

---

# THE BHARATIYA NAGRIK SURAKSHA (SECOND) SANHITA, 2023: SOCIAL AND LEGAL PERSPECTIVES

**First A. Natasha Zubin<sup>1</sup>, Fellow A. Samiksha<sup>2</sup> & Second A. Dr Shibu Puthalath<sup>3</sup>**

<sup>1</sup>II BBA LLB Student, School of Law, Christ University, Bangalore, India, [natasha.zubin@law.christuniversity.in](mailto:natasha.zubin@law.christuniversity.in)

<sup>2</sup>II BBA LLB Student, School of Law, Christ University, Bangalore, India, [samiksha@law.christuniversity.in](mailto:samiksha@law.christuniversity.in)

<sup>3</sup>Assistant Professor, School of Law, Christ University, Bangalore, India: [Shibu.p@christuniversity.in](mailto:Shibu.p@christuniversity.in)

**ABSTRACT** Laws on criminal justice and public safety have changed over time as a result of social changes and advances in technology. The BNSS2, a new piece of Indian legislation, aims to modernise legal structures for the digital age. This paper analyses the differences, similarities, and applicability of the Bhartiya Nagarik Suraksha (Second) Sanhita (BNSS), 2023 and the Criminal Procedure Code of 1973 (CrPC, 1973) in the contemporary world. The study contrasts the BNSS2 to the antiquated CrPC, 1973, which does not address modern challenges and looks at how it has adjusted to new technological innovations and contemporary issues while protecting victim welfare and individual rights. The study examines the advancements in scope, technological integration, protection of individual rights, and victim-centricity to highlight the significance of the research for India's criminal justice system. The existing legal literature emphasises the historical context and limitations of the CrPC, 1973, highlighting the necessity of legislative changes to adequately address evolving crime trends and technological advancements. Legal documents, academic articles, secondary sources, and expert opinions are analysed to identify key provisions of both the BNSS2 and the CrPC, 1973. The BNSS2 is a significant divergence from the CrPC, extending its purview to include cybercrime and contemporary dangers and incorporating technology into procedures and evidence processing. In contrast to the CrPC, 1973's restricted rights provisions, it places a higher priority on victim support and the preservation of individual rights to solve the inadequacies. This change demonstrates BNSS2's flexibility in responding to modern issues and its commitment to justice in the digital age. These results highlight the importance of the BNSS2 in strengthening India's criminal justice system. To conclude, the BNSS represents a key development in India's legal framework for citizen safety, bringing the criminal justice system into line with contemporary issues while maintaining core values.

**KEYWORDS:** BNSS 2023, Criminal Justice System, CrPC 1973, Technological Integration, Victim Empowerment.

---

## I. INTRODUCTION

The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 is a pivotal legal framework in India, dedicated to upholding the rights and security of its citizens. Although it was first introduced in the Lok Sabha on 11th August 2023, following an examination by the Standing Committee on Home Affairs, a revised iteration, Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 (BNSS2), incorporating specific committee recommendations, emerged on December 12, 2023. Exploring the historical roots of this legislation is essential for understanding its essence. As societal landscapes evolved, necessitating a response to emerging challenges, the need for a contemporary and resilient legal structure became evident. The backdrop of the new Sanhita is intricately linked to significant events like the rise of cybercrime, terrorist activities, and communal tensions. Moreover, technological advancements and shifting social dynamics underscored the imperative for re-evaluating the existing legislative framework. Understanding this historical context is essential for appreciating the Bharatiya Nagarik Suraksha (Second) Sanhita's significance as it endeavours to address the complexities of contemporary India.

At its core, the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, seeks to ensure the safety and security of Indian citizens by providing a comprehensive legal framework. It outlines guidelines for preventing crime, enhancing public safety infrastructure, and refining emergency response systems. Furthermore, the Act envisions effective collaboration among law enforcement agencies, the judiciary, and relevant stakeholders to cultivate a safer society. Importantly, its application extends universally to all individuals in India, irrespective of nationality, age, or gender, addressing both urban and rural populations. The overarching goal is to instil a sense of security in every citizen across all facets of their lives. Moreover, it is also aimed at marking an end to colonial-era laws, thereby enabling India to finally overcome the endless oppression, turmoil and dominance caused by colonial rule.

The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, assumes formidable legal significance within the Indian legal landscape. Crafted to ensure the security and safety of Indian citizens, the legislation deploys a comprehensive set of measures and laws. It defines various offences and prescribes penalties, upholding the sanctity of the law and ensuring justice is served. Additionally, it delineates the responsibilities of law

enforcement agencies and establishes procedural protocols for investigation, trial, and the enforcement of the law. In essence, this legislation serves as a robust legal foundation, safeguarding national security, preventing crime, and protecting the rights and liberties of individual citizens fairly and equitably.

Examining the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, within social contexts carries profound implications for society. This scholarly exploration delves into the legal frameworks and provisions established to guarantee the protection and welfare of Indian citizens. The analysis of social implications provides deep insights into the responsibilities and rights of individuals within the societal fabric. It scrutinises the impact of this legislation on marginalised groups, addressing concerns related to gender equality, caste discrimination, and access to social welfare. Furthermore, it underscores the instrumental role of education in fostering awareness and comprehension of the legal and social rights enshrined in the Act. This examination contributes to cultivating a society founded on principles of justice, inclusivity, and equity.

