSS have sparked debate regarding their constitutional validity, effectiveness, and potential for misuse.

On one hand, these provisions serve as an important tool for ensuring that accused persons do not frustrate criminal trials. On the other, they raise concerns about due process, human rights, and proportionality, especially in light of Articles 14, 19, and 21 of the Constitution of India and international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR).

Against this backdrop, the present research critically examines the proclaimed offender framework under the BNSS, 2023, tracing its historical evolution, analyzing its doctrinal and constitutional dimensions, assessing judicial interpretations, and comparing it with international practices.

1.2 BACKGROUND OF THE STUDY

The concept of proclaimed offender under the CrPC was intended to ensure the presence of absconding accused. However, over time, its application revealed serious challenges. Proclamation and attachment proceedings were often carried out mechanically, with little regard for procedural fairness. Courts, in cases like **Paramjeet Singh v. State of Punjab (2008)** and **Ashok Kumar v. State of Haryana (2013)**, underscored that strict compliance with statutory requirements was mandatory before branding someone as a proclaimed offender.

The BNSS, 2023, while modernizing India's criminal procedure, largely reproduces these provisions with certain adjustments. Yet, longstanding concerns remain – misuse by investigating agencies, arbitrary application, and insufficient safeguards for the accused. At the same time, jurisdictions like the UK and USA employ more nuanced mechanisms such as judicial oversight and bail-jumping offences, which may provide useful comparative insights.

Thus, a critical study of the proclaimed offender provisions under BNSS, 2023 becomes essential to evaluate their effectiveness, constitutionality, and compatibility with global human rights standards.

1.3 STATEMENT OF THE PROBLEM

Declaring a person as a proclaimed offender is a measure with severe consequences, including stigma, property attachment, and restrictions on bail rights. While necessary to prevent absconding, its misuse under CrPC was widely reported, often violating principles of natural justice. The BNSS retains these provisions with only minor refinements, leaving doubts about

whether it adequately addresses past shortcomings.

The problem, therefore, is whether the BNSS framework strikes a fair balance between the State's interest in ensuring justice and the individual's constitutional rights to liberty and fair trial, and whether additional safeguards are necessary.

1.4 OBJECTIVES OF THE STUDY

1. To examine the provisions relating to proclaimed offenders under BNSS, 2023 in comparison with the CrPC, 1973.
2. To analyze the constitutional validity of proclaimed offender provisions in light of Articles 14, 19, and 21 of the Constitution.
3. To study judicial interpretations and their relevance under the BNSS.
4. To evaluate the effectiveness of the BNSS framework in preventing absconding and ensuring justice.
5. To suggest reforms for balancing individual rights with State interests.

1.5 RESEARCH QUESTIONS

1. What changes has the BNSS, 2023 introduced in the concept and procedure of declaring a proclaimed offender compared to the CrPC, 1973?
2. How do proclaimed offender provisions affect the fundamental rights of the accused?
3. What safeguards exist against misuse by law enforcement agencies?
4. How have Indian courts interpreted proclaimed offender provisions, and do these interpretations remain relevant under the BNSS?
5. Does the BNSS framework adequately balance individual liberties with the State's obligation to prevent absconding?

1.6 HYPOTHESIS

The proclaimed offender provisions under the BNSS, 2023, though aimed at strengthening justice delivery, lack adequate safeguards and

may disproportionately affect the constitutional rights of accused persons.

1.7 SCOPE OF THE STUDY

The research is limited to the analysis of proclaimed offender provisions under the BNSS, 2023, their constitutional validity, judicial interpretation, and comparative perspectives. It does not cover all procedural aspects of BNSS but focuses specifically on proclamation and attachment.

1.8 METHODOLOGY

Doctrinal Research: Analysis of statutory provisions, case law, and constitutional principles.

Comparative Method: Study of absconding mechanisms in UK, USA, and Canada.

Critical Analysis: Evaluation of judicial trends, human rights implications, and Law Commission reports.

HISTORICAL EVOLUTION OF PROCLAIMED OFFENDER PROVISIONS

2.1 INTRODUCTION

The concept of proclaiming an absconding accused as a proclaimed person or proclaimed offender is not new to Indian criminal law. Its origins can be traced back to colonial legislation, when the British administration sought to ensure that fugitives from justice did not escape the jurisdiction of Indian courts. These provisions were subsequently codified under the Code of Criminal Procedure, 1898 and retained in the Code of Criminal Procedure, 1973 (CrPC), with only minor changes. The proclaimed offender framework was thus designed to serve two essential purposes:

1. To secure the presence of the accused before the court, and
2. To prevent frustration of justice due to absconding or concealment.

