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## THE JOURNEY FROM CODE OF CRIMINAL PROCEDURE TO BHARATIYA NAGRIK SURAKSHA SANHITA 2023

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### ABSTRACT

*The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, is an attempt to replace the CrPC. It contains 531 clauses that, among other things, make it easier to use forensic sciences and technology in crime investigation as well as to furnish and lodge information, and serve summonses, and other legal documents through electronic communication. A prompt and effective judicial system is essential for a strong government; yet, India confronts obstacles such as lengthy court cases, a high case backlog, poor conviction rates, low usage of technology, slow investigation processes, and insufficient use of forensics. To address the many issues with the current criminal justice system, the proposed BNSS promotes citizen engagement and expedited processes in addition to utilizing technology. In the end, the bill is a reflection of the government's commitment to an equitable, accessible, and responsive justice system that caters to the many demands of the populace. BNSS2 allows the use of handcuffs during arrests for drug-related crimes, acid attacks, rapes, and habitual offenders, in violation of National Human Rights Commission rules and Supreme Court decisions. These clauses might be in contradiction with Supreme Court rulings and existing laws, so a thorough review and possible revisions are required. In moving forward, the legislature must address these controversies, ensuring that the BNSS is effectively implemented for the betterment of society. Clarity on provisions impacting individual rights and aligning with existing legal frameworks is essential.*

**Keywords:** *The Bharatiya Nagarik Suraksha Sanhita, New Bills, Criminal Procedural Law, Indian Penal Code, Motor Vehicles Act.*

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## INTRODUCTION

The general procedural legislation governing criminal procedure in India at the moment is the Code of Criminal Procedure (CrPC), 1973<sup>2</sup>. The CrPC is a procedural law established for the administration of the Indian Penal Code, 1860 (IPC). It governs the procedure for investigation, arrest, prosecution, and bail for offences. The British implemented the aforementioned Code in India in 1861.<sup>3</sup> Procedures for arrest, charging, and posting bail are outlined in the 1973 CrPC. The CrPC was reenacted and went into effect on April 1, 1974, based on the suggestions of the 41st Report of the Law Commission<sup>4</sup>. There have been numerous voices expressing the need to rationalize and improve the country's criminal justice system as well as to conduct a thorough study of it.

Before this, on August 11, 2023, the Home Minister introduced the Bharatiya Nagarik Suraksha Sanhita, 2023 in the Lok Sabha. On August 18, 2023, the Chairman of the Rajya Sabha referred the Bill and two other Bills for review to the Standing Committee on Home Affairs. On November 10, 2023, the Committee sent its report along with comments and suggestions to the Rajya Sabha Chairman and the Speaker of the Lok Sabha.<sup>5</sup>

The government withdrew three criminal law bills on December 12, 2023, and replaced them with three new bills that incorporated the amendments that a parliamentary committee had proposed and that the government had approved.<sup>6</sup> In an attempt to replace the CrPC, the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 has 531 clauses that, among other things, facilitate the use of forensic sciences and technology in crime investigation as well as the furnishing and lodging of information, service, and summons, etc., through electronic communication.<sup>7</sup>

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<sup>2</sup> The Code of Criminal procedure 1973.

<sup>3</sup> 'MEMBERS' REFERENCE SERVICE LEGISLATIVE NOTE LOK SABHA SECRETARIAT NEW DELHI for the Use of Members of Parliament NOT for PUBLICATION the BHARATIYA NAGARIK SURAKSHA (SECOND) SANHITA, 2023 [Seeks to Repeal the Code of Criminal Procedure 1898 (CrPC) (Re-Enacted in 1973)] at a Glance' <[https://loksabhadocs.nic.in/RefinputNew\\_Reference\\_Notes/English/19122023\\_103646\\_102120474.pdf](https://loksabhadocs.nic.in/RefinputNew_Reference_Notes/English/19122023_103646_102120474.pdf)>.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

## NEED FOR THE BHARATIYA NAGRIK SURAKSHA (SECOND SANHITA) 2023

A fast and efficient justice system is crucial for good governance, yet India faces challenges like delays due to complex legal procedures, high case pendency, low conviction rates, limited technology use, delayed investigation systems, and inadequate forensic utilization. These hurdles disproportionately impact the poor.<sup>8</sup> Addressing these issues requires a citizen-centric criminal procedure. Given over seven decades of Indian democracy, there is a pressing need for a comprehensive review of criminal laws, including the Code of Criminal Procedure. Adapting these laws in line with contemporary needs and public aspirations is essential. This reform should prioritize simplifying procedures, leveraging technology for swift trials, improving investigation efficiency, and enhancing forensic capabilities. A citizen-focused approach is vital to ensure that the justice system serves all segments of society efficiently and fairly, fostering trust and upholding the principles of democracy and governance.<sup>9</sup>

The Law Commission of India, through various reports, has proposed numerous amendments to criminal laws. Additionally, committees such as the Madhava Menon Committee Vishwanathan Committee, Bezbaruah Committee and Malimath Committee have recommended both section-specific changes in criminal laws and broader reforms to the criminal justice system. These recommendations underscore a recognized need for a comprehensive overhaul of India's criminal legal framework. The calls for reform stem from a collective understanding that the existing laws may not adequately address evolving societal needs, technological advancements, and the complexities of modern crime. The combined insights from these commissions and committees highlight a consensus on the imperative for nuanced, context-specific modifications to ensure the legal system remains effective, just, and responsive to contemporary challenges, ultimately seeking to enhance the efficiency and fairness of the criminal justice system in India.<sup>10</sup>

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<sup>8</sup> Neha Joshi, Satyendra Wankhade, 'How Bharatiya Nagarik Suraksha Sanhita, 2023 Aims to Change Criminal Procedure Laws' (*Bar and Bench - Indian Legal news* 15 August 2023) <<https://www.barandbench.com/news/litigation/bharatiya-nagarik-suraksha-sanhita-2023-aims-change-criminal-procedure-laws>> accessed 12 January 2024.

<sup>9</sup> 'TWO HUNDRED FORTY SEVENTH REPORT on the BHARATIYA NAGARIK SURAKSHA SANHITA, 2023' (2023) <[https://sansad.in/getFile/rsnew/Committee\\_site/Committee\\_File/ReportFile/15/188/247\\_2023\\_12\\_15.pdf?source=rajyasabha](https://sansad.in/getFile/rsnew/Committee_site/Committee_File/ReportFile/15/188/247_2023_12_15.pdf?source=rajyasabha)>.

<sup>10</sup> 'MEMBERS' REFERENCE SERVICE LEGISLATIVE NOTE LOK SABHA SECRETARIAT NEW DELHI for the Use of Members of Parliament NOT for PUBLICATION the BHARATIYA NAGARIK SURAKSHA

## OBJECTIVE BEHIND THIS JOURNEY

The government, adhering to the inclusive mantra of "Sabka Saath, Sabka Vikas, Sabka Vishwas, and Sabka Prayas," is unwavering in its commitment to ensuring swift justice for all citizens, aligning with constitutional democratic principles. Recognizing the need for a thorough reevaluation of criminal laws, the government proposes the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, aiming to replace the existing Code of Criminal Procedure, 1973. This legislative endeavour emphasizes accessibility and promptness in the delivery of justice.<sup>11</sup>

The BNSS introduces a progressive use of technology and forensic sciences in crime investigations, information submission, summons service, and communication, employing electronic means. It establishes specific timelines for investigations, trials, and judgment pronouncements to enforce a time-bound process. The bill adopts a citizen-centric approach by ensuring victims receive copies of the First Information Report and are informed about the investigation progress, utilizing digital means for communication.<sup>12</sup>

In cases where the potential punishment exceeds seven years, the BNSS grants victims the right to be heard before the government withdraws a case. A significant reform is the mandatory provision for summary trials in minor cases, aiming to expedite the legal process for less serious offences. The bill also facilitates the electronic examination of accused individuals through video conferencing, embracing modern technological tools for efficiency.<sup>13</sup>

Moreover, the magisterial system undergoes streamlining under the BNSS, reflecting a commitment to administrative efficiency and procedural clarity. This comprehensive legislative effort represents a bold step towards aligning the criminal justice system with contemporary needs, fostering transparency, and ensuring citizens' rights are at the forefront of legal reforms. The proposed BNSS not only leverages technology but also prioritizes citizen participation and expeditious processes, addressing the multifaceted challenges in the current

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(SECOND) SANHITA, 2023 [Seeks to Repeal the Code of Criminal Procedure 1898 (CrPC) (Re-Enacted in 1973)] at a Glance' <[https://loksabhadocs.nic.in/Refinput/New\\_Reference\\_Notes/English/19122023\\_103646\\_102120474.pdf](https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/19122023_103646_102120474.pdf)>.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

criminal justice framework. Ultimately, the bill reflects the government's dedication to a justice system that is accessible, fair, and responsive to the diverse needs of the population.<sup>14</sup>

## MAJOR CHANGES

The Criminal Procedure bill is in line with the government's Digital India initiative, which seeks to encourage the use of technology and facilitate video-conference trials. The BNSS has new provisions that designate crimes punishable by imprisonment for a maximum of seven years, warring against a foreign government that is committing depredation on its land or at peace with India.<sup>15</sup>