## II. LEGAL PERSPECTIVE OF THE BNSS, 2023

The purpose of this section is to critically examine the Bharatiya Nagarik (Second) Suraksha Sanhita 2023 and analyse the legislation's key legal components. Through a systematic review, the analysis aims to identify the primary objectives, intentions, and legal implications of this legislation. It also intends to offer a comprehensive assessment of the provisions, principles, and procedures to facilitate a clearer understanding of its scope and impact.

The BNSS2 seeks to modernise the CrPC by incorporating revolutionary methods in the realms of arrest, detention, witness collection, court proceedings, victim rights and so much more. Moreover, Sanhita has also prescribed specific timelines for time-bound investigation, trial and pronouncement of judgements. Furthermore, the Court Hierarchy Modification, in the BNSS2 has brought in variations to the way in which criminal matters are prosecuted in India. The previous hierarchical structure outlined in the CrPC, which included Magistrates Courts, Sessions Courts, High Courts and the Supreme Court along with state governments designating areas has been eliminated.<sup>1</sup> This

---

<sup>1</sup> The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, PRS LEGISLATIVE RESEARCH (2023),

<https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-second-sanhita-2023>

means that metropolitan areas will no longer have a classification or appointed Metropolitan Magistrates.<sup>2</sup> The citizen-centric approach has been adopted for the supply of copies of the first information report to the victim and to inform them about the progress of the investigation, including by digital means.<sup>3</sup> Apart from this, the BNSS2 has also brought in changes to the CrPC regarding detention amendments by introducing provisions regarding the release of accused individuals on bond after spending half of their maximum imprisonment period in detention.<sup>4</sup> However, there are exceptions to this rule for those punishable by life imprisonment and individuals facing proceedings in more than one offence. It is important to note that offences punishable by death were already excluded from this provision. Another notable change brought by the BNSS2 is mandating forensic investigation for offences carrying an imprisonment of seven years or more. Moreover, Forensic experts are now obligated to visit crime scenes, collect evidence and document their process using devices.<sup>5</sup> In cases where a state lacks facilities, it must utilise facilities available in another state. Finally, the introduction of the concept of Summary trial for petty and less serious cases will surely help in the speedy disposal of cases, thereby increasing the overall efficiency of the Indian Justice System.

## **A. ANALYSIS OF LEGAL PRINCIPLES AND PROCEDURES**

### **1) ARREST AND DETENTION**

The Bharatiya Nagarik Suraksha (second) Sanhita 2023 meticulously governs the procedures related to arrests and detentions through specific legal principles. These guidelines serve a dual purpose: ensuring that law enforcement agencies have justifiable grounds for arrests and, simultaneously, safeguarding the rights of the individuals undergoing arrest.

The Sanhita explicitly outlines the grounds for arrest, covering situations where there is a reasonable suspicion of the person having committed an offence.

Additionally, it establishes a procedure for obtaining an arrest warrant from a competent authority before making an arrest, with exceptions in specific circumstances. The rights of the arrested person, including being informed of the reasons for arrest, access to legal counsel, and the right to remain silent, are explicitly protected.<sup>6</sup> Beyond these legal aspects, these guidelines act as a necessary check to prevent any potential misuse of police powers. In the context of detention, the Sanhita sets specific periods and incorporates provisions for periodic reviews to prevent arbitrary and prolonged deprivation of liberty. The Code of Criminal Procedure (CrPC) introduces a provision allowing individuals accused of crimes, having served half of their imprisonment period in custody, to be eligible for release on bond, with exceptions for offences carrying the death penalty or life imprisonment.

An important amendment introduced by the BNSS2 focuses on the alteration of procedures for police custody. The Sanhita extends the permissible duration of police custody to 15 days, subject to approval by a magistrate. Judicial custody may be extended beyond 15 days if sufficient grounds exist. It is stipulated that the overall detention cannot exceed 60 or 90 days, depending on the nature of the offence. Importantly, during the initial 40 or 60 days of this detention period, police custody may be demanded in whole or in parts, and bail cannot be granted within this period.<sup>7</sup>

Addressing the use of handcuffs during arrest, the BNSS2 permits their use in specific circumstances, such as with habitual or repeat offenders or individuals accused of severe offences like rape, acid attacks, organized crime, drug-related crimes, or offences against the State.<sup>8</sup> A noteworthy modification proposed by the standing committee in 2023 led to the removal of the provision allowing handcuffs in economic offences, aligning with the committee's recommendation.

In summary, the Bharatiya Nagarik Suraksha (Second) Sanhita 2023 establishes a comprehensive legal framework for arrests and detentions, balancing the imperative of law enforcement with the protection of individual rights.

<sup>2</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 6, No. 174, Acts of Parliament, 2023 (India)

<sup>3</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 230, No. 174, Acts of Parliament, 2023 (India)

<sup>4</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 479, No. 174, Acts of Parliament, 2023 (India)

<sup>5</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 176, No. 174, Acts of Parliament, 2023 (India)

<sup>6</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 38, No. 174, Acts of Parliament, 2023 (India)

<sup>7</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 187, No. 174, Acts of Parliament, 2023 (India)

<sup>8</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 43 (3), No. 174, Acts of Parliament, 2023 (India)

---

## 2) INVESTIGATION AND INQUIRY

The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 provides a comprehensive framework for the investigation and inquiry process.

Investigators are given extensive powers to ensure a thorough and effective investigation. They have the authority to conduct searches and seizures, gather evidence, interview witnesses, and obtain documents and records relevant to the case. Investigators may also have the power to request assistance from other law enforcement agencies or professionals in specific fields. These broad powers allow investigators to carry out their duties diligently and will contribute to the overall success of investigations conducted under the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023.

The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 outlines the procedures for the collection and preservation of evidence in investigations. It emphasizes the importance of properly collecting and handling evidence to ensure its admissibility in court. One of the key provisions included in the Sanhita is the admissibility of digital evidence recorded in any electronic device, which can include phones, laptops, digital cameras etc.<sup>9</sup> This provision is extremely crucial in today's world where life without technology is unfathomable. Furthermore, investigators are required to follow prescribed protocols for gathering evidence, including taking photographs, videos, or recordings, and documenting the scene of the incident. They must also label and seal evidence to maintain its integrity and prevent tampering. The legislation mandates that evidence be stored in appropriate facilities under controlled conditions to prevent degradation or loss. Special care must be taken when handling sensitive evidence, such as DNA samples, to avoid contamination. Furthermore, the law requires investigators to maintain a detailed chain of custody for each piece of evidence to establish its authenticity and reliability during trial.

## 3) INTERROGATION

The Sanhita highlights the importance of adhering to legal boundaries and ethical standards while conducting interrogations. The Sanhita strictly forbids the use of

coercive methods, including torture or physical abuse. It elucidates the need for investigators to receive proper training on effective and lawful interrogation techniques to ensure fair and just outcomes. Additionally, the text emphasises the rights of the accused during the interrogation process, including the right to remain silent and the right to legal representation.

## 4) FORENSIC ANALYSIS IN INVESTIGATIONS

The Bharatiya Nagarik Suraksha (Second) Sanhita 2023 recognizes the crucial role of forensic analysis. Forensic analysis refers to the application of scientific techniques and methods to gather, analyze, and interpret evidence that can be presented in court. It plays a vital role in determining the authenticity, integrity, and relevance of various types of evidence, including physical, biological, chemical, and digital evidence. Forensic analysis helps to establish facts, identify suspects, and link them to crime scenes or victims. It includes techniques such as DNA analysis, fingerprint examination, ballistics analysis, and digital forensics. The legislation makes forensic analysis mandatory for all investigations relating to offences with an imprisonment of seven years or more. It is also essential that forensic experts visit the crime scene themselves to collect data and samples required for the same. The Sanhita has also made it possible to collect specimen signatures or handwriting, finger impressions and voice samples from people who have not been arrested. Furthermore, if a state lacks facilities to conduct investigations of such nature, it can utilise the facilities of any other state with prior notification for the same.<sup>10</sup>

## 5) BAIL AND REMAND

Provisions relating to Bail, remand and bonds are mentioned in chapter 35, ranging from sections 478 to 496 of the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023. The BNSS2, unlike the CrPC, has introduced definitions for the term bail, bail is defined under Section 2 clause (b).<sup>11</sup> Further, the term bail bond is defined in Section 2 (d).<sup>12</sup>

In the context of the Bharatiya Nagarik Suraksha (second) Sanhita 2023, bail conditions play a significant role in ensuring the proper conduct of

---

<sup>9</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 94, No. 174, Acts of Parliament, 2023 (India)

<sup>10</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 176 (3), No. 174, Acts of Parliament, 2023 (India)

<sup>11</sup> “the release of a person accused of an offence from the custody of law upon certain conditions imposed by an officer or court including execution by such person of a bond or bail bond”

Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 2 (b), No. 174, Acts of Parliament, 2023 (India)

<sup>12</sup> “Bail bond” means an undertaking for release with surety”. Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 2(d), No. 174, Acts of Parliament, 2023 (India)

individuals released on bail. These conditions serve as safeguards to mitigate potential risks such as flight, interference with witnesses, or commission of further offences. Examples of bail conditions can include the requirement to surrender travel documents, adhere to curfews, abstain from alcohol or drug consumption, maintain employment, or report regularly to law enforcement officials. The judiciary also makes considerations when determining appropriate bail conditions, ensuring they are proportionate to the seriousness of the alleged offence and individual circumstances. A significant advancement involves aligning the Sanhita with the Juvenile Justice (Care and Protection of Children) Act, 2015, particularly in expanding the definition of 'child,' thus allowing exemption from ineligibility for bail.

Judicial review allows higher courts to assess the legality and fairness of bail decisions. It serves as a mechanism for reviewing whether lower courts have correctly applied the relevant legal principles and considered all relevant facts and circumstances. Numerous factors are considered during judicial review, such as the existence of errors of law, procedural irregularities, or misapplication of bail conditions. It also explores the potential outcomes of judicial review, including affirmation, modification, or setting aside the original bail decision, ensuring the maintenance of justice and fairness throughout the legal process. According to the CrPC, a detained individual may be granted bail once she/he has completed half the maximum period of imprisonment for the given offence. On the other hand, the BNSS2 denies this to individuals facing charges for multiple offences.<sup>13</sup>

#### 6) PRE-TRIAL DETENTION

Pre-trial detention refers to the confinement of individuals who are awaiting trial. It examines the circumstances under which pre-trial detention may be imposed, considering factors such as the severity of the alleged offence, risk of flight, potential danger to the community, or interference with the investigation. The provision in the legislation that allows police custody up to 15 days, which can be authorised as a whole or in parts during the initial 40 or 60 days of the 60 or 90 days of judicial custody may also mean that the accused wouldn't be granted bail until the period of police

custody is complete.<sup>14</sup> The Sanhita also includes the rights of the accused during pre-trial detention, ensuring that they are treated fairly and with respect for their human rights. It examines the duration of pre-trial detention, the conditions of confinement, the possibility of bail during this period, and the availability of legal mechanisms to challenge or appeal the decision to detain.

#### 7) TRIAL AND EVIDENCE

In the Bharatiya Nagarik Suraksha (Second) Sanhita 2023, the section on Trial and Evidence provides a framework for the examination of witnesses, presentation of documentary evidence, expert testimony, and cross-examination. By defining these processes, the law ensures that the parties involved have a clear understanding of their roles and responsibilities when presenting and challenging evidence in court.

#### 8) WITNESS PROTECTION

Witnesses play a crucial part in providing testimony and presenting evidence that can support or refute the claims made by the prosecution or defence. They are expected to provide first-hand knowledge of the events or circumstances related to a case and have a duty to provide accurate and truthful information to assist the court in reaching a well-informed decision. The law recognizes the significance of witnesses in ensuring a fair and just trial. Their testimonies, given under oath, have the potential to influence the judgement of the court. Hence witness reliability must also be taken into utmost consideration. Considering the crucial role that witnesses play in the delivery of justice, it is pertinent to provide safeguards that ensure the protection of their overall well-being and identity according to the nature of the case at hand. According to Section 179 of the Sanhita, men below the age of fifteen and above the age of sixty, disabled individuals, individuals with acute illness and women need not leave their place of residence to record their statements. Furthermore, Section 180 provides for female victims to be examined by female officers only.<sup>15</sup> As an additional safeguard to the witness, Section 181 imparts that the statement(s) given to a police officer shall not be signed by the person making it nor can it be used against him.<sup>16</sup> Finally,

<sup>13</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 479, No. 174, Acts of Parliament, 2023 (India)

<sup>14</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 187 (2), No. 174, Acts of Parliament, 2023 (India)

<sup>15</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 180, No. 174, Acts of Parliament, 2023 (India)

<sup>16</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 181, No. 174, Acts of Parliament, 2023 (India)

---

section 398 of the Sanhita relates to the witness protection scheme.<sup>17</sup>

#### 9) PRESENTATION OF DOCUMENTARY EVIDENCE

The Presentation of Documentary Evidence is an essential aspect of the trial process. The Sanhita outlines the rules and procedures for introducing and admitting documentary evidence in court. It defines the types of documents that are admissible, such as records, contracts, photographs, and other relevant materials. The law also provides guidelines for the authentication, marking, and presentation of these documents during trial. By establishing a clear framework for the presentation of documentary evidence, the law ensures that reliable and relevant information can be considered by the court in reaching a just verdict. To ensure the integrity of the evidence presented before the court, Section 383 of the bill outlines the procedure for trial for giving false evidence.<sup>18</sup> To keep up with the changing technological needs of society, Sanhita has also incorporated provisions to submit audio, visual and electronic forms of evidence before the court.<sup>19</sup>

#### 10) EXPERT TESTIMONY

Expert Testimony holds significant importance to ensure a fair trial. This section outlines the rules and procedures for presenting expert testimony during a trial. It defines the qualifications and criteria for individuals to be considered experts in their respective fields and provides guidelines for their examination and presentation of opinions. The law also emphasises the reliability and credibility of expert witnesses and sets standards for their admissibility. By establishing clear guidelines, the law ensures that expert testimony contributes to the court's understanding of complex matters and assists in making informed decisions based on sound and authoritative knowledge.

#### 11) CROSS-EXAMINATION

Cross-examination is a crucial part of the trial process outlined in the Bharatiya Nagarik Suraksha (Second) Sanhita 2023. It specifies the rules and procedures for questioning and challenging witnesses during cross-examination. It defines the scope and limitations of cross-examination, ensuring that it remains relevant to the issues in the case. The law also provides guidelines for the proper conduct of cross-examination, emphasising the need for fairness, respect, and the avoidance of harassment or intimidation. By establishing clear rules, the law aims to promote the search for truth while safeguarding the rights and interests of all parties involved in the trial. Section 322 of the Sanhita relates to the provisions for cross-examining witnesses.<sup>20</sup>

#### 12) JUDGMENT AND APPEAL

This section of the legislation outlines the procedures and mechanisms for challenging and reviewing judicial decisions. It encompasses the principles of judicial review, which allow individuals and organisations to request a higher court to review the legality and constitutionality of a lower court's decision. Additionally, it covers the appellate court process, which details the steps involved in appealing a judgment, including filing an appeal, presenting arguments, and submitting relevant evidence. This section also explores the significance of precedents and case law in shaping legal interpretations and decisions, highlighting their role in providing guidance and establishing consistency in the application of the law.

#### 13) JUDGEMENT

As per Section 258 (1) Judgement of acquittal or conviction is to be given within 30 days of reserving for trial which may be extended to 60 days with reasons.<sup>21</sup> *“After hearing arguments and points of law (if any), the Judge shall give a judgement in the case, as soon as possible, within a period of thirty days from the date of completion of arguments, which may for specific*

---

17 Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 398, No. 174, Acts of Parliament, 2023 (India)

18 Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 383, No. 174, Acts of Parliament, 2023 (India)

19 Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 530, No. 174, Acts of Parliament, 2023 (India)

20 Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 322, No. 174, Acts of Parliament, 2023 (India)

21 Saloni Sharma, Arshdeep Singh “Revamping The British Era Laws: IPC, CrPC And Evidence Act” (2023) 5 Indian Journal of Law and Legal Research <https://hcommons.org/deposits/objects/hc:59090/datastream/s/CONTENT/content>

*reasons extend to a period of sixty days.*"<sup>22</sup> Moreover, the same section mandates the judgement of acquittal or conviction to be given within 30 days of reserving for trial which may be extended to 60 days with reasons.<sup>23</sup> "*After hearing arguments and points of law (if any), the Judge shall give a judgement in the case, as soon as possible, within a period of thirty days from the date of completion of arguments, which may for specific reasons extend to a period of sixty days.*"<sup>24</sup> The central government under Section 475, BNSS BILL, 2023 has also replaced the Power to commute sentences.<sup>25</sup>

#### 14) APPELLATE COURT PROCESS

The Appellate Court process outlined in the Bharatiya Nagarik Suraksha (Second) Sanhita 2023 serves as a mechanism for parties dissatisfied with a judgement to seek redress and a fair hearing. There are various stages involved in the appellate court process, which include filing a notice of appeal, preparing and presenting written submissions and oral arguments, and responding to the opposing party's contentions. It also outlines the criteria considered by the appellate court in evaluating the merits of an appeal, such as errors of law, procedural irregularities, or the need for a fresh assessment of evidence. By providing an overview of the appellate court process, this section elucidates the avenues available for parties to challenge and potentially overturn unfavourable judgments. Chapter XXXI of the Sanhita covers all matters relating to appeals and the powers and procedures involved concerning the Appellate Court.

#### 15) MERCY PETITION

Under the BNSS Bill, 2023 the Central Government has also introduced the concept of Mercy petitions.<sup>24</sup> For Mercy Petition in the death sentence cases:

A convict facing capital punishment or their legal representative has a window of 30 days following notification by the Jail superintendent to submit a mercy petition either to the President or Governor.

Initially, the petition is presented before the Governor, and if it is turned down, it must be forwarded to the President within 60 days.

Additionally, the Jail superintendent is mandated to forward mercy petitions of co-convicts to the appropriate central or state authority for consideration. Upon receipt, the Central Government must convey its recommendations to the President within 60 days after receiving inputs from the state and the jail.

The President retains the discretion to address mercy petitions for all convicts collectively.

The decision will be relayed to the State's home department and jail authorities within 48 hours.

Furthermore, no avenues for appeal exist in any court, and no judicial inquiry may be initiated into the matter.

### III. COMPARATIVE ANALYSIS OF THE BNSS, 2023 WITH THE CrPC, 1973

The Code of Criminal Procedure, 1973 (CrPC) regulates the administration of justice alongside the Indian Penal Code, 1860 (IPC). It covers procedures for investigation, arrest, prosecution, and bail for offences. Originally enacted in 1861 to unify legal systems, the CrPC has undergone revisions, notably in 1973 and 2005, introducing changes like anticipatory bail and plea bargaining. The Supreme Court has interpreted the CrPC extensively, establishing mandates such as mandatory FIR registration for cognizable offences and affirming bail as an absolute right for bailable offences. Challenges persist in the criminal justice system, including case backlogs and concerns about equitable treatment. Due to the same, the Bharatiya Nagarik Suraksha Sanhita (BNSS) Bill 2023, later replaced by the Bharatiya Nagarik Suraksha (Second) Sanhita 2023, was introduced to replace the CrPC. Following are the key legal provisions that will come into effect with the implementation of the Bharatiya Nagarik Suraksha (Second) Sanhita 2023 in comparison with the CrPC:

- As per the CrPC, the medical examination of the accused, particularly in cases of rape, is permissible under specific circumstances. This examination is conducted by a registered medical practitioner upon the request of a police officer of at least the sub-inspector rank.<sup>25</sup> However, under the BNSS2, any police officer is empowered to request such an examination.<sup>26</sup>

<sup>22</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 258 (1), No. 174, Acts of Parliament, 2023 (India)

<sup>23</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 475, No. 174, Acts of Parliament, 2023 (India)

<sup>24</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 472, No. 174, Acts of Parliament, 2023 (India)

<sup>25</sup> The Code of Criminal Procedure, 1973, § 53(A), No. 174, Acts of Parliament, 2023 (India)

<sup>26</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 51(1), No. 174, Acts of Parliament, 2023 (India)



- The BNSS2 mandates forensic investigation for offences carrying a minimum sentence of seven years' imprisonment. In such cases, forensic experts are required to visit crime scenes to collect evidence, documenting the process using mobile phones or other electronic devices. If a state lacks forensic facilities, it must utilise facilities in another state.<sup>27</sup>

- The CrPC outlines a hierarchical structure for adjudicating criminal matters in India. This structure includes Magistrate's Courts responsible for most criminal trials, Sessions Courts presided over by a Sessions Judge and hearing appeals from Magistrate's Courts, High Courts with inherent jurisdiction over criminal cases and appeals, and the Supreme Court, which hears appeals from High Courts and exercises original jurisdiction in certain matters. The CrPC also empowers state governments to designate cities or towns with populations exceeding one million as metropolitan areas,<sup>28</sup> which have Metropolitan Magistrates.<sup>29</sup> However, the BNSS2 eliminates the classification of metropolitan areas and Metropolitan Magistrates.

- The Constitution of India<sup>30</sup> and CrPC<sup>31</sup> limit police custody to 24 hours, extendable by a Magistrate up to 15 days if needed for investigation. The Magistrate may extend judicial custody beyond 15 days with sufficient justification. However, the maximum detention period remains 60 or 90 days, depending on the severity of the offence. The BNSS2 amendment alters this process by permitting police custody for up to 15 days within the initial 40 or 60 days of detention, potentially leading to bail denial if law enforcement advocates for the individual's return to custody during this period.

- According to the CrPC, under trials must be released on a personal bond if they have served half the maximum imprisonment for an offence, except in cases punishable by death.<sup>32</sup> The

BNSS2 maintains this provision and introduces a new rule: first-time offenders are eligible for bail after serving one-half of the maximum sentence.<sup>33</sup> However, this new provision does not apply to offences punishable by life imprisonment or cases involving multiple offences or pending investigations, inquiries, or trials across multiple cases. Given that charge sheets frequently list multiple offences, this adjustment may render many under trial prisoners ineligible for mandatory bail.

- Plea bargaining, introduced to the CrPC in 2005, allows for agreements between the defence and prosecution wherein the accused pleads guilty for a reduced sentence or a lesser offence.<sup>34</sup> However, it is prohibited for offences punishable by death, life imprisonment, or terms exceeding seven years. Under the CrPC, no bargaining is allowed for a lesser offence or compounding, resulting in the accused being considered confessed and convicted. The BNSS2 maintains this provision, restricting plea bargaining in India to sentence bargaining. Additionally, it mandates that the accused must file a plea-bargaining application within 30 days from the framing of charges, potentially impacting the effectiveness of plea bargaining by limiting the window for seeking a reduced sentence.<sup>35</sup>

- The CrPC grants police the authority to seize movable property suspected to be stolen or found under circumstances suggesting the commission of an offence. BNSS2 expands this to include immovable properties.<sup>36</sup> However, the treatment of seized property under BNSS2 differs from the provisions outlined in the Prevention of Money Laundering Act, 2002 (PMLA), which deals with the confiscation of assets linked to specified offences involving money laundering.<sup>37</sup> Unlike PMLA, BNSS2 lacks certain safeguards, such as a time limit for property attachment and a 30-day notice period for showing cause against attachment orders. Instead, BNSS2 provides a

<sup>27</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 176(3), No. 174, Acts of Parliament, 2023 (India)

<sup>28</sup> The Code of Criminal Procedure, 1973, § 8(1), No. 2, Acts of Parliament, 1974 (India)

<sup>29</sup> The Code of Criminal Procedure, 1973, § 16, No. 2, Acts of Parliament, 1974 (India)

<sup>30</sup> INDIA CONST. art 22

<sup>31</sup> The Code of Criminal Procedure, 1973, § 51, No. 2, Acts of Parliament, 1974 (India)

<sup>32</sup> The Code of Criminal Procedure, 1973, § 436 (A), No. 2, Acts of Parliament, 1974 (India)

<sup>33</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, 479, No. 174, Acts of Parliament, 2023 (India)

<sup>34</sup> The Code of Criminal Procedure (Amendment) Act, 2005, No. 2, Acts of Parliament, 2006 (India)

<sup>35</sup> Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 290, No. 174, Acts of Parliament, 2023 (India)

<sup>36</sup> Nevada Properties Pvt. Ltd. V. State of Maharashtra, (2019) 20 SCC 119

<sup>37</sup> Prevention of Money Laundering Act, 2002, § 3,5,8, No. 15, Acts of Parliament, 2003 (India)



---

shorter 14-day notice period for the accused to respond.

- Under the CrPC, a Magistrate has the authority to order an individual with adequate means to provide a monthly allowance for the maintenance of their parents who are unable to support themselves. Failure to comply with this order may result in the issuance of a warrant for levying the due amount and imprisonment for up to one month or until the payment is made. BNSS2 maintains this provision, which mirrors the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.<sup>38</sup> The Act mandates the establishment of Maintenance Tribunals by state governments to determine maintenance for senior citizens and parents. These tribunals can issue warrants for levying overdue amounts and impose imprisonment for up to one month or until payment is fulfilled. It's noteworthy that this Act supersedes all other laws in this regard.

- The CrPC outlines procedures for investigating and trying offences, along with provisions for maintaining public order and tranquillity. It empowers District Magistrates to issue orders necessary to preserve public order. BNSS2 retains these provisions in separate chapters, prompting discussion on whether procedures for trials and maintenance of public order should be included in the same law or handled separately. Public order falls under state jurisdiction according to the Seventh Schedule of the Constitution,<sup>39</sup> while matters under the CrPC were previously listed under the Concurrent List before the Constitution came into effect.<sup>40</sup>

- The 2005 amendment to the CrPC allowed Magistrates to obtain handwriting or signature samples from arrested individuals.<sup>41</sup> BNSS2 expands this to include finger impressions and voice samples, even from non-accused persons. Meanwhile, the 2022 Criminal Procedure (Identification) Act<sup>42</sup> permits a wider range of data collection, including fingerprints, handwriting, and biological samples, from convicts, arrestees, or non-accused individuals, with data retention for up to 75 years. With the

recent passage of this comprehensive law, the necessity of retaining and expanding provisions in the BNSS2 is uncertain. The constitutional validity of the 2022 Act is pending before the Delhi High Court.<sup>43</sup>

## IV. SOCIAL PERSPECTIVES

### 1) IMPACT OF BNSS ON SOCIETY

The Bharatiya Nagarik Suraksha Sanhita (Second) 2023 has profoundly influenced society, bringing about positive changes in individual rights, legal access, and overall citizen well-being. This legislation stands as a cornerstone in safeguarding fundamental rights and civil liberties, empowering citizens to actively participate in the social, cultural, and political spheres without fear of discrimination. By prioritising access to legal aid services, Sanhita ensures that financial limitations do not impede individuals from seeking legal representation, fostering a more equitable society where everyone can effectively exercise their legal rights. The establishment of an independent and accountable judiciary, coupled with efficient enforcement mechanisms, reinforces the rule of law, instilling a sense of security and confidence within the society. Additionally, the Sanhita's initiatives to enhance legal awareness, educate the public, and promote efficient methods contribute to a more informed, and amicably resolved legal landscape, further strengthening the societal fabric.

---

<sup>38</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, No. 56, Acts of Parliament, 2007 (India)

<sup>39</sup> The Constitution of India, Entry 1, List II, Seventh Schedule

<sup>40</sup> The Constitution of India, Entry 2, List III, Seventh Schedule

<sup>41</sup> The Code of Criminal Procedure, 1973, § 311(A), No. 2, Acts of Parliament, 1974 (India)

<sup>42</sup> The Criminal Procedure (Identification) Act, 2022, No. 11, Acts of Parliament, 2022 (India)

<sup>43</sup> Harshit Goel v. Union of India, W.P. (CRL) 869/2022

---

## 2) ACCESS TO JUSTICE

The Bharatiya Nagarik Suraksha Sanhita (Second) 2023 ensures access to justice for all, covering civil, political, economic, social, and cultural rights. The legislation prohibits discrimination, upholds equality before the law, and strives for a just society. Enshrining fundamental rights such as life, liberty, and freedom of expression, the legislation also guarantees a fair trial, protection against torture, and the right to participate in community life. The State is mandated to effectively uphold these rights.

Addressing financial barriers, Sanhita prioritises legal aid, offering free or affordable assistance, including advice and court representation. The aim is to bridge the justice gap and enable individuals, regardless of their economic status, to exercise their legal rights.

To prevent discrimination, the legislation explicitly prohibits bias based on various grounds, promoting equality. It establishes mechanisms to address complaints and empowers authorities to act against violators. The enforcement mechanisms are robust, establishing an independent and accountable judiciary. Procedures for filing complaints, seeking redress, and enforcing legal rights are outlined. Individuals can approach the courts, while enforcement agencies have the power to investigate and take action against rights violators. The Sanhita not only safeguards legal rights on paper but actively protects and enforces them for the benefit of all citizens. Its goal is to enhance access to justice by improving legal awareness, strengthening judicial infrastructure, promoting alternative dispute resolution, and expanding legal aid programs. Through these measures, the legislation strives for a more accessible, transparent, and efficient legal system, ensuring justice is within reach for every citizen.

## 3) PROTECTION OF RIGHTS AND LIBERTIES

Ensuring fundamental rights, civil liberties, and provisions against discrimination, the Sanhita stands as a beacon for a just and equitable society. Fundamental rights, such as the right to life, liberty, and freedom of expression, form the cornerstone of the Sanhita, promoting a democratic and inclusive environment. Civil liberties, including freedom of speech, religion, and privacy, are meticulously safeguarded to prevent undue state interference. Equality and non-discrimination are paramount principles, prohibiting bias based on race, religion, caste, gender, or disability. The Sanhita fosters a society valuing diversity and inclusivity.

With an eye on the digital age, Sanhita prioritises individual privacy, setting stringent measures against unreasonable searches, ensuring data confidentiality, and limiting data collection. Enforcing these rights, the Sanhita establishes independent oversight bodies and empowers citizens to seek redress through the judiciary, ensuring justice remains accessible and rights are protected. The judiciary, acting as a check on state power, interprets the Sanhita's provisions in alignment with constitutional principles and international human rights standards, ensuring effective enforcement. Law enforcement agencies, bound by principles of fairness, impartiality, and human rights protection, are entrusted with maintaining public safety while respecting individual rights. The Sanhita emphasizes accountability and transparency in their practices.

---

#### 4) ROLE OF LAW ENFORCEMENT

The Bharatiya Nagarik Suraksha Sanhita (Second) 2023 assigns law enforcement agencies responsibilities crucial for citizen safety. This includes maintaining public order, enforcing laws, preventing and investigating crimes, cooperating with other agencies, engaging with community organisations, and ensuring the training and development of personnel. Law enforcement's role in maintaining public order involves monitoring gatherings, ensuring smooth traffic flow, and responding to emergencies. Specialised training equips personnel to uphold order and protect citizens. The ongoing training and development of law enforcement personnel are paramount. Comprehensive programs cover various aspects, ensuring personnel stay updated on emerging challenges, adopt best practices, and effectively serve and protect the community.

Enforcing laws and regulations is pivotal, covering compliance monitoring, investigations, and corrective actions against violators. This includes routine patrols and apprehension of those engaged in criminal activities, contributing to a secure environment. Preventing and investigating crimes is a critical responsibility, with law enforcement actively identifying threats, conducting thorough investigations, and presenting cases to judicial authorities, ensuring overall community security. Cooperation with other government agencies is integral for effective law enforcement. Close collaboration involves sharing information, resources, and expertise, enhancing overall societal security. Engagement with community organisations fosters positive relationships, allowing law enforcement to understand local needs and collaboratively address safety issues, promoting shared responsibility.

Indian citizens. The Sanhita modernises The Code of Criminal Procedure, 1973, by introducing revolutionary methods in arrest, detention, investigation, trial, evidence presentation, judgement, and appeal processes. It emphasises the importance of fair trial processes, evidence presentation, and judicial review mechanisms. It also introduces measures to enhance victim rights and streamline court proceedings, reflecting a citizen-centric approach to law enforcement.

Despite these advancements, the Sanhita acknowledges the limitations of previous legal frameworks, particularly the outdated Criminal Procedure Code (CrPC), 1973. By addressing these shortcomings and emphasising modernization, accountability, and transparency, Sanhita strives to create a more just and equitable society. Through its provisions for legal awareness, access to justice, and enforcement mechanisms, the Bharatiya Nagarik Suraksha (Second) Sanhita 2023 stands as a beacon for protecting fundamental rights and promoting equality. It empowers individuals, strengthens the judiciary, and ensures that law enforcement agencies uphold principles of fairness and human rights protection, ultimately contributing to a safer and more secure environment for all citizens.

#### V. CONCLUSION

The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, emerges as a comprehensive legal framework aimed at ensuring the safety, security, and rights of

---

## REFERENCES

- [1] Konina Mandal, “Colonial to citizen-centric: Revamping India’s criminal justice system” The Sunday Guardian, 31<sup>st</sup> December, 2023  
<https://sundayguardianlive.com/business/colonial-to-citizen-centric-revamping-indias-criminal-justice-system>
- [2] Passage of Bharatiya Nagarik Suraksha Sanhita, 2023, Bharatiya Nyaya Sanhita, 2023 and Bharatiya Sakshya Adhiniyam, 2023 is a watershed moment in our history: PM, (Dec. 21, 2023), <https://pib.gov.in/PressReleasePage.aspx?PRID=1989434>.
- [3] The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, PRS LEGISLATIVE RESEARCH (2023), <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-second-sanhita-2023>
- [4] Revolutionizing Justice: Unveiling India’s 2023 Legal Reforms – Bharatiya Nagarik Suraksha Sanhita (BNSS), Bharatiya Nyaya Sanhita (BNS), and Bharatiya Sakshya Sanhita (BSS), Century Law Firm, last accessed (February 7, 2023, 2:53 pm), <https://www.centurylawfirm.in/blog/indias-2023-legal-reforms-bharatiya-nagarik-suraksha-sanhita-bnss-bharatiya-nyaya-sanhita-bns-and-bharatiya-sakshya-sanhita-bss/>
- [5] The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, PRS LEGISLATIVE RESEARCH (2023), <https://prsindia.org/billtrack/the-bharatiya-nagarik-surakshasecond-sanhita-2023>
- [6] Saloni Sharma, Arshdeep Singh “Revamping The British Era Laws: IPC, CrPC And Evidence Act” (2023) 5 Indian Journal of Law and Legal Research  
<https://hcommons.org/deposits/objects/hc:59090/datastreams/CONTENT/content>