2.2 PROCLAIMED OFFENDER UNDER THE CRPC, 1973

Under Sections 82–86 of the CrPC, 1973, the law provided that if a person against whom a warrant had been issued failed to appear, the court could issue a proclamation requiring his attendance within a specified time. If he still failed to appear, he could be declared a proclaimed offender.

The consequences included:

- Attachment of property (Section 83),
- Sale of attached property (Section 85), and
- Denial of anticipatory bail as clarified in later judicial decisions.

This mechanism, while intended to ensure accountability, also carried the risk of misuse, particularly if proclamation orders were issued mechanically or without strict compliance with statutory safeguards.

2.3 JUDICIAL INTERPRETATION UNDER THE CRPC

Indian courts have played a vital role in interpreting and refining the proclaimed offender provisions.

- In **Paramjeet Singh v. State of Punjab** (2008) 13 SCC 490, the Supreme Court held that proclamation must be issued only after due application of mind and strict adherence to procedure.
- In **Ashok Kumar v. State of Haryana** (2013) 4 SCC 177, the Court emphasized that procedural requirements such as proper publication and notice are mandatory before declaring someone a proclaimed offender.
- The Delhi High Court, in **Court on its Own Motion v. State**, 2009 Cri LJ 3505, cautioned against the arbitrary exercise of proclamation powers and underscored the need for judicial oversight.
- In **Lavesh v. State** (2012) 8 SCC 730 and **State of M.P. v. Pradeep Sharma** (2014) 2 SCC 171, the Supreme Court clarified that a proclaimed offender is not entitled to

anticipatory bail, reinforcing the seriousness of the declaration.

These decisions reveal that while the judiciary has consistently sought to uphold procedural fairness, the misuse of proclamation provisions under CrPC remained a recurring concern.

2.4 LAW COMMISSION REPORTS AND RECOMMENDATIONS

Several Law Commission reports have examined issues related to absconding accused and proclamation proceedings:

41st Report (1969): Provided the foundation for the CrPC, 1973, including provisions for proclamation and attachment.

154th Report (1996): Highlighted problems in execution of warrants and suggested improvements to proclamation mechanisms.

177th Report (2001): Focused on arrest procedures, recommending safeguards against arbitrary police actions in absconding cases.

239th Report (2012): Examined expeditious investigation and trial of cases against influential individuals, emphasizing the misuse of procedural loopholes by absconding accused.

277th Report (2018): Addressed wrongful prosecution, indirectly reinforcing the need for fairness in proclamation proceedings.

These reports reveal a consistent acknowledgment that while proclamation provisions are necessary, they must be tempered with adequate safeguards to prevent abuse.

2.5 CHALLENGES UNDER THE CRPC FRAMEWORK

Despite its utility, the proclaimed offender framework under the CrPC faced multiple criticisms:

1. **Arbitrary application:** Proclamations were sometimes issued without proper service of summons or warrants.

2. Police misuse: Investigating agencies often used proclamation as a coercive tool against accused persons.

3. Delay in execution: Proclamation and attachment proceedings were slow and ineffective in practice.

4. Constitutional concerns: The provisions were frequently challenged for violating the rights to equality, liberty, and fair trial under Articles 14, 19, and 21 of the Constitution.

2.6 TRANSITION TO BNSS, 2023

The Bharatiya Nagarik Suraksha Sanhita, 2023 retains the proclaimed offender framework largely intact, with some procedural refinements. The continuity of these provisions raises the critical question of whether the BNSS addresses the longstanding concerns identified by the judiciary and the Law Commission.

DOCTRINAL ANALYSIS OF PROCLAIMED OFFENDER UNDER THE BNSS, 2023

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), enacted as a replacement of the Code of Criminal Procedure, 1973 (CrPC), aims to modernize procedural criminal law in India. While several provisions have been restructured, the framework relating to proclaimed offenders has been largely retained, with minor procedural refinements. This chapter undertakes a doctrinal analysis of these provisions, comparing them with the earlier CrPC framework and evaluating them in light of constitutional mandates and judicial interpretation.

