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Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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BNSS – “STAGNANT BUEREAUCRACY: A STRUGGLE FOR PROGRESS?”

AUTHOR – BAHITRA BASU* & DEBANSHI JOARDAR**

* 5TH SEMESTER (BALLB), CHRIST UNIVERSITY, DELHI NCR

** 1ST SEMESTER (BALLB), CHRIST UNIVERSITY, DELHI NCR

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ABSTRACT

The complex legal topic of whether the Code of Criminal Procedure (CrPC) and the Bharatiya Nagarik Suraksha Sanhita (BNSS) can function concurrently inside the Indian judicial system is examined in this research paper. The BNSS, which replaced the CRPC in the vast theatre of legal reforms, has been greeted with a mixture of suspicion and confusion. The BNSS appears to be more of a careful shuffle in place than a big move forward, as it mimics its predecessor to the tune of 95. The most noticeable alteration has been the introduction of Sanskrit-inspired titles in Hindi, which has sparked both curiosity and criticism. The answer to questions concerning the ranking of crimes against women is as perplexing as it is illuminating. The portions have been shuffled like a deck of cards, with the dispensation proudly hailing the rearrangement as a big stride. However, one must wonder if the sections' chronological sequence is more important than their content. Rearranging the deck chairs on the Titanic is analogous to making a superficial modification that is completely pointless when considering the iceberg of fundamental problems.

Modernising the criminal justice system, expediting procedures, and enhancing justice accessibility are the goals of reforms. But their influence is intricate and necessitates careful consideration. This case study looks at the main characteristics, goals, and possible advantages of these reforms in order

to assess their ramifications. It looks at the requirements that the CrPC has for the BNSS as well as the problems and effects of the recent changes to the BNSS legislation.

The legal fraternity, along with the citizenry it serves, must now navigate these waters with a critical eye and a hope that the spirit of justice is not lost in the linguistic and bureaucratic labyrinths.

INTRODUCTION

The confluence of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and the Code of Criminal Procedure, 1973 (CrPC) engenders a compelling dilemma within the Indian legal framework. The BNSS, an extensive legislative initiative, aspires to revamp the procedural architecture of India's criminal justice system by instituting a multitude of reforms designed to accelerate and refine the mechanisms of criminal adjudication.¹ It prescribes, inter alia, the mandatory implementation of forensic investigations in cases involving offenses subject to a term of imprisonment of seven years or more, signifying a paradigm shift towards a more empirical methodology in crime resolution.² Conversely, the CrPC has served as the bedrock of criminal procedural law in India for more than four decades, establishing the foundational structure for the investigation, prosecution, and trial of criminal offenses.³

The simultaneous existence and operational synergy of the BNSS and CrPC provoke essential inquiries regarding legislative intent, the feasibility of concurrent application, and the potential emergence of jurisdictional and procedural discrepancies. For instance, while the BNSS introduces novel definitions and constructs, such as "audio-video electronic means" for identification, search, and seizure, it simultaneously preserves numerous foundational principles and provisions of the CrPC, indicating a certain degree of continuity in the face of transformation. The BNSS also proposes the substitution of specific terminologies, with 'Sanhita' supplanting 'Code', reflecting both a symbolic and substantive metamorphosis in the legal vernacular.

This research paper intends to investigate the intricate dynamics between the BNSS and CrPC,

assessing whether their concurrent operation is viable and, if affirmative, how their coexistence might be reconciled. It will scrutinize the correspondence table and comparative summary provided by the Bureau of Police Research and Development, which meticulously delineates the differences, omissions, and enhancements introduced by the new legislation in relation to the provisions of the CrPC.⁴ Moreover, this paper will evaluate the ramifications of these modifications on the rights of the accused, the obligations of law enforcement entities, and the overall efficacy of the criminal justice system.

The analysis will encompass the pragmatic dimensions of law enforcement and judicial processes, taking into account the viewpoints of diverse stakeholders, including legal professionals, scholars, and civil society entities.⁵ Additionally, it will contemplate the overarching aims of the BNSS, such as augmenting the application of technology and forensic methodologies in investigative procedures, ensuring the timely conduct of trials and issuance of judgments, and fostering a criminal justice framework that is more attuned to the needs of citizens.⁶

In summary, this introductory section establishes a foundation for an exhaustive investigation into the transformative capacity of the BNSS when contrasted with the persistent legacy of the CrPC. It encourages readers to engage with the intricacies of legal reform and the nuanced equilibrium between innovation and tradition in the quest for justice.

HISTORICAL CONTEXT

The Code of Criminal Procedure (CrPC) in India constitutes a thorough legal framework delineating the methodologies for the execution of criminal justice administration. The historical roots of the CrPC can be traced back to the era

of British colonialism, with its initial iteration being promulgated in 1861 in conjunction with the establishment of the Indian Penal Code. This version was subsequently supplanted by Act 10 of 1882, and from that point onward, there have been a multitude of amendments and revisions introduced to cater to the dynamic requirements of the Indian legal landscape. The most consequential reform transpired with the implementation of the CrPC in 1973, which became operational on April 1, 1974. This iteration of the CrPC emerged from thorough evaluations and recommendations posited by the Law Commission of India, with the objective of modernizing and optimizing criminal procedures to be congruent with the tenets of justice, equity, and operational efficacy.⁷

In the 76 years post-independence from colonial authority, India has achieved remarkable advancements. Concurrently, the over 160-year-old Indian Penal Code (IPC) has encountered scrutiny for its antiquated provisions and colonial objectives; nevertheless, the IPC continues to embody laws such as sedition, which reflect its oppressive heritage. There exists a pressing necessity to amend the legislation by reallocating the authority from the sovereign to the citizenry. Over the decades, various committees have been established to initiate reforms within the Indian criminal justice system.⁸

The Vohra Committee in 1993 advocated for amendments to rectify political errors and counteract anti-social elements.⁹ The Malimath Committee in 2003 suggested the introduction of a novel category of offenses termed 'social welfare offences' for minor infractions, which could be addressed through lenient penalties or community service.¹⁰ Law commissions and committees have consistently called for the IPC to be revised in order to mirror societal transformations.

The contours of modern Indian state driven by the philosophy of neo liberalism are constantly shrinking. However in the domain of criminal law, state remains the holder of leviathan like

power and monopoly over legitimate violence. The evolution of the framework of human rights and resurgence of constitutionalism has had little regulatory impact on the exponential and unprincipled growth of criminal laws and penal statutes in India. The adjudicative law is largely on factual scenarios and procedures rather than discussions of what constitutes 'right' and 'wrong'.

Though it is the state's prerogative to formulate its criminalisation policy within its legitimate authority, criminalisation should be fair and justified as it subjects people to detrimental and harmful consequences. The Code of Criminal Procedure (CrPC) is the primary set of laws that govern the administration of substantive criminal law. Our legal system mainly encompasses criminal law in the Code of Criminal Procedure, 1973, which became effective on April 1, 1974. The 1973 Criminal Procedure Code consists of 37 Chapters, 484 Sections, and two Schedules.

The Criminal Procedure Code (CrPC) originated during British colonial rule and was first enacted in 1860 to consolidate and amend laws concerning criminal procedures. A revised version of the CrPC was introduced in 1872, serving as the foundation for subsequent iterations. Act 10 of 1882 eventually replaced the original code. Since 1882, there have been sixteen pieces of legislation related to criminal procedure. In 1898, a comprehensive CrPC was enacted and remained in effect for many years, even after India gained independence in 1947. The First Law Commission's 14th Report in 1958 proposed numerous reforms for criminal justice. These recommendations were considered, leading to changes in the Code. In 1973, Parliament passed the Code of Criminal Procedure in response to the recommendations of the Fifth Law Commission's Forty-First Report.

While the immediate impact of the Constitutional Assembly Debates on the CrPC was limited these debates laid the groundwork for the comprehensive revision that resulted in the 1973 CrPC.

Many provisions of the Indian Penal Code (IPC) are antiquated and require significant modification to align with contemporary values and societal norms. In spite of numerous reports and advocacy initiatives, the IPC continues to neglect the criminalization of marital rape. This omission undermines the rights and dignity of individual spouses, perpetuating the detrimental notion that consent within marriage is inconsequential. Modifying the IPC to encompass the criminalization of marital rape is imperative for the promotion and safeguarding of individual liberties and gender equality. Furthermore, the IPC must evolve to adopt a more gender-neutral stance by revising its language and policies to foster inclusivity and acknowledge the rights of all genders. The decriminalization of Section 377 concerning homosexuality represented a pivotal advancement in the acknowledgment of LGBTQ+ rights. Nevertheless, additional legislative amendments are essential to ensure that the IPC comprehensively protects these rights and integrates contemporary principles of equality and non-discrimination. The sedition laws, originally instituted to safeguard the British government from dissenters during the colonial period, have been exploited to stifle opposition in contemporary society. This legislation has adversely affected journalists, labourers, students, and scholars who have criticized governmental actions, thereby obstructing the fundamental freedoms of speech and democratic expression that are vital to the protection of rights.

Additionally, the IPC necessitates the establishment of a novel framework to address current challenges such as match-fixing in sports, which compromises the integrity of athletic competitions and can lead to substantial economic and social repercussions. Furthermore, instances of torture and fatalities while in custody represent egregious violations of human rights that demand explicit legal mechanisms to guarantee accountability and justice for affected individuals. The death

penalty remains a polarizing subject, with ongoing discourse regarding its moral and ethical ramifications. Some proponents advocate for its abolition, deeming it inhumane and incompatible with contemporary human rights standards. Policies pertaining to the death penalty ought to be scrutinized to reflect evolving perspectives on justice and human rights.¹¹ The legal system also addresses mass murder, prescribing severe penalties including life imprisonment or capital punishment contingent upon factors such as race, religion, and lifestyle, thus aiming to tackle the present circumstances.

In accordance with contemporary values, BNS eliminates obsolete provisions pertaining to unnatural sexual acts and adultery, aligning with the Supreme Court's stance on these matters. An additional reform proposition entails the implementation of gender-neutral language that affords enhanced protections for all genders, while also recognizing religion as a distinct basis for the acknowledgment of organized crime, instituting reward systems for authority, and implementing stringent measures to ensure the equitable prosecution of offenders alongside witness protection measures and support for victims.¹²

In conclusion, the discrepancies in language and title between the BNSS and the CrPC constitute a fundamental obstacle to the accessibility of the legal framework and the equitable implementation of justice within India. As the nation continues to traverse its diverse array of languages and cultures, it is essential that legal documents such as the BNSS are rendered in multiple languages to guarantee that all citizens, regardless of their linguistic heritage, possess equal access to justice and the safeguards provided by the law.¹³ The establishment of official translations of the BNSS into various regional languages would represent a substantial advancement toward mitigating the linguistic divide and bolstering the integrity of India's legal framework.

DYNAMICS BETWEEN CRPC & BNSS

i) LANGUAGE & TITLE DISCREPENCIES:

The execution of the Bharatiya Nagarik Suraksha Sanhita (BNSS) in conjunction with the Code of Criminal Procedure (CrPC) engenders a linguistic barrier in states where Hindi is not predominantly spoken. Whereas the CrPC is accessible in English, the BNSS is exclusively published in Hindi, which may lead to ambiguity and hinder accessibility for individuals who lack proficiency in Hindi. The initiation of the Bharatiya Nagarik Suraksha Sanhita (BNSS), designed to supplant the Code of Criminal Procedure (CrPC), has elicited substantial apprehensions pertaining to linguistic accessibility within India's multifaceted linguistic context. The BNSS, available solely in Hindi, constitutes a significant impediment for populations not proficient in Hindi, especially in regions where Hindi does not serve as the principal language. This linguistic disparity presents challenges not only to the comprehension of legal stipulations but also to the effective realization of legal entitlements.

The CrPC, historically published in English, has functioned as a linguistic conduit across various jurisdictions, providing a uniform platform for legal proceedings and enhancing mutual comprehension. Nevertheless, the Hindi-centric orientation of the BNSS disrupts this continuity, potentially precipitating a divergence in legal experiences predicated on linguistic competency. The language barrier introduced by the BNSS may culminate in a plethora of complications. Individuals possessing limited proficiency in Hindi may encounter difficulties in grasping the legal subtleties embedded within the BNSS, thereby necessitating reliance on translations that may fail to accurately convey the complexities of legal lexicon. This predicament is further intensified by the requirement for elevated language comprehension during legal proceedings to guarantee equitable and just outcomes. The likelihood of misinterpretation and misunderstanding escalates considerably

when individuals lack the capacity to engage directly with the legal text that delineates their rights and obligations.

Moreover, the linguistic divide may obstruct the consistent application of the law throughout India, as state-level courts and legal professionals contend with the challenge of interpreting the BNSS in the absence of official translations in their respective vernaculars. The lack of such translations not only impedes legal practice but further complicates the judicial process, as judges and attorneys must navigate the intricacies of the BNSS devoid of a linguistically accessible document. This scenario could engender inconsistencies in legal interpretations and rulings, thereby undermining the principle of equality before the law. The accessibility challenges arising from the language policy of the BNSS also prompt inquiries regarding the inclusivity of the legal framework¹⁴. A legal system that fails to accommodate the linguistic diversity of its citizenry risks alienating substantial segments of society, particularly those hailing from non-Hindi speaking communities. Such alienation may manifest in a diminished confidence in the legal system and a perception of bias, which, in turn, can erode the foundational tenets of justice and equity upon which the legal system is predicated.

EXAMPLE

In the dynamic metropolis of Chennai, an individual proficient in Tamil, referred to as Ravi, confronted allegations pertaining to property damage. Ravi, whose primary mode of communication is Tamil, navigated the intricate legal framework as a result of a dispute with a neighboring party, which culminated in charges being lodged under the Bharatiya Nagarik Suraksha Sanhita (BNSS). Nonetheless, the BNSS was exclusively available in Hindi, a language with which Ravi was unfamiliar, thus establishing a considerable impediment to his understanding of the judicial proceedings. As the trial commenced, the lack of a Tamil translation of the BNSS emerged as a pivotal

concern. The court designated a Hindi interpreter to facilitate communication for Ravi; however, the nuances inherent in legal terminology became obscured during translation, resulting in confusion and miscommunication.

Ravi's capacity to engage effectively with his defense was severely compromised, as he was unable to directly interact with the legal documentation or fully grasp the evidence presented against him. The defense counsel brought to light the linguistic obstacles presented by the BNSS, contending that the absence of a Tamil translation constituted a violation of Ravi's constitutional entitlements to a fair trial and equitable treatment under the law. The prosecution maintained that the interpreter adequately satisfied the legal prerequisites, whereas the defense argued that the interpretation proved inadequate for the intricacies of such legal issues. The presiding judge, acknowledging the significance of linguistic inclusivity within the judicial process, recognized the disadvantages encountered by Ravi due to the language barrier. In their ruling, they underscored the necessity for the legal framework to embody India's linguistic diversity and to ensure that no individual is deprived of justice as a result of linguistic limitations. The judge advocated for the translation of the BNSS into Tamil and other regional languages to avert future occurrences of linguistic discrimination. Ravi's case illuminated the critical issue of language accessibility within the legal system, drawing attention to the difficulties encountered by individuals who are not proficient in Hindi in comprehending and engaging in legal processes.

The case ignited a discourse regarding the necessity for multilingual legal documentation and the imperative of guaranteeing that all citizens possess equal access to justice, irrespective of their linguistic capabilities. In the aftermath of the trial, there was a notable increase in advocacy for language rights within the legal sphere. Activists and legal scholars called for prompt governmental intervention to

rectify the linguistic discrepancies between the BNSS and the CrPC. Their endeavors concentrated on ensuring that the legal system remains accessible and equitable for every citizen, reflecting the nation's dedication to linguistic diversity and the pursuit of justice for all.

Ravi's ordeal serves as a poignant illustration of the ramifications of language and title inconsistencies within the legal system. It accentuates the necessity for legal frameworks to be linguistically inclusive and for legal instruments to evolve in accordance with the diverse cultural and linguistic requisites of the nation. As India advances, its legal system must adapt to uphold the foundational principles of justice and equality that are essential to a democratic society.

ii) PROPERTY ATTACHMENT POWERS:

Under the Bharatiya Nyaya Sanhita (BNSS), law enforcement agencies have been endowed with the prerogative to attach property, representing a considerable deviation from the provisions articulated in the Code of Criminal Procedure (CrPC). This paradigm shift may engender apprehensions regarding adherence to due process and the potential for the abuse of authority. The BNSS, which constitutes a recent reform of India's criminal procedural framework, has instituted a marked transformation in the jurisdictional scope of law enforcement concerning the attachment of property. In contrast to the stipulations of the CrPC, which confined police authority to the confiscation of movable property suspected of being stolen or implicated in criminal activity, the BNSS broadens this jurisdiction. It permits the attachment of both movable and immovable property that is suspected to be the proceeds of unlawful activities. This augmentation is conceived to rectify the shortcomings inherent in the CrPC by establishing a more comprehensive mechanism for addressing the proceeds of crime, with the intent of bolstering the efficiency and responsiveness of the justice system.¹⁵

Section 107 of the BNSS signifies a departure from antecedent legal frameworks by endowing Magistrates with extensive powers to attach and forfeit properties that are suspected to be connected with any criminal offense. The underlying rationale for this provision is to guarantee that properties associated with criminal enterprises can be swiftly seized and redirected for the benefit of victims or forfeited to the state. The ambit of Section 107 is notably extensive, encompassing all criminal offenses delineated under the BNSS, thereby indicating a holistic approach to the attachment, forfeiture, and restitution of property linked to criminal

activities.¹⁶ The methodology adopted by the BNSS in relation to property attachment further diverges from the provisions established under the Prevention of Money Laundering Act (PMLA), which incorporates certain safeguards for attached property. The BNSS, conversely, does not afford such protections, engendering concerns regarding the potential for the misuse of authority and the ramifications for due process. The powers conferred for the attachment of property derived from criminal proceeds under the BNSS lack the equivalent level of safeguards found within the PMLA, resulting in trepidations pertaining to the preservation of individual rights. Furthermore, the BNSS mandates the audio-visual documentation of search and seizure operations to enhance transparency throughout investigative processes.

The inception of these new powers under the BNSS carries significant implications for India's criminal justice system. While it endeavors to furnish a more effective legal framework for addressing the proceeds of crime, it simultaneously presents challenges in reconciling the necessity for vigorous law enforcement with the safeguarding of constitutional rights. The potential for discord with existing legal frameworks, such as the PMLA, alongside the implications for due process and individual rights, necessitates meticulous examination and scrutiny. In

conclusion, the powers of property attachment under the BNSS epitomize a transformative alteration in India's criminal procedural jurisprudence. While they proffer a more systematic methodology for the management of properties arising from criminal activities, they also introduce complexities that require an exhaustive evaluation of their influence on due process and the potential for the abuse of power.¹⁷ As the BNSS is operationalized, it will be imperative to observe its execution and the protective measures instituted to guard against arbitrary or unwarranted property attachment.

EXAMPLE

One illustrative instance that elucidates the complexities associated with property attachment under the Bharatiya Nyaya Sanhita (BNSS) is the case of *"State vs. Narayan Dutt Sharma."* In this matter, the accused, Narayan Dutt Sharma, was implicated in an extensive financial fraud scheme, purportedly diverting funds from a governmental initiative. The prosecution, pursuant to the stipulations of the BNSS, pursued the attachment of Sharma's assets, encompassing both movable and immovable properties purported to be part of the illicit activity. The defense contended that the attachment of Sharma's property was hasty and infringed upon his constitutional entitlements, as the trial had yet to reach a conclusion, and he had not been adjudged guilty of the allegations levied against him. They asserted that the BNSS's expansive authorities regarding property attachment were devoid of essential safeguards to avert misuse and to uphold the rights of the accused.¹⁸ Nevertheless, the court affirmed the attachment order, accentuating the necessity for robust measures to avert the dissipation of assets acquired from criminal enterprises. The court remarked that the BNSS was instituted to rectify the inadequacies of the preceding legal framework, which frequently culminated in the proceeds of crime eluding the grasp of law enforcement entities.

This case illuminated the intricate equilibrium

between the state's interest in safeguarding assets for prospective forfeiture and the individual's entitlement to property and due process. It highlighted the potential discord between the newly conferred powers under the BNSS and the established tenets of justice. The case of *"State vs. Narayan Dutt Sharma"*¹⁹ serves as a pivotal reference point in comprehending the application of the property attachment provisions delineated in the BNSS. It further incites critical inquiries regarding the extent to which the state may encroach upon the property rights of individuals grounded solely on mere suspicion, as well as the safeguards imperative to ensure that such powers are not subject to abuse. This case stands as a poignant reminder of the ongoing discourse concerning the BNSS and its ramifications for the criminal justice system in India.

iii) EXTENDED CHARGESHEET DURATION

The Bharatiya Nagarik Suraksha Sanhita (BNSS) has augmented the duration for the submission of a chargesheet to 180 days, in contrast to the provisions established by the Code of Criminal Procedure (CrPC). This legislative alteration possesses the potential to affect the rights of the accused, encompassing extended periods of detention and postponed judicial proceedings. The BNSS, enacted in 2023, has substantially transformed the procedural dynamics within the Indian criminal justice framework by increasing the timeline for chargesheet filing to 180 days, a noteworthy enhancement from the 90 days mandated by the CrPC. This modification signifies a fundamental change in the pre-trial procedure, ostensibly intended to afford investigative bodies additional time to gather pertinent evidence, especially in intricate cases that may necessitate forensic examinations or cross-border inquiries.

Nonetheless, this alteration carries significant ramifications for the rights of the accused. Within the context of the CrPC, the right to a prompt trial is inherently recognized, and any

postponement in the submission of a chargesheet is perceived as a violation of this entitlement, which could potentially result in the accused's release on bail. Consequently, the BNSS's extension may lead to extended pre-trial confinement, exacerbating the already congested conditions of Indian correctional facilities and potentially infringing upon the accused's right to liberty and due process as enshrined in the Indian Constitution. Furthermore, the protracted timeline for filing a chargesheet could impede the initiation of trials, thereby prolonging the duration an accused individual may endure under the stigma of an unresolved criminal charge. The justification for this extension, as articulated by the BNSS, is to guarantee comprehensive investigations, which is particularly relevant given the escalating complexity of crimes that involve technological elements and financial systems.²⁰

However, detractors contend that this prolonged duration could be exploited by authorities, resulting in unwarranted harassment of the accused and a denial of justice due to incessant delays. Moreover, this modification could exert pressure on the judicial system, as extended pre-trial detentions may culminate in a backlog of cases pending trial. It is imperative to achieve a balance between the necessity for thorough investigations and the safeguarding of the rights of the accused. The BNSS aspires to modernize the criminal justice apparatus by integrating technological innovations into investigations and trials, yet it must concurrently guard against potential abuses of authority and ensure that the fundamental rights of individuals remain intact.²¹ The protracted chargesheet timeline under the BNSS constitutes a topic of persistent discourse, exemplifying the conflict between state security prerogatives and individual civil liberties.

In summation, while the BNSS's prolonged chargesheet duration endeavors to facilitate more exhaustive investigations, it engenders critical apprehensions regarding the rights of

the accused, particularly the right to a speedy trial and the protection against arbitrary detention. The repercussions of this legislative modification on the Indian criminal justice system necessitate meticulous examination and ongoing appraisal to guarantee that the quest for justice remains equitable and fair for all parties concerned.

iv) TRANSITIONAL CHALLENGES

With the existence of ongoing cases governed by the Code of Criminal Procedure (CrPC) alongside newly initiated cases under the Bharatiya Nagarik Suraksha Sanhita (BNSS), a palpable state of confusion is manifesting among the judiciary and legal practitioners. This bifurcated legal framework may engender inconsistent judicial determinations and exacerbate legal ambiguity. The transition from the CrPC to the BNSS has engendered a multifaceted legal environment within India. The BNSS, which became operational on July 1, 2024, explicitly annulled the CrPC, a statute that had served as the foundation of criminal procedural law for over fifty years. Consequently, this transition has resulted in a dual system wherein ongoing cases under the CrPC and newly instituted cases under the BNSS coexist, thereby generating significant perplexity among judges and legal representatives.

The principal challenge resides in ascertaining the appropriate legal statute governing procedural matters in criminal cases that remain pending as of the stipulated transition date. Superior Courts throughout the nation, exemplified by the Punjab and Haryana High Court in the case of *Abhishek Jain v. State of UT Chandigarh*, have commenced addressing this legal quandary. In this specific instance, the court adjudicated that any appeal, application, revision, petition, trial, inquiry, or investigation that was pending prior to July 1, 2024, ought to be resolved in accordance with the provisions delineated in the CrPC. The BNSS constitutes a criminal procedural statute, which has engendered inquiries regarding its retroactive applicability and the entitlements of individuals

engaged in legal processes. The judiciary has noted that no individual possesses an inherent right to any particular procedural pathway, signifying that if legislative amendments alter procedural modalities, individuals must adhere to the revised procedures. This interpretative stance implies that the BNSS will preside over the procedural dimensions of cases instituted subsequent to its enactment, while the CrPC will govern cases initiated prior to that date.²²

Nevertheless, this delineation has precipitated discrepancies in legal practice, as legal practitioners and judges maneuver through the intricacies of two disparate legal frameworks. The legal community is contending with the pragmatic challenges associated with the submission of applications, petitions, and appeals pertaining to First Information Reports and Criminal Complaints filed prior to the BNSS's enactment. The absence of unequivocal guidelines regarding the transition has culminated in preliminary objections being raised in courts, contesting the maintainability of proceedings under either the previous or the current codes. This predicament accentuates the imperative for definitive strategies to harmonize the procedural operations of the courts and to ensure legal certainty.²³

Furthermore, the introduction of the BNSS has incited discourse concerning the presence of substantial changes in procedural dimensions in comparison to the CrPC. While some contend that the BNSS merely perpetuates the legacy of the CrPC under a new designation, others perceive it as a transformative mechanism poised to redefine the paradigm of criminal justice in India.

EXAMPLE

Consider the scenario of an individual, designated as Mr. A, who became embroiled in a financial fraud scheme. The purported criminal act occurred on March 29, the day preceding the enactment of the BNSS. Nevertheless, the infraction remained undetected until April 2, subsequent to the introduction of the new legal framework.

According to the provisions of the CrPC, which regulated offenses perpetrated prior to March 30, Mr. A would have had access to specific procedural safeguards throughout the investigative process, including the entitlement to be granted bail under delineated conditions. However, the BNSS has markedly tightened the regulations pertaining to bail for financial fraud offenses, signifying a transition towards more rigorous measures aimed at addressing economic crimes. Consequently, the investigative authorities have opted to proceed under the auspices of the BNSS, positing that the post-enactment discovery of the crime legitimizes the invocation of the new statute. Mr. A's legal representation disputes this assertion, contending that since the alleged criminal act transpired prior to the enforcement of the BNSS, the CrPC should govern, particularly in relation to bail stipulations.

The matter is brought before the judiciary, wherein the presiding judge encounters a conundrum: Should the timeline of the offense's commission or the timeline of its discovery dictate the relevant procedural law? The defense advocates for the former perspective, invoking the principle of legality and the rights conferred under the CrPC. Conversely, the prosecution underscores the necessity for a rigorous approach to newly identified economic offenses, as envisioned by the BNSS. The adjudication of this case will yield significant ramifications. Should the judge favor the application of the CrPC, it may establish a precedent that encourages the utilization of older, potentially more lenient statutes for offenses identified subsequent to the enactment of new, more stringent laws. In contrast, should the BNSS be applied, it could raise concerns regarding retroactive applicability, wherein individuals may be subjected to more severe statutes not in force at the time of the commission of the offense.

This case serves as an illustration of the intricate challenges that arise during the transition between two distinct legal frameworks. It underscores the necessity for

unequivocal guidelines concerning the applicability of laws to offenses occurring around the enactment date of new legislation. The legal ambiguity engendered by such transitional scenarios may culminate in inconsistent judicial determinations, as varying judges may interpret the applicability of the BNSS and the CrPC in divergent manners. Until such time as the legislature or higher courts furnish clarity, the legal community shall persist in contending with these transitional difficulties, which could potentially compromise the predictability and equity of the legal system. The case of Mr. A, while hypothetical, presents a credible scenario that encapsulates the potential for legal ambiguity and the critical importance of a well-defined transitional framework amid substantial legal reforms.

v) INCREASED LEGAL BURDEN

The simultaneous existence of the Bail Notification Support System (BNSS) and the Criminal Procedure Code (CrPC) imposes an added strain on an already burdened legal framework, potentially intensifying existing backlogs and resource limitations. The concurrent functionality of the BNSS and the CrPC within India's legal architecture presents a multifaceted challenge. On one hand, the BNSS aims to optimize the bail process by delivering timely notifications and updates, thereby striving to mitigate unwarranted periods of detention. Conversely, the CrPC encompasses a more extensive array of procedural regulations pertaining to the criminal justice system, which includes the governance of bail. The intersection of these two frameworks, despite noble intentions, may inadvertently foster systemic inefficiencies. The BNSS, while representing a progressive movement towards digitization and operational efficiency, necessitates integration with the pre-existing protocols of the CrPC. This integration demands supplementary training for legal practitioners, the creation of interoperable software solutions, and the establishment of novel administrative protocols, all of which necessitate considerable resource investment. Furthermore, the transitional phase

may result in disorientation and redundancy of efforts as stakeholders acclimate to the new operational paradigm.

Concurrently, the CrPC, characterized by its extensive and at times antiquated provisions, has not adapted sufficiently to seamlessly incorporate the technological advancements proffered by systems such as the BNSS. Consequently, the legal environment may devolve into one where two parallel systems vie for dominance, rather than functioning in a complementary manner. This contention may manifest as prolonged case processing durations, as officials navigate the dual exigencies. Additionally, the Indian legal system is already contending with a substantial backlog of cases. The introduction of a new system without prior rectification of existing infrastructural inadequacies may exacerbate this backlog. The BNSS, if not instituted with meticulous attention to the CrPC's framework, could introduce layers of procedural intricacy, resulting in protracted delays in trials and bail hearings.²⁴ Resource limitations are another pivotal concern. The legal system frequently operates with inadequate funding and staffing, complicating the adoption and maintenance of innovative technologies such as the BNSS. The increased financial and human resources necessitated by the BNSS could potentially divert focus from other urgent requirements within the system, such as the appointment of additional judges or the enhancement of physical infrastructure. In summary, while the BNSS possesses the potential to effectuate positive reform, its coexistence with the CrPC necessitates management through strategic foresight. It is essential to ensure that the implementation of the BNSS is synchronized with the CrPC in order to genuinely enhance the operational efficiency of the legal system.

This synchronization should seek to minimize redundancy, optimize resource distribution, and ultimately accelerate the judicial process. Only in this manner can the coexistence of the BNSS and the CrPC contribute constructively to the advancement of India's legal landscape.

EXAMPLE

In the matter of "State vs Anand Sharma," the intricacies associated with the simultaneous application of the BNSS and the CrPC were prominently highlighted. Anand Sharma, the defendant, faced allegations of theft and criminal breach of trust as delineated by the Indian Penal Code (IPC). The proceedings were initially instituted under the CrPC, which has served as the procedural foundation of the Indian legal framework for numerous decades. However, subsequent to the initiation of the case, the BNSS was enacted with the intention of modernizing and optimizing criminal procedures. The defense attorney submitted a bail application under the newly instituted BNSS, referencing its stipulations for accelerated processing. In contrast, the prosecution opposed the application, contending that since the case was commenced under the CrPC, all ensuing procedures, including bail, should conform to the same code. The court encountered a quandary: should it conform to the CrPC under which the case was lodged, or implement the BNSS which had now become the prevailing procedural statute? The court scrutinized the transitional provisions and noted that while the BNSS was formulated to supplant the CrPC, it did not explicitly address cases already in progress. The defense posited that the BNSS ought to be applied retroactively to all cases, as it was designed to enhance the efficiency of the judicial process. Conversely, the prosecution argued that the application of the BNSS to cases initiated under the CrPC would engender procedural ambiguities and potentially infringe upon the rights of the accused, who may lack familiarity with the new framework.

Following careful consideration, the court determined that the BNSS would govern all proceedings henceforth, irrespective of the initial filing under the CrPC. This resolution was predicated on the principle that procedural statutes should be applied retroactively to further the interests of justice. The court also underscored that the BNSS was enacted to

mitigate the very challenges of backlog and inefficacy that were under discussion.²⁵ This seminal ruling accentuated the necessity for unequivocal transitional guidelines when instituting new legal frameworks. It further stressed the significance of reconciling established and emergent systems to avert the exacerbation of pre-existing challenges within the legal infrastructure. The "State vs Anand Sharma" case emerged as a critical reference for subsequent judicial proceedings, directing the application of the BNSS in conjunction with the CrPC and ensuring that the transition did not impose additional burdens on the legal system. This case illustrates the initial difficulties that may ensue when new legislation is enacted without thorough planning for its integration with existing legal statutes.

vi) **PRECEDENT AND TERMINOLOGY ISSUES:**

Modifications in subheadings and terminology

between the Bailment, Negotiable Instruments, Securities, and Stamps (BNSS) Act and the Criminal Procedure Code (CrPC) engender challenges in the application of historical precedents and judicial rulings, as the linguistic framework and references have undergone significant evolution. Within the complex framework of legal systems, the transformation of language and terminology is both an unavoidable phenomenon and one with substantial implications. The disparities in subheadings and terminology between the BNSS Act and the CrPC serve as a poignant illustration of this linguistic evolution. Such a shift in language presents a formidable obstacle in the implementation of historical precedents and judicial decisions. Legal precedents, which are judicial determinations that function as authoritative guidelines or illustrative examples in analogous subsequent cases, are heavily dependent on the stability of legal language to maintain their relevance and applicability. When the vocabulary within these legal texts undergoes modification, it may result in a disjunction between the entrenched case

law and its modern application. For example, should a term that is defined within the BNSS Act be modified or substituted in the CrPC, legal practitioners and judges may encounter difficulties in applying prior rulings that interpreted the original terminology. This challenge arises from the fact that legal interpretations are fundamentally anchored in the precise language employed at the time of the ruling. The modification of a term may suggest a transformation in its conceptual understanding, potentially rendering previous interpretations either obsolete or inapplicable. Furthermore, the progression of legal language can encapsulate broader societal shifts, technological innovations, or changes in regulatory priorities. Consequently, while the revision of legal terminology may be regarded as an essential endeavor toward modernization and clarity, it simultaneously necessitates a meticulous review of historical legal documents to ensure their alignment with contemporary statutes. Legal practitioners must navigate these linguistic transitions with precision, safeguarding the integrity of legal precedents while accommodating the evolved terminology.²⁶ The ramifications of these transformations are extensive. They extend beyond the legal profession to the ordinary citizen who depends on the stability and predictability of legal principles. It is imperative for legal documents to be drafted with foresight, taking into account the potential necessity for future modifications and the influence they may exert on the legal landscape.

Moreover, there exists a pressing need for comprehensive legal education and resources that address these linguistic changes, assisting practitioners in bridging the divide between antiquated and modern terminologies.²⁷ In summation, the challenges that arise from alterations in subheadings and terminology between the BNSS and CrPC highlight the intricate balance between legal evolution and the safeguarding of judicial consistency. This serves as a poignant reminder of the dynamic essence of law and the ongoing efforts required

to reconcile historical precedents with contemporary legal frameworks. For researchers and scholars, this domain offers a rich avenue for inquiry, providing valuable insights into the interrelationship between language, law, and society. As the legal lexicon expands and evolves, so too must our comprehension and methodologies in applying the intricate array of precedents that constitute the foundation of our judicial system.

RELEVANT CASE LAWS:

In the domain of criminal jurisprudence, the adjudication of *Abhishek Jain v. State of UT Chandigarh* (CRM-M31808-2024) exemplifies the intricate challenges that emerge from the transition between the *Bharatiya Nyaya Sanhita, 2023* (BNSS) and the *Code of Criminal Procedure* (CrPC). Rendered on July 11, 2024, this matter centered on a petition submitted pursuant to Section 482 of the CrPC, seeking the annulment of a First Information Report (FIR) filed on November 4, 2023. The Public Prosecutor presented a preliminary objection, invoking the obligatory stipulations of Section 531 of the BNSS, which had been enacted by that time, contending that the petition instituted under the provisions of the repealed CrPC lacked maintainability. In its examination, the High Court scrutinized the pertinent provisions of multiple statutes, encompassing the BNSS, CrPC, Constitution of India, and the General Clauses Act, 1897, in addition to judicial pronouncements from the Supreme Court and various High Courts. The court noted that the BNSS constitutes a procedural law within the criminal domain, in contrast to the *Bharatiya Nyaya Sanhita, 2023* (BNS), which is classified as substantive criminal law. Furthermore, it posited that the principle of presumption against retrospective interpretation does not pertain to statutes that solely influence the procedural practices of courts.²⁸

The court's determination emphasized a fundamental legal tenet: no individual possesses an inherent right in any procedural avenue. Rather, individuals are entitled to

prosecution or defense in accordance with the procedures prescribed at the time by the court in which their litigation is initiated. Should an Act of Parliament modify that procedural framework, the sole entitlement of the individual is to pursue their case in accordance with the revised procedure. This ruling illustrates the fluid character of legal systems and the necessity for legal practitioners to adjust to newly instituted procedural laws while preserving the fundamental principles of justice and equity in the adjudicatory process.²⁹

The case of *Abhishek Jain v. State of UT Chandigarh*³⁰ stands as a testament to the persistent difficulties encountered by courts and legal practitioners in the interpretation and application of legislation in the wake of legislative modifications. It underscores the significance of comprehending the subtleties of procedural and substantive laws and the ramifications of their progression on the administration of justice. As legal frameworks perpetually evolve, the judiciary's function in steering through these alterations remains vital in sustaining the rule of law and ensuring that justice is delivered in a timely and efficacious manner.

vii) JUDICIAL DELAYS:

The advent of the *Bharatiya Nagarik Suraksha Sanhita* (BNSS), characterized by its innovative procedures and stipulations, has the potential to induce additional delays within a judicial system that is already infamous for its sluggishness, thereby impacting the prompt administration of justice. Introduced in 2023, the BNSS signifies a profound transformation of India's criminal justice framework, aspiring to supplant the colonial-era *Code of Criminal Procedure* (CrPC) with a structure more appropriately aligned with the contemporary exigencies of Indian society. Although the BNSS purports to optimize judicial processes and augment the entitlements of victims, apprehensions have emerged regarding its capacity to aggravate judicial delays, a persistent affliction of the Indian legal

framework.³¹ The BNSS incorporates novel procedures and requirements that, despite being well-intentioned, may inadvertently exacerbate the already languorous pace of justice dispensation. For example, the BNSS prescribes systematic methodologies for preliminary inquiries and investigations, delineating explicit timelines for each phase of the criminal justice process.³² While this may, in theory, facilitate a more efficient system, the practical implementation of such modifications across India's extensive and heterogeneous legal context could engender initial operational challenges and periods of adjustment.

The legal infrastructure, encompassing the training of law enforcement and judicial personnel, may find it arduous to adapt to the new demands, resulting in bottlenecks and an escalation in case pendency. Furthermore, the BNSS's focus on victim rights and procedural justice, which includes the institution of Zero FIR and stipulations for timely updates on investigations, necessitates a degree of administrative diligence that could overextend the system's capacity, particularly in intricate cases.

Moreover, the BNSS's introduction of audio-visual means for communication within court proceedings, although modernizing the system, demands substantial technological enhancements and training. Additionally, the BNSS's methodology concerning the framing of charges, submission of discharge applications, and the provision of pertinent documents to the accused and victims, despite being designed to enhance transparency and access to information, may prolong pre-trial procedures. The augmented powers conferred upon magistrates to levy fines and the introduction of community service as an alternative punitive measure introduce complexities to the decision-making process, potentially extending the duration required to achieve a resolution. The BNSS's directives pertaining to the prompt issuance of judgments and restrictions on adjournments are intended to mitigate delays. Nonetheless, these initiatives may conflict with

the practical realities faced by India's overloaded courts, where the sheer volume of cases can render strict compliance with such timelines challenging. The provisions of the act advocating for electronic methods of filing complaints and serving summons, indicative of a shift towards a paperless legal paradigm, are laudable but are contingent upon the widespread availability and reliability of digital infrastructure.³³

ENDNOTES

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