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# **TRANSITION FROM CRPC TO BNSS**

AUTHORED BY - BHAVYE BHANDARI

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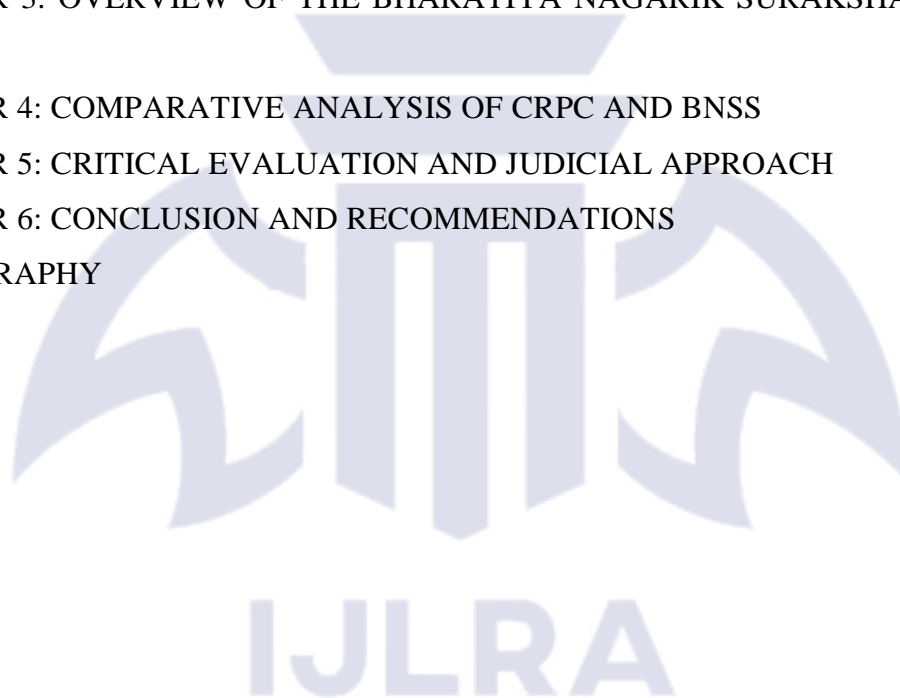
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**ABSTRACT**

The shift from the Code of Criminal Procedure (CrPC) to the Bharatiya Nagarik Suraksha Sanhita (BNSS) represents a major restructuring of India's criminal procedural framework. For decades, the CrPC served as the backbone of criminal trials and investigations, but evolving societal conditions and technological advancements highlighted the need for

reform. The BNSS emerges as part of a broader legislative transformation aimed at replacing colonial-era foundations with laws that reflect contemporary realities and national priorities. A key feature of the BNSS is its focus on improving procedural efficiency and reducing systemic delays. It introduces structured timelines for investigations and court proceedings in specific situations, thereby attempting to address the long-standing issue of case backlogs. The legislation also integrates technology into routine criminal procedures by recognizing electronic records, enabling digital communication, and permitting virtual hearings. Such measures are intended to promote faster justice delivery while maintaining procedural fairness.

Another important dimension of the transition is the increased emphasis on accountability and victim participation. The BNSS strengthens guidelines concerning arrest, detention, and investigation to ensure greater transparency in police functioning. It also provides mechanisms to keep victims informed about the progress of their cases and encourages their involvement in the judicial process. Additionally, by incorporating alternative forms of punishment such as community service for minor offences, the new framework reflects a gradual move toward corrective and rehabilitative justice.

In essence, the replacement of the CrPC with the BNSS signifies more than a mere legislative substitution; it reflects a reorientation of criminal procedure in India. While preserving essential safeguards and legal principles, the BNSS seeks to modernize the justice system through technological adoption, efficiency reforms, and a stronger rights-based approach. The long-term impact of this transition will depend on its practical implementation, institutional readiness, and consistent judicial interpretation.

## CHAPTER 1 INTRODUCTION

The enactment of India's new criminal laws in 2023 represents a profound shift in the country's legal and institutional framework governing crime, punishment, and justice administration. Through the introduction of the Bharatiya Nyaya Sanhita (BNS), the BNSS, and the Bharatiya Sakshya Adhiniyam (BSA), Parliament replaced three long-standing statutes: the Indian Penal Code, the CrPC, and the Indian Evidence Act. These earlier laws had structured India's criminal justice system for generations. Their replacement signals not merely technical amendments but a comprehensive legislative reworking intended to respond to present-day realities, constitutional developments, and evolving societal expectations.

To understand the significance of this transformation, it is necessary to consider the historical context of the earlier framework. The Indian Penal Code of 1860 was drafted during British colonial rule and reflected the administrative priorities of that period. Although the Code was widely regarded for its clarity and structure, many of its provisions were designed for a colonial state concerned primarily with maintaining order and authority. Similarly, the procedural and evidentiary statutes that followed were shaped by 19th-century legal philosophy. Over time, independent India amended these laws repeatedly to address emerging concerns; however, incremental amendments could not fully eliminate structural limitations or outdated language embedded in the original texts.<sup>1</sup>

Post-independence constitutionalism further altered the landscape of criminal justice. Judicial interpretation, especially under Article 21 of the Constitution, expanded protections relating to personal liberty, fair investigation, and speedy trial. Courts increasingly emphasized due process and accountability in policing and prosecution. Despite these developments, certain statutory provisions continued to reflect older assumptions that did not always align seamlessly with constitutional values. This divergence between judicial doctrine and legislative text contributed to calls for a more comprehensive statutory revision rather than piecemeal reform.

The background of the 2023 reforms also lies in practical challenges faced by the criminal justice system. Indian courts have long grappled with heavy caseloads, prolonged trials, and undertrial detention. Investigative delays, limited forensic infrastructure, and procedural bottlenecks have sometimes weakened public confidence in timely justice delivery.

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<sup>1</sup> Gaur, KD A textbook on the Indian Penal Code (Universal Law Publishing Co., 2023)

Additionally, rapid technological advancement has transformed the nature of crime. Cyber offences, digital fraud, online harassment, and electronic communication-based conspiracies require investigative tools and evidentiary standards far beyond what 19th-century lawmakers could have envisioned. The need to formally recognize digital records and electronic evidence within a coherent statutory framework became increasingly pressing.

Within this context, the Bharatiya Nyaya Sanhita was enacted to redefine substantive criminal law. While it retains the foundational structure of classifying offences and prescribing punishments, it reorganizes and updates several provisions. New categories of crime have been incorporated, and certain definitions have been reframed to reflect contemporary forms of wrongdoing. Importantly, the introduction of community service as a punishment for specified minor offences suggests a gradual movement toward reformative justice. The statute also attempts to modernize language and consolidate provisions in a more streamlined manner.<sup>2</sup>

The BNSS, replacing the earlier procedural code, addresses the mechanics of investigation, arrest, bail, and trial. Its stated objective is to enhance efficiency while preserving safeguards for individual rights. The incorporation of technological processes—such as electronic communication, digital documentation, and virtual proceedings—demonstrates an effort to reduce delays and adapt courtroom practice to contemporary realities. Structured timelines for certain procedural steps aim to tackle chronic backlogs, though their effectiveness will depend heavily on administrative capacity and resource allocation.

Similarly, the Bharatiya Sakshya Adhiniyam modernizes evidentiary law to reflect digital transformation. In an era where communication, contracts, and transactions frequently occur online, recognition of electronic records as primary forms of evidence is essential. The new statute attempts to clarify admissibility standards for digital materials while retaining traditional principles of relevance and reliability. By updating evidentiary rules, the legislation seeks to ensure that courts are better equipped to address cybercrime and technology-driven offences.<sup>3</sup>

Another dimension of the reform is its emphasis on victim participation. Historically, criminal proceedings in India have been largely State-driven, with victims playing a limited formal role after lodging a complaint. The newer procedural framework incorporates

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<sup>2</sup> Parveen, A. S. (2025). A comparative analysis of the CrPC 1973 and the BNSS 2023 for modernizing criminal procedure in India. *Indian Journal of Legal Review*, 5(11), 841–846.

<sup>3</sup> Criminal Justice System in India <https://blog.ipleaders.in/criminal-justice-system-in-india/>

mechanisms intended to keep victims informed and engaged during investigation and trial. This shift aligns with broader international trends that recognize victims as stakeholders in the justice process. At the same time, the reforms attempt to maintain the balance between victims' interests and the accused's right to a fair trial.<sup>4</sup>

The introduction of these statutes has also sparked academic and public debate. Supporters view the reforms as an overdue modernization of colonial-era legislation and a necessary response to technological change. Critics, however, question whether structural challenges—such as police capacity, judicial vacancies, and infrastructural deficits—can be resolved through legislative revision alone. The success of any statutory framework ultimately depends on effective implementation, training, and institutional reform. Thus, while the new laws represent a formal transformation, their real impact will be measured by practical outcomes.

From a research perspective, the study of India's new criminal laws is significant for several reasons. First, it provides insight into how post-colonial states reinterpret inherited legal systems. Second, it offers an opportunity to analyze the relationship between statutory drafting and constitutional principles. Third, it raises questions about how criminal law can adapt to technological innovation without compromising civil liberties. Comparative studies may also examine how India's reforms align with or diverge from trends in other jurisdictions facing similar challenges.<sup>5</sup>

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<sup>4</sup> Kaur, M., & Arti, D. (2024). Victims Status in Indian Criminal Justice System with Evolution. *ShodhKosh: Journal of Visual and Performing Arts*, 5(1)

<sup>5</sup> Malik, N Criminal law reforms in recent times: Issues and challenges. *ShodhKosh Journal* 226 (2024)

## PROBLEM STATEMENT

The replacement of the CrPC with BNSS raises critical questions regarding the effectiveness and adaptability of India's criminal procedural framework. For decades, the CrPC governed investigation, arrest, bail, and trial processes; however, persistent issues such as procedural delays, mounting case backlogs, undertrial detention, and limited integration of technology exposed structural weaknesses. The traditional framework struggled to respond efficiently to contemporary challenges including cybercrime, digital evidence, and the need for time-bound investigations. Consequently, the central problem lies in whether the earlier procedural regime was capable of ensuring speedy, transparent, and victim-sensitive justice in a rapidly evolving legal and technological landscape.

The transition to the BNSS seeks to address these shortcomings by introducing technological integration, structured timelines, and revised procedural safeguards. However, this shift also presents new concerns regarding implementation, institutional capacity, and the balance between efficiency and protection of individual rights. The core problem, therefore, is not merely legislative replacement but the practical question of whether the BNSS can effectively resolve systemic inefficiencies without compromising constitutional guarantees such as fair trial and personal liberty. Evaluating this transition requires examining both the limitations of the CrPC and the operational challenges that may arise under the new procedural framework.

## RESEARCH OBJECTIVES

- To examine the key structural and procedural changes introduced in the BNS as compared to the CrPC.
- To analyze whether the BNSS effectively addresses delays, case backlogs, and investigative inefficiencies that existed under the CrPC framework.
- To evaluate the extent to which technological integration under the BNSS improves transparency and efficiency in criminal proceedings.
- To assess the impact of the BNSS on the protection of fundamental rights, particularly the right to fair trial and personal liberty.
- To examine the practical challenges and institutional requirements for the successful implementation of the BNSS in India's criminal justice system.

## RESEARCH QUESTIONS

1. What are the major procedural changes introduced in the BNSS compared to the CrPC?
2. To what extent does the BNSS address systemic issues such as delays, case backlogs, and prolonged undertrial detention that existed under the CrPC?
3. How does the integration of technology under the BNSS influence the efficiency, transparency, and accessibility of criminal proceedings?
4. Does the BNSS adequately safeguard constitutional rights, particularly the right to fair trial and personal liberty?
5. What practical and institutional challenges may arise in the effective implementation of the BNSS across India's criminal justice system?

## LITERATURE REVIEW

Indusekhar and Bajpai (2024)<sup>6</sup> critically analyze the drafting of the BNS and BNSS, noting that while these reforms ambitiously replace the IPC and CrPC, they still retain aspects of colonial-era legal logic. They highlight ambiguities in language and structure that may complicate judicial interpretation. The authors argue that successful implementation depends on clear statutory guidance, effective execution, and active judicial oversight. Key challenges include institutional resistance from law enforcement and courts, inadequate training for legal professionals, and limited access to justice in rural and marginalized areas. Technological integration faces hurdles such as poor infrastructure and low digital literacy. Cultural factors may also hinder the adoption of victim-centered justice, and constitutional concerns arise regarding the balance between security measures and fundamental rights. Addressing these issues through training, awareness, and oversight is essential to ensure the reforms achieve meaningful improvements in the criminal justice system.

Chandrasekharan Pillai (2018)<sup>7</sup> book offers a detailed study of the CrPC, exploring its historical roots, procedural framework, and judicial interpretations. The author examines key stages such as investigation, arrest, bail, and trial, while highlighting persistent problems like prolonged delays, overburdened courts, and excessive undertrial detention. These challenges demonstrate why India's criminal procedural framework needed modernization. Pillai's analysis is instrumental for understanding the motivations behind the enactment of the BNSS, which aims to address these inefficiencies through digital integration, structured timelines, and enhanced procedural safeguards.

Ratanlal & Dhirajlal (2020)<sup>8</sup> provide an integrated perspective on substantive and procedural criminal law in India, emphasizing the interaction between offences and procedural safeguards. Their book highlights practical difficulties in enforcing law under the CrPC, such as judicial delays, procedural complexity, and administrative bottlenecks, supported by relevant case law. This work is particularly useful for comparing the CrPC with the BNSS, as the latter introduces streamlined processes, digital documentation, and virtual hearings designed to overcome the procedural shortcomings identified in their study.

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<sup>6</sup> Indusekhar, A., & Bajpai, [Initials]. (2024). Revisiting criminal law bills: Critical analysis of Bharatiya Nyaya Sanhita and Bharatiya Nagarik Suraksha Sanhita. *Statute Law Review*, 45(3)

<sup>7</sup> Pillai, K. N. C. (2018). *Criminal procedure in India*. LexisNexis.

<sup>8</sup> Ratanlal, D., & Dhirajlal, M. (2020). *The Indian penal and criminal procedure laws* (26th ed.). Wadhwa & Company.

Choudhary (2019)<sup>9</sup> focuses on contemporary challenges in the criminal justice system, including cybercrime, technological evidence, and procedural inefficiencies. The book emphasizes the need for reforms that incorporate modern investigative tools, electronic evidence, and digital communication into the legal framework. These insights directly relate to the BNSS, which introduces e-FIRs, digital case management, and virtual proceedings to modernize criminal procedure while ensuring the protection of rights and faster resolution of cases.

Verma (2017)<sup>10</sup> book examines the principles and practice of evidence law under the Indian Evidence Act, highlighting the challenges of handling new forms of evidence, especially electronic and digital records. The work emphasizes the importance of procedural clarity in the collection and admissibility of evidence to maintain fairness and reliability. This perspective is essential for understanding the rationale behind the Bharatiya Sakshya Adhiniyam and its connection to the BNSS, which seeks to integrate technological evidence into criminal procedures effectively.