The 533 sections of the Bhartiya Nagarik Suraksha Sanhita Bill include 160 amended sections from the previous law, 9 newly inserted sections, and 9 sections removed. Several issues are covered by the Bharatiya Nyaya Sanhita, which will replace the IPC, including serious crimes, the prevention of crimes against women, mob lynching, and child trafficking, among other crimes. In contrast, the proposed Bharatiya Nagarik Suraksha Sanhita, which will replace the CrPC, includes various provisions like trial in absentia, the use of technology, mercy petitions, and other safeguards.<sup>16</sup>

The Bharatiya Nagarik Suraksha Sanhita (BNSS) introduces a transformative wave of technological integration into legal processes, aiming to streamline proceedings and reduce paperwork. Notably, the BNSS authorizes the use of technology for serving summons, notices, and warrants electronically, enhancing efficiency in legal communication [Clause 63, 227(1)(b)]. It innovatively introduces the concept of Special Executive Magistrates, allowing the appointment of police officers or Executive Magistrate, not below the SP rank, as Special Executive Magistrates for specific functions or areas [Clause 15]. Further, the BNSS

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<sup>14</sup> *Ibid.*

<sup>15</sup> 'Bharatiya Nagarik Suraksha Sanhita (Bill to Replace CrPC), Key Provisions' *Law Insider India* (16 August 2023) <<https://www.lawinsider.in/news/bharatiya-nagarik-suraksha-sanhita-bill-to-replace-crpc-key-provisions>> accessed 12 January 2024.

<sup>16</sup> 'Bharatiya Nagarik Suraksha Sanhita Bill: Key Changes & Highlights of Proposed Legislation | Explained' (*News1814* August 2023) <<https://www.news18.com/explainers/bharatiya-nagarik-suraksha-sanhita-bill-ipc-crpc-bharatiya-nyaya-sanhita-parliament-explained-8534638.html>> accessed 14 October 2023.

establishes a Directorate of Prosecutions, clearly defining its roles and powers, and placing it under the administrative control of the state's Home Department [Clause 20].<sup>17</sup>

Addressing gender-sensitive concerns, the BNSS outlines arrest procedures for women, mandating that information about the arrest of a woman must be communicated to her friends, relatives, or designated individuals [Clause 43(1)]. The bill also provides guidelines for the judicious use of handcuffs during arrests, considering the gravity and nature of the offence [Clause 43(3)]. Additionally, it introduces provisions for the forfeiture of property belonging to proclaimed offenders staying abroad [Clause 85(6)].<sup>18</sup>

The BNSS requires audio-video electronic recording of search and seizure operations to maintain transparency. This promotes accountability and conformity to procedural norms. The law presents the idea of "Zero FIR," which permits the filing of reports for crimes that happen within the state but outside the police station's authority. In addition, the BNSS requires teams equipped with electronic devices to visit the crime scene to gather forensic evidence for significant offences. Crucially, the bill places restrictions on how long police can hold suspects while they conduct various phases of an investigation, offering protection against protracted detentions.<sup>19</sup>

To better serve the public, the BNSS mandates that police officers use digital channels to communicate with victims and update them on the status of their investigations. All things considered, the BNSS is an extensive endeavour to bring the criminal justice system up to date, promote openness, and give citizens' welfare top priority.<sup>20</sup>

### **SOME CONTROVERSIAL CHANGES**

The Constitution<sup>21</sup> and CrPC<sup>22</sup> limit police custody to 24 hours, extendable up to 15 days by a Magistrate if an investigation takes longer than 24 hours to finish. Judicial custody may go beyond 15 days with sufficient grounds, but the total detention period cannot exceed 60 or 90

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<sup>17</sup> 'MEMBERS' (n 9)

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> The Constitution of India 1950.

<sup>22</sup> The CrPc 1973.



days. The BNSS2 allows police custody in parts or whole of 15 days within the initial 40 or 60 days, potentially impacting bail decisions. This contrasts with the Unlawful Activities (Prevention) Act's 30-day limit.<sup>23</sup> The Supreme Court suggests limiting initial police custody to 15 days, with extensions as exceptions.<sup>24</sup> Clarification of this clause's interpretation was recommended by the Standing Committee (2023).<sup>25</sup>

The BNSS2 permits handcuff use during arrests for habitual offenders or specific crimes such as acid attack, rape or drug-related crime, contrary to Supreme Court rulings and National Human Rights Commission guidelines. The Court deems handcuffs as inhumane, arbitrary, and violating Article 21<sup>26</sup>. Only in extreme cases can handcuffs be used, with the escorting authority required to provide reasons. Judicial consent is mandatory for handcuffing trial prisoners<sup>27</sup>, and the Supreme Court assigns this discretion to the trial court. The BNSS2 provision contradicts established legal principles and raises concerns about human rights and constitutional rights violations during arrests.

