

# Dispute Resolution Hotline

January 31, 2024

## NAVIGATING THROUGH CRIMINAL LAW REFORMS: PART II - REVIEW OF BHARATIYA NAGARIK SURAKSHA SANHITA, 2023, REPLACING THE CODE OF CRIMINAL PROCEDURE, 1973

### A. INTRODUCTION

In an effort to overhaul the criminal justice system in India, the Parliament recently passed three significant legislations: Bharatiya Nyaya Sanhita, 2023 ("BNS"), Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), and Bharatiya Sakshya Adhiniyam, 2023 ("BSA"). These laws repeal and supersede the Indian Penal Code, 1100% ("IPC"), Code of Criminal Procedure, 1973 ("CrPC"), and the Evidence Act, 1872 ("Evidence Act") respectively. The bills, approved by the Parliament on December 20 and 21, 2023, received the Presidential assent on December 25, 2023. However, the laws are yet to come into force, as the Central Government has not notified these enactments.

The BNSS shall "come into force on such date as the Central Government, by notification in the Official Gazette, appoint".<sup>1</sup> While the sections of the BNSS are yet to be notified, the BNSS clarifies that notwithstanding the repeal, if there is any appeal, application, trial, inquiry or investigation pending before BNSS comes into force, then it will be conducted in accordance with the CrPC.<sup>2</sup> Further, various administrative and procedural elements, such as notifications, proclamations, powers, forms, local jurisdictions, sentences, orders, rules, and appointments, made under the CrPC will be deemed applicable to the corresponding provisions of the BNSS.<sup>3</sup> Additionally, sanctions or consents given under the CrPC will be considered valid under the BNSS, allowing for the commencement of proceedings accordingly.<sup>4</sup> Lastly, the BNSS would not extend the period specified for an application or proceeding under the CrPC if it had already expired before the BNSS comes into force.<sup>5</sup>

In Part I of this series, we analysed the key changes introduced in the BNS, which replaces the IPC. In this part, we provide an overview and analysis of the material changes introduced in the BNSS, with focus on economic offences. Part III will focus on the key changes sought to be introduced in BSA.

### B. HIGHLIGHTS OF THE KEY CHANGES

**1. Revisions to the Definitions**: The BNSS defines certain key terms which were undefined under the CrPC and/or revises the definitions such as:<sup>6</sup>

- 'Audio-video electronic means' has been defined to include use of any communication device for purposes of video conferencing, recording processes like identification, search, and seizure, as well as the transmission of electronic communication and for such other purposes or by such other means as may be provided in rules by the State Government.<sup>7</sup>
- 'Bail' has been defined as the release of an individual accused or suspected of committing an offence from legal custody. This release is contingent upon the accused agreeing to specific conditions set by an officer or court and executing a bond or bail bond.<sup>8</sup>
- 'Bail bond' is defined to mean an undertaking for release with surety.<sup>9</sup>
- 'Bond' is defined to mean a personal bond or an undertaking for release without surety.<sup>10</sup>
- 'Electronic communication' is defined to mean the transmission or transfer of written, verbal, pictorial information, or video content using electronic devices such as telephones, mobile phones, wireless telecommunication devices, computers, audio-video players, cameras, or other specified electronic forms, as outlined by notification from the Central Government. This communication can occur between individuals, devices, from a person to a device, or from a device to a person.<sup>11</sup>
- The definition of 'victim' has been expanded by removing the prerequisite of the accused person being formally charged. This adjustment streamlines the process for victims to promptly receive entitled compensation in specific cases.<sup>12</sup>
- An explanation has been added to the definition of "investigation" clarifying that if any provisions of a special act conflict with those of the BNSS the provisions of the special act will take precedence.<sup>13</sup>

**2. Concepts of Metropolitan Area/Metropolitan Magistrate are now abolished**<sup>14</sup>: Section 8 of the CrPC previously designated the erstwhile presidency towns of Bombay, Calcutta, and Madras, along with the city of Ahmedabad, as

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metropolitan areas,' leading to the nomenclature of 'Metropolitan Magistrates' for judicial magistrates in these regions. Under the BNSS, the positions of Judicial Magistrate of the third class, Metropolitan Magistrate, and Assistant Session Judges have been eliminated, streamlining the categories of judges to four. These include Judicial Magistrate of the second class, Judicial Magistrate of the first class (encompassing Chief Judicial Magistrate or Additional Chief Judicial Magistrate), Sessions Judge (comprising Additional Session Judge), and Executive Magistrates.<sup>15</sup>

**3. Technological compatibility and use of electronic means in investigation and trial:** These changes signify the changing technological landscape in the realms of investigation and trial. They encompass various facets such as the delivery of summons and notices, the utilization of audio-video conferencing for evidence deposition and the recording of search and seizure activities, etc. Section 530 of the BNSS envisages conducting all trials, inquiries, and proceedings in a manner compatible with technology, utilizing electronic communication or audio-video electronic means. The specific changes have been discussed in detail in Part D below. For instance, Section 173(1) of the BNSS also allows the information related to commission of a cognizable offence to be given to a police officer by electronic communication, in which case, it would be taken on record on being signed within three days of such information being given. Further, police reports or chargesheets can also be submitted before a Magistrate in any form, including digital mode; evidence of a witness can be recorded by audio-video electronic means; examination of witness can be done by audio-video electronic means; personal attendance of the accused before a court would include attendance through audio-video electronic means. These changes have been discussed in detail in Part D hereinbelow.

#### 4. Technological compatibility for issuance and service of summons:

1. The court is now permitted to issue summons in electronic format, validated by the image of the court's seal or a digital signature.<sup>16</sup>
2. Further, the Proviso to Section 64(2) of the BNSS<sup>17</sup> provides that summons bearing the image of court's seal may also be served by electronic communication in such form and manner as prescribed by the rules framed by the State Government in this respect. In an attempt to streamline recordkeeping, Section 64 of the BNSS mandates the maintenance of a register in both the police station and the court to contain the details, such as the address, email address, phone number, etc., of the individual being summoned.
3. Section 71(1) of the BNSS<sup>18</sup> provides that a court issuing summons to a witness may, in addition to and simultaneously with the issue of such summons direct a copy of the summons to be served by electronic communication or by registered post at the place where the witness ordinarily resides or carries on business or personally works for gain.
4. Additionally, the service of all summons under the BNSS served through electronic methods shall be considered as duly served and a copy of such electronic summons shall be attested and kept as a proof of service of summons.<sup>19</sup>

However, none of the aforementioned provisions specify the criteria for deeming the service as completed, especially in the context of electronic service. It is advisable to include details such as the requirement for read receipts or other acknowledgment mechanisms, such as single or double ticks, akin to the indicators on messaging platforms like WhatsApp. This additional specification serves the purpose of providing clear evidence that the electronic service has been successfully completed, adding a layer of confirmation and documentation to the processes.

**5. Offences committed by means of electronic communication, letters, etc.:** Section 182 of the CrPC dealt with offences committed by means of letters or telecommunication messages. Section 202 of the BNSS expands the scope to include offences committed by electronic means as well.<sup>20</sup>

**6. Service of summons on corporate bodies, firms and societies:** Section 63 of the CrPC provided that service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post. Section 65(2) of the BNSS modifies this to provide that service of a summons on a firm or other association of individuals may be effected by serving it on any partner of such firm or association, or by letter sent by registered post addressed to such partner, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.<sup>21</sup>

**7. Zero FIR:** A significant alteration concerning the registration of FIRs is the codification of the "Zero FIR" concept,<sup>22</sup> making it obligatory for police stations to register an FIR upon receiving information about a cognizable offence, regardless of jurisdiction.<sup>23</sup> The Zero FIR concept was first introduced by the Justice Verma Committee recommendations which was set up in 2012 pursuant to the infamous Nirbhaya case.<sup>24</sup> A Zero FIR can be filed at any police station, irrespective of its jurisdiction. Subsequently, the concerned police station must transfer the Zero FIR to the appropriate jurisdiction for investigation. This has been discussed in detail in Part D hereinbelow.

**8. Preliminary Enquiry:** Section 173(3) of the BNSS now codifies the concept of a 'preliminary enquiry' prior to registration of FIR – to establish the existence of a *prima facie* case relating to commission of cognizable cases punishable with more than 3 and less than 7 years of imprisonment, with a fixed timeline of 14 days for completion. This has been discussed in detail in Part D hereinbelow.

#### 9. Introduction of timelines under the BNSS

1. **Power to postpone or adjourn proceedings curtailed:** Under Section 309 of the CrPC, the court had unlimited power to grant adjournments if the circumstances are beyond the control of the party seeking adjournment. The power of the court to postpone/adjourn proceedings has been curtailed by way of Proviso (b) to Section 346(2) of the BNSS. Under the BNSS, where the circumstances are beyond the control of a party, not more than two adjournments may be granted by the court after hearing the objections of the other party and for the reasons to be

recorded in writing.

2. The introduction of express timelines in the BNSS marks a significant change towards an effective criminal justice system. Unlike the CrPC, the BNSS meticulously delineates specific timeframes for crucial procedures within the justice system. For instance, it introduces a specific timeline in relation to conducting further investigation after the charge sheet has been filed with the Magistrate, during the trial phase;<sup>25</sup> the police officer is required to update the informant or victim on the investigation's progress within a 90-day period;<sup>26</sup> the Magistrate must furnish documents to the accused without delay and, in no case, beyond fourteen days from the accused's production or appearance;<sup>27</sup> charges are to be framed within 60 days from the first date of hearing on charge (trial before a court of Sessions<sup>28</sup> and Magistrate<sup>29</sup>). A judgment of acquittal or conviction (trial before a court of Session) has to be passed within 30 days from completion of arguments which can be extended by 45 days only by giving specific reasons.<sup>30</sup> These measures serve as pivotal benchmarks, strategically designed to expedite legal processes, prevent unwarranted delays and ensure the timely administration of justice. By introducing these timelines, the BNSS not only enhances procedural efficiency but also fosters transparency, accountability and fairness within the criminal justice system, ultimately promoting a more robust and expeditious legal framework. The revisions/introduction of new timelines have been discussed in detail in Part D hereinbelow.

## 10. Protection of interests of victims

1. **Withdrawal from prosecution will only be permissible pursuant to the victim being granted an opportunity to be heard:** Section 321 of the CrPC previously allowed withdrawal of prosecution of a person, with the consent of the court and before pronouncement of judgment. Section 360 of the BNSS<sup>31</sup> now provides that such withdrawal can only be done after giving the victim an opportunity of being heard.
2. **Supply of copies of the police report and other documents (Section 230 of the BNSS):** Section 230 of the BNSS pertains to the supply of documents such as *inter alia* the police report, First Information Report and witness statements, to the accused and victim (if represented by an advocate) in criminal proceedings initiated on a police report. While Section 154(2) of the CrPC required copy of the information to be provided free of cost only to the informant, Section 173(2) of the BNSS extends such provision of the documents to the *victim or the informant*. Unlike Section 207 of the CrPC which did not specify a time frame for furnishing such documents, Section 230 of the BNSS specifies that the Magistrate must furnish documents without delay and, in no case, beyond fourteen days from the accused's production or appearance. Section 230 of the BNSS allows furnishing copies through electronic means or inspection either personally or through an advocate in court. Section 207 of the CrPC provided for inspection either personally or through a pleader in court. Similarly, in case of Sessions triable cases instituted on a complaint, the copies of statements and documents may also be furnished through electronic means.<sup>32</sup>
3. **Update on progress of investigation:** Section 193(3)(ii) of the BNSS stipulates that the police officer is required to update the informant or victim of the investigation's progress within a 90-day period, which time frame was not previously provided under Section 173 (2)(ii) of the CrPC.

**11. Anticipatory Bail:** The proviso to Section 438(1), along with Sections 438(1) (i)-(iv), 438(1A) and 438(1B) of the CrPC (which had been introduced by way of amendments in 2005), have been omitted under the corresponding Section 482 of the BNSS. Notably, aspects like affording "the Public Prosecutor a reasonable opportunity of being heard" during the application hearing and ensuring the presence of the applicant seeking anticipatory bail, have now been excluded. Section 482 of the BNSS also fails to provide any express criteria for determining the grounds for grant of anticipatory bail, resulting in the court presiding over such applications exercising absolute discretion without specified guidelines. This has been discussed in detail in Part D herein below.

**12. New positions and roles of District Directorate of Prosecution and Assistant Directors of Prosecution introduced; eligibility criteria for appointment of Director/Deputy Director of Prosecution revised:** Section 20 of the BNSS establishes a comprehensive Directorate of Prosecution and outlines the qualifications, duties, and authorities' powers within it, which was absent under Section 25A of the CrPC.

The Director of Prosecutions is entrusted with providing opinions on filing appeals and overseeing cases that carry sentences of 10 years or more, life imprisonment, or death.<sup>33</sup> The Deputy Director of Prosecution is assigned the responsibility of examining police reports and supervising cases punishable by 7 years or more but less than 10 years, ensuring their prompt resolution.<sup>34</sup>

**13. Witness Protection Scheme:** Section 398 of the BNSS stipulates that each State Government is required to formulate and announce a witness protection scheme.<sup>35</sup>

## C. SOME HITS AND MISSES:

### Hits:

1. Technological advancements- The BNSS embraces technological advancements by incorporating definitions and provisions that recognize and leverage modern communication methods. It introduces changes to various legal processes, acknowledging the impact of technology on investigations, trials, and courts. This shift from traditional means is also expected to reduce delays in criminal proceedings.
2. Imposition or revision of timelines- The BNSS introduces measures to enhance the efficiency of legal proceedings by setting specific timeframes for key stages in the criminal justice process. It aims to address concerns related to delays and streamline the timeline for investigations, trials, and other essential aspects of criminal proceedings.
3. In his analysis, Advocate Kushal Mor, Criminal Law Expert, said that "*The BNSS recognizes the victim as an important stakeholder and as a person more than a mere spectator of the trial: The Supreme Court<sup>36</sup> had held that a victim has unbridled participatory rights in the trial. However, no contours were laid down to that effect. The BNSS now lays down that a victim has to be informed of progress in the investigation, has the right to obtain*

documents and materials relied upon by the prosecution. Further, in case of withdrawal from prosecution, the court will not permit such withdrawal without giving an opportunity to the victim to be heard, which provision was also absent under the CrPC. Unfortunately, the victim's right to engage a counsel to argue a discharge application, submit evidence apart from that submitted by the prosecution is still not recognized. Recognition to the proposition that victim should be heard at the stage of quashing could have also been provided."

4. In respect of the amendment to Section 251 of the CrPC as it stood earlier (Recording of plea of the accused in a summons case), Advocate Kushal Mor said that *"This provision did not provide for discharge. These cases despite being less grave than the warrants cases, remained pending for the same amount of time. The Proviso to Section 274 of the BNSS now provides that the courts can discharge the accused from cases which are deemed as groundless."* This has been discussed in detail in Paragraph 6 (j) (ii) in Part D hereinbelow.
5. He further stated that, *"A first-time offender, not accused of committing an offence punishable with death or life imprisonment, and having spent one-third sentence shall be released on bail. This represents a noteworthy initiative aimed at addressing the persistent issue of overcrowded prisons. However, the potential impact could have been further reinforced by incorporating additional provisions emphasizing the principle that bail should be the norm, and imprisonment should be the exception."* This has been discussed in detail in Paragraph 5 in Part D hereinbelow.

#### Misses:

1. Modern legal systems recognize the importance of non-trial resolutions, like settlements, particularly in cases of economic crimes by corporations. These mechanisms, such as deferred prosecution agreements (DPAs), conserve resources, apply penalties for reparations and avoid lengthy trials. Countries like the UK, Canada, and France have adopted such mechanisms, reflecting a progressive shift towards restorative justice. In India, the absence of non-trial resolutions in the BNSS represents a missed opportunity. However, there is recognition of community service as a form of punishment under the BNS and the BNSS, which perhaps should have been made applicable to a wider set of offences.
2. In his analysis, Advocate Kushal Mor, Criminal Law Expert, said *"Section 225 of the BNSS<sup>37</sup> envisages that even before cognizance is taken, the 'prospective' accused be heard. This concept is completely alien to criminal law and it only will cause further delays as the accused will have more than required opportunities of getting himself exonerated from the case. In any event, the accused has several such opportunities such as challenging the summoning order, seeking discharge, revision, quashing, etc."*
3. He further stated that, *"The provision regarding the inquiry, trial, or judgment in absentia of a proclaimed offender may serve a dual purpose — either compelling the appearance of individuals evading summons, investigation, or trial, or facilitating the seizure of assets belonging to fugitives with properties located abroad. While the intention behind this provision is ostensibly to address the challenges posed by individuals avoiding legal proceedings, it raises concerns regarding due process. The absence of the accused party during legal proceedings denies them the opportunity to effectively exercise their right to a defence. It also raises questions about the reliability of the judgment when the accused is not present to provide counterarguments or refute evidence. Furthermore, the potential seizure of assets without proper legal representation may infringe upon the individual's property rights. While the provision may be a pragmatic response to dealing with fugitives, it requires careful consideration to ensure that it aligns with the principles of due process, safeguarding the rights of the accused even in cases of evasion. Striking a balance between expeditious legal processes and the protection of individual rights remains a critical aspect of maintaining the integrity of the justice system."* This provision has been discussed in detail at Paragraph 6 (t) in Part D herein below.
4. Section 105 of the BNSS introduces mandatory videography of the entire search and seizure procedure, including the compilation of a list of seized items and the subsequent signing of the list by a witness. However, it does not prescribe the guidelines for such recording. The lack of specific guidelines creates uncertainty regarding the technical aspects of the videography, such as the type of recording equipment to be used, the positioning of cameras, resolution requirements, and the duration of the recording, timestamps etc. These details are crucial for ensuring the reliability and admissibility of the recorded evidence in legal proceedings. Moreover, it may raise issues related to the privacy and rights of individuals subjected to search and seizure. Without clear parameters, there is a risk of overreach or misuse of the videography provision, potentially infringing on the rights of the individuals involved. *(Please refer to Paragraph 6(g) in Part D below).*
5. Under Section 482 of the BNSS, important provisions related to anticipatory bail have been omitted such as the considerations for granting such application seeking anticipatory bail and, providing the Public Prosecutor an opportunity to be heard. The statute also lacks clear criteria for granting anticipatory bail, leaving the court with absolute discretion and no specified guidelines for such applications. *(Please refer to Paragraph 3 in Part D below).*
6. Section 167 of the CrPC originally allowed a magistrate to extend the initial police custody up to 15 days following an arrest. However, BNSS has modified this provision to permit the custody period of 15 days to be distributed over 40 or 60 days, depending on the gravity of the offense. This expansion of discretionary powers for police seeking remand raises concerns about potential misuse and the considerable anxiety it can instill in the minds of the accused. *(Please refer to Paragraph 2(g) in Part D below).*
7. Sentencing guidelines: Recommendations of high-level committees on introducing sentencing guidelines have not been incorporated in the BNSS. To ensure that sentences are proportional, several jurisdictions have introduced sentencing guidelines. The United Kingdom<sup>38</sup>, and the US states of Minnesota<sup>39</sup> and California<sup>40</sup>, give judges the discretion to determine the sentence according to sentencing rules. Currently, India does not have codified sentencing guidelines leading to lack of uniformity in sentencing. The Law Commission's considerations for sentencing factors, such as the nature of the offense, offender's background, and rehabilitation prospects outlined have not been captured.<sup>41</sup>

While the BNSS has both positives and negatives, just like any new statute, it will have to be tested on the anvil of judicial scrutiny by courts.



## 1. Filing of complaint/registration of First Information Report (FIR)

1. **Information of cognizable offences (Section 173 of the BNSS):**<sup>42</sup> Section 173(1) of the BNSS allows the registration of an FIR for offences irrespective of the jurisdiction of a police station, whereby information may be given orally or by electronic communication to an officer in charge of any police station. However, the provision does not provide for transfer of the Zero FIR to the concerned police station having appropriate jurisdiction for investigation. Moreover, the provision for lodging information through electronic communication (e-FIR) has been incorporated<sup>43</sup>, specifying that the signature of the informant must be obtained within three days before the e-FIR is officially recorded. While Section 154(2) of the CrPC required copy of the information to be provided free of cost to the informant, Section 173(2) of the BNSS extends such provision of the FIR to informant or the victim.

Furthermore, Section 173(3) now codifies the concept of a 'preliminary enquiry' prior to registration of FIR – to establish the existence of a *prima facie* case relating to commission of cognizable cases punishable with more than 3 and less than 7 years of imprisonment, with a fixed timeline of 14 days for completion. It provides that without prejudice to the provisions for conducting investigation under Section 175 of the BNSS, on receipt of information related to commission of such cognizable offences, the police officer in charge may (a) proceed to conduct such 'preliminary enquiry' to ascertain where a *prima facie* case exists for proceeding in the case; or (b) proceed with investigation where a *prima facie* case exists. Such preliminary enquiry can only be conducted with the prior permission of an officer not below the rank of Deputy Superintendent of Police. Lastly, Section 173(4) of the BNSS, expressly provides the option of 'making an application to the Magistrate' under Section 175(3) of the BNSS, if the FIR is not registered even after the intervention of the Superintendent of Police. The decision to conduct a 'preliminary enquiry' may cause delays in registration of FIRs and investigations. In such cases, the aggrieved person may resort to alternatives such as reporting to the Superintendent of Police or making an application to the Magistrate.

2. **Information of non-cognizable offences (Section 174 of the BNSS):**<sup>44</sup> Under the CrPC, the officer in charge of a police station was directed to refer the informant to the Magistrate when information about a non-cognizable offence is given. Under the Section 174(1)(ii) of the BNSS, in addition to referring the informant to the Magistrate, the officer is also required to forward the daily diary report of all such cases fortnightly to the Magistrate, with the probable intention to increase the credibility of investigation and the accountability of police officers.

## 2. Investigation and filing of chargesheet.

1. **Commencement of investigation (Section 175 of the BNSS):**<sup>45</sup> In serious cases and those involving public servants, Section 175(1) introduces the provision whereby the Superintendent of Police can now depute a Deputy Superintendent of Police to conduct the investigation. This introduces a hierarchical oversight mechanism to ensure a thorough and efficient inquiry. Further, in case of a cognizable offences, the Magistrate is now required to examine the application of the complainant along with affidavit and submission made by the police officer before directing an investigation by the police.<sup>46</sup> The Magistrate may make inquiries in this regard. Moreover, Section 175(4) introduces protective measures against false and frivolous cases targeting public servants in the course of their official duties. Before taking cognizance of a complaint against a public servant, the Magistrate is mandated to consider the assertions made by the public servant as to the situation that led to the incident alleged and receive a report containing facts and circumstances of the incident from the superior officer. In essence, these provisions collectively enhance the credibility and fairness of the investigative process.
2. **Immunity from the police's power to require attendance of witnesses now extends to persons with acute illness:**<sup>47</sup> The Proviso to Section 160 of the CrPC provided that no male person under the age of fifteen years or above the age of sixty years or a woman or a mentally or physically disabled person shall be required to attend at any place other than the place in which such male or woman resides. This immunity now extends to persons with acute illness.<sup>48</sup> Further, such exempted persons can now however waive their immunity as per their discretion.<sup>49</sup> A corresponding change has also been made in respect of restrictions on power to summon persons.<sup>50</sup>
3. **Mandatory forensic investigation:** Section 176(3) of the BNSS is a new provision which provides that where the offence is punishable with imprisonment of 7 years or more, the police officer in charge shall cause the forensic experts to visit the crime scene to collect such forensic evidence and video-record the entire process on their mobile phone or other electronic device. It further provides that if a state lacks forensic facilities, it shall notify utilization of such services from another state.
4. **Checks on the search conducted by police officers:**<sup>51</sup> Section 185 of the BNSS introduces several safeguards to regulate the authority of the police during searches. The police officer is mandated to document the reasons for conducting a search at a specific location in the 'case-diary'.<sup>52</sup> Additionally, any search carried out by a police officer must be captured through audio-video electronic means<sup>53</sup>. The police officer is required to promptly dispatch, within 48 hours, copies of any records generated during the search to the nearest Magistrate authorized to handle the offence<sup>54</sup>. There was no such time limit under Section 165 of the CrPC.
5. **Filing of chargesheet by police (Section 193 of the BNSS):**<sup>55</sup> Under Section 193(3)(i) of the BNSS, the officer in charge of the police station required to forward the report to the Magistrate upon completion of the investigation, may now do so including through electronic means. Sub-clause (i) of Section 193(3)(ii) of the BNSS provides that the report shall also contain 'the sequence of custody in case of electronic device'. To prioritize the interests of the victim, Section 193(3)(ii) requires the police officer to update the informant or victim on the investigation's progress within a 90-day period, which time frame was not previously provided under Section 173 (2)(ii) of the CrPC.

Additionally, Section 193(8) mandates the police officer to submit the required number of copies of the police

report, along with appropriately indexed documents, to the Magistrate at the time of filing the charge sheet for subsequent distribution to the accused. This may now be done through electronic communication. Previously, the CrPC provided that the investigating police officer may furnish such report and documents to the accused if he finds it convenient so to do.

Section 173(8) of the CrPC did not previously provide a specific timeline in relation to conducting further investigation after the charge sheet has been filed with the Magistrate. However, the proviso to Section 193(9) of the BNSS, establishes a specific timeline of 90 days for conducting further investigation. Any extension beyond this period requires express permission from the court. This is intended to safeguard against potential abuses of police power, promoting police accountability and preventing unwarranted delays in criminal proceedings.

6. **Clarification to the effect that it is not necessary to arrest the accused at the time of filing the chargesheet especially if the accused had not been arrested during the investigation:** In line with Section 170 of the CrPC, Section 190 of the BNSS<sup>56</sup> provides that if the officer in charge of the police station finds sufficient evidence or reasonable grounds, such officer shall forward the accused to the custody of a Magistrate or, if the offence is bailable, take security for the accused's appearance before the Magistrate. However, the proviso to Section 190 of the BNSS clarifies that it is not obligatory for the accused to be taken into custody, especially if the person is not arrested during the investigation. The police officer shall take security from the accused for their appearance before the Judicial Magistrate. Additionally, it ensures that the Judicial Magistrate receiving such a report should not reject it on the grounds that the accused has not been taken into custody. This proviso embodies and is in line with judicial interpretation.<sup>57</sup>
7. **Revised maximum duration of police custody:** Section 187 of the BNSS<sup>58</sup> outlines that the maximum duration for seeking police custody is 15 days, which can be undertaken in a continuous or staggered manner. It grants police the authority to request custody either in a single stretch or in segments throughout the initial 40 or 60 days of total the detention period of 60 or 90 days respectively, as may be applicable.<sup>59</sup> The CrPC did not provide for the option request custody in a staggered manner. Additionally, to safeguard the accused's right to bail, Section 480 of the BNSS<sup>60</sup> states that the requirement for police custody beyond the initial 15 days should not be the sole basis for denying bail to the accused.
8. **Wider powers of the police to detain/remove:** Under the newly introduced Section 172 of the BNSS, the police have the authority to detain or remove any person resisting, refusing, ignoring or disregarding to conform to any direction given by such officer and further has the discretion to present such individual before the Magistrate. Further, in petty cases, the police can release such individual from detention with 24 hours of such incident.

**3. Anticipatory Bail:**<sup>61</sup> Section 438(1) of the CrPC *inter alia* laid down the following factors, upon consideration whereof the High Court or the Sessions Court could grant anticipatory bail:

- i) The nature and the gravity of accusation;
- ii) The antecedents of the applicant including if he had previously undergone imprisonment on conviction in respect of a cognizable offence;
- iii) The possibility of the applicant to flee from justice;
- iv) Where the accusation is made with the object of injuring or humiliating the applicant by having him arrested.

The BNSS omits these factors. Section 482(1) of the BNSS now provides that the court may, if it thinks fit, grant anticipatory bail to the applicant, thereby giving absolute discretion to the court. The language in Section 482(1) of the BNSS appears to give the court absolute discretion in deciding whether to grant anticipatory bail, without specifically considering the nature and gravity of the accusation, the applicant's antecedents, the possibility of fleeing from justice, or malicious intent behind the accusation. This could raise questions about the potential impact on the consistency and predictability of anticipatory bail decisions, as well as concerns about the protection of individual rights and the potential for arbitrary judgments.

Further, the Proviso to Section 438(1) of the CrPC provided that where the court neither issued an interim order nor dismissed an application for anticipatory bail, the police officer in charge was authorized to arrest the applicant without a warrant based on the accusations anticipated in the application. This provision has also been omitted from the BNSS. The removal limits the police's automatic authority to arrest an applicant without a warrant when the court neither issues an interim order nor dismisses an anticipatory bail application. This change underscores a commitment to protecting individuals from arbitrary arrest, encouraging a more measured approach by law enforcement, and promoting legal certainty by ensuring that arrests are contingent upon a judicial decision in the anticipatory bail process.

Section 438 (1-A) of the CrPC provided that where the court grants anticipatory bail under Section 438(1), it shall forthwith cause a notice being not less than seven days, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the court. This provision also stands omitted from the BNSS.

Lastly, Section 438 (1-B) of the CrPC requiring the presence of the applicant seeking anticipatory bail at the time of final hearing of the application and passing of the order in relation thereto, upon application made by the Public Prosecutor, also stands omitted.

#### 4. Arrest of persons

1. **New provision for infirm/old age person in respect of arrest of persons without a warrant:**<sup>62</sup> Section 41 and 41 A of the CrPC have now been consolidated to Section 35 of the BNSS. In addition to the existing provisions under the CrPC, a special provision has been introduced in favour of aged and infirm persons. Section 35(7) of the BNSS provides that no arrest shall be made in case of an offence punishable for less than three years if the person is infirm or above the age of 60 years, without prior permission of the officer not below the rank of Deputy Superintendent of Police.

2. **Scope of persons to whom information of arrest is provided is broadened:**<sup>63</sup> Under the CrPC, the information pertaining to the arrest of a person could only be provided by the police officer to the person's relative or friend. Under the BNSS, such information may now be provided to the person's relative or friend or to *any other person* named by him for the said purpose.
3. **Additional requirement in respect of information on arrest:** In case of arrest under a warrant, Section 82(2) of the BNSS<sup>64</sup> now casts a duty on the police officer making the arrest to forthwith give information regarding such arrest and the place where the arrested person is being held to the designated police officer and to such police officer of another district where the arrested person normally resides. Additionally, Section 48 of the BNSS<sup>65</sup> now provides that information of arrest and place where the arrestee is held shall be given to the designated police officer in the district.
4. **Maintaining information of persons arrested and display of such information:** Section 41C of the CrPC provided that the State Government shall cause the names and addresses of the persons arrested and the name and designation of the police officers who made the arrests, to be displayed on the notice board kept outside the control rooms at every district. Section 37 of the BNSS<sup>66</sup> clarifies the specifications of such requirement. It provides the State Government shall designate one police officer in every district and at every police station, not below the rank of Assistant Sub-Inspector of Police who shall be responsible for maintaining information of the names and addresses of persons arrested and the nature of the offence charged with. This is required to be prominently displayed at district headquarters at every police station including through digital means.
5. **Arrest on refusal to give name and residence or giving false details:**<sup>67</sup> Under Section 42 of the CrPC, a person could have been released on his executing a bond, with or without sureties in case of such arrests. With the codification of 'bail bond'<sup>68</sup>, Section 39 of the BNSS provides that a person arrested in such cases can be released on a bond or a bail bond.
6. **Revised time-limit of handing over arrestee by private persons to the police:**<sup>69</sup> In case of arrest by a private person, Section 40(1) of the BNSS has been modified to mandate the production of such arrested person within six hours before a police officer or to be taken to the nearest police station. Section 43(1) of the CrPC simply stated production of such person "*without unnecessary delay*", which timeline has now been clarified.
7. **Persons arrested without warrant are not to be detained for more than 24 hours (whether the Magistrate has jurisdiction or not):** Section 57 of the CrPC provided, *inter alia*, that no police officer shall detain a person in custody arrested without warrant for an unreasonably long period, which period shall not exceed 24 hours (exclusive of the time taken for the journey from the place of arrest to the Magistrate), unless otherwise ordered by a Magistrate. Section 58 of the BNSS is modified to add the words "*whether having jurisdiction or not*" at the end of the provision, thereby requiring the police officer to produce the arrestee as soon as possible before the nearest Magistrate (irrespective of jurisdiction of the Magistrate).

**5. Revisions in the provision pertaining to bail, and maximum period of detention for undertrial prisoners:** The BNSS adopts a compassionate stance, particularly towards first-time offenders, who now have the opportunity to secure release on bond from the court after undergoing detention for up to one-third of the maximum imprisonment period prescribed for the respective offence.<sup>70</sup> The BNSS now authorizes the jail superintendent to apply for bail on behalf of an undertrial prisoner who completes either one-half or one-third of the maximum stipulated period.<sup>71</sup> Stricter conditions are stipulated for the release of undertrial prisoners involved in multiple offences or cases. If there are ongoing investigations, inquiries or trials related to a person in more than one offence or multiple cases, the court is prohibited from granting bail to that individual.<sup>72</sup> Consequently, the likelihood of obtaining bail becomes significantly diminished when faced with the common scenario of multiple cases being initiated by a complainant against a person. Further, irrespective of the circumstances, the person should not be detained beyond the maximum period of imprisonment prescribed for the relevant offence under the applicable law during the investigation, inquiry or trial.<sup>73</sup> Lastly, offences for which the punishment of death or life imprisonment has been specified as one of the punishments under that law, have now been expressly excluded from the purview of this provision.<sup>74</sup> The corresponding provision for Section 479 of the BNSS was Section 436A of the CrPC.

## 6. Trial before the court or Magistrate

1. **Cognizance of offence by Magistrate (Section 210 of the BNSS):**<sup>75</sup> Section 210(1)(a) of the BNSS expressly allows Magistrates to take cognizance of offences based on complaints filed by individuals authorized under special laws, in addition to the modes previously provided under Section 190(1)(a) of the CrPC (i.e., upon receiving a complaint on facts; upon a police report; upon information received from any person other than a police officer or upon the Magistrate's own knowledge). Furthermore, in line with technological advancements, Section 210(1)(b) of the BNSS now allows the Magistrate to take cognizance of any offence upon receiving a police report electronically.
2. **Accused to be provided an opportunity to be heard before the Magistrate takes cognizance (Section 223 of the BNSS):**<sup>76</sup> Section 200 of the CrPC provided that the Court can take cognizance of an offence even without the knowledge of the accused person. However, under the BNSS, the Magistrate shall afford the accused an opportunity to be heard before the court proceeds to take cognizance of an offence based on a complaint.<sup>77</sup> A corresponding provision has been newly introduced in case where the complaint is against a public servant.<sup>78</sup>
3. **Electronic issuance of process (summons/warrants) to the accused (Section 227 of the BNSS):**<sup>79</sup> In a warrant case, the Magistrate may issue a warrant or, if deemed fit, a summons for causing the accused to be brought or to appear. The proviso to Section 227(1) of the BNSS now allows the issuance of summons or warrants through electronic means.
4. **Specification of timelines for supply to the accused copy of the police report and other documents and electronic means of inspection (Section 230 of the BNSS):**<sup>80</sup> Section 230 of the BNSS pertains to the supply of

documents such as *inter alia* the police report, first information report and witness statements, to the accused in criminal proceedings initiated on a police report. Unlike Section 207 of the CrPC which did not specify a time frame for furnishing such documents, Section 230 of the BNSS specifies that the Magistrate must furnish documents without delay and, in no case, beyond fourteen days from the accused's production or appearance. Section 230 of the BNSS allows furnishing copies through electronic means or inspection either personally or through an advocate in court. Section 207 of the CrPC provided for inspection either personally or through a pleader in court. Similarly, in the case of Sessions triable cases instituted on a complaint, the copies of such documents may also be furnished through electronic means under Section 231 of the BNSS.

5. **Time-bound committal of case if triable exclusively by the Sessions court (Section 232 of the BNSS):**<sup>81</sup> To expedite the commitment process, two provisos have been introduced under Section 232 of the BNSS. They provide a time-bound approach by requiring the completion of proceedings within 90 days from the date of the Magistrate taking cognizance. In cases where additional time is deemed necessary, an extension of up to 180 days is permissible, contingent upon recorded justifications. Moreover, any applications submitted to the Magistrate by the accused, or the victim must be transmitted to the court of Session alongside the committal of the case, ensuring a streamlined and efficient legal progression.

6. **Production of digital evidence:** Section 94 of the BNSS has incorporated provisions for presenting electronic communication, encompassing communication devices that may hold digital evidence.<sup>82</sup> Section 94 outlines the procedures for obtaining documents, electronic communications and other items deemed necessary for investigation, trial, or proceedings under the BNSS. A court or a police officer can issue a summons or a written order to the person believed to possess such materials, requiring them to produce the specified items at a designated time and place. The court or police officer may issue such summons or written order respectively in physical or in electronic form.<sup>83</sup> If the requirement is for document production, the person may comply by causing the document to be produced instead of attending personally. These changes aim for a more comprehensive investigation. However, all electronic communications or data in a device may not be relevant for a given investigation.

While this provision ensures the genuineness of evidence and facilitates the retrieval of digital information, concerns arise regarding the invasion of the right to privacy and the potential violation of the right against self-incrimination. The provision grants authorities the power to compel individuals in possession of digital evidence to produce electronic devices, raising issues of potential misuse and manipulation. This provision exposes the risk of fishing expeditions by investigating authorities and unrestricted use of seized electronic devices. Ongoing Supreme Court proceedings<sup>84</sup> underscore the need for safeguards to protect personal and legally privileged information when seizing digital devices. The potential breach of privacy and privilege rights calls for careful consideration of the implications of this provision.

7. **Recording of search and seizure through audio-video electronic means:** In order to promote the use of technology and instill accountability in the search and seizure process, the BNSS introduces mandatory videography of the entire search and seizure procedure, including the compilation of a list of seized items and the subsequent signing of the list by a witness.<sup>85</sup> Such videography is permitted to be carried out using a mobile phone and is required to be forwarded without delay by the police officer to the District Magistrate, Sub-Divisional Magistrate or Judicial Magistrate of First Class. However, the BNSS does not prescribe the guidelines for such recording.

8. **New provisions on attachment, forfeiture, restoration of property by police:** Section 86 of the BNSS introduces a provision for identification and attachment of property of proclaimed person. In this regard, the court may request assistance from a court or authority in the contracting state<sup>86</sup> for such purpose of identification, attachment and forfeiture of property belonging to a proclaimed person.<sup>87</sup>

Section 107 of the BNSS outlines the process for the attachment and forfeiture of property believed to be derived from criminal activities. There is no corresponding provision in the CrPC, and it is the first time that such a provision empowering the attachment, forfeiture and restoration proceeds of crime has been introduced.

When a police officer, during an investigation, has reason to believe that certain property is linked to criminal activity or commission of a criminal offence, such police officer may seek approval from the Superintendent of Police or Commissioner of Police to apply to the relevant court or Magistrate for attachment of such property.<sup>88</sup> If the court or Magistrate, after due consideration whether before or after taking evidence, has reason to believe that the properties in question are proceeds of crime, a notice is issued to the concerned person, providing an opportunity to show cause within fourteen days.<sup>89</sup> Following the response, the court or Magistrate may order the attachment of identified properties found to be proceeds of crime after considering the response to the show cause notice, materials available and after giving a reasonable opportunity of being heard to such person.<sup>90</sup> In cases where the notice recipient does not respond within the specified time, an *ex parte* order may be issued.<sup>91</sup> The court or Magistrate, under certain circumstances, may even issue an interim *ex parte* order for the attachment or seizure of property if giving notice would defeat the purpose.<sup>92</sup>

If the attached or seized properties are confirmed as proceeds of crime, the court or Magistrate shall direct the District Magistrate to distribute the proceeds to those affected by the crime which may even be done prior to an adjudication of the alleged offences.<sup>93</sup> The District Magistrate is mandated to complete this distribution within sixty days.<sup>94</sup> In cases where there are no claimants or any surplus after satisfying claimants, the proceeds of crime shall be forfeited to the Government.<sup>95</sup> The definition of 'proceeds of crime' remains the same i.e., "*any property derived or obtained directly or indirectly, by any person as a result of criminal activity (including crime involving currency transfers) or the value of any such property.*"<sup>96</sup>

The BNSS grants Magistrates the authority to attach properties identified as 'proceeds of crime,' a power similar to that vested in the Directorate of Enforcement and Adjudicating Authority under the Prevention of Money-Laundering Act, 2002 (PMLA). However, the safeguards provided under the PMLA in relation to treatment of



seized property are not available under the BNSS. Under the PMLA, attachment is provisional in nature for up to 180 days. A notice period of at least 30 days needs to be given to show cause why an attachment order must not be made. During the attachment, enjoying of immovable property cannot be denied.<sup>97</sup> On the other hand, the BNSS does not specify the time up to which the property may be attached.

9. **Electronic evidence acceptable in case of offences committed outside India:** Section 208<sup>98</sup> and Section 209<sup>99</sup> of the BNSS deal with offences committed outside India and receipt of evidence related to offences committed outside India, respectively. For offences committed beyond India's borders, previously, only the physical form of depositions or exhibits was permissible. However, with the BNSS, electronic forms are also accepted for producing evidence for offences committed outside India.<sup>100</sup> Section 188 of the CrPC provided that such a person may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found. Section 208 of the BNSS expands the scope to add "*where the offence is registered in India*" in addition to the place where such person may be found.

10. **Discharge of the accused:**

i) **Timelines specified for discharge of accused in case of absence of Complainant:** The BNSS introduces timelines for discharge of the accused in a summons case or complaint-initiated warrant case where the offence may be lawfully compounded or is not a cognizable offence. The Magistrate has the authority to discharge the accused after giving thirty-days' time to the complainant to make his appearance, which timeline was absent under the CrPC.<sup>101</sup> This is expected to minimize delays in complaint cases and restrict the potential for false or frivolous complaints.

ii) **Discharge by Magistrate in summons cases:**<sup>102</sup> In a summons-case, when the accused appears or is brought before the Magistrate, the accused is informed of the particulars of the alleged offence. The accused is then asked to plead guilty or present a defence, and there is no mandatory formal framing of a charge. The BNSS now provides that if the Magistrate deems the accusation to be groundless, the Magistrate is required to record written reasons and subsequently release the accused. Such release operates as a discharge.

iii) **Discharge on application by the accused in trial before a Sessions Court or warrants case before Magistrate based on police report:**

1. **If the case is triable by the sessions court (Section 250 of the BNSS):**<sup>103</sup> Section 250(1) of the BNSS introduces a crucial change by allowing the accused to file a discharge application within sixty days from the case's committal to sessions court<sup>104</sup>. The inclusion of a timeframe aims to expedite the legal process and allow prompt action from the accused in seeking discharge, reflecting a deliberate effort to enhance procedural efficiency, which time frame was absent in the CrPC.

2. **If the case is triable by the magistrate (Section 262 of the BNSS):**<sup>105</sup> In line with the intent to expedite criminal proceedings and promote the use of technology, Section 262 (1) of the BNSS introduces a 60-day timeline from the date of supply of documents to the accused to file an application for discharge. Further, Section 262(2) of the BNSS also provides for the Magistrate to conduct an examination of the accused who can discharge the accused if the charge is deemed groundless, recording the reasons either physically or through audio-video electronic means. In contrast, Section 239 of the CrPC lacked the specified timeline for filing discharge applications and did not include audio-video electronic means in the examination process.

k. **Specification of timelines and use of technology for framing of charges**

1. **If triable by sessions court (Section 251 of the BNSS):**<sup>106</sup> Section 251(1)(b) of the BNSS stipulates a specific time frame of 60 days for the framing of charges, starting from the first hearing on the charge. This new temporal constraint aims to expedite legal proceedings and ensure a prompt formulation of charges against the accused. Moreover, Section 251(2) introduces the utilization of audio-video means to communicate and explain charges to the accused person, thereby dispensing the need for the accused to be physically present.

2. **If triable by Magistrate (Section 263 of the BNSS):**<sup>107</sup> Similarly, Section 263 of the BNSS mandates that the charges must be framed within 60 days from the date of first hearing on the charge.

l. **Revised limit on framing charges of the same kind within one year:**<sup>108</sup> The number of offences of the same kind within a year that may be charged together has been increased from three to five offences.

m. **Revisions in provisions pertaining to summary trial:** Substantial changes have been made to the power to try summarily under Section 283 of the BNSS<sup>109</sup>. Now, it is mandatory for Chief Judicial Magistrate and Magistrate of First Class to summarily try petty offences listed in clauses (i) to (viii) of sub-section (1) of Section 283 of the BNSS. Under the CrPC, a summary trial was discretionary. This change may lead to quicker resolution of petty cases, reducing the burden on the judicial system. Further, the monetary thresholds, for summarily trying offences related to theft, stolen property, have been enhanced from two thousand rupees to twenty thousand rupees<sup>110</sup>. This adjustment reflects an effort to align penalties with the economic context and ensures that lower-value offenses can be effectively addressed through a summary trial process. As per the BNSS, all offences of criminal intimidation under Section 351(2) and (3) of the BNSS can be tried summarily, and not just offences with a maximum penalty of imprisonment up to two years thereby broadening the scope of cases that can be expedited through summary procedure. Further, the Magistrate has also been empowered to summarily try offences where the maximum penalty is imprisonment up to three years, after giving reasonable opportunity of being heard to the accused.<sup>111</sup> However, the Magistrate must record the reasons in writing for summarily trying such offences. Lastly, no appeal shall lie against such decision of the Magistrate.

n. **Revisions in provisions pertaining to plea bargaining:** Section 290(1) of the BNSS<sup>112</sup> now fixes a time limit of 30 days from the date of framing of charges, for filing an application for plea bargaining. Further, Section 290(4)(a) of the BNSS also introduces a timeline of 60 days for the Public Prosecutor, the complainant, and the accused to

collaboratively reach a mutually satisfactory disposition of the case, which may involve the accused providing compensation and covering other expenses for the victim during and after the case. Both these timelines were absent under the CrPC.

Section 293 of the BNSS pertaining to disposal of such plea-bargaining cases, is modified to add a more lenient and personalized sentencing approach, particularly for first time offenders. For first-time offenders with a stipulated minimum penalty, the court has the discretion to impose a sentence amounting to one-fourth of the minimum punishment<sup>113</sup>, as opposed to one-half of the punishment under Section 265E of the CrPC. Additionally, in cases where the punishment is extendable and lacks a minimum stipulation, a first-time offender shall be subject to a sentence equivalent to one-sixth of the prescribed penalty<sup>114</sup>, in contrast to the one-fourth standard used for repeat offenders under the CrPC.

**o. Evidence to be taken in presence of the accused, including through audio-video electronic means:** Section 308 of the BNSS<sup>115</sup> now allows for the examination in the presence of the accused through electronic means, particularly utilizing audio-video conferencing (facilities available at a location designated by the State Government).

**p. Power of the Magistrate to order a person to give specimen, signatures or handwriting, etc.:** Section 311 A of the CrPC allows the Magistrate of the first class the authority to direct any person (including an accused) to provide specimen signatures or handwriting. Section 349 of the BNSS now expands the contours of this authority to include specimen finger impressions and a voice sample, reflecting a progressive alignment with technological advancements in forensic practices. Further, the Proviso to Section 349 of the BNSS specifically provides that the Magistrate has the authority, with recorded reasons, to order an individual to provide such specimens or samples without the necessity of prior arrest.

#### **q. Use of audio-video electronic means for recording of evidence**

- 1. Before the sessions court (Section 254 of the BNSS):**<sup>116</sup> The court is mandated to proceed with the collection of all evidence presented by the prosecution.<sup>117</sup> Recording of a witness' evidence can now be done through audio-video electronic means, including the deposition of evidence for public servants under Section the Proviso to Section 254(1) and Section 254(2) of the BNSS.
- 2. Before the Magistrate court (Section 265 of the BNSS):**<sup>118</sup> If the accused refuses to plead or does not plead, or if the Magistrate does not convict the accused under Section 264 of the BNSS, the Magistrate is required to schedule a date for the examination of witnesses. Upon the prosecution's application, the Magistrate has the authority to issue summons to its witnesses, directing them to attend or produce documents. On the designated date, the Magistrate proceeds to take all evidence in support of the prosecution. While the process of examination is the same under the CrPC, Section 265 of the BNSS also stipulates the use of audio-video electronic means at a designated place, for the prosecution to examine the witnesses in trial of warrant cases by a Magistrate.
- 3. In magistrate triable cases (Section 266 of the BNSS):**<sup>119</sup> After the framing of charges, the accused is called upon to commence their defence and present evidence. Section 266 of the BNSS provides for a similar provision as mentioned hereinabove for the use of audio-video electronic means at a designated place to be notified by the State Government, for examination of the witnesses by the defence.
- 4. Time limit for taking signature of accused examined by electronic communication (Section 316 of the BNSS):**<sup>120</sup> The Proviso to Section 316(4) provides that where the accused is in custody and is examined through electronic communication, his signature shall be taken within 72 hours from such examination.

**r. Time-limit for acceptance or denial of genuineness of a document (Section 330 of the BNSS):**<sup>121</sup> The time-limit for the prosecution and the accused/advocate for the accused to admit/deny the genuineness of a document filed with the court is now specified as 30 days from the date on which such documents were supplied to them respectively. This timeframe may be extended by the court for reasons to be recorded in writing.

**s. Deemed closure of prosecution evidence (Section 269 of the BNSS)**<sup>122</sup>: The newly inserted sub-section (7) to Section 269 of the BNSS provides that where despite giving opportunity to the prosecution if the attendance of the prosecution witnesses cannot be secured for cross-examination, it shall be deemed that such witness has not been examined for not being available. The Magistrate may then close the prosecution evidence for reasons in writing and proceed with the case on the basis of the materials on record.

**t. Inquiry, trial or judgment in absentia of proclaimed offender:** A new provision of trial in absentia has been incorporated by way of Section 356 of the BNSS for persons declared as proclaimed offenders.<sup>123</sup> The purpose of this provision appears to be either to compel the appearance of individuals evading summons, investigation, or trial, or to seize the assets of such fugitives who have properties located abroad.

Section 356 allows proceedings to continue in cases where a person declared as a proclaimed offender evades trial. If the individual remains absconded with no immediate prospect of arrest, the court can proceed with the trial after specific conditions are met. These conditions include a) Consecutive Warrants: Two consecutive warrants of arrest must be issued within an interval of at least thirty days, b) Publication in Newspapers: A notice must be published in a national or local daily newspaper circulating in the place of the offender's last known address, requiring them to appear for trial. It should inform the person that if they fail to appear within thirty days from the publication date, the trial shall commence in their absence, c) Notification to Relatives or Friends: The court must inform the relative or friend of the proclaimed offender about the commencement of the trial, and d) Affixing Information: Information about the trial must be affixed on a conspicuous part of the house or homestead where the person ordinarily resides, and it should also be displayed in the police station of the district of the last known address.<sup>124</sup>

The court shall not commence the trial until a period of ninety days has lapsed from the date of framing the charges. Depositions and examinations of witnesses may be recorded by audio-video electronic means, preferably a mobile phone.<sup>125</sup> The trial can continue even if the accused voluntarily stays absent after it has commenced.<sup>126</sup> However, the accused may examine any evidence taken in their absence if such accused person is later arrested and

produced or appear before the court during the trial.<sup>127</sup> No appeal shall lie against the judgment under this section unless the proclaimed offender presents themselves before the court of appeal. Importantly, no appeal against conviction shall be allowed after the expiry of three years from the date of the judgment.<sup>128</sup>

## 7. Pronouncement of judgment and sentencing

- 1. Time-bound disposal of a case by acquittal/conviction- In a trial before a Court of Sessions (Section 258 of the BNSS):**<sup>129</sup> In sessions cases, specific timeframes are now stipulated for the issