

LEX SCRIPTA MAGAZINE OF LAW AND POLICY, VOL-1, ISSUE-3
ISSN-2583-8725

LEX SCRIPTA MAGAZINE OF LAW AND POLICY
ISSN- 2583-8725

VOLUME-1 ISSUE-3
YEAR: 2023

EDITED BY:
LEX SCRIPTA MAGAZINE OF LAW AND
POLICY

LEX SCRIPTA MAGAZINE OF LAW AND POLICY, VOLUME-1: ISSUE-3

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BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS) BILL, 2023

Author: Shivam Kumar Pandey

(Research Scholar, Rashtriya Raksha University)

Introduction

The Parliamentary Standing Committee on Home Affairs has been tasked with reviewing the three proposals and making suggestions. Within three months, the Committee must provide its report. Introducing these measures has taken an essential step toward modernizing India's criminal justice system. The proposals are intended to remedy the system's problems, such as trial delays, poor conviction rates, and a lack of victim protection.

The proposals aim to increase the system's receptivity to public needs and guarantee that justice is administered swiftly and fairly. Mixed responses have been given to the three bills. While some people have praised the decision to replace the laws from the colonial era, others have voiced worries about the revisions' possible effects. These issues must be adequately considered before the Parliamentary Standing Committee makes its recommendations.

Introducing these bills is a significant advancement in India's criminal justice system. It is still unclear how the bills will be put into effect and what effect they will have. However, the laws show the Government's commitment to changing the system and ensuring everyone receives justice.

The introduction of new legislation, “Bhartiya Nagrik Suraksha Sanhita (BNSS) Bill, 2023”, that will replace the “Criminal Procedure Act, 1898” according to each group, the reforms were implemented to improve access to justice, modernize the judicial system, and better reflect the hopes and priorities of the people. The laws that the Central Government passed include a variety of amendments that help India's system function effectively and efficiently. The new statutes will replace the “British-developed Criminal Law” system, which will be repealed.

Let us analyze the CrPC, the most comprehensive and essential criminal law procedure. In its place, the “Bharatiya Nagarik Suraksha Sanhita (BNSS) Bill, 2023” would be introduced.

Some of the salient features of the Act are:

Features	BNSS BILL	CrPC
“Custody period”	“15 days (Section 187)”	“90 days (Section 167)”
“Trial in absentia”	“Yes (Section 228)”	“No (Section 204)”
“Use of technology”	“Yes (Section 229)”	“No specific provisions”
“Safeguards for accused Persons”	“More comprehensive”	“Less comprehensive”
“Community justice”	“Yes”	“No provisions”
“Bail”	“More strict”	“Less strict”

As defined by “Section 2(1)(a)”, "audio-video electronic" refers to “the use of any communication equipment for video conferencing, recording of identification, search, and seizure operations, transmission of electronic communication, and other purposes and methods that the State Government may, by rules, provide”¹; As evidence, “Section 2(a)(f)” of the same law, which defines "electronic communication" as “any written, verbal, pictorial, or video content transmitted (from one person to another, from one device to another, or from a device to a person) using a computer, mobile device, or other electronic device, was enacted by the central government of the country”².

ARREST

Feature	BNSS Bill,2023	CrPC
“Power of arrest”	“Only a police officer can arrest a person (Section 186).”	“A police officer or a public servant can arrest a person (Section 41)”
“Procedure for arrest”	“The police officer must inform the person arrested of	“The police officer is not required to inform the person

¹ “Section 2 (1) (a) of the Act”

² “Section 2 (a) (f) of the Act”

	the grounds for arrest and the right to remain silent.”	arrested on the grounds for arrest or the right to remain silent”
“Right to bail.”	“The person arrested has the right to be released on bail, subject to certain conditions.”	“The person arrested has the right to be released on bail, subject to the discretion of the police officer (Section 43)”
“Protection of arrested person”	“The arrested person must be produced before a magistrate within 24 hours of arrest.”	“The arrested person must be produced before a magistrate within 24 hours of arrest, unless the police officer has obtained an order from the magistrate for further detention.”

The introduction of technological communication with the developing and changing globe will enable the quick and straightforward resolution of situations. When police may arrest without a warrant, “**Section 35**” of the new law also includes a new introduction and adjustment to “**Section 41**” of the CrPC.

- “**Section 35(7)** states that if the individual being arrested is elderly or disabled and the crime carries a sentence of less than three years, no arrest may be made without the consent of an officer not lower than the level of Deputy Superintendent of Police.”³

The central Government added the following provisions to **Section 37** in light of the new era and digitalization: “Designated Police Officer” to designate a police officer. Every district and police station, as well as the district headquarters, must have a designated officer, not lower than the rank of “Assistant Sub-Inspector of Police”, in charge of keeping records of the names and addresses of those detained, as well as the circumstances surrounding their detention and the nature of the arrests, and the offence for which they were arrested.

³ “Section 35 (7) of CrPC”

Additionally, the subsection "Arrest" has been introduced by the central Government. How made and by Section 43 (3): When arresting a repeat offender, an offender who has escaped from custody, a suspect in an organized crime or terrorism crime, a drug offender, a suspect in a crime involving the illegal possession of arms and ammunition, a suspect in a crime involving murder, rape, an acid attack, counterfeiting coins and currency notes, or a suspect in a crime involving human trafficking, the police officer may use handcuffs.

Under section 54 of the BNSS, "video graph" has been changed to "audio-electronic means." Identifying the accused through electronic communication [Section 54]

Section 58 has been amended to state that the person arrested must appear before the Magistrate as required by the CrPC: "A person apprehended may not be held for more than 24 hours; without a special order from a magistrate under **section 187**, no police officer may keep someone arrested without a warrant in custody for longer than is reasonable given all the circumstances of the case. This period cannot, in addition to the time needed to get from the place of arrest to the Magistrate's Court, whether it has jurisdiction or not, exceed twenty-four hours because by adding jurisdiction, it safeguards individual rights."⁴

Section 63 has been added to accommodate the receipt of a summons electronically. "Whenever a Court issues a summons under this Sanhita, it must do so in one of two ways: (i) in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule, direct; or (ii) in an encrypted or other form of electronic communication and shall bear the image of the seal of the Court."⁵

The central Government also protects the armed forces under "Section 151(2)" Protection against prosecution for activities committed by Sections 148, 149, and 150 of the provision, which include:

- "With the caveat that no case may be filed under subsection (1) of section 174 against any officer or member of the armed forces for any action taken by him in compliance with any

⁴ "Section 187 of CrPC"

⁵ "Section 63, CrPC"

order that he was required to comply with in the course of performing his official duties, without first conducting a preliminary investigation.”⁶

- Furthermore, no officer or member of the Union's armed forces, or any police officer of a State, shall be detained for anything carried out or alleged to have been carried out by him in compliance with any order that he was required to carry out in the course of his official duties unless first obtaining permission from the Central Government or the State Government.

It is important to note that Section 172(2) of the BNSS Bill, 2023 and Chapter 11 of the CrPC both reference preventive detention by the police. Any individual who refuses to comply with a police officer's order under subsection (1) may be detained or removed, and the police officer has the option of either bringing the person before a judicial magistrate or, in the event of minor offences, releasing him after the incident has passed.

INITIATION OF PROCEEDINGS

Section 173(1) of the “BNSS Bill, 2023” provides for the e-filing of zero FIR and permits giving information orally or electronically to begin legal action. The information must be signed within three days of being taken into account. Additionally, according to **section 173 (3)**, a police officer may conduct a preliminary inquiry within 14 days after receiving a crime report with a potential prison sentence of three to seven years with the prior consent of a DSP rank officer.

“Upon receiving a report on the facts from the employee's superiors about the incident and after hearing the employee's assertions about the circumstances leading up to the incident, a Magistrate may take cognizance of a complaint against a public servant arising out of the performance of his duties under Section 210(3).”⁷

SEARCH AND SEIZURE

Features	BNSS Bill	CrPC
“Power to search”	“Only a police officer can search a	“A police officer or a public servant can search a person

⁶ “Section 174 (1), CrPC”

⁷ “Section 210 (3) , CrPC”

	person or property.”	or property.”
“Procedure for Search”	“The police officer must obtain a warrant from a magistrate before searching a person or property.”	“The police officer can search a person or property without a warrant in certain cases.”
“Videography of search”	“Videography of the search is Compulsory.”	“Videography of the search is not compulsory.”
“Protection of seized articles”	“Seized articles must be kept secure and produced before a magistrate within 24 hours.”	“Seized articles must be kept secure and produced before a magistrate within 15 days.”

In criminal law, search and seizure are essential investigative techniques that allow law enforcement agencies to obtain evidence, stop the destruction of evidence, and protect the public. In India, the “BNSS BILL, 2023” has rules that control and direct the procedure for search and seizure.

Search is looking at someone, somewhere, or something to find evidence or contraband connected to a crime. In order to combine the needs of efficient law enforcement with the rights of persons, the BNSS BILL, 2023 includes provisions for approved searches.

Taking control of things or documents discovered during a search and essential to the investigation is a seizure. Items that have been seized may be used as evidence in Court.

The Government has made the following adjustments and amendments to search and seizure:

- **Article 265 (1)**, This clause states that witness statements can now be recorded via electronic means.
- **“Proviso to section 316”**: The “BNSS bill, 2023” establishes a time limit for the accused's statement, which may be provided electronically and signed by the defendant within 72 hours.

- In addition, a specific police officer must ensure that a forensics specialist attends the crime scene to gather forensic evidence and videotape the entire procedure on any electronic device if the offence carries a sentence of more than seven years.
- **Section 176 (3)** The State Government must use a facility from another state if an expert or forensic facility is unavailable for a particular crime.
- **Section 183 (6):** In rape cases, a female magistrate shall record the victim's account whenever possible; if none are available, a male magistrate must do so in the presence of a female.
- In the event of a disabled individual, the Magistrate can record a statement electronically, ideally on a mobile phone, for offences punished with ten years or more.
- **Section 184(6):** The investigating official must receive the medical practitioner's report within seven days.
- **Section 185(2) provision:** It is preferred that searches be documented using a mobile phone.

CUSTODY AND BAIL

The Federal Government permits the Magistrate to give police custody for 15 days, in whole or in part, to cover the chapters and entrench the legal process for custody and bail.

“According to Section 187(2), this may be granted at any moment during the initial 40 or 60 days of detention instead of the 60 or 90 days allowed before filing a charge sheet. When an inquiry cannot be finished in 24 hours, the procedure stipulates that the Judicial Magistrate to whom an accused person is directed under this section may, after considering the accused person's status as to whether or not he is free on bail, authorize the accused person's detention in the custody the Magistrate deems appropriate, for a term not to exceed fifteen days in whole or in portions, at any time during the initial forty or sixty days of the detention period, regardless of whether or not the Magistrate has jurisdiction to prosecute the case.”⁸

If he has no jurisdiction to try the case or commit it for trial and considers further detention. Additionally, it is stated that nobody may be held in custody outside of a police station or a prison by regulations.

Another change made by the legislation is that, according to Section 193(3) (ii), police must inform the victim or complainant of the investigation's status within 90 days. (ii) The police

⁸ “Section 187 (2), CrPC”

officer must inform the victim or informant of the investigation's status within 90 days via any method, including electronic communication.

With the Court's approval, the police officer may conduct his or her report after completing the investigation. The report must be finished within 90 days and may be extended by the Court –

Proviso to Section 193(9).

“With the caveat that additional inquiry during the trial may be permitted with the approval of the Court trying the case, and that investigation must be finished within 90 days, which the Court may extend with its permission.”⁹

According to **Section 218** of the BNSS Bill, in the year 2023, if a judge or public worker is being prosecuted for an offence under “**Section 218** Prosecution of Judges and Public Employees”, the decision to impose a sanction must be made within 120 days after the sanction request.

Proviso to Section 218: If no decision is made, it will be assumed that one has already been made. Additionally, it is stated that the Government will decide within a day.

One hundred twenty days, they are starting from the request for the sanction in cases where judges and public officials are being prosecuted.

If no decision is made, it will be assumed that the same has already been given—except for section 218.

Furthermore, such Government shall decide within 120 days from the receipt of the request for permission; if it does not, the sanction shall be presumed to have been granted by such Government.

When taking cognizance of the offence, the Magistrate with jurisdiction must note that the complainant has been examined and that the Magistrate may take no cognizance of the complaint without providing the accused with a chance to defend themselves.

Features	BNSS Bill	CrPc
“Maximum police custody Period”	15 days	90 days.

⁹ Section 193 (9), CrPC

“Extension of police custody Period”	“Can be extended by a magistrate for a further 15 days.”	“Can be extended by a magistrate for a further 90 days”
Bail	Stricter	Less strict.
“Grounds for denying bail”	“There are 12 grounds for denying bail under the BNSS Bill.”	“There are six grounds for denying bail under the CrPC.”
“Right to be released on bail after 90 days of custody.”	Yes	No
“Bail bond”	“The person released on bail must deposit a sum of money as bail.”	“The person released on bail is not required to deposit a sum of money as bail.”

TRIAL

The trial process is crucial to the pursuit of justice in criminal law. The “BNSS Bill, 2023” establishes the procedural rules for holding criminal trials in India, ensuring that the rights of the accused and the general public are preserved and respected. In this section, we will examine the main features of a trial under the BNSS Bill of 2023.

- The following additional parts and provisions that have been introduced to the legislation as part of the BNSS Bill, 2023, are listed in order to perform the trial:
- Section 232: The accused must be furnished with all papers within 90 days and no later than 180 days (with permission) in cases that the sessions judge can try.
- Section 250: Within 60 days of the date of the accused's commitment in session court and 60 days of the Magistrate's formulation of the charge, the accused may file a discharge application. The charges must be drafted by Sections 262 and 251 within 60 days of the initial charge hearing. The charges may be communicated to the accused electronically.
- Section 254: Evidence of a police officer or public worker may be obtained electronically using audio and video.