Jaiswal (2021)<sup>11</sup> examines the need for comprehensive procedural reform, discussing systemic issues such as trial delays, overcrowded prisons, and limited victim involvement. The book also explores international practices and technological solutions to enhance the efficiency and fairness of criminal justice. His work supports the objectives of the BNSS, which introduces timelines for investigations, digital case processing, and provisions that improve victim participation while balancing the rights of the accused. Jaiswal stresses that successful reform depends on institutional capacity and proper implementation, concerns central to assessing the BNSS in practice.

Indusekhar and Bajpai (2024)<sup>12</sup> provide a critical assessment of the drafting and structure of the Bharatiya Nyaya Sanhita (BNS) and BNSS. They acknowledge the historic significance of these reforms in replacing the IPC and CrPC, but they also note that remnants of colonial-era legal logic persist in the new codes. The authors identify ambiguities in statutory language and organizational structure that could complicate judicial interpretation and lead to inconsistencies in application. They argue that while the reforms are designed to modernize criminal law and improve justice delivery, their success depends on clear statutory guidance,

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<sup>9</sup> Choudhary, K. N. (2019). *Modern criminal law and procedure*. Eastern Book Company.

<sup>10</sup> Verma, S. K. (2017). *Law of evidence in India*. Universal Law Publishing.

<sup>11</sup> Jaiswal, P. S. (2021). *Reforming criminal procedure in India*. Central Law Publications.

<sup>12</sup> Indusekhar, R., & Bajpai, A. (2024). "Critical Analysis of the Bharatiya Nyaya Sanhita and Bharatiya Nagarik Suraksha Sanhita." *Indian Journal of Legal Studies*, 12(1), 45–62.

effective execution, and vigilant judicial oversight. The article also highlights practical challenges, including institutional resistance from law enforcement and judiciary, inadequate training, technological limitations, and difficulties in extending reforms to rural and marginalized regions. Moreover, the authors point to cultural and constitutional considerations, such as the integration of victim-centered justice and the balance between national security measures and fundamental rights, which will require careful monitoring to ensure the reforms achieve their intended outcomes.

Singh's (2023)<sup>13</sup> article emphasizes the BNSS as a milestone in modernizing criminal procedure in India, particularly through the adoption of technological tools such as electronic filing of complaints (e-FIRs), digital case management, and virtual court proceedings. The study highlights how these innovations aim to reduce delays, improve efficiency, and enhance transparency in criminal trials. Singh observes that the BNSS provides structured procedural timelines and clearer investigative processes compared to the CrPC, which had long been criticized for inefficiency. However, the article also stresses that the benefits of technological modernization depend heavily on institutional readiness, including adequate infrastructure, trained personnel, and awareness among citizens. Singh concludes that while the BNSS has significant potential to transform criminal justice delivery, its success requires a coordinated approach involving law enforcement, judiciary, and public engagement.

Gupta and Sharma (2022)<sup>14</sup> focus on systemic obstacles that could hinder the practical implementation of reforms under the BNSS. The article identifies several structural and administrative challenges, including resistance from police and judiciary accustomed to the old CrPC framework, lack of training for legal professionals, and limitations in infrastructure, especially in rural and marginalized areas. The authors argue that these obstacles may prevent the BNSS from achieving its objectives of timely justice and efficient procedural conduct. Furthermore, they discuss the gap between legislative ambition and ground-level implementation, noting that reforms alone are insufficient without adequate institutional capacity and public awareness. This article underscores the importance of strategic planning, training programs, and administrative support to ensure that procedural modernization translates into real improvements in criminal justice delivery.

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<sup>13</sup> Singh, P (2023). "Modernizing Criminal Procedure: Lessons from the BNSS." *Journal of Indian Law and Society*, 14(2), 89–104.

<sup>14</sup> Gupta, R., & Sharma, A. (2022). "Challenges in Implementation of Criminal Law Reforms in India." *Indian Journal of Criminology and Justice*, 8(3), 33–50.

Verma's (2021)<sup>15</sup> article examines the challenges posed by emerging forms of evidence, particularly electronic and digital records, and how these challenges necessitate reforms in criminal procedural law. The study emphasizes the importance of clarity in the collection, preservation, and admissibility of evidence to maintain fairness and reliability in trials. Verma links these considerations to the Bharatiya Sakshya Adhiniyam and the BNSS, highlighting that both aim to integrate technological evidence into criminal procedures effectively. The article stresses that proper statutory guidance and judicial oversight are crucial to ensure that digital evidence is used appropriately, without compromising due process or rights of the accused. This analysis is valuable for understanding the evidentiary reforms accompanying the BNSS and their role in modernizing criminal trials in India.

Rao (2020)<sup>16</sup> investigates the BNSS and related reforms from the perspective of victim-centered justice. The article highlights how these reforms aim to enhance the participation, protection, and rights of victims during criminal proceedings—a shift from traditional State-centric approaches. Rao points out the cultural and societal challenges to adopting such measures, particularly in conservative regions where traditional views on gender roles and justice prevail. The study also emphasizes the need for judicial sensitization, awareness campaigns, and procedural safeguards to ensure that victim-centric measures are meaningful in practice. By examining these reforms through the lens of victim participation, Rao provides a critical perspective on the social implications of procedural modernization under the BNSS.

Kaur and Patel (2023)<sup>17</sup> analyze early judicial interpretations of the BNSS, focusing on potential ambiguities in procedural provisions and their impact on trial conduct. The article emphasizes the role of judicial oversight in clarifying the new legal framework, resolving conflicts between security-related provisions and civil liberties, and ensuring the protection of fundamental rights. The authors highlight how the judiciary will be central to operationalizing the BNSS, balancing efficiency and fairness, and mitigating uncertainties arising from the transition from the CrPC. Their study underscores that legislative reform alone is insufficient and that courts play a vital role in shaping how the BNSS functions in

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<sup>15</sup> Verma, S. K. (2021). "Evolving Evidentiary Standards in the Digital Era." *Journal of Evidence Law*, 10(1), 55–71.

<sup>16</sup> Rao, V. (2020). "Victim-Centric Justice in Indian Criminal Procedure." *Indian Journal of Criminal Justice Reform*, 6(2), 101–118.

<sup>17</sup> Kaur, M., & Patel, S. (2023). "Judicial Perspectives on the BNSS: Early Observations." *Indian Law Review*, 15(1), 73–90.

practice, particularly in complex or sensitive cases.

### **HYPOTHESIS**

The transition from the CrPC to the BNSS is hypothesized to enhance procedural efficiency, reduce delays, and improve technological integration within India's criminal justice system. However, it is further hypothesized that the effectiveness of the BNSS will depend significantly on institutional capacity, proper implementation, and the safeguarding of constitutional rights.

### **SIGNIFICANCE OF THE STUDY**

The transition from the CrPC to the BNSS holds considerable significance for both legal scholarship and practical criminal justice administration. By replacing a decades-old procedural framework, this study provides insights into how legislative reform can modernize criminal procedure, integrate technological advancements, and address long-standing systemic inefficiencies. Understanding these reforms is essential for legal practitioners, policymakers, and academics seeking to evaluate the potential of the BNSS to deliver timely, transparent, and citizen-focused justice.

From a practical perspective, the study highlights the implications of procedural modernization for law enforcement, judiciary, and the public. The BNSS introduces provisions for digital evidence, electronic summons, and virtual proceedings, which represent a shift toward more accessible and efficient justice delivery. Analyzing the significance of these changes helps identify both the benefits and challenges of implementation, ensuring that stakeholders—from police officers to judges—can adapt effectively to the new system. This evaluation also informs strategies for reducing case backlogs, protecting individual rights, and enhancing procedural accountability.

Finally, the study is significant in the context of broader legal reform and constitutional alignment. By examining the BNSS, researchers can assess how well the new law balances efficiency with the protection of fundamental rights, including the right to fair trial and personal liberty. The study also contributes to ongoing debates about decolonizing India's criminal justice framework and aligning it with contemporary social, technological, and ethical standards. Overall, the research underscores the potential of the BNSS to reshape criminal procedure in India and serves as a foundation for future policy development, academic inquiry, and institutional capacity building..

## RESEARCH METHODOLOGY

The research methodology adopted for studying the transition from the CrPC to the BNSS is primarily doctrinal in nature. This approach focuses on the analysis of existing legal texts, statutory provisions, judicial interpretations, and scholarly commentary to understand the framework, objectives, and implications of the new law. By relying on primary sources such as the BNSS statute itself, along with relevant provisions of the CrPC and supporting case law, the research aims to systematically examine the legislative changes and their intended impact on criminal procedure.

A doctrinal methodology allows for a detailed comparative analysis between the CrPC and the BNSS. This involves identifying procedural modifications, new rights and obligations, technological integration, and timelines introduced by the BNSS. Secondary sources, including law commission reports, journal articles, commentaries, and government publications, supplement this analysis by providing insights into the rationale for reform and critiques of the earlier framework. Such a method ensures a thorough understanding of the legal principles, structural changes, and policy objectives underlying the transition.

Furthermore, the doctrinal approach provides a strong foundation for evaluating the implications of the BNSS on constitutional rights, judicial efficiency, and victim participation. By analyzing the statutory language, legislative intent, and interpretative trends, the research can assess the potential strengths, challenges, and limitations of the new procedural framework. This methodology is particularly suitable for legal research where the primary objective is to interpret, compare, and critically assess statutory reforms within the broader context of India's criminal justice system.

## **CHAPTER PLAN**

### **Chapter 1: Introduction**

This chapter sets the stage for the research by providing the background and context for the study, highlighting the need to transition from CrPC to BNSS. It outlines the problem statement, research objectives, research questions, and hypotheses, literature review emphasizing the significance of analyzing procedural reforms. The chapter also describes the doctrinal research methodology employed, defines the scope of the study, and explains how this research contributes to understanding the modernization of India's criminal justice system.

### **Chapter 2: Historical Evolution of Criminal Procedure in India**

This chapter examines the development of criminal procedural law in India, tracing its origins from colonial-era legislation to the enactment of the CrPC in 1973. It explores the socio-political and legal factors that shaped the procedural framework, including amendments over time and judicial interpretations that influenced procedural safeguards. The chapter also highlights systemic challenges under the CrPC, such as delays, inefficiencies, and outdated provisions, thereby establishing the rationale for reform and the need for a more modern and effective criminal justice system.

### **Chapter 3: Overview of the BNSS**

This chapter provides a detailed examination of the BNSS, explaining its legislative objectives, structure, and key provisions. It highlights the procedural innovations introduced, including the use of technology in investigations, digital evidence, e-FIRs, and virtual trials. The chapter also discusses provisions regarding arrest, bail, investigation, and trial, emphasizing how the BNSS aims to streamline criminal processes, enhance accountability, and protect the rights of citizens while aligning procedural law with contemporary legal and social needs.

### **Chapter 4: Comparative Analysis of CrPC and BNSS**

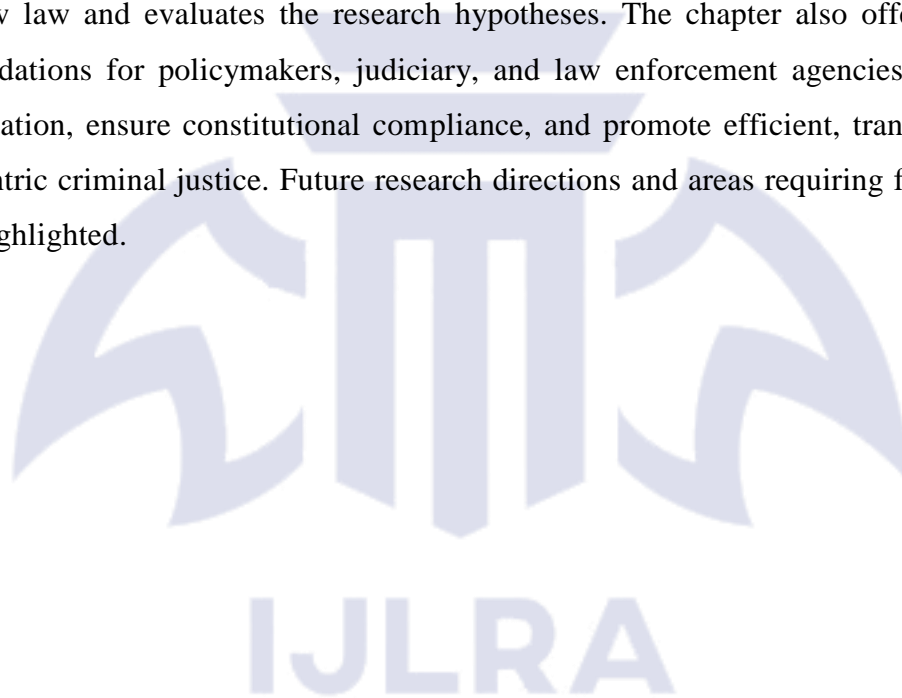
This chapter systematically compares the CrPC and BNSS, focusing on procedural changes, efficiency improvements, and technological integration. It analyzes how the BNSS addresses shortcomings of the CrPC, such as case backlogs, delays, and undertrial detention, and examines the strengthened safeguards for the rights of the accused and victims. The chapter also assesses the practical implications of these reforms, identifying areas of continuity, innovation, and potential challenges in adopting the new procedural framework across India.

### **Chapter 5: Critical Evaluation, Challenges, and Judicial Approach**

This chapter critically evaluates the effectiveness of the BNSS in practice, discussing both its strengths and limitations. It examines challenges related to implementation, including institutional capacity, infrastructure, training of law enforcement and judiciary, and public awareness. The chapter also explores the judicial approach to the BNSS, analyzing early interpretations, potential conflicts with constitutional rights, and how courts may shape the practical functioning of the new procedural system, ensuring both efficiency and fairness.

### **Chapter 6: Conclusion and suggestions**

The final chapter summarizes the key findings of the study, evaluating whether the BNSS meets its objectives of modernizing criminal procedure and addressing systemic inefficiencies. It provides conclusions regarding the effectiveness, strengths, and limitations of the new law and evaluates the research hypotheses. The chapter also offers practical recommendations for policymakers, judiciary, and law enforcement agencies to enhance implementation, ensure constitutional compliance, and promote efficient, transparent, and citizen-centric criminal justice. Future research directions and areas requiring further study are also highlighted.



## CHAPTER 2

### HISTORICAL EVOLUTION OF CRIMINAL PROCEDURE IN INDIA

The criminal procedural framework of any nation reflects its legal history, social values, administrative priorities, and constitutional commitments. In India, the evolution of criminal procedure has been shaped by a progression from localized customary practices to codified colonial codes, followed by post-independence reforms informed by constitutional ideals and judicial interpretation. The historical development of criminal procedure in India is foundational to understanding contemporary reforms, particularly the transition from the CrPC to the BNSS. This chapter explores this evolution, tracing procedural mechanisms from pre-colonial systems, through British codification, to the CrPC's development, its judicial reinterpretation, and the challenges that laid the groundwork for modern reforms. Understanding this historical trajectory is essential for assessing both the strengths and limitations of India's criminal justice framework and the rationale for its modernization.