3.2 Relevant Provisions under BNSS, 2023

The proclaimed offender provisions under the BNSS, 2023 are primarily contained in Sections 84–88, which correspond to Sections 82–86 of the CrPC, 1973.

- Section 84 (Proclamation for Person Absconding): If a court has reason to believe that a person against whom a warrant has been issued has absconded or is concealing himself, it may issue a

proclamation requiring him to appear within not less than 30 days.

- Section 85 (Attachment of Property of Person Absconding): The court may order attachment of the proclaimed person’s movable and immovable property.
- Section 86 (Claims and Objections to Attachment): Provides for third parties to raise claims or objections to attached property.
- Section 87 (Release, Sale, and Restoration of Attached Property): Lays down conditions under which property may be restored or sold if the proclaimed person fails to appear.
- Section 88 (Appeal against Attachment): Provides the right of appeal to persons aggrieved by attachment orders.

Key Continuity: The structure of these provisions is almost identical to CrPC Sections 82–86. The BNSS has not radically changed the substantive content.

Key Refinement: BNSS emphasizes time-bound proceedings and digitization in service of proclamation, in keeping with the overall thrust of the new criminal law codes.

3.3 Comparison with the CrPC, 1973

Aspect	CrPC, 1973 (Ss. 82–86)	BNSS, 2023 (Ss. 84–88)	Change/Continuity
Proclamation	Sec. 82 – appearance within not less than 30 days	Sec. 84 – same requirement	Continuity
Property Attachment	Sec. 83 – movable & immova	Sec. 85 – same	Continuity

Aspect	CrPC, 1973 (Ss. 82-86)	BNSS, 2023 (Ss. 84-88)	Change/Continuity
	ble		
Claims/Objections	Sec. 84	Sec. 86	Continuity
Sale/Restoration	Sec. 85	Sec. 87	Continuity
Appeals	Sec. 86	Sec. 88	Continuity
Digital Service	Not explicitly mentioned	Recognized in BNSS	Refinement

3.4 Judicial Interpretation and Its Relevance under BNSS

Since BNSS provisions mirror the CrPC, earlier judicial precedents remain applicable.

Mandatory Procedure: Courts have held that proclamation orders must be issued strictly in accordance with law (Paramjeet Singh v. State of Punjab, 2008).

Service Requirements: In Ashok Kumar v. State of Haryana (2013), it was emphasized that public notice of proclamation must be properly published.

Effect on Bail: In Lavesh v. State (2012) and State of M.P. v. Pradeep Sharma (2014), the Supreme Court held that proclaimed offenders are not entitled to anticipatory bail.

Judicial Oversight: High Courts have consistently required careful judicial scrutiny to prevent arbitrary use of proclamation provisions.

BNSS does not override these precedents, meaning courts will continue to rely on CrPC-era case law to interpret proclaimed offender provisions.

3.5 Doctrinal Concerns under BNSS

1. No Substantive Reform: Despite decades of criticism, the proclaimed offender provisions are virtually unchanged.
2. Risk of Misuse: The police may still use proclamation proceedings as a coercive tool.
3. Constitutional Tensions: Articles 14 and 21 require fair procedure, but arbitrary declarations may continue.
4. Attachment of Property: The attachment mechanism may disproportionately impact families and third parties, raising issues of fairness.
5. International Human Rights Concerns: The ICCPR recognizes the right to liberty and fair trial; proclamation proceedings must align with these obligations.

3.6 Constitutional Dimensions

The proclaimed offender framework under BNSS must be tested against constitutional safeguards:

Article 14 (Equality before Law): Proclamation must not be issued arbitrarily; procedural safeguards are mandatory.

Article 19 (Freedom of Movement & Property Rights): Attachment of property and restrictions on liberty must be reasonable.

Article 21 (Right to Life & Personal Liberty): Fair procedure is part of due process; proclamation proceedings must not become punitive before conviction.

Thus, while the provisions serve a legitimate state interest, they must be narrowly applied to avoid constitutional violations.

3.7 Comparative Doctrinal Perspective

Other jurisdictions use mechanisms such as “fugitive offender” laws (UK) or “failure to appear” sanctions (US), but these are often subject to stricter judicial checks. BNSS, by contrast, continues with a colonial-era framework that grants significant discretion without introducing modern safeguards like

periodic judicial review or independent oversight.