The CrPC mandates releasing undertrials on personal bonds after serving half the maximum sentence, except for capital offences. BNSS2 adds a provision for first-time offenders to obtain bail after one-third of the sentence but excludes life imprisonment cases and those involving multiple charges. This could affect undertrials facing chargesheets with numerous offences. Notable court decisions linking crimes under different statutes, like illegal mining as theft or rash driving under both the Motor Vehicles Act and IPC, may render accused individuals ineligible for mandatory bail.<sup>28</sup> The Supreme Court emphasizes bail as the norm, advocating release for undertrial prisoners at the earliest, especially due to poverty-related inability to furnish bail bonds.<sup>29</sup>

Plea bargaining, introduced in the CrPC in 2005, allows accused individuals to plead guilty for a reduced sentence. Restricted for offences with imprisonment exceeding seven years, life imprisonment or death penalty, it excludes bargaining for a lesser offence or compounding. The BNSS2 maintains these limitations but introduces a 30-day timeframe for filing a plea-

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<sup>23</sup> The Unlawful Activities (Prevention Act) 1967.

<sup>24</sup> *Central Bureau of Investigation v Anupam J Kulkarni* (1992) 1992 AIR 1768 (Supreme Court).

<sup>25</sup> 'The Bharatiya Nagarik Suraksha Sanhita' (Standing Committee on Home Affairs 2023).

<sup>26</sup> *Prem Shankar Shukla vs Delhi Administration* (1980) 1980 AIR 1535 (Supreme Court).

<sup>27</sup> *Citizens for Democracy v State of Assam* (1995) 1995 SCC 743 (1995) 3 (Supreme Court).

<sup>28</sup> 'The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023' (*PRS Legislative Research*) <<https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-second-sanhita-2023>> accessed 12 January 2024.

<sup>29</sup> *State of Rajasthan v. Balchand* (1977) 1977 AIR 1447 (Supreme Court)

bargaining application from the charge framing date, potentially affecting the effectiveness of the process by limiting the time available for seeking a reduced sentence through negotiation.<sup>30</sup>

The CrPC amendment in 2005 allowed Magistrates to obtain handwriting or signature specimens from arrested persons. BNSS2 broadens this by enabling the collection of finger impressions and voice samples, even from non-arrested individuals. The 2022 Criminal Procedure (Identification) Act extends data collection to fingerprints, handwriting, and biological samples, applicable to convicts, arrestees, and non-accused persons, with a storage period of up to 75 years. The BNSS2's expansion, amidst a recently enacted comprehensive law, raises questions about the necessity of retaining and augmenting data collection provisions. The constitutional validity of the 2022 Act is currently under scrutiny before the Delhi High Court.<sup>31</sup>

The Criminal Procedure Code (CrPC) includes laws for upholding public order and peace, as well as the investigation and trial processes for offences. The BNSS2 keeps these requirements in different chapters. Whether these different functions should be covered by the same statute is the tricky part. According to the Seventh Schedule of the Constitution, public order is a state subject, and issues about the CrPC which was in place before the Constitution are under the Concurrent List. Whether these fields should be legislatively divided or kept together under a single body of law is the main topic of contention.<sup>32</sup>

## CONCLUSION

The evolution of criminal procedural laws in India has seen significant milestones, with the latest being the Bharatiya Nagarik Suraksha Sanhita (BNSS), seeking to replace the Code of Criminal Procedure, 1973. The BNSS reflects a major legislative shift, introducing a procedural law to enforce rights and liabilities outlined in the Indian Penal Code. The bill brings about positive changes by incorporating new technology, introducing the concept of Special Executive Magistrates, provisions for forfeiture of property, mandatory videography of search and seizure operations, Zero FIR, and limitations on police custody.

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<sup>30</sup> BNNS (n 14)

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

The positive aspects underscore the bill's adaptability to contemporary societal changes and the imperative to enhance efficiency and transparency in legal processes. However, certain contentious provisions, such as the extended police custody period, use of handcuffs, and limitations on mandatory bail, need clarification and resolution. These provisions may conflict with established laws and Supreme Court guidelines, prompting the necessity for careful examination and potential amendments.

In moving forward, the legislature must address these controversies, ensuring that the BNSS is effectively implemented for the betterment of society. Clarity on provisions impacting individual rights and aligning with existing legal frameworks is essential. By striking a balance between embracing positive changes and addressing contentious issues, the BNSS can serve as a progressive legal instrument, fostering justice, and transparency, and safeguarding fundamental rights in the ever-evolving landscape of contemporary Indian society.