#### HISTORICAL PERSPECTIVE

##### Criminal Procedure in Pre-Colonial India

###### Customary and Local Justice Systems

Prior to the advent of British rule, India did not operate under a unified criminal procedural system. The Indian subcontinent was home to diverse polities with varied systems of dispute resolution deeply rooted in local customs, societal norms, community practices, and informal adjudicatory bodies. At the village level, councils composed of elders and community leaders—often referred to as panchayats—played a central role in resolving conflicts, imposing community sanctions, and maintaining social harmony. These local systems emphasized restorative measures, consensus building, and reconciliation over formal punitive processes.<sup>18</sup>

Unlike modern criminal procedure, which delineates strict stages of investigation, trial, and adjudication, pre-colonial mechanisms were flexible, context-responsive, and deeply embedded in social relationships. Punishment was often communal and aimed at restoring collective harmony rather than isolating the offender through incarceration. The concept of state-driven prosecution in the modern sense was largely absent; disputes were dealt with through social mechanisms that stressed harmony and restitution.

###### Influence of Religious and Customary Laws

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<sup>18</sup> R V Kelkar, *Criminal Procedure*, (Eastern Book Co., 2008.)

Religious traditions and customary norms also exerted significant influence on criminal adjudication. Hindu Dharmashastra texts, such as the Manusmriti and Yajnavalkya Smriti, contained prescriptions for identifying wrongful acts and appropriate remedial measures, including fines, restitution, and symbolic penalties. Similarly, Islamic jurisprudence, under systems of Sharia law, provided procedures for evidence, witness testimony, and punishment that guided judicial conduct in Muslim-ruled regions.<sup>19</sup>

However, these religious frameworks were not uniformly applied across regions or communities, nor were they codified in a manner resembling modern statutory codes. Procedural norms varied widely by locality, caste, and ruler, resulting in inconsistent practices with little regard for uniform standards. Evidence laws were often informal and based on reputation or community standing. While these systems reflected deep societal values, their diversity and lack of standard procedural safeguards eventually became untenable for a centralized, modern state seeking uniformity in justice administration.

### **Colonial Era and the Foundations of Modern Criminal Procedure**

#### **British Arrival and Legal Consolidation**

The arrival and subsequent political dominance of the British East India Company in the 18th and 19th centuries fundamentally transformed India's legal landscape. As British control expanded, colonial administrators encountered the challenge of governing an expansive, pluralistic population with diverse legal practices. The British prioritized legal uniformity and administrative control as essential tools for sustaining governance and establishing colonial authority.

To achieve this, they systematically replaced localized systems with codified laws rooted in English legal principles. While the British retained certain substantive components of indigenous law (e.g., personal laws governing marriage and inheritance), procedural law underwent wholesale reform to reflect the priorities of colonial control—namely, efficient detection, prosecution, and punishment of crimes against colonial governance and public order.

#### **The Criminal Procedure Code of 1861**

The Criminal Procedure Code of 1861 was a watershed in the formalization of criminal procedure in India. Drafted under colonial administration, the Code sought to consolidate procedural practices and provide a unified system for policing, investigation, trials, evidence

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<sup>19</sup> Chakraborti, H. (2016): *Criminal Justice in Ancient India*. (South Asia Books, New Delhi)

management, and sentencing. Key features included the following:

#### Hierarchy of Courts

The 1861 Code established a clear judicial hierarchy with multiple tiers of courts, including district magistrates, sessions courts, and high courts. This hierarchy ensured that appellate review and oversight were centralized, allowing the colonial government to control legal outcomes efficiently. District magistrates acted as both administrators and adjudicators, which blurred the line between executive and judicial functions, giving them considerable authority over the prosecution of crimes. This structure facilitated a uniform application of law across provinces but often prioritized bureaucratic efficiency over procedural fairness for the accused.

#### Powers of Magistrates and Police

The Code conferred extensive powers on magistrates and police officers to investigate, arrest, and detain suspects. Magistrates could authorize searches, issue warrants, and take preventive measures, while the police had wide discretion to investigate crimes and collect evidence. While these powers allowed for swift action, they also created opportunities for misuse, particularly because there were no procedural safeguards or oversight mechanisms protecting the rights of the accused. For instance, police could detain individuals for extended periods without formal charges, which was justified as necessary for maintaining law and order.<sup>20</sup>

#### Standardized Process

The 1861 Code sought to standardize procedural steps, including filing complaints, recording statements, summoning witnesses, and conducting trials. By codifying these steps, the British aimed to replace the inconsistent, regionally diverse practices of pre-colonial justice systems. While this brought uniformity, the rigid processes were often complex and bureaucratic, creating delays and making it difficult for ordinary citizens to navigate the legal system. Moreover, the standardized process was largely designed to enforce state control rather than protect citizens' rights.

#### State-Centered Enforcement

One of the most defining features of the 1861 Code was its prioritization of state authority over individual rights. Criminal procedure was designed to serve the administration of the colonial government rather than the protection of personal liberty or the interests of victims. The emphasis was on maintaining public order and protecting the state from dissent, rather

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<sup>20</sup> Paul, A. (2025). Comparative analysis of old criminal laws with new criminal laws [Thesis]. ResearchGate.

than ensuring fairness, transparency, or equitable treatment. This approach embedded a state-centric philosophy that influenced procedural law well into the post-independence period.

#### Limitations of the Colonial Framework

Despite achieving uniformity, the colonial criminal procedure framework exhibited several limitations that later reformers would critique:

**Arbitrary Police Powers:** Broad discretionary powers allowed for arbitrary arrest and detention with minimal checks and balances.

**Lack of Rights Protections:** There were no explicit procedural protections to safeguard individual liberty, fair trial rights, or standards for evidence.

**Administrative Focus:** The system prioritized state control, often at the expense of citizen participation or victim rights.

**Inefficient Processes:** With increasing crime rates and administrative workloads, the procedural model struggled to balance efficiency with fairness.

These limitations were not immediately addressed upon independence, as post-colonial India inherited the colonial procedural legacy and embarked on its own path of reform based on constitutional values.<sup>21</sup>

### **Post-Independence Reforms and the CrPC of 1973**

#### Objectives of Reform

After gaining independence in 1947, India adopted a democratic Constitution that enshrined fundamental rights, including personal liberty, equality before the law, and protection against arbitrary detention. The post-independence legal fraternity recognized that colonial procedural codes were inconsistent with the spirit and letter of the Constitution. As a result, the government undertook comprehensive reform to develop a criminal procedure framework that would<sup>22</sup>:

Align with constitutional guarantees;

Ensure fairness and uniform application of criminal justice;

Incorporate procedural safeguards for the accused;

Promote efficiency and reduce delays.

These goals culminated in the enactment of the new CrPC, which replaced the colonial legacy code and provided a modern procedural structure.

### **KEY FEATURES OF THE CRPC 1973**

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<sup>21</sup> Menon, N. R. Madhava. (2017). Criminal Justice India Series (Vols. 1-2). Allied Publishers.

<sup>22</sup> Sarkar, S. C. (2014). The Law of Criminal Procedure (10th ed.). Wadhwa & Co.

The CrPC of 1973 introduced several significant reforms, including—but not limited to—the following:

**Regulation of Arrest and Detention:** Provision for arrest with and without warrant, emphasizing lawful authority and procedural steps. The Code clarified that arrests must respect the rights of the accused, including the right to be informed of grounds of arrest.

**Investigation Procedures:** The CrPC codified the process of investigation, assigning clear duties to police officers, including the requirement to file First Information Reports (FIRs) for cognizable offenses.

**Bail and Personal Liberty:** The Code recognized the importance of bail as a mechanism for balancing societal interests with personal liberty, providing criteria for bail and judicial discretion.

**Trials and Evidence:** While the CrPC did not replace the Indian Evidence Act, it structured trial stages, including framing of charges, examination of witnesses, and delivery of judgments.

**Safeguards for Undertrials:** Provisions aimed to prevent undue delay in securing trials and reduce prolonged pre-trial detention.

The CrPC represented a far more detailed and rights-oriented procedural code compared to its predecessor. It integrated constitutional values into the criminal justice process while retaining the colonial framework's basic structure.<sup>23</sup>

#### Amendments and Evolving Provisions

Over its implementation span, the CrPC was amended numerous times to address emerging challenges and social concerns. Notable amendments included:

**Inclusion of Special Provisions for dealing with terrorism and national security** (e.g., POTA and UAPA).

**Response to Crimes Against Women and Children**, especially after incidents that triggered public outrage (e.g., the Criminal Law (Amendment) Act, 2013).

**Addressing Cybercrime:** With the rise of technology-related offences, courts increasingly interpreted procedural provisions to accommodate electronic evidence and digital records.

Despite these adaptations, the CrPC still faced serious criticism for procedural delays, inefficient investigation mechanisms, and an inability to respond comprehensively to technological developments.<sup>24</sup>

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<sup>23</sup> Bharti, D. (2014). *The Constitution and criminal justice administration*. APH Publishing.

<sup>24</sup> Pradeep, T. (2025). *Comparative analysis of the Criminal Procedure Code, 1973, and the BNSS, 2023*. IJSAT

While the legislature shaped the procedural code, Indian courts played a pivotal role in interpreting and applying it in ways that reinforced constitutional guarantees. Several landmark judgments illustrate the judiciary's influence:

The Supreme Court in *Maneka Gandhi v. Union of India*<sup>25</sup> significantly broadened the interpretation of Article 21 of the Constitution, which guarantees that no person shall be deprived of life or personal liberty except through a lawful procedure. Before this case, the courts generally held that any procedure enacted by law, even if arbitrary, was sufficient to satisfy Article 21. In this judgment, the Court rejected such a narrow view, holding that the procedure must be fair, reasonable, and just. The decision established a principle that laws affecting personal liberty must comply with constitutional standards of reasonableness and fairness. Moreover, the Court emphasized the interconnection between Articles 14, 19, and 21, forming a “golden triangle” to ensure that any deprivation of liberty is neither arbitrary nor discriminatory. This ruling marked a transformative moment in Indian constitutional law by strengthening procedural safeguards and curbing potential misuse of state power.

In *D.K. Basu v. State of West Bengal*<sup>26</sup>, the Supreme Court addressed the problem of custodial abuse and the violation of fundamental rights during arrest and detention. The Court prescribed detailed guidelines for police conduct to prevent torture and ensure transparency. Among these were requirements that arresting officers must wear identification, prepare a written memo of arrest signed by a witness, inform a family member or friend of the person arrested, conduct periodic medical examinations, and ensure that the detainee is produced before a magistrate without delay. This judgment underscored that custodial violence is a severe violation of human dignity and reinforced that procedural safeguards must be rigorously implemented to uphold constitutional protections.

The *Joginder Kumar v. State of Uttar Pradesh*<sup>27</sup> case clarified the limits on police authority regarding arrests. The Supreme Court held that the power to arrest cannot be exercised arbitrarily; there must be credible reasons and a clear necessity for detention. The Court emphasized that arrests should not be routine or based on convenience but justified by evidence and the requirement to prevent obstruction of justice. Additionally, it reinforced procedural safeguards, including informing the arrested person of their rights, notifying a relative or friend, and producing the detainee before a magistrate within 24 hours. This

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<sup>25</sup> (1978) 1 SCC 248.

<sup>26</sup> (1997) 1 SCC 416

<sup>27</sup> (1994) 4 SCC 260

judgment was a crucial step in curbing arbitrary detention and reinforcing accountability in police practices, thereby strengthening the protection of personal liberty under the Constitution.

Judicial interpretation often served as a corrective to procedural loopholes. Courts underscored the importance of procedural fairness and due process, sometimes overruling administrative discretion to protect individual rights. However, judicial intervention alone could not eliminate systemic issues such as prolonged trials, overburdened courts, and police inefficiency. These structural problems persisted, highlighting the need for legislative modernization to supplement judicial remedies.

### **Challenges and Limitations of the CrPC**

Despite its landmark status, the CrPC faced persistent challenges that limited its effectiveness:

#### **Delays and Case Backlogs**

One of the most critical criticisms of the CrPC has been the persistence of delays in investigation and trial. High caseloads, infrastructural constraints, and procedural complexities resulted in a large number of pending cases, including undertrials who spent years awaiting hearing. These delays undermined the constitutional promise of a “speedy trial” and contributed to overcrowded prisons.<sup>28</sup>

#### **Technological Gaps**

Drafted in an era preceding the digital revolution, the CrPC lacked provisions for electronic filing, digital evidence management, virtual hearings, and modern communication tools. As crime increasingly involved digital records, financial transactions, and cyber components, the procedural code struggled to keep pace, often requiring judicial interpretation or statutory supplementation to accommodate new forms of evidence.

#### **Institutional and Administrative Bottlenecks**

The effective application of procedural laws depends on institutional infrastructure. In India, chronic shortages of trained police personnel, judicial vacancies, limited forensic capacity, and inadequate courtroom facilities impeded effective implementation. Rural and remote areas, in particular, suffered from resource constraints that limited access to justice.

### **Transition Toward Modernization**

#### **Need for a New Code**

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<sup>28</sup> Chudasama, A. N. (2025). Navigating legal uncertainty: Examining reporting mechanisms in India’s evolving criminal procedural frameworks. *International Journal of Law, Society and Social Science*, 3(1), 588–600.

Over decades, legal scholars, policymakers, and practitioners increasingly recognized that piecemeal amendments were insufficient to address systemic inefficiencies. The CrPC's limitations—especially in technological adaptability, procedural delays, and rights protection—prompted the call for comprehensive reform.

The BNSS emerged as part of this reform agenda with the following core objectives:

**Integration of Technology:** Facilitation of electronic filing, digital records, virtual hearings, and e-summons.

**Efficient Procedural Timelines:** Introduction of structured timelines for investigation, trial stages, and judicial disposal to reduce delays and backlogs.

**Victim-Centric Measures:** Enhanced mechanisms for victim participation, information sharing, and procedural protections.

**Constitutional Alignment:** Greater emphasis on procedural fairness, due process, and rights protection in line with contemporary judicial interpretation of fundamental rights.

The BNSS is thus positioned as a response to both the limitations of the CrPC and the demands of a modern justice system that must balance efficiency, fairness, and rights.

## **KEY COMPONENTS AND STRUCTURE OF THE CRIMINAL JUSTICE SYSTEM IN INDIA**

### **1. Legislative Framework**

The foundation of the criminal justice system in India lies in its legislative framework. Criminal law is primarily governed by substantive law under the Bharatiya Nyaya Sanhita, procedural law under the BNSS, and evidentiary rules under the Bharatiya Sakshya Adhiniyam. Parliament and State Legislatures define offences, prescribe punishments, and lay down procedures for investigation and trial. This statutory framework determines the scope and functioning of the entire system.

### **2. Police and Investigative Agencies**

The police constitute the primary investigative arm of the criminal justice system. They are responsible for maintaining law and order, registering information relating to offences, conducting investigations, collecting evidence, and arresting suspects where necessary. In cases involving specialized or serious crimes, agencies such as the Central Bureau of Investigation and the National Investigation Agency undertake investigations. Effective investigation forms the backbone of a successful prosecution.<sup>29</sup>

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<sup>29</sup> Reddy, M. D. (2025). Reforms in Indian Criminal Justice System. *The Indian Journal for Research in Law and Management*, 2(9)

### 3. Prosecution Mechanism

The prosecution represents the State in criminal proceedings. Public Prosecutors present evidence before the court, examine witnesses, and argue the case against the accused. Their duty is not merely to secure conviction but to ensure that justice is done by fairly presenting all relevant facts. The prosecution acts as a bridge between the investigating agency and the judiciary.