- “Under Section 269(7), a prosecution witness who could not be cross-examined despite all efforts due to circumstances beyond their control will be deemed not examined for not being accessible.”¹⁰
- “Section 336”: A public worker or expert must submit a document they authored as evidence to be examined. The replacement officer can be questioned if the original officer has been transferred, retired, or deceased, cannot be located, cannot provide a deposition, or if securing attendance will delay the trial.
- Proviso to section 346(1): To prevent unneeded adjournments, the Central Government has appropriately stipulated that only two may be allowed, even in exceptional circumstances.
- Section 349: The Magistrate may summon any individual to provide voice or signature samples without first placing them under arrest.
- “Section 356” Proclaimed offender inquiry trial or judgment in absentia.
- There is no immediate chance of apprehending a proclaimed offender who has fled to avoid trial; thus, it is assumed that they have waived their right to appear and be prosecuted in person.
- Under the following conditions, the Court will conduct the trial as though he were present:
 - After 90 days of the charges being framed.
- Multiple orders for his arrest within at least 30 days; - publication of the trial in a daily newspaper sent to his last-known home; - notification of any relatives or friends, if any friends or family, let them know; post information about the trial's start date on the last-known address.
- The trial will be recorded and saved, and the accused's voluntary absence will not stop the proceedings from proceeding to a verdict, even if he is arrested or shows up at the end of the trial. After three years have passed from the date of the verdict, there may be no appeal against a conviction by an evading person.

JUDGEMENT

A court's ultimate ruling following a trial is a judgment under the BNSS Bill, 2023. In it, the Court's conclusions regarding the accused's guilt or innocence are outlined, together with, if necessary, the sentence that will be given. The following are the main features of a ruling under the BNSS Bill, 2023:

¹⁰ “Section 297 (7), CrPC”

1. The timeline for passing judgment: According to Section 258, a decision on guilt or innocence must be made within 30 days of setting a trial date, though this time frame may be extended to 60 days with justification.

- The judge must render a decision in the matter as quickly as possible—within two weeks—after hearing arguments and any relevant legal points. Thirty days begins on the day the arguments are finished, which might specifically extend to sixty days.

2. Pronouncing the ruling: According to “Section 392”, the judgment must be delivered in open Court following the trial not later than 45 days after notification to the parties. Moreover, the judgment must be posted online on the platform within seven days.

“392. (1) The presiding officer in every trial in any Criminal Court or original jurisdiction shall pronounce the judgment in open Court either immediately following the conclusion of the trial or at a later date not later than forty-five days from the date notice thereof shall be given to the parties or their attorneys.”

Mercy Petition

According to Section 473 of the BNSS Bill, 2023, tabled by the Central Government, a capital penalty offender or his legal successor may file a mercy plea before the President or Governor after 30 days of getting notification from the jail superintendent.

- Submit a petition to the governor first, then notify the President of its denial within 60 days.
- The jail superintendent should also submit ex-convicts mercy applications to the state or federal government for consideration.
- The Central Government must provide its recommendations to the President within 60 days after receiving them from the State and the Jail.
- The President has the authority to decide on all convicts' applications for compassion at once.
- The State Home Department and the correctional authorities will be informed of the order within 48 hours.
- No court may hear an appeal, and no court may inquire into it.

Conclusion

As a result, the legislation voted by the legislators has been designed to repeal the previous British laws in force. The three proposed legislation would eliminate the Evidence Act of 1872, the IPC of 1860, and the CrPC 1973, all of the criminal statutes. These three proposals still

need to be passed to become laws, but they will soon be seen governing India's criminal laws. The measures have not yet been passed into law and are still in the early stages of development. However, they have the potential to substantially alter how criminal cases are discovered, pursued, and decided in India. There have been a variety of responses to the bills. Some people think the legislation is too progressive and could make it impossible for police to conduct investigations. Others think the legislation is essential to safeguard the rights of the accused. Before becoming law, the bills will probably be subject to more discussion. Overall, the three laws passed to replace the “CrPC, Evidence Act, and IPC” represent a substantial advancement in India's efforts to modernize its criminal justice system. The proposals include several brand-new clauses intended to strengthen the system's effectiveness and fairness while also defending the rights of those accused.

It is still unclear how the bills will be implemented and whether their objectives will be met. The bills seek to be current with The inclusion of digitization and strict regulations introduced to date in response to society's dynamic and ever-changing character and to improve the effectiveness and efficiency of India's justice system.