4.1 JUDICIAL TRENDS AND CASE LAW ANALYSIS

Judicial interpretation has played a critical role in shaping the law relating to proclaimed offenders. While the statutory framework under the CrPC, 1973—and now under the BNSS, 2023—provides the basic procedure, it is the judiciary that has elaborated on the scope, limits, and safeguards to prevent misuse. Courts in India have repeatedly emphasized that the proclamation and attachment procedure is not a mere formality but a substantive process requiring strict compliance with statutory conditions. This chapter analyses landmark judicial pronouncements, the trends they reflect, and their implications under the new BNSS framework.

4.2 Proclamation as a Mandatory Procedure

Paramjeet Singh v. State of Punjab (2008) 13 SCC 490

The Supreme Court held that a proclamation declaring a person as absconding must be issued strictly in accordance with statutory requirements. Any failure to comply with the procedural safeguards renders the proclamation invalid.

Ashok Kumar v. State of Haryana (2013) 4 SCC 113

The Court stressed that the proclamation must be publicly read in a conspicuous place, affixed at the accused's residence, and at the courthouse, ensuring the accused has actual or constructive knowledge of the proceedings.

Trend: Courts have consistently insisted on strict adherence to procedure, highlighting the principle that proclamation cannot be issued mechanically.

4.3 Effect of Proclamation on Bail Rights

Lavesh v. State (2012) 8 SCC 730

The Supreme Court held that once a person is declared a proclaimed offender, he is not

entitled to anticipatory bail, as his conduct reflects deliberate evasion of law.

State of Madhya Pradesh v. Pradeep Sharma (2014) 2 SCC 171

Reiterating Lavesh, the Court observed that the status of proclaimed offender is sufficient ground to deny anticipatory bail.

4.4 Judicial Oversight on Attachment of Property

Sukesh Chandrasekhar v. State (2016 Delhi HC)

The Delhi High Court ruled that attachment of property must be proportional and should not penalize family members or unrelated third parties.

Devendra Singh Negi v. State of U.P. (Allahabad HC, 2019)

The Court emphasized that attachment of property cannot be used as a means of harassment and should be supported by proper judicial orders.

4.5 Abuse of Process and Judicial Correctives

Court on its Own Motion v. State (Delhi HC, 2009)

The High Court highlighted that police often misuse proclamation proceedings as a tool of harassment. The Court directed that magistrates must carefully examine the police report before issuing a proclamation.

Vikas v. State of Haryana (Punjab & Haryana HC, 2020)

The Court quashed the proclamation order because the mandatory conditions of publication and notice had not been followed.

4.6 Proclaimed Offenders and Constitutional Dimensions

Maneka Gandhi v. Union of India (1978) 1 SCC 248

(though not directly on proclaimed offenders) established that procedure must be “fair, just, and reasonable” under Article 21. This principle has been consistently invoked in cases dealing with proclamation, ensuring that the right to fair trial is not violated.

Mohd. Shamim v. State (Delhi HC, 2017)

The Court linked proclamation provisions with Article 14, holding that arbitrary declarations without proper inquiry violate equality before law.

4.7 Judicial Trends under BNSS Context

Since the BNSS, 2023 provisions are nearly identical to CrPC, earlier judicial precedents retain full relevance. Courts are likely to continue:

1. Insisting on strict procedural compliance.
2. Denying anticipatory bail to proclaimed offenders.
3. Protecting third-party rights in property attachment.
4. Checking arbitrary police action through judicial scrutiny.

4.8 Comparative Note on Foreign Jurisprudence

United Kingdom: Fugitive Offenders Act emphasizes extradition and due process safeguards.

United States: Courts treat “failure to appear” as a separate offence, but with constitutional protections like right to counsel.

India: Still relies on colonial-era proclamation, with stronger coercive elements and fewer procedural innovations.

Trend: Indian judiciary has tried to fill gaps left by the legislature, but reforms remain limited compared to modern safeguards in other jurisdictions.

4.9 Judicial trends reveal a dual approach:

On one hand, the courts adopt a strict deterrent stance against absconding accused by upholding proclamations and denying bail.

On the other, they act as a safeguard against misuse, insisting on strict compliance and protecting fundamental rights.

Under the BNSS, these precedents will remain binding, but the shift towards digitalized and

time-bound procedures may create new challenges for judicial interpretation. Ultimately, the judiciary remains the key check-and-balance ensuring that the proclaimed offender mechanism does not undermine constitutional guarantees.

COMPARATIVE AND INTERNATIONAL PERSPECTIVES

5.1 The proclaimed offender mechanism in India, now embodied under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), is largely a continuation of colonial-era provisions from the Code of Criminal Procedure, 1898 and later the CrPC, 1973. While it provides a legal tool to deal with absconding accused, it has often been criticized for being outdated, coercive, and prone to misuse. In order to understand its strengths and shortcomings, it is essential to analyze how other jurisdictions address the challenge of accused persons evading trial. This chapter undertakes a comparative study of laws in the United Kingdom, United States, and select Commonwealth nations, highlighting lessons for India in light of global human rights standards.

5.2 United Kingdom

The UK does not use the term “proclaimed offender.” Instead, its approach is governed by the Bail Act, 1976 and the Extradition Act, 2003.

Failure to Appear as a Separate Offence: If an accused fails to attend court without reasonable cause, it constitutes a criminal offence, leading to fines or imprisonment.

Bench Warrants: Courts issue a bench warrant for the arrest of the absconding accused.

Extradition & Fugitive Offenders Act (1881, later repealed): Historically dealt with fugitives, but now replaced by extradition procedures under the 2003 Act.

Safeguards: Accused persons enjoy strong procedural protections, including legal aid, right to counsel, and review by appellate courts.

Lesson for India: The UK treats absconding as a separate offence rather than relying on broad

proclamations, ensuring clarity and proportionality.

5.3 United States

The U.S. legal system addresses absconding primarily through the Bail Reform Act, 1984 and various state statutes.

Failure to Appear (FTA): Non-appearance is treated as an independent offence, punishable by fines and imprisonment.

Bail Forfeiture: Bail bonds are automatically forfeited if the accused fails to appear.

Fugitive Felon Act (18 U.S.C. § 1073): Makes interstate flight to avoid prosecution a federal crime.

Safeguards: Due process guarantees under the Fifth and Fourteenth Amendments ensure that coercive measures are balanced with fundamental rights.

Lesson for India: The U.S. approach is federal and rights-based, focusing on deterrence through additional penalties rather than property attachment.

5.4 Canada

Canada deals with absconding under the Criminal Code, R.S.C. 1985, c. C-46.

Failure to Attend Court: Considered an offence under Sections 145 and 145.1 of the Criminal Code.

Bench Warrants: Issued immediately to secure the presence of the accused.

Charter Protections: The Canadian Charter of Rights and Freedoms (1982) ensures proportionality and judicial oversight.

Lesson for India: Canada balances enforcement with constitutional guarantees under its Charter, minimizing chances of arbitrary action.

5.5 Australia

Under the Crimes Act, 1914 and state legislations:

Absconding Bail Conditions: Treated as a separate statutory offence.

Property Attachment Rare: Unlike India, property attachment is not a routine measure for proclaimed absconders.

Judicial Discretion: Courts emphasize rehabilitation and proportional sanctions rather than coercive penalties.

Lesson for India: Australia reflects a rehabilitative model, focusing on accountability without excessive punitive measures.

5.6 International Human Rights Standards

International Covenant on Civil and Political Rights (ICCPR), 1966 – Article 9 protects liberty and security, permitting deprivation of liberty only in accordance with due process.

Universal Declaration of Human Rights (UDHR), 1948 – Article 11 guarantees the right to be presumed innocent until proven guilty.

UN Human Rights Committee – Consistently emphasizes that coercive measures must be necessary, proportionate, and subject to judicial review.

Lesson for India: India must align its proclaimed offender provisions with global human rights standards, ensuring fair trial rights are not undermined.

5.7 Critical Comparison with India (BNSS, 2023)

India (BNSS): Relies on proclamation and property attachment with limited procedural innovations.

UK/US/Canada/Australia: Treat absconding as a separate offence, ensuring accountability while safeguarding due process.

Human Rights Angle: India's model is more coercive and colonial, while other jurisdictions adopt a proportional and rights-based approach.

5.8 Suggested Reforms for India

1. Treat Absconding as a Distinct Offence: Like in the UK and US, non-appearance should be criminalized directly rather than through broad proclamations.

2. Limit Property Attachment: Safeguards must be strengthened to protect third parties and family members.

3. Introduce Digital Proclamation: BNSS should incorporate electronic notices and publication for efficiency and transparency.

4. Judicial Review: Every proclamation order must be subject to periodic judicial review to prevent abuse.

5. Human Rights Compliance: Align BNSS procedures with ICCPR and Indian constitutional jurisprudence to ensure fair trial and proportionality.

MAJOR FINDINGS

Historical Continuity

The proclaimed offender provisions under BNSS are largely a replica of CrPC, 1973, which itself was a continuation of colonial-era provisions under the Code of Criminal Procedure, 1898.

Despite criminal law reforms in 2023, the approach towards proclaimed offenders remains punitive and coercive rather than modernized.

Constitutional Concerns

The provisions potentially conflict with Article 14 (equality before law), Article 19 (right to freedom of movement), and Article 21 (right to life and personal liberty) of the Indian Constitution.

Judicial scrutiny under cases such as *Bachhan Singh v. State of Punjab* (on proportionality) and *Maneka Gandhi v. Union of India* (on due process) indicates that absolute coercive measures like property attachment require stricter safeguards.

Judicial Interpretation

Courts have upheld the necessity of proclamation to secure attendance (*Lavesh v. State (NCT of Delhi)*, 2012), but have also warned against mechanical application.

Judicial pronouncements emphasize reasoned orders, proportionality, and rights of third parties

(e.g., family members whose property may be attached).

Practical Challenges

Delay in proclamation proceedings, limited awareness, and bureaucratic inefficiency hinder effective implementation.

Property attachment provisions often impact innocent dependents, raising humanitarian concerns.

Lack of digital tracking systems makes proclamations outdated in the era of cyber governance.

Comparative Insights

UK, US, Canada, Australia treat absconding as a separate criminal offence rather than relying on broad proclamation powers.

International standards (ICCPR, UDHR) emphasize due process, proportionality, and judicial oversight.

India's approach is comparatively colonial and coercive, lacking modernization and human rights compliance.

SUGGESTIONS FOR REFORM

1. Introduce Failure to Appear as a Separate Offence

Absconding should be criminalized directly, as seen in the UK and US, instead of relying primarily on proclamation and attachment.

2. Digitalization of Proclamation Procedures

Use electronic summons, online publication, and integrated criminal databases to track proclaimed offenders.

Reduce reliance on physical proclamation notices, which are often ineffective.

3. Strengthen Procedural Safeguards

Ensure judicial review at every stage of proclamation and property attachment.

Protect rights of third parties and dependents who are not connected to the offence.

4. Limit Property Attachment

Make attachment a last resort, applicable only when there is clear evidence of deliberate evasion.

Provide for appeal and review mechanisms before final confiscation.

5. Human Rights Compliance

Align BNSS provisions with ICCPR obligations and Indian constitutional standards by ensuring proportionality and necessity.

Training for magistrates and police to ensure proclamations are used judiciously.

6. Adopt Restorative and Rehabilitative Models

Instead of purely punitive measures, explore rehabilitative sanctions, fines, or restricted travel permits for absconders who voluntarily return.

CONCLUSION

The proclaimed offender mechanism under the BNSS, 2023, while legally significant, reflects a continuation of colonial-era punitive approaches that do not fully resonate with modern principles of criminal justice. While it remains a necessary tool to prevent accused persons from frustrating trials, its current form poses constitutional challenges, risks of misuse, and humanitarian concerns.

Comparative analysis demonstrates that other common law jurisdictions have moved towards treating absconding as a separate offence, thereby ensuring clarity and proportionality, while safeguarding individual rights. International human rights frameworks similarly stress that coercive measures must always be necessary, proportionate, and subject to judicial oversight.

Thus, India stands at a critical juncture: the BNSS provides an opportunity to modernize the proclaimed offender framework. By digitalizing processes, strengthening safeguards, limiting coercive measures, and adopting rights-based approaches, India can ensure that its criminal justice system is both efficient and just. Ultimately, the proclaimed offender provisions

must strike a delicate balance between the State's duty to secure justice and the individual's right to liberty and fair trial.

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