

BHARATIYA NAGARIK SURAKSHA
SANHITA, 2023
(CRIMINAL PROCEDURE)

A COMMENTARY

*With
Special Features*

- Date of Enforcement Notification
- Key highlights of Bharatiya Nagarik Suraksha Sanhita, 2023
- Comparative Tables of sections old versus new and new versus old
- Table of new provisions introduced in new Act
- Table of provisions of CrPC, 1973 omitted in new Act
- Guidelines issued by Supreme Court for grant of bail in *Satender Kumar Antil v. CBI*
- Judgment in *Mohd. Asfak Alam v. State of Jharkhand*
- Corresponding law under each section of new Act
- Articles and comments of legal experts

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A C O M M E N T A R Y

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Preface

The newly enacted Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS for short) has repealed and replaced the Code of Criminal Procedure, 1973 (CrPC for short), which in turn had repealed and replaced the Code of Criminal Procedure, 1898, respectively.

The notable features of the new law include e-FIR, compulsorily recording statement of the victim in cases of sexual violence and the video recording of the statement in cases of sexual harassment, regularly furnishing status of complaint to the complainant, enhanced concern for the victim, deemed sanction for prosecution, ruling out total pardoning, promoting forensic science to optimise rate of conviction.

BNSS, replacing CrPC, now has 533 sections, wherein 160 sections of CrPC have been changed/amended/substituted, 9 new sections have been added and 9 sections have been repealed.

Section 35 BNSS now consolidates Sections 41 and 41-A CrPC into one section. In case of an offence punishable with less than three years and where a person is infirm or above 60 years of age, an arrest can be made only if an officer not below the rank of Deputy Superintendent of Police grants prior permission for such arrest. Such provisions make the Sanhita more people-friendly.

Section 43(3) BNSS formally brings back the usage of handcuff conferring the police with discretionary powers to handcuff accused persons albeit in special circumstances mentioned in the section (in deference to the Supreme Court directions in *Sunil Batra v. Delhi Admn.*¹ and *Prem Shankar Shukla v. Delhi Admn.*²).

1. (1978) 4 SCC 494; 1979 SCC (Cri) 155.

2. (1980) 3 SCC 526; 1980 SCC (Cri) 815.

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Section 82(4) CrPC prescribes that someone can be declared as a “proclaimed offender” for only 19 specified offences under IPC, namely, “302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460”. Now under Section 84(4) BNNS, the limited list of offences has been done away with and anybody accused of an offence with more than 10 years of imprisonment or other special offences can be declared a proclaimed offender. This rationalises the provision. Section 356 has been added to the BNSS which provides for a detailed procedure for conducting a trial/inquiry in the absence of a person declared as “proclaimed offender”.

The BNSS broadens the scope of the CrPC’s police power in property seizure. While the CrPC initially allowed the seizure of movable properties suspected to be stolen or found under suspicious circumstances, Section 85 BNSS extends this authority to include immovable properties as well.

It is mandatory for police to register an FIR where information regarding commission of a cognizable offence is received either orally or through electronic communication irrespective of whether it has jurisdiction or not (Section 173 BNSS). Zero FIR can be registered at any police station which in turn shall transfer it to the proper police station.

In Section 173(3) BNSS (corresponding to Section 154 CrPC), for offences punishable with three years or more but less than seven years, the officer in charge may with the prior permission of the Deputy Superintendent of Police proceed to conduct a preliminary enquiry within 14 days to ascertain if there exists a prima facie case and proceed with the investigation where there exists one³. In such cases, the victim/complainant will have to wait for permission from the Deputy Superintendent of Police (for which no time limit is prescribed) and then 14 days for investigation. Another change is found in Section 173(4) [corresponding to Section 154(4) CrPC] which provides that the complainant may file an application to the Magistrate to register an FIR only if the Superintendent of Police does not investigate the case or direct a subordinate police officer to investigate, in accordance with the BNSS. This may put the complainant in a state of uncertainty.

3. Cf, *Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1; (2014) 1 SCC (Cri) 524.

Crucially, Section 193(7) BNSS [corresponding to Section 173(6) CrPC] now casts an obligation on the police to inform the victim or informant of the progress of the investigation including by electronic communication within a period of 90 days. Further, the BNSS also permits further investigation after the charge-sheet has been submitted to the Magistrate but now requires that such further investigation shall be completed within 90 days, which may be extended with the permission of the court. It will have to be seen how it is implemented and its societal impact.

The second proviso to Section 218(1) BNSS {corresponding to Section 197(1) CrPC} now provides that the government shall take the decision of whether to grant sanction for the prosecution of judges or public servants within 120 days from the date of receipt of the request for sanction and if it fails to do so, the sanction shall be deemed to have been accorded. This is welcome as people having some say will now not be able to delay prosecution indefinitely by delaying grant of sanction.

In relation to framing of charges, a timeline of 60 days has been specified {in Section 251(1)(b) BNSS} for the Sessions Judge from the date of the first hearing to frame in writing a charge against the accused. Section 258(1) BNSS {corresponding to Section 235(1) CrPC} provides that after hearing arguments and points of law, the judge shall give a judgment within 30 days from the completion of arguments, which may for specific reasons extend to a period of 45 days, for reasons to be recorded in writing. Finally, the BNSS under Section 392 provides that the court shall upload a copy of the judgment on its portal within seven days from the date of judgment. There was no such provision in the CrPC.

Section 262 BNSS (corresponding to Section 239 CrPC) provides a time limit to the accused to prefer an application for discharge within a period of 60 days from the date of supply of copies of documents under Section 230 CrPC. Section 274 BNSS corresponds to Section 251 CrPC which requires the Magistrate to state the allegation to the accused and ask if he pleads guilty. To this, a proviso has been added providing that if the Magistrate considers the accusation as groundless, he shall, after recording reasons in writing, release the accused and such release shall have the effect of discharge. This will save innocent persons from unnecessary harassment.

Under Section 187(2) BNSS {corresponding to Section 167(2) CrPC}, a Magistrate to whom an accused is forwarded may authorise detention of custody of the accused for a term not exceeding 15 days in the whole or in parts at any time during the initial 40 days out of 60 days or 60 days out of 90 days. The Magistrate may now authorise detention in police custody beyond the period of 15 days if there exist adequate grounds for doing so. However, such detention shall not exceed 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of 10 years or more, or 60 days in case of any other offence. There is strong apprehension of arbitrary application of this provision increasing the number of undertrials.

In this book a comparative table showing correspondence of provisions of the old law with that of the new law has been provided. In the text each provision is placed in juxtaposition of the old provision. Where there is no change, the rulings of the court will hold good, and the gist of the judgments of the last 10 years is given as these present the current law position. Where there is a modification or change in the provision, the case rulings on the old provision are presented as above to the extent applicable and impact of the change discussed. In case of an entirely new provision, the need, scope and ambit as also possible future impact thereof on the public at large is discussed.

An attempt has been made to make this book user-friendly, compact and handy taking care that it does not become a bulky compendium. For ease of case references, cases decided by the Supreme Court only have been cited and referred.

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