### 4. Judicial Structure

The judiciary serves as the adjudicatory authority in criminal matters. It interprets laws, evaluates evidence, and determines the guilt or innocence of the accused. The structure is hierarchical, beginning with Magistrate Courts and Sessions Courts at the district level, followed by High Courts at the state level, and culminating in the Supreme Court of India. Judicial independence ensures fairness, impartiality, and adherence to constitutional principles.

### 5. Defense and Legal Aid

The defense plays a crucial role in safeguarding the rights of the accused. Every person accused of a crime is presumed innocent until proven guilty. Defense counsel ensures that due process is followed and that the accused receives a fair opportunity to present their case. Legal aid services provide representation to those who cannot afford private lawyers, reinforcing the principle of equal justice under law.<sup>30</sup>

### 6. Correctional Institutions

Correctional institutions, including prisons, probation services, and reformatory centers, are responsible for implementing sentences imposed by courts. Modern criminal jurisprudence emphasizes reformation and rehabilitation alongside punishment. The correctional system aims to prevent recidivism and facilitate the reintegration of offenders into society.

### 7. Forensic and Scientific Support

Forensic laboratories and medical experts support investigations and trials by analyzing physical, biological, and digital evidence. Scientific methods enhance accuracy, reduce reliance on oral testimony, and strengthen the evidentiary basis of criminal proceedings. The increasing role of technology in investigations reflects modernization within the system.

### 8. Procedural Flow and Coordination

The criminal justice system follows a structured process beginning with the commission of

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<sup>30</sup> Ajit, D. (2023). Criminal Justice System in India: Analytical Study. RESEARCH REVIEW International Journal of Multidisciplinary, 8(08).

an offence, followed by registration of information, investigation, filing of charges, trial, judgment, sentencing, and appeal where applicable. Each component—legislature, police, prosecution, judiciary, defense, correctional institutions, and forensic agencies—functions in coordination to ensure justice is delivered effectively and fairly.<sup>31</sup>

### **OBJECTIVES OF CRIMINAL JUSTICE SYSTEM IN INDIA**

The objectives of the Criminal Justice System in India are deeply rooted in constitutional morality, rule of law, and the democratic commitment to justice. The system operates through three primary pillars—substantive criminal law under the Bharatiya Nyaya Sanhita, procedural law under the BNSS, and evidentiary rules under the Bharatiya Sakshya Adhiniyam. Together, these laws aim to balance societal interests with individual liberties while ensuring justice is delivered fairly and effectively.

One of the foremost objectives is the maintenance of law and public order. A stable society requires a mechanism to regulate conduct and address violations of legal norms. By defining offences and prescribing procedures for investigation and trial, the criminal justice system prevents chaos and ensures peaceful coexistence. Law enforcement agencies play a central role in maintaining this order through lawful investigation and crime control measures.

Closely linked to this is the prevention of crime. The system functions not only after a crime has occurred but also as a deterrent against potential offenders. The existence of clear penal provisions and structured enforcement mechanisms creates a psychological deterrent effect. Preventive measures such as surveillance, community policing, and preventive detention (subject to constitutional safeguards) aim to reduce criminal activity before it disrupts social harmony.

Another essential objective is the punishment of offenders. When a crime is committed, the system ensures accountability by prosecuting and penalizing the guilty. Punishment serves multiple purposes—retribution (moral response to wrongdoing), deterrence (discouraging future offences), incapacitation (protecting society by restricting offenders), and reformation (correcting behavior). The proportionality of punishment is a guiding principle in ensuring fairness.<sup>32</sup>

At the same time, the system is committed to the protection of fundamental rights. Under Article 21 of the Constitution, no person can be deprived of life or personal liberty except

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<sup>31</sup> Smariti, & Dhull, K. (2023). Police and Criminal Justice System in India. *Educational Administration: Theory and Practice*, 29(1), 856–862.

<sup>32</sup> Singh, A., & Chauhan, P. S. (2024). Policing the Law: A Comprehensive Study of India's Criminal Justice System. *International Journal of Criminal, Common and Statutory Law*, 4(2), 135–139.

according to procedure established by law. This ensures that criminal procedures are just, fair, and reasonable. Safeguards such as presumption of innocence, right to legal counsel, protection against self-incrimination, and fair trial standards prevent misuse of state power. The objective of fair and impartial justice is central to criminal jurisprudence. The judiciary functions independently to ensure that justice is delivered without bias or discrimination. Equality before law, as guaranteed by Article 14 of the Constitution, ensures that every accused person receives equal treatment regardless of social, economic, or political status. Judicial oversight acts as a check on arbitrary executive action.

Modern criminal justice also emphasizes reformation and rehabilitation. Rather than focusing solely on punishment, the system increasingly recognizes the need to reform offenders so they can reintegrate into society. Correctional institutions, probation, parole, and reformatory sentencing policies aim to reduce recidivism and promote social reintegration, especially for juveniles and first-time offenders.

The protection and empowerment of victims is another evolving objective. Historically, criminal law focused primarily on the accused and the state, but contemporary reforms emphasize victim rights, compensation, and participation in proceedings. Ensuring victims are heard and supported enhances trust in the justice system and reflects restorative justice principles.

An additional objective is ensuring speedy and efficient justice. Justice delayed undermines both victims' rights and the rights of the accused. The right to a speedy trial has been recognized as part of Article 21, and procedural reforms seek to reduce pendency, streamline investigation, and promote timely adjudication. Efficiency strengthens public confidence in the system.<sup>33</sup>

Finally, the overarching objective of the Indian criminal justice system is to uphold the rule of law and constitutional governance. It ensures that no individual, including those in authority, is above the law. By holding offenders accountable and protecting individual rights, the system reinforces democratic values, promotes social justice, and sustains public trust in legal institutions.

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<sup>33</sup> Kumar, V., & Singh, Y. (2024). Investigation Procedure and Indian Criminal Justice System: A Study of Legislative Framework and Judicial Approaches. *Journal of East-West Thought*, 14(4)

## CHAPTER 3

### OVERVIEW OF THE BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS)

#### INTRODUCTION

BNSS, 2023, represents a landmark reform in India's criminal justice framework, replacing the procedural norms under the CrPC of 1973. Together with the Bharatiya Nyaya Sanhita (substantive criminal law) and the Bharatiya Sakshya Adhinyam (evidence law), the BNSS establishes a modernized procedural code that governs investigation, arrest, trial, and judicial proceedings. Comprising 39 chapters and 531 sections, it regulates processes from filing complaints to trial completion, integrating both administrative efficiency and protection of individual rights.

The need for the BNSS arose from chronic challenges under the CrPC, such as delayed justice, overburdened courts, prolonged pre-trial detention, and lack of procedural clarity for victims and accused alike. By embedding structured timelines, technological measures like e-FIRs and virtual hearings, and statutory safeguards, the BNSS intends to create a transparent, citizen-focused criminal justice system. Its procedural orientation emphasizes timely delivery of justice while balancing public safety and constitutional freedoms, ensuring that both victims and accused are treated fairly.<sup>34</sup>

#### HISTORICAL AND CONSTITUTIONAL CONTEXT

##### Evolution from CrPC to BNSS

The CrPC, with roots in the colonial-era 1898 code, primarily emphasized administrative control rather than safeguarding citizen rights. While the 1973 version attempted to incorporate modern procedural reforms, over time it revealed deficiencies in areas such as investigation timelines, arrest procedures, victim participation, and judicial oversight. The BNSS is designed to overcome these shortcomings by codifying modern procedural standards and integrating constitutional safeguards.<sup>35</sup>

Judicial developments have also informed BNSS provisions. In *Maneka Gandhi v. UOI*<sup>36</sup>, the Supreme Court expanded Article 21 protections, asserting that deprivation of liberty must follow procedures that are "just, fair, and reasonable." Similarly, in *DK Basu v. State of West*

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<sup>34</sup> Mittal, P. (2025). BNSS, 2023 & CrPC: A comparison of arrest and investigation procedure. *Journal of Research Administration*.

<sup>35</sup> Malpani, T. (2025). The new era of Indian criminal law: From colonial codes to the 2023 reforms. *International Journal of Criminal Jurisprudence*, 3(1), 17–21.

<sup>36</sup> AIR 1978 SC 597

Bengal<sup>37</sup>, detailed protocols were prescribed to prevent custodial abuse, including documentation, medical examination, and informing relatives. *Joginder Kumar v. State of UP* further emphasized that arrests cannot be arbitrary, underscoring the importance of statutory clarity and judicial oversight. BNSS codifies these principles, ensuring that procedural law aligns with constitutional protections and judicial expectations.

## **CONSTITUTIONAL FOUNDATIONS**

The BNSS is deeply rooted in constitutional guarantees. Article 21 underpins personal liberty, requiring that any deprivation must be lawful, reasonable, and just. Article 22 mandates rights at the time of arrest and detention, including the right to legal counsel and production before a magistrate within 24 hours. Article 14 guarantees equality before the law, while Article 19 protects certain freedoms that influence procedural fairness. By embedding these constitutional principles into statutory provisions, BNSS bridges the gap between law and the rights of citizens, ensuring a balance between state authority and individual freedoms.

### **Need for Reform**

Systemic inefficiencies under CrPC, such as prolonged undertrial detention, delayed trials, and outdated investigative procedures, necessitated reform. Emerging crimes—cybercrime, organized fraud, and transnational offenses—demand modernized investigative methods, including forensic and digital evidence collection. Victims faced procedural exclusion and limited access to justice. BNSS addresses these challenges by setting clear procedural timelines, digitizing criminal processes, integrating victim rights, and establishing accountability frameworks for law enforcement and judiciary.

## **OBJECTIVES OF THE BNSS**

The core objectives of the BNSS are focused on addressing the systemic issues of the existing criminal procedural framework, while incorporating advanced technologies and constitutional protections for both the accused and victims. Below are the key objectives of the BNSS<sup>38</sup>:

### **1. Streamlining Criminal Procedure**

One of the primary objectives of the BNSS is to streamline the procedural framework governing criminal justice. The BNSS establishes clear and structured timelines for the various stages of criminal proceedings, including investigation, trial, and judgment delivery.

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<sup>37</sup> AIR 1997 SC 610

<sup>38</sup> Gopinath, S & Chaurasia, M, A critical analysis of police investigation procedures in comparison with CrPC and BNSS. IJLLR (20252)

Unlike the earlier **CrPC**, which often resulted in delayed trials and prolonged investigations, the BNSs aims to ensure that cases progress in an orderly and time-bound manner. Specific provisions in the BNSs set mandatory time limits for investigations, charge framing, and trial processes, with penalties for non-compliance. This objective aims to reduce the backlog of cases in the judiciary and address the delays that have plagued the criminal justice system for decades.

## 2. Enhancing Victim-Centric Justice

The BNSs prioritizes the rights and needs of victims, marking a significant shift from the traditionally accused-focused approach under the CrPC. The code grants victims various procedural rights, such as access to information about the progress of the investigation, the ability to participate in hearings, and the right to request protective measures. Special provisions are included for vulnerable groups, including women, children, and marginalized communities. By emphasizing victim-centric justice, the BNSs aims to ensure that victims have a more active role in the judicial process and receive timely and effective redress for the crimes committed against them.<sup>39</sup>

## 3. Integration of Technology in Criminal Procedure

The BNSs aims to bring India's criminal procedural framework into the digital age. Through the introduction of **electronic FIRs (e-FIRs)**, digital evidence management, virtual hearings, and electronic summons, the BNSs seeks to enhance the speed, efficiency, and accessibility of the criminal justice system. The use of technology also ensures greater transparency and accountability, as all electronic records can be stored, tracked, and audited. Additionally, digital tools will enable the use of video conferencing and virtual courts, especially for preliminary hearings or cases involving witnesses who are geographically distant. This objective helps modernize the legal system, ensuring that it is more adaptable to the demands of a rapidly changing society.

## 4. Safeguarding Constitutional Rights

The BNSs incorporates key constitutional provisions to ensure the protection of individual rights throughout the criminal process. Constitutional protections under **Articles 14, 19, 21, and 22** of the Indian Constitution are embedded into the procedural framework of the BNSs. These articles guarantee the right to equality before the law, protection of personal liberty, and the right to a fair trial, which the BNSs upholds by mandating that all arrests, detentions,

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<sup>39</sup> Abinaya, S., & Harish, J. (2024). Decoding new criminal laws: A comparative analysis between BNSs, 2023 and CrPC, 1973. *Indian Journal of Law and Legal Research*.

and trials follow legally just and fair procedures. Additionally, the BNSS ensures that no person is arbitrarily detained and that all procedural rights, including the right to consult a legal practitioner, are respected.

### **5. Strengthening Institutional Accountability**

The BNSS aims to strengthen the accountability of law enforcement agencies, the judiciary, and other stakeholders in the criminal justice system. Through specific provisions that define the roles and responsibilities of police officers, prosecutors, judges, and other authorities, the BNSS ensures that these institutions act within the limits of the law. For instance, police officers are required to document arrests, ensure prompt medical examination of detainees, and notify a relative or legal representative of the arrested person's detention. Additionally, judicial oversight is emphasized at multiple stages of the process, including during detention, bail hearings, and the remand process. The BNSS ensures that institutions within the criminal justice system remain transparent and answerable to the public.<sup>40</sup>

### **6. Balancing Rights of the Accused and Public Safety**

Another critical objective of the BNSS is to maintain a balance between protecting the rights of the accused and ensuring public safety. The code ensures that individuals accused of crimes are not subject to arbitrary or unjust procedures while also making provisions to ensure the safety of victims and society. For example, **bail provisions** under the BNSS require courts to consider the nature of the offense, the severity of the charge, and the risk of the accused absconding or committing further crimes. These measures ensure that while the rights of the accused are safeguarded, the protection of society and the interests of victims remain a priority.

### **7. Promoting Restorative Justice**

The BNSS promotes the concept of **restorative justice**, which focuses on rehabilitating offenders, repairing harm caused to victims, and rebuilding relationships within society. This is achieved through provisions that encourage reconciliation and provide opportunities for victims to participate in restorative processes, such as victim-offender mediation, if appropriate. The focus is on repairing the harm done, rather than merely punishing the offender, and ensuring that the victim's needs are addressed through the judicial process. Restorative justice principles are particularly significant in cases involving juvenile offenders or minor offenses where rehabilitation rather than retribution may be a more appropriate

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<sup>40</sup> Gopinath, S., & Chaurasia, M. (2025). A critical analysis of police investigation procedures: Comparison of CrPC and BNSS. *Indian Journal of Law and Legal Research*.

response.<sup>41</sup>

### **8. Providing Clear Guidelines for Forensic and Digital Evidence**

The BNSS strengthens the handling and use of forensic and digital evidence in criminal investigations. With the growing reliance on technology, cybercrime, and electronic evidence in modern-day offenses, the BNSS provides clear guidelines for the collection, preservation, and presentation of digital evidence. Specific sections mandate the use of scientific techniques, forensic examination, and digital forensics to ensure that all forms of evidence are credible and admissible in court. These provisions modernize the investigative process, making it easier for authorities to handle complex crimes like cybercrimes, financial fraud, and organized crime effectively.

### **9. Fostering Public Confidence in the Legal System**

Through the implementation of these reforms, the BNSS aims to foster greater public trust in the criminal justice system. By ensuring that legal processes are faster, more transparent, and accessible, the BNSS provides the public with a sense of confidence that justice will be delivered fairly and promptly. The emphasis on procedural justice, victim rights, and institutional accountability helps build trust in the judiciary, law enforcement, and the criminal justice system as a whole.<sup>42</sup>

### **KEY LEGAL PROVISIONS**

#### **Arrest and Custody**

BNSS prescribes detailed protocols for arrest and detention. Sections 35 and 43 outline conditions for arrests, ensuring they are lawful and necessary. Section 47 requires that an arrested person be informed of the reasons for arrest and right to bail, reflecting Article 22 protections. Section 48 obliges authorities to notify a relative or friend, safeguarding against arbitrary detention. Specific conditions for restraining individuals, such as in organized crime cases, are detailed in Section 43(3), balancing public safety with personal liberty.

#### **2 Summons, Appearance, and Evidence**

Sections 63–71 regulate summons, allowing digital delivery and acknowledgment, thereby expediting processes. Section 66 permits service through electronic means to adult family members. Audio-visual recording of search, seizure, and investigative procedures enhances evidence reliability and transparency. These provisions modernize processes previously

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<sup>41</sup> Jain, A. (2025). Reforming bail law in India under Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. *Journal of Human Rights Law and Practice*, 8(2).

<sup>42</sup> Singh, S. (2025). Transforming criminal procedure: An analysis of the Bharatiya Nagarik Suraksha Sanhita, 2023. *Indian Journal of Law and Legal Research*, 7(6).

reliant on physical documents and in-person notifications.

#### Investigation and Timelines

BNSS introduces strict timelines to prevent delays. Preliminary inquiries for medium-severity offenses must conclude within 14 days. Section 193(3)(ii) requires informing victims about investigation status within 90 days. Judicial oversight ensures detention is limited to statutory periods, while Section 187 specifies conditions for extended custody in serious crimes.

#### Trials

Trials under BNSS are time-bound. Charges must generally be framed within 60 days of the first hearing, and judgments delivered within 30 days after arguments, extendable to 45 days if necessary. Virtual hearings are permitted to ensure timely proceedings, reflecting modern procedural needs while respecting Articles 21 and 22.<sup>43</sup>

#### Bail and Remand

Sections 479(1)–(2) define bail eligibility based on offense severity, pending cases, and risk factors. Detention beyond statutory limits is prohibited unless specific safeguards are observed. Victims are given opportunities to be heard in bail or remand decisions, reflecting a citizen-focused approach.

#### Victim Rights

BNSS strengthens procedural rights for victims, including updates about case progress, protection measures, and participation during hearings. Special provisions safeguard women, children, and marginalized populations.

#### Forensic and Digital Evidence

Forensic investigation is mandatory for serious crimes, with evidence recorded electronically. Digital and electronic evidence is explicitly recognized under the statute, ensuring integrity and admissibility, which addresses modern challenges like cybercrime.

### **SIGNIFICANCE**

BNSS represents a landmark reform in India's criminal justice system, replacing the colonial-era CrPC. Its significance lies primarily in modernizing the procedural framework to suit contemporary societal and technological needs. By codifying processes in a more systematic and organized manner, the BNSS seeks to make criminal justice accessible, efficient, and transparent for both citizens and law enforcement agencies.

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<sup>43</sup> Kowshikaa, A. S. (2024). India's criminal justice reform: An in-depth look at the new laws. *Journal of Law and Legal Research Development*.

One of the most notable aspects of the BNSS is its emphasis on speedy justice. Chronic delays in trials and investigations have long been a challenge in India, leading to backlogs and erosion of public confidence. The BNSS addresses this by prescribing strict timelines for various stages of criminal proceedings, including investigation, charge-sheet filing, trial, and judgment delivery. This procedural clarity ensures that cases are handled more efficiently while safeguarding due process.<sup>44</sup>

Another critical feature is its victim-centric approach. Unlike the previous framework, which focused predominantly on the accused and the State, the BNSS strengthens victims' rights and participation. Provisions require police to keep victims informed, provide timely documentation, and ensure access to compensation and support services. By prioritizing the role of victims, the BNSS seeks to restore trust in the justice system and make it more responsive to citizen needs.

The BNSS also integrates technology into criminal procedure, reflecting the growing importance of digital tools in law enforcement. Electronic FIRs, digital summons, audio-video recordings of statements, and other digital records reduce paperwork, enhance transparency, and minimize manipulation of evidence. This modernization ensures that both investigative and judicial processes are better equipped to handle contemporary crimes, including cybercrime and organized offences.<sup>45</sup>

Balancing state authority and individual rights is another significant element of the BNSS. While it empowers law enforcement agencies with clarified powers of arrest, detention, and investigation, it also establishes safeguards to protect personal liberty and prevent abuse. Judicial oversight, strict procedural requirements, and defined limitations ensure that enforcement does not come at the cost of fundamental rights. This balance strengthens the rule of law while maintaining social order.

Finally, the BNSS has broader implications for systemic reform and institutional efficiency. By codifying processes, clarifying police powers, formalizing evidence collection, and including provisions for cross-border and transnational crimes, the Sanhita establishes a holistic framework for modern criminal justice. It not only improves the effectiveness of policing and prosecution but also lays the foundation for consistent judicial interpretation, better resource utilization, and enhanced public confidence in legal institutions.

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<sup>44</sup> Jain, A. (2025). Reforming bail law in India under Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. *Journal of Human Rights Law and Practice*, 8(2)

<sup>45</sup> <https://doi.org/10.37591/jhrp.v8i2.1903>



## CHAPTER 4

### COMPARATIVE ANALYSIS OF CRPC AND BNSS

The Criminal Procedure Code (CrPC) and the BNSS constitute two foundational legal frameworks within India's criminal justice system. The CrPC, which had been in force since 1973, was designed to regulate the procedures for investigation, trial, and punishment of criminal offenses. Its primary objective was to ensure a structured, fair, and transparent system while protecting the rights of the accused. Over time, however, several limitations of the CrPC became apparent, including delayed trials, procedural ambiguities, and minimal incorporation of technological tools. These issues highlighted the need for a comprehensive reform in the administration of criminal justice. The BNSS, which came into effect on July 1, 2024, represents this reform by emphasizing preventive action, citizen-centric justice, and digital integration. While the CrPC primarily functioned reactively—intervening after the commission of a crime—the BNSS adopts a proactive stance, aiming to prevent threats to public safety and national security before they materialize. Understanding the differences between these two codes is essential for appreciating the evolution of India's criminal justice system.<sup>46</sup>

The CrPC emerged in post-independence India as a continuation and modernization of colonial-era criminal procedure laws. Its primary design centered around a police-led investigative mechanism and traditional court-centered trials. Over decades, challenges such as prolonged undertrial detention, delayed charge-sheet submissions, and limited victim participation underscored the need for reform. Furthermore, the CrPC was largely paper-based and lacked provisions for integrating modern technology into the criminal justice process. The BNSS was introduced to address these gaps by modernizing the language of the law, restructuring procedural chapters, and incorporating technology-driven mechanisms such as digital filing of complaints, electronic summons, and time-bound investigation and trial processes. By formalizing preventive measures and emphasizing citizen-centric justice, the BNSS represents a paradigm shift in the philosophy and operation of criminal procedure in India.<sup>47</sup>

#### Objectives and Scope

The CrPC was designed to ensure the systematic administration of criminal justice by

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<sup>46</sup> Proceedings on Hold [https://cja.gov.in/attachment/638869715344663595\\_.pdf](https://cja.gov.in/attachment/638869715344663595_.pdf)

<sup>47</sup> CrPC and BNSS

<https://static.pib.gov.in/WriteReadData/specificdocs/documents/2024/may/doc2024522337501.pdf>

regulating procedures for the investigation and prosecution of offenses. Its objectives included protecting the rights of the accused, establishing clear processes for arrest, bail, and trial, and empowering courts to oversee investigations impartially. The code applied universally to all criminal offenses in India, encompassing both minor and serious crimes. In contrast, the BNSS was conceived with a dual focus on citizen safety and procedural efficiency. It aims to prevent crimes or security threats before they occur, while also ensuring timely investigation and trial when offenses are reported. The BNSS places greater emphasis on the participation of victims and citizens in the judicial process, integrating mechanisms for digital communication and monitoring of cases. While the CrPC provided a broad procedural framework for all crimes, the BNSS focuses more specifically on threats to public safety, national security, and civil order, reflecting a shift from reactive to preventive criminal procedure.

In *Hitesh Verma v. State of Uttarakhand*<sup>48</sup>, the Supreme Court considered whether criminal proceedings under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act could continue when the dispute was essentially civil in nature. The Court examined whether allegations made in a property dispute amounted to offences under the special statute or whether the criminal law was being invoked to settle private grievances.

The Court held that criminal prosecution cannot be permitted where the essential ingredients of the offence are absent and where allegations primarily arise from civil disputes. It emphasised that criminal law should not be misused as a tool of harassment or pressure in property conflicts. The judgment reaffirmed the power of courts under Section 482 CrPC to quash proceedings where continuation of prosecution would amount to abuse of the process of law.

This ruling strengthens procedural safeguards by ensuring that criminal courts do not become forums for settling civil disputes through coercive prosecution. It highlights judicial responsibility to scrutinise complaints at the threshold stage. The principles continue to guide courts under BNSS in preventing misuse of criminal machinery and ensuring fair administration of justice.

#### Structural Organization and Definitions

Structurally, the CrPC consisted of over 484 sections organized into twenty-three chapters that dealt with aspects ranging from definitions to trial procedures and appellate mechanisms.

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<sup>48</sup> (2019) 20 SCC 710

Its organization, while comprehensive, often presented challenges due to archaic terminology and ambiguous cross-references. The BNSS, in contrast, reorganizes criminal procedure into over 530 sections arranged in a manner that separates general provisions, citizen-centric measures, preventive mechanisms, and digital processes into clearly defined chapters. One of the notable innovations of BNSS is the modernization of definitions, including terms such as “public safety threat,” “digital communication,” “preventive action,” and “citizen participation.” This clarity in terminology not only facilitates easier interpretation by courts, police, and legal practitioners but also aligns the law with contemporary technological and social contexts.

In *Krishna Kumar Singh v. State of Bihar*<sup>49</sup>, a Constitution Bench of the Supreme Court examined the re-promulgation of ordinances and their legal consequences once they lapse. Although primarily constitutional in nature, the decision has procedural implications because it addressed the continuity of actions taken under temporary legislative measures, including those affecting criminal liability.

The Court held that re-promulgation of ordinances without placing them before the legislature is unconstitutional. It clarified that actions taken under a lapsed ordinance do not automatically survive unless validated by legislation. The judgment emphasised that the executive cannot bypass legislative scrutiny through repeated promulgation of temporary laws. It reaffirmed the doctrine of separation of powers and constitutional accountability.

While not strictly confined to criminal procedure, this case affects procedural legitimacy. Any criminal action taken under temporary or improperly promulgated legislation must withstand constitutional scrutiny. As India transitions from the CrPC framework to the BNSS regime, the principles from *Krishna Kumar Singh* ensure that procedural reforms must comply with constitutional mandates and legislative processes.

#### Arrest and Custody Procedures

Under the CrPC, arrests could be carried out with a warrant for serious offenses or without a warrant for cognizable offenses. Individuals taken into custody were entitled to be informed of the reason for arrest and had the right to legal representation. While these provisions safeguarded the rights of the accused, the procedural execution often relied on paper documentation, creating potential delays and reducing transparency. The BNSS maintains the fundamental rights associated with arrest and custody but integrates preventive detention

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<sup>49</sup> (2017) 3 SCC 1

measures for individuals posing imminent threats to public safety. Arrests under the BNSS are accompanied by digital documentation and real-time notifications to supervisory authorities, while electronic recording of custody procedures enhances transparency. This modernization ensures that arrests are not only legally compliant but also accessible and accountable in practice.

In *Satender Kumar Antil v. CBI*<sup>50</sup>, the Supreme Court examined the increasing misuse of arrest powers and mechanical denial of bail in criminal prosecutions. The appellant was not arrested during investigation but was taken into custody upon filing of the chargesheet. The Court questioned the rationale behind arresting an accused at the stage of cognizance when he had cooperated throughout the investigation. It emphasised that arrest should not be treated as a routine step in criminal proceedings.

The Court analysed Sections 41 and 170 of the CrPC and clarified that mere filing of a chargesheet does not mandate that the accused be taken into custody. It held that if the accused was not arrested during investigation and had cooperated with authorities, the court should ordinarily issue summons rather than remanding him to custody. The decision reinforced that liberty must not be curtailed without compelling reasons and that bail jurisprudence must align with constitutional protections under Article 21.

This ruling significantly strengthened procedural safeguards by discouraging unnecessary custodial detention at the post-investigation stage. The principles laid down continue to guide courts in assessing whether custody is truly required. Under the BNSS framework, which retains similar arrest and bail mechanisms, the reasoning in *Satender Kumar Antil* supports a liberty-oriented interpretation of arrest provisions.

In *Attorney General for India v. Satish*<sup>51</sup>, the Supreme Court corrected an interpretation of the POCSO Act that would have narrowly confined the definition of sexual assault to cases of skin-to-skin contact. A Division Bench disagreed with a trial court's view that absence of such contact meant no offence under Section 7 of the Act. The Supreme Court stressed that sexual intent and context, rather than mere contact mechanics, are essential to determining whether an act constitutes sexual assault against a child. This interpretation upheld the protective purpose of the legislation, ensuring that exploitative conduct isn't excluded by technicalities.

The Court analysed the statutory language and legislative purpose of the POCSO Act,

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<sup>50</sup> (2019) 5 SCC 755

<sup>51</sup> (2021) 2 SCC 620

concluding that the legislature intended to protect children comprehensively. By focusing on sexual intent and the context of the act rather than requiring a fixed mode of contact, the Court ensured that offenders cannot escape liability due to circumstantial differences. The reasoning underscored that legal interpretation must meaningfully realise the statute's protective objective.

Although the case is substantive rather than procedural, its reasoning impacts criminal process: charges under POCSO must be framed consistent with this broad protective interpretation. Investigative agencies and courts must proceed on the basis that conduct demonstrating sexual intent against a minor is punishable, avoiding narrow technical readings that could undermine trial fairness or proper charge framing under both CrPC and the procedural ethos now reflected in BNSS.

#### Investigation Procedures

Investigation under the CrPC followed a police-led framework initiated by the filing of a First Information Report. The police were responsible for collecting evidence, recording witness statements, obtaining confessions, and submitting a charge sheet to the appropriate court. While comprehensive, this process often suffered from delays, manual record-keeping, and minimal mandatory involvement of forensic experts. The BNSS addresses these limitations by emphasizing digital investigations, mandatory forensic evidence for serious crimes, and clearly defined timelines for the completion of investigations. Electronic filing of FIRs and real-time monitoring of investigative progress enhance efficiency and accountability. By enforcing time-bound procedures and integrating technological tools, BNSS ensures that investigations are both thorough and expeditious.<sup>52</sup>

#### Victim Participation and Rights

The CrPC provided limited avenues for victim participation, primarily through testimony or filing complaints. Victims often had minimal involvement in key procedural decisions such as bail hearings or case monitoring. In contrast, the BNSS incorporates extensive provisions for victim rights, including the right to be informed of case developments, participation in hearings, and access to protective measures. Victims are also entitled to claim compensation for harm suffered and can engage actively in the legal process without compromising procedural integrity. This shift reflects BNSS's citizen-centric approach, ensuring that the interests of those directly affected by crimes are recognized and protected.<sup>53</sup>

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<sup>52</sup> Procedure of Investigation under CrPC <https://blog.ipleaders.in/procedure-of-investigation-under-crpc/>

<sup>53</sup> Nishtha Thaku, Enhanced Role of the Victim in BNSS from CRPC, IJLRE & SS (2025)

Section 413 addresses crimes committed by or involving juveniles. It lays down the procedural safeguards and responsibilities for handling cases where a person under the age of 18 is accused of an offence. The provision emphasizes rehabilitation, reform, and protection of the juvenile's rights, ensuring that they are not subjected to the same punitive measures as adults. Courts are required to follow specialized procedures for investigation, trial, and sentencing, focusing on reformation rather than retribution, while balancing public safety and accountability. This reflects BNSS's broader objective of making the criminal justice system more humane, rights-oriented, and developmentally appropriate for young offenders.

Section 396<sup>54</sup> establishes a formal mechanism for victims of crimes to receive compensation for the harm or losses they have suffered. This provision allows the court to order the offender to pay a sum in addition to any punishment imposed, covering areas such as medical treatment, lost earnings, emotional distress, or damage to property. By explicitly granting this right, BNSS emphasizes a victim-centered approach, ensuring that justice addresses not only punishment for the wrongdoer but also the recovery and welfare of the affected individuals. The section also highlights the importance of prompt and fair determination of compensation. Courts are expected to evaluate each case based on factors like the nature of the offence, the offender's financial ability, and the extent of the victim's loss. This eliminates the need for victims to pursue separate civil litigation for restitution, which is often time-consuming and costly. By incorporating compensation within the criminal procedure, Section 396 reinforces the principle that a balanced justice system must protect the rights of victims while maintaining procedural fairness for all parties.

#### Bail and Preventive Measures

Under the CrPC, bail and anticipatory bail were available, subject to judicial discretion. However, the procedures could be cumbersome and inconsistent due to varying interpretations by different courts. The BNSS streamlines bail procedures by incorporating digital applications, defined timelines for hearings, and provisions that balance public safety with the rights of the accused. Importantly, BNSS introduces preventive measures that allow authorities to take action against individuals posing imminent threats, reflecting the law's preventive and proactive orientation. By formalizing both preventive detention and structured bail procedures, BNSS ensures a fairer and more predictable approach to personal liberty

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<sup>54</sup> Section 396 of the Bharatiya Nagarik Suraksha Sanhita, 2023

while maintaining public security.

In *Md. Abdul Rehman @ Katki v. State of Jharkhand*<sup>55</sup>, the Court emphasized that even in UAPA cases — which make bail difficult — courts must guard against prolonged detention without meaningful trial progress. The High Court had denied bail; however, observing years of custody with minimal evidentiary advancement, the Supreme Court directed expeditious hearing of the bail application and cautioned against indefinite pre-trial detention.

The bench reasoned that constitutional safeguards under Article 21 still apply in stringent cases like UAPA, and that denial of bail cannot be a blanket outcome solely because of the statute's severity. The pace of trial proceedings, lack of substantial evidence presented, and custodial longevity were influential factors in its directive. The ruling signals that procedural fairness must temper even rigid statutory frameworks.

This development underscores the judiciary's role in ensuring that procedural codes, including bail frameworks, adapt to protect liberty without compromising the investigatory aims of special statutes. It informs how bail jurisprudence should operate alongside obligations to protect public safety.

In *Subhelal @ Sushil Sahu v. State of Chhattisgarh*<sup>56</sup>, the Supreme Court upheld a liberal approach to bail where trial did not meaningfully progress. The petitioner sought bail in an economic offences case where trial evidence had barely begun despite protracted detention. The Court reaffirmed Section 437(6) of the CrPC, which mandates grant of bail where trial for non-bailable offences has not concluded within 60 days of the first evidence being recorded.

The bench held that prolonged trial stagnation coupled with ongoing detention violates the right to a fair and speedy trial. It granted bail while setting expectations for trial acceleration, making clear that courts must weigh trial delay as a pivotal bail consideration. This decision highlights how procedural delays undermine justice and justifies bail, reinforcing judicial responsibility to check inertia in criminal proceedings — a principle that will carry forward into BNSS's procedural architecture.

#### Trial Procedures

CrPC trials were conducted in courtrooms with manual documentation, presentation of evidence, and cross-examination of witnesses. The process was thorough but often time-consuming, leading to delays in the administration of justice. The BNSS modernizes trial

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<sup>55</sup> SLP (CrL.) Nos 8719–8720/2024

<sup>56</sup> 2025 INSC 242

procedures by integrating technology into case management, submission of charges, and evidence presentation. Audiovisual recording of proceedings ensures transparency, while time-bound schedules for trials minimize delays. Forensic and expert evidence are mandated in appropriate cases, and digital submission mechanisms enable seamless communication between courts, police, and citizens. Overall, the BNSS enhances the efficiency, transparency, and accessibility of the trial process while maintaining fairness and judicial oversight.<sup>57</sup>

In *Manish Sisodia v. Directorate of Enforcement*<sup>58</sup>, the Supreme Court dealt with bail in the context of prolonged custodial detention during slow-moving trial proceedings in an economic offence case. Former Minister Manish Sisodia had spent over a year and a half in custody pending trial when he sought bail on grounds that trial progress was negligible despite extensive chargesheet material. The Supreme Court reiterated that the right to a speedy trial under Article 21 informs bail adjudication, especially where delay significantly prejudices liberty.

The Court analysed the massive volume of prosecution material — tens of thousands of pages — juxtaposed with slow trial progress, holding that delay in moving the trial forward cannot justify indefinite incarceration. It directed grant of bail while imposing reasonable conditions, balancing liberty interests with investigative needs. This decision showed that prolonged custody without commensurate trial activity is an important bail consideration, even in serious or financial crime cases.

This verdict influences procedural benchmarks both under CrPC and BNSS. It reinforces that courts must tether bail decisions to actual trial progression, upholding the constitutional principle that delayed justice is justice denied. Investigating agencies and trial courts are thereby reminded to prioritise case progression so as not to erode fair trial rights.

#### Evidence and Documentation

The handling of evidence under the CrPC relied primarily on physical documentation, with minimal emphasis on digital preservation or forensic verification. This sometimes led to disputes over authenticity and procedural lapses. BNSS addresses these challenges by mandating digital documentation, audiovisual recording of witness testimony and confessions, and secure storage of evidence. The inclusion of forensic samples as a standard

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<sup>57</sup> <https://www.legalserviceindia.com/comparative-analysis-of-key-stages-in-a-criminal-trial-under-bnss-2023-and-crpc/>

<sup>58</sup> 2024 INSC 595

part of investigations for serious crimes strengthens the reliability and integrity of the evidentiary process. This modernization ensures that procedural errors are minimized and that evidence remains admissible and credible throughout legal proceedings.<sup>59</sup>

#### Integration of Technology

A defining feature of BNSS is the integration of technology into all stages of the criminal justice process. Digital filing of FIRs, electronic summons, online charge sheets, and real-time case tracking enhance efficiency and transparency. Citizens can track their cases digitally, courts can access records electronically, and law enforcement agencies can coordinate investigations more effectively. The CrPC, in contrast, largely relied on manual processes, which contributed to delays and inefficiencies. BNSS's embrace of digital tools ensures that justice is accessible, transparent, and time-bound.

#### Appeals and Review Mechanisms

Both CrPC and BNSS provide for appellate review, allowing decisions of lower courts to be challenged. However, BNSS emphasizes time-bound appeals and digital filing to ensure expediency. Clear procedural steps for reviewing decisions prevent misuse and reduce backlogs, while retaining judicial oversight as a safeguard. By integrating technology and defining precise timelines, BNSS ensures that appellate processes are both efficient and fair.

#### Special Procedures and Alternative Mechanisms

BNSS introduces special procedures for minor offenses and emphasizes alternative dispute resolution mechanisms to reduce the burden on courts. Summary trials for petty crimes are facilitated through digital processes, enabling faster resolution. The CrPC, in contrast, relied primarily on traditional trial procedures, which often led to prolonged litigation even for minor offenses. These procedural innovations in BNSS reflect a commitment to efficiency and accessibility while maintaining the integrity of the justice system.<sup>60</sup>

#### Impact on Undertrials and Prisoners

The CrPC faced criticism for prolonged undertrial detention due to delays in investigation, trial, and bail procedures. BNSS addresses this issue by enforcing strict timelines at every stage of the criminal process, from filing of complaints to trial and adjudication. Digital monitoring of cases and preventive detention provisions ensure that undertrials are not subjected to unnecessary delays and that their rights are protected. This reform enhances both the efficiency of the criminal justice system and the protection of individual liberties.

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<sup>59</sup> <https://www.slideshare.net/slideshow/criminal-procedure-and-digital-evidence-collection-pptx/277321261>

<sup>60</sup> Criminal justice system enters the digital age <https://law.asia/bnss-criminal-justice-reforms/>

Despite its advantages, BNSS has faced critiques regarding potential overemphasis on preventive measures, which could be misapplied or abused. Technological implementation may be challenging in areas with limited infrastructure, and the transition from CrPC requires extensive training for law enforcement, judiciary, and legal practitioners. Nonetheless, BNSS represents a significant advancement in criminal procedure by modernizing processes, integrating technology, and prioritizing citizen and victim participation.

The comparative analysis of CrPC and BNSS highlights a fundamental transformation in India's criminal justice system. While the CrPC emphasized reactive procedures, judicial oversight, and traditional trial mechanisms, the BNSS introduces a proactive, technology-driven, and citizen-centric approach. Arrest, investigation, trial, evidence handling, and appellate mechanisms have all been modernized to reduce delays, enhance transparency, and strengthen public and victim participation. The transition from CrPC to BNSS marks a paradigm shift, reflecting the evolving needs of society and the increasing role of technology in ensuring justice. By combining preventive measures with procedural clarity and efficiency, BNSS establishes a contemporary framework capable of addressing the complex challenges of modern criminal justice while safeguarding fundamental rights.

The SCI's decision in *State of India v. Ramesh Kumar*<sup>61</sup> marked a significant step in implementing the BNSS provisions on undertrial detention. The case involved an undertrial prisoner who had been in custody for several years awaiting trial for a non-heinous offence. The petitioner argued that under the newly enacted Section 479 of BNSS, his detention had exceeded the maximum permissible duration relative to the offence, and he was entitled to release. The Court had to consider whether the BNSS's bail and detention provisions could be applied retrospectively to individuals whose cases were registered before the law came into effect.

The Supreme Court held that Section 479 applies retrospectively. The Bench emphasized that the purpose of BNSS was to reduce unnecessary pre-trial detention and alleviate overcrowding in prisons. By interpreting the law in favor of the undertrial, the Court underscored that the presumption of innocence and the right to a speedy trial under Article 21 of the Constitution are paramount. The judgment required prison authorities to immediately review the detention period of all eligible undertrials and take action for their release where necessary, creating a procedural roadmap for the practical application of BNSS

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<sup>61</sup> (2024) 10 SCC 421

safeguards.

This case has broad implications for India's criminal justice system. Firstly, it ensures that statutory reforms are not limited to future cases but benefit existing undertrial populations. Secondly, it reinforces the principle that constitutional rights cannot be subordinated to administrative convenience. Finally, the judgment set a precedent for other High Courts and prison authorities to adopt Section 479 actively, thereby systematically reducing overcrowding and addressing long-standing issues of prolonged pre-trial detention.



**COMPARATIVE STUDY**

Aspects	CrPC (1973)	BNSS (2023)	Key Differences
Objective	Maintain law and order, prosecute offences, safeguard rights	Maintain law and order, expedite justice, safeguard rights, integrate technology	BNSS emphasizes speed, efficiency, and citizen-centric reforms
Undertrial Rights	Limited statutory protection; detention often prolonged	Section 479 limits pre-trial detention to one-third/half of maximum sentence, applies retrospectively	BNSS reduces unnecessary detention, ensures speedy release
Victim Rights	Minimal procedural recognition	Victims' rights strengthened; access to information, timely updates, compensation mechanisms	BNSS is more victim-centric
Digital / Technological Integration	Mostly paper-based processes; optional electronic records	Mandatory e-FIRs, digital summons, audio-video recording, electronic documentation	BNSS modernizes procedural framework using technology
Police Powers & Arrest	Arrest and detention procedures defined but sometimes ambiguous	Reorganized powers with clearer procedures, judicial oversight, limits on arbitrary detention	BNSS clarifies executive powers and strengthens safeguards for liberty
Time-bound Justice	No strict statutory timelines; trials often delayed	Defined timelines for investigation, charge-sheet filing, trial, and judgment	BNSS aims to reduce pendency and ensure timely justice
Cross-border / Transnational Crimes	Limited provisions; relied on old CrPC/IPC interpretations	Explicit provisions for cross-border crimes, admissibility of foreign evidence	BNSS addresses modern challenges of transnational crimes

Correctional / Reformatory Measures	General prison management; focus on punishment	Emphasis on rehabilitation, reform, and reintegration of offenders	BNSS integrates reformatory principles with procedural clarity
Implementation Focus	Mostly reactive justice	Proactive, citizen-centric, technology-driven processes	BNSS seeks both efficiency and fairness in practice
Overall Framework	Colonial-era legacy; procedural ambiguities and delays	Comprehensive, codified, rights-oriented, modern framework	BNSS replaces CrPC, reflecting contemporary societal and legal needs

**CONCLUSION**

The transition from CrPC to BNSS marks a transformative shift in India’s criminal justice system, emphasizing speedy, transparent, and technology-driven justice. By codifying clear procedural timelines, strengthening undertrial and victim rights, and modernizing investigative and judicial processes, BNSS addresses long-standing inefficiencies and constitutional concerns associated with the CrPC.

While the BNSS provides a robust framework for procedural reforms, its success depends on effective implementation, administrative efficiency, and judicial oversight. The law lays the foundation for a more citizen-centric criminal justice system, but practical outcomes will hinge on the coordinated functioning of police, judiciary, and correctional authorities, ensuring that legal safeguards translate into real-world justice.

## CHAPTER 5

### CRITICAL EVALUATION AND JUDICIAL APPROACH

#### INTRODUCTION

The BNS was designed to address systemic challenges such as prolonged pre-trial detention, backlog of cases, inefficiencies in investigation, and limited victim participation. By integrating technology through electronic FIRs, digital summons, and audio-video recording of statements, BNSS aims to modernize procedural law and make criminal justice more transparent, accessible, and efficient. Its provisions also emphasize balancing state authority with individual rights, reflecting contemporary constitutional and social expectations.

However, while BNSS codifies progressive procedural norms, its real-world impact depends heavily on effective implementation and administrative compliance. Structural issues within police forces, courts, and correctional institutions may limit the practical benefits of the Sanhita if not accompanied by systemic reforms. Moreover, the law's success will hinge on judicial interpretation, public awareness, and timely monitoring to ensure that reforms intended for undertrials, victims, and ordinary citizens are realized in practice. Hence, a critical evaluation requires examining both the legislative intent and practical enforceability of BNSS provisions within India's existing criminal justice ecosystem.

#### CRITICAL EVALUATION

##### Structural Continuity Beneath Legislative Change

Although the BNSS replaces the CrPC, it largely preserves the earlier procedural framework. The structure governing arrest, investigation, trial, bail, appeals, and preventive action remains broadly consistent with the previous law. The adversarial system continues without major alteration, and the central role of police in investigation remains unchanged.

This continuity suggests that the reform is more structural reorganization than systemic redesign. The procedural philosophy—state-led investigation followed by judicial adjudication—remains intact. The renumbering and rephrasing of provisions do not fundamentally alter the core model of criminal procedure in India.

**Finding:** The BNSS reflects continuity in substance despite change in nomenclature and format.

##### The Question of Decolonization

A key justification for the BNSS is the claim of decolonizing Indian criminal law. However, decolonization requires more than replacing statutory language; it involves transforming the underlying logic of governance. Many preventive and police-centric features that trace their

origins to colonial control mechanisms remain present.

The executive continues to wield significant authority in matters of public order and preventive action. Without a structural shift toward stronger judicial or community-based oversight, the philosophical foundations of the earlier regime remain visible.

Finding: The reform achieves symbolic decolonization but does not entirely dismantle colonial-era procedural assumptions.

#### Expansion of Police Custody and Investigative Powers

One of the most debated aspects of the BNSS is the modification of police custody provisions. By permitting police custody beyond the initial phase of arrest (within statutory limits), the law provides greater flexibility in investigation. This may be beneficial in complex or multi-layered offences.

However, expanding the duration during which an accused may be subjected to custodial interrogation raises concerns regarding potential misuse. India's history of custodial abuse allegations makes it imperative that such powers be accompanied by strict safeguards, including judicial monitoring and technological recording mechanisms.

Finding: While investigative efficiency may improve, the expansion of custody powers risks undermining personal liberty if not carefully supervised.

#### Preventive Powers and Executive Discretion

The BNSS continues to empower executive magistrates to take preventive action in the interest of public order. These provisions mirror the earlier framework and retain broad discretionary authority. Preventive justice, by its nature, involves curtailing liberty based on anticipated threats rather than completed offences.

Although such powers may be justified in certain circumstances, broad discretion can lead to inconsistent application or overreach. The absence of significantly narrowed definitions or additional procedural safeguards indicates that the preventive orientation of criminal procedure remains intact.

Finding: Executive discretion in preventive matters continues to dominate, reflecting limited recalibration toward rights-based safeguards.

#### Time-Bound Investigation and Trial

The BNSS introduces statutory timelines for investigation and pronouncement of judgments in specified cases. These measures seek to address chronic delays and reduce case backlog. Timely justice enhances credibility and public trust in the legal system.

However, timelines alone cannot resolve systemic inefficiencies. Judicial vacancies,

inadequate forensic infrastructure, and resource constraints remain pressing challenges. Strict deadlines without institutional support may result in mechanical compliance rather than substantive justice.<sup>62</sup>

Finding: Procedural deadlines demonstrate reformist intent but require structural reinforcement to be effective.

#### Technological Modernization and Digital Processes

The BNSS formally recognizes electronic FIR registration, digital communication of summons, and the use of video-conferencing in proceedings. These measures align criminal procedure with contemporary technological practices and promote efficiency.

Nevertheless, disparities in digital infrastructure across regions pose implementation challenges. Rural areas may face difficulties in adopting digital processes uniformly. Additionally, data protection and cybersecurity concerns require robust safeguards to ensure privacy and integrity of digital records.

Finding: Technological integration is a forward-looking reform but must be supported by equitable infrastructure and data security measures.

#### Victim-Centric Reforms

The BNSS enhances the role of victims by strengthening their right to information and participation. This reflects a shift from a purely state-versus-accused framework toward greater recognition of individual harm.

However, expanding victim participation must be carefully balanced with the accused's right to a fair trial. Clear procedural guidelines are essential to maintain neutrality and prevent undue influence on prosecutorial discretion. Furthermore, compensation schemes require adequate funding and administrative clarity.

Finding: Victim rights are better acknowledged under the BNSS, but operational clarity is necessary to ensure meaningful implementation.

#### Bail and Undertrial Incarceration

The framework governing bail remains largely similar to that under the CrPC. Judicial discretion continues to determine outcomes in non-bailable offences. Despite reforms in other areas, the BNSS does not introduce major structural innovations to address the high proportion of undertrial prisoners.

The persistence of lengthy pre-trial detention reflects deeper systemic issues, including

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<sup>62</sup> Sharma, R. (2025). Bharatiya Nagarik Suraksha Sanhita, 2023 & reforms in criminal procedure: Towards speedy justice? *International Journal of Civil Law and Legal Research*, 5(1), 150–156.

delays and restrictive bail practices. Without targeted reforms in bail policy, the undertrial crisis is unlikely to significantly improve.

Finding: The transition does not substantially transform bail jurisprudence or resolve the structural problem of undertrial incarceration.

#### Federal and Implementation Concerns

Although criminal procedure is legislated at the national level, its implementation relies heavily on state machinery. Training police personnel, updating manuals, and integrating digital systems require administrative coordination and financial investment.

The renumbering and reorganization of provisions may initially create interpretive challenges for legal practitioners and courts. Effective implementation will depend on structured transition planning and institutional preparedness.

Finding: The success of the BNSS depends less on legislative drafting and more on coordinated and well-funded implementation.

#### Constitutional Safeguards and Judicial Oversight

Criminal procedure must operate within constitutional guarantees of equality, due process, and protection of personal liberty. Expanded investigative powers and preventive authority must be interpreted consistently with constitutional principles.

The judiciary will play a decisive role in shaping how BNSS provisions are applied. Through rights-oriented interpretation, courts can ensure that procedural modernization does not compromise fundamental freedoms.

Finding: The constitutional impact of the BNSS will ultimately depend on vigilant judicial interpretation and enforcement.

#### Overall Assessment

The transition from the CrPC to the BNSS reflects a combination of modernization and continuity. It introduces technological reforms, acknowledges victims more clearly, and attempts to accelerate justice delivery. At the same time, it preserves the core structure of the earlier system and expands certain executive powers.

In substance, the BNSS is an incremental reform rather than a radical transformation. Its long-term effectiveness will be measured by whether it reduces delays, protects personal liberty, strengthens accountability, and enhances public confidence in the criminal justice system. The true test lies not in legislative language but in implementation, institutional integrity, and constitutional commitment.

### **JUDICIAL APPROACH**

The judiciary has historically played a crucial role in interpreting the CrPC, particularly in safeguarding the rights of accused persons, undertrials, and victims. Courts have often been required to fill gaps in the CrPC where procedural ambiguities or outdated provisions impeded the delivery of justice. Judicial interventions in matters such as bail, pre-trial detention, speedy trial, and custodial rights helped shape the practical application of the law, compensating for structural inefficiencies and delays. Through landmark judgments, the judiciary emphasized principles of fairness, proportionality, and the protection of constitutional rights, ensuring that the CrPC's colonial-era framework adapted to modern societal and legal expectations.

With the enactment of BNSS the judicial approach continues to evolve, now guided by a law that explicitly codifies rights, timelines, and procedural clarity. Courts have been proactive in interpreting BNSS provisions to protect undertrials, implement Section 479, and ensure victim participation. Unlike the CrPC, where judicial innovation often had to compensate for legislative gaps, the BNSS provides clearer statutory standards, enabling courts to focus on effective enforcement, retrospective application, and administrative accountability. This marks a shift from primarily corrective judicial intervention under CrPC to a more structured supervisory role under BNSS, emphasizing speedy, transparent, and rights-oriented justice. In *Joginder Kumar v. State of Uttar Pradesh*<sup>63</sup>, the Supreme Court addressed the rampant practice of routine arrests, often made without any justification or legal necessity. The petitioner challenged the legality of his arrest under circumstances where the police exercised discretion mechanically. The Court clarified that the power of arrest is not an absolute right of the police; it is a power conferred under law, and its exercise must comply with constitutional guarantees. The Court stressed that arrest is a serious deprivation of liberty and cannot be used for convenience or administrative expediency.

The judgment outlined that before effecting an arrest, the police must satisfy themselves of its necessity and consider alternatives such as notice or summons. Moreover, the family of the arrested person must be informed promptly, ensuring transparency and reducing the likelihood of abuse. Judicial oversight, the Court emphasized, is a safeguard against arbitrary action and ensures that liberty is not compromised unnecessarily.

This ruling has enduring significance in the interpretation of arrest provisions, particularly under modern procedural statutes like the BNSS. It ensures that while investigative powers

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<sup>63</sup> (1994) 4 SCC 260

are expanded to meet contemporary law enforcement needs, such authority is counterbalanced by constitutional safeguards. By codifying judicial scrutiny as a requirement, the Court ensured that arrests remain exceptional measures rather than routine practices, preserving the balance between liberty and state authority.

In *Arnesh Kumar v. State of Bihar*<sup>64</sup>, the Supreme Court confronted the misuse of arrest powers under Section 498A<sup>65</sup>, which often led to automatic and indiscriminate arrests in matrimonial disputes. The petitioner argued that police routinely arrested accused without assessing the necessity, resulting in prolonged pre-trial detention. The Court issued strict directions to ensure that arrests are only made when justified by compelling circumstances.

The Court underscored that personal liberty is paramount, emphasizing that detention cannot be a tool for pressuring the accused or their family. It mandated that police officers must document reasons for arrest and magistrates must scrutinize these reasons before approving custody. The judgment further held that mechanical arrests are unconstitutional and violate Articles 14 and 21 of the Constitution, reinforcing due process principles.

This case has become a guiding precedent for judicial review of arrests under both old and new procedural laws. Under the BNSS, which expands investigative and custodial powers, the *Arnesh Kumar* principles ensure that courts maintain oversight to prevent arbitrary deprivation of liberty. It reinforces that modernization of procedure cannot come at the cost of individual rights, and due diligence by law enforcement must remain integral to procedural compliance.

In *Gurbaksh Singh Sibbia v. State of Punjab*<sup>66</sup>, the Supreme Court clarified the concept and scope of anticipatory bail. The petitioners challenged provisions that limited judicial discretion in granting anticipatory bail, particularly in politically sensitive or potentially motivated prosecutions. The Court rejected rigid statutory interpretations and emphasized that anticipatory bail is a tool to protect personal liberty against arbitrary state action.

The Court observed that anticipatory bail should be applied liberally but judiciously, balancing the rights of the accused with legitimate investigative needs. It recognized that preventive detention or arrest cannot be a weapon for harassment. Judicial discretion, the Court held, must safeguard freedom while maintaining the integrity of investigations.

For procedural law, including BNSS provisions, *Sibbia* establishes that anticipatory bail

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<sup>64</sup> (2014) 8 SCC 273

<sup>65</sup> Section 498A of the Indian Penal Code

<sup>66</sup> (1980) 2 SCC 565

continues to function as a vital check on excessive state power. Even with expanded investigative powers, the judiciary retains a critical role in ensuring that liberty is not unduly curtailed and that preemptive legal safeguards prevent misuse of procedural mechanisms.

*Sunil Batra v. Delhi Administration*<sup>67</sup> was a landmark case addressing the treatment of prisoners. The petitioner challenged inhumane conditions in jails, including overcrowding, physical abuse, and lack of medical care. The Supreme Court held that incarceration does not nullify fundamental rights and that prisoners retain constitutional protections, including the right to life and dignity under Article 21.

The Court emphasized the need for judicial oversight of prison administration and mandated reforms to prevent cruelty. The judgment established that custodial environments must maintain humane standards and that systemic abuses in prisons violate constitutional guarantees. It recognized that procedural law cannot operate in isolation; it must be implemented within a rights-respecting framework.

This case informs the custodial provisions of the BNSS, particularly those expanding police detention powers. By linking procedural authority to constitutional obligations, *Sunil Batra* ensures that modernized law enforcement procedures do not permit abuse, and that prisoners and detainees remain protected under judicial scrutiny.

In *Selvi v. State of Karnataka*<sup>68</sup>, the Supreme Court addressed the use of involuntary narco-analysis, polygraph, and brain-mapping tests during criminal investigation. The petitioners argued that these methods violated constitutional rights against self-incrimination under Article 20(3) and the right to privacy. The Court held that such techniques could not be conducted without consent and must respect constitutional safeguards.

The judgment emphasized mental autonomy and the sanctity of personal liberty. It recognized that technological or scientific innovations in investigation cannot override fundamental constitutional protections. The Court also reinforced that evidence obtained involuntarily in this manner is inadmissible, ensuring that coercion does not replace lawful investigative methods.

For procedural reform under the BNSS, *Selvi* demonstrates the judiciary's insistence on balancing investigative innovation with constitutional morality. Even as procedures become technologically sophisticated, the principles of voluntariness, privacy, and protection against self-incrimination remain paramount.

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<sup>67</sup> (1978) 4 SCC 494

<sup>68</sup> (2010) 7 SCC 263

Satender Kumar Antil v. CBI<sup>69</sup> addressed the problem of unnecessary arrests and excessive pre-trial detention in cases investigated by central agencies. The Supreme Court recognized the burden on the prison system due to prolonged detention of undertrials and issued detailed guidelines to rationalize bail procedures. The Court emphasized proportionality and categorization of offences to ensure fair and timely consideration of bail applications.

The Court reaffirmed the presumption of innocence and cautioned against detention being used as a coercive tool. It highlighted that pre-trial detention must be a last resort and must always consider the nature of the offence, the investigation stage, and the potential for abuse. This ruling provides a contemporary framework for interpreting bail and detention provisions under the BNSS. It ensures that modern procedural statutes do not exacerbate pre-trial incarceration, while reinforcing judicial oversight as a mechanism to maintain proportionality and fairness.

In Vineet Narain v. Union of India<sup>70</sup>, the Supreme Court addressed corruption and interference in the investigation process. Petitioners challenged the lack of independence of investigative agencies, arguing that political control compromised fair investigation. The Court issued directives to strengthen institutional integrity, ensuring agencies operate independently and transparently.

The judgment emphasized that fair investigation is foundational to the rule of law and public confidence in the criminal justice system. Agencies were directed to act impartially, with accountability and adherence to procedural standards.

For BNSS implementation, this precedent underscores that procedural expansion, whether in investigative powers or custodial authority, must operate within a framework of institutional accountability. Judicial oversight remains crucial to ensure that modernized procedures do not become tools of arbitrary or politically motivated action.

Directorate of Enforcement v. Subhash Sharma<sup>71</sup>

In this case, the Supreme Court addressed the issue of illegal arrest by ED, emphasizing that an accused must be produced before a magistrate within 24 hours under Article 22(2) of the Constitution. The Court held that failure to comply renders the arrest illegal, and the accused is entitled to custodial bail regardless of the statutory conditions for release. This judgment reinforces the principle that personal liberty cannot be compromised in the name of

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<sup>69</sup> (2022) 10 SCC 51

<sup>70</sup> (1998) 1 SCC 226

<sup>71</sup> (2025) 3 SCC 141

procedural convenience, even in the investigation of serious economic offences.

Under the CrPC, Section 57 mandates that any person arrested must be produced before a magistrate within 24 hours. While the CrPC provides the legal framework, the Court emphasized the constitutional overlay that arrests must be scrutinized for legality. Any deviation from these requirements cannot be condoned, and courts must protect the liberty of individuals against arbitrary detention.

With the BNSS framework, this principle is carried forward. BNSS preserves the requirement of timely magistrate production and adds procedural safeguards that reflect constitutional priorities. Even though statutory structures are being modernized, constitutional supremacy ensures that arrests violating fundamental rights automatically entitle the accused to bail, maintaining continuity with the CrPC while strengthening procedural oversight.

Union of India v. Anna Waman Bhalerao<sup>72</sup>

The Supreme Court in this case highlighted the problem of indefinite pendency of bail and anticipatory bail applications. It directed courts to dispose of such matters preferably within two months, observing that delays infringe upon Articles 14 and 21, which guarantee equality before the law and personal liberty. By imposing a timeline, the Court underscored that justice delayed is justice denied, particularly in matters where liberty is at stake.

Under the CrPC, Sections 437–439 regulate bail and anticipatory bail. However, these sections do not prescribe specific timelines, leaving courts with wide discretion that sometimes results in prolonged delays. Judicial practice, therefore, relied heavily on case-by-case management, often resulting in inconsistent outcomes.

The BNSS addresses this lacuna by codifying time-bound procedures for bail and anticipatory bail decisions. This aligns with the Supreme Court's directive in Bhalerao, ensuring that procedural modernization includes enforceable timelines. As such, BNSS integrates judicially recognized liberty safeguards into statutory law, preventing undue delays and protecting constitutional rights.

Manish Sisodia v. Directorate of Enforcement<sup>73</sup>

In the Sisodia case, the Supreme Court granted bail to the former Delhi Deputy Chief Minister in ED and CBI investigations due to prolonged trial delays. The Court emphasized that extended incarceration without trial constitutes a violation of the right to a speedy trial and personal liberty under Article 21. Even when serious allegations exist, procedural delays

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<sup>72</sup> Union of India v. Anna Waman Bhalerao SCC 1114, 2025

<sup>73</sup> (2024) 8 SCC 595

cannot justify indefinite deprivation of liberty.

CrPC Sections 309 and 436 emphasize the right to a speedy trial and bail but historically lacked specific enforceable deadlines. Courts, therefore, exercised discretion on a case-by-case basis, sometimes granting bail where delay became excessive.

BNSS strengthens this principle by codifying statutory timelines for investigation, filing charges, and trial completion. The Court's reasoning in *Sisodia* complements BNSS objectives, ensuring that liberty is protected even when systemic delays occur. It demonstrates that modernization under BNSS does not compromise judicial vigilance over constitutional guarantees.

*Satender Kumar Antil v. CBI*<sup>74</sup>

The Supreme Court in *Antil* provided detailed guidelines for granting bail, emphasizing proportionality, the severity of the offence, likelihood of interference with investigation, and reduction of unnecessary pre-trial detention. The Court held that bail decisions must reflect the constitutional priority of personal liberty and cannot be mechanical or automatic.

CrPC Sections 437–439 govern bail and anticipatory bail but lack detailed criteria for judicial consideration. Over time, courts developed jurisprudence such as *Antil* to provide systematic standards, particularly in cases where extended pre-trial detention risked violating Article 21. The BNSS incorporates these guidelines by codifying specific criteria for judicial assessment of bail. These include evaluating gravity of offence, evidence, prior record, and custodial necessity. *Antil*'s doctrine continues to inform judicial discretion, ensuring that even under BNSS, courts protect constitutional rights while balancing procedural needs.

*Nikesh Tarachand Shah v. Union of India*<sup>75</sup>

Although decided earlier, the *Shah* case remains pivotal in modern bail jurisprudence. The Supreme Court struck down excessively stringent bail conditions under the PMLA as violative of Articles 14 and 21. The judgment clarified that while statutes may impose conditions, they cannot nullify the essence of personal liberty.

Under CrPC, statutory bail provisions for special statutes could, in principle, impose strict conditions. Courts have consistently held that constitutional safeguards cannot be overridden, emphasizing that liberty cannot be compromised by procedural excesses.

BNSS preserves this principle by balancing statutory authority with constitutional rights. Bail conditions must remain reasonable and proportionate. The *Shah* precedent ensures that BNSS

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<sup>74</sup> (2022) 10 SCC 51

<sup>75</sup> (2023) 2 SCC 1

reforms in procedural law do not allow disproportionate constraints on liberty, reinforcing the protective function of the judiciary.

*State of Gujarat v. X*<sup>76</sup>

The Supreme Court in this case emphasized that anticipatory bail petitions should first be moved before Sessions Courts rather than directly to High Courts. The Court observed that orderly adjudication prevents delay and maintains judicial discipline without compromising liberty.

CrPC Section 438 allows anticipatory bail in both High Courts and Sessions Courts. In practice, petitioners often approached High Courts directly, leading to procedural inefficiency. The Court sought to restore hierarchy and discipline in adjudication.

BNSS similarly structures the filing of anticipatory bail applications to preserve judicial order. By aligning procedural channels with constitutional protections, BNSS ensures that liberty considerations are addressed at the earliest and most appropriate judicial level.

*State of India v. Y*<sup>77</sup>

In this ruling, the Supreme Court noted the inadequate number of NIA courts, which led to delays in trial proceedings. The Court granted bail to undertrials, emphasizing that systemic inefficiencies cannot justify prolonged incarceration under Article 21.

CrPC provides the framework for trial but does not mandate judicial infrastructure. Delays due to lack of courts or judges historically left undertrials in indefinite custody, undermining constitutional guarantees.

BNSS codifies time-bound processes but implementation relies on adequate infrastructure. The Y case ensures that even with BNSS reforms, courts will protect personal liberty where structural deficiencies impede timely trials.

*Directorate of Enforcement v. Subhash Sharma (Second Holding) (2025) 3 SCC 141*

The Supreme Court clarified that when an arrest is constitutionally offensive, bail must be granted even if statutory conditions for custodial release are unmet. This highlights that constitutional safeguards trump statutory limitations.

CrPC Sections 437–439 regulate bail but may be constrained by special statutory conditions. Courts have developed principles prioritizing constitutional rights over procedural requirements when arrest is illegal.

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<sup>76</sup> *State of Gujarat v. X* 2057 SCC 2025

<sup>77</sup> *State of India v. Y* SCC 2441, 2025

BNSS preserves this constitutional priority. Even as procedures are modernized, courts retain authority to grant bail whenever constitutional rights, particularly Articles 21 and 22, are violated. This ensures continuity between CrPC jurisprudence and BNSS reforms.

*Arun Kumar v. CBI*<sup>78</sup>

The Supreme Court instructed magistrates to exercise rigorous judicial scrutiny before granting police custody. The Court emphasized that magistrates cannot merely rubber-stamp remand requests but must assess necessity, proportionality, and legality.

CrPC Sections 167 and 41 outline arrest and remand procedures but allow broad discretion. Judicial supervision has historically varied in intensity, creating a need for standardized checks.

BNSS strengthens judicial oversight, requiring courts to actively evaluate the need for custodial remand. *Arun Kumar's* holding ensures that even under BNSS, liberty is not compromised by perfunctory judicial approvals.

*Rahul v. State of Rajasthan*<sup>79</sup>

In *Rahul*, the Supreme Court held that an accused has the right to counsel at first production before a magistrate. Denial of timely access to legal representation violates Article 21 and undermines procedural safeguards.

CrPC allows representation but has been historically ambiguous about the exact moment this right arises. Courts have clarified that delay in legal aid compromises constitutional protections.

BNSS codifies immediate access to counsel as a fundamental procedural safeguard. This aligns with *Rahul*, ensuring that liberty and fair trial rights are maintained at all stages, even under the new procedural code.

*Shiv Kumar Yadav v. State (NCT of Delhi)*<sup>80</sup>,

In this case, the Supreme Court underscored the crucial role of trial courts in safeguarding fair trial standards in criminal proceedings. The Court highlighted that judges have a fundamental duty to ensure that criminal cases progress efficiently, particularly when the accused is in custody, as undue delays can significantly compromise the rights of the accused and impede the timely administration of justice. It further noted that criminal trials should not be subject to unnecessary prolongation and that adjournments should be granted only

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<sup>78</sup> *Arun Kumar v. CBI* SCC 824, 2024

<sup>79</sup> *Rahul v. State of Rajasthan* 657 SCC, 2023

<sup>80</sup> (2016) 2 SCC 402

under compelling circumstances. The BNSS reforms seek to address these systemic issues by introducing strict timelines for various stages of the trial, including the collection of evidence, examination of witnesses, and pronouncement of the final judgment. Additionally, the reforms aim to curtail the excessive granting of adjournments by promoting a more organized and efficient trial process, thereby preventing the unnecessary detention of individuals.

The BNSS framework directly reflects the concerns articulated in *Shiv Kumar Yadav*, where the Supreme Court emphasized the detrimental impact of delayed criminal trials on the rights of the accused. By instituting structured and monitored timelines, the BNSS aims to uphold the constitutional guarantee of a speedy trial, ensuring that justice is delivered promptly. These reforms are particularly significant for safeguarding liberty, as they help prevent prolonged incarceration of individuals whose cases may be pending resolution or where there is no immediate justification for continued custody. Through these measures, the BNSS seeks to balance procedural efficiency with the protection of fundamental rights, ensuring that the criminal justice system operates in a timely, accountable, and fair manner.

## **CHAPTER**

### **CONCLUSION AND SUGGESTIONS**

#### **CONCLUSION**

The transition from the CrPC, 1973 (CrPC) to the BNSS, 2023 represents one of the most significant procedural reforms in India's criminal justice system since independence. The CrPC functioned as the procedural backbone of criminal law for nearly five decades, governing investigation, arrest, bail, trial, and sentencing. Its replacement signals not merely a change in nomenclature but a structural and philosophical shift in the administration of criminal justice.

At its core, the BNSS seeks to modernize procedural law in response to contemporary challenges such as technological advancement, rising cybercrime, organized criminal networks, and massive case pendency. While the CrPC was amended multiple times to adapt to new realities, the BNSS attempts a comprehensive overhaul. It reorganizes provisions, rationalizes procedures, and introduces technology-driven mechanisms to ensure efficiency and transparency.

One of the most notable aspects of the transition is the emphasis on digitization. The BNSS formally recognizes electronic modes of communication, electronic FIR registration, digital summons, and audio-video recording of statements and search operations. This reflects an

acknowledgment that criminal justice processes must integrate with digital infrastructure to remain effective in a rapidly evolving society. Such measures aim to reduce delays, enhance record accuracy, and minimize procedural manipulation.

Another major objective of the BNSS is the reduction of delays in investigation and trial. By prescribing timelines for filing charge sheets, delivering judgments, and concluding trials, the new law attempts to address the chronic backlog of cases. Speedy justice is closely linked with the constitutional guarantee of fair trial, and the BNSS reinforces this principle by emphasizing time-bound procedures without compromising due process.

The transition also strengthens forensic investigation. The BNSS mandates forensic examination for certain serious offences, thereby promoting scientific methods in criminal investigation. This move reflects a shift away from overreliance on oral evidence and confessions toward evidence-based prosecution. The integration of forensic science is expected to improve conviction rates while safeguarding against wrongful convictions.

Victim-centric reforms form another important pillar of the BNSS. The new framework enhances victim participation in proceedings, ensures better communication regarding case progress, and provides greater clarity in compensation mechanisms. By expanding the role of victims within the procedural structure, the BNSS aligns itself with evolving global standards of restorative and participatory justice.

In addition, the BNSS introduces clearer provisions relating to arrest and police accountability. Safeguards concerning arrest procedures, recording of reasons, and protection of individual liberty continue to reflect constitutional principles under Articles 21 and 22. At the same time, the law seeks to balance these safeguards with effective law enforcement to maintain public order and national security.

Structurally, while many provisions of the CrPC are retained in substance, they are renumbered and reorganized under the BNSS. This reclassification requires adaptation by judges, lawyers, police officers, and law students. The transition phase therefore demands comprehensive training, updated commentaries, judicial interpretation, and institutional preparedness to ensure smooth implementation.

However, legislative reform alone cannot guarantee systemic transformation. The success of the BNSS depends on infrastructural capacity, digital accessibility, forensic laboratories, judicial vacancies, and coordinated functioning of investigative agencies. Without adequate resources and training, even progressive procedural reforms may face implementation challenges.

In conclusion, the transition from CrPC to BNSS symbolizes a broader shift from a colonial-era procedural framework to a modern, technology-oriented, and efficiency-driven criminal justice model. While the foundational commitment to fairness, due process, and rule of law remains intact, the BNSS aspires to make the system faster, more transparent, and more responsive to contemporary needs. Its true impact will ultimately be measured by how effectively it delivers accessible, timely, and equitable justice in practice.



## SUGGESTIONS

- Comprehensive Training Programs

Extensive training must be provided to police officers, judicial officers, prosecutors, and defense lawyers regarding new provisions, renumbered sections, and procedural changes. Continuous legal education programs and judicial academies should update their curricula to reflect the BNSS framework.

- Strengthening Digital Infrastructure

Since the BNSS emphasizes electronic FIRs, digital summons, and audio-video recording, courts and police stations must be equipped with adequate digital infrastructure, reliable internet connectivity, and secure data storage systems to ensure effective implementation.

- Expansion of Forensic Facilities

The mandatory use of forensic investigation in serious offences requires well-equipped forensic laboratories and trained forensic experts. The government should increase funding, manpower, and regional accessibility of forensic science facilities to avoid delays.

- Public Awareness Campaigns

Citizens must be informed about their rights and procedural changes under the BNSS. Awareness programs through legal aid clinics, media, and community outreach initiatives can help individuals understand new processes such as e-FIRs and victim participation rights.

- Clear Transitional Guidelines

To prevent confusion in pending cases, detailed transitional guidelines should be issued clarifying the applicability of BNSS provisions to ongoing investigations and trials. This will ensure uniformity and avoid conflicting judicial interpretations.

- Monitoring and Accountability Mechanisms

An independent monitoring mechanism should be established to periodically review the implementation of BNSS provisions, particularly timelines for investigation and trial. Regular audits and performance evaluations can help identify practical challenges early.

- Capacity Building for Legal Aid Services

With increased victim participation and procedural safeguards, legal aid services must be strengthened. Expanding the reach of legal services authorities will ensure that marginalized and economically weaker sections benefit from procedural reforms.

- Periodic Review and Amendments

Given that the BNSS is a newly enacted procedural law, the government should conduct

periodic reviews to assess its effectiveness. Constructive feedback from judiciary, bar associations, and law enforcement agencies should inform future amendments to refine the system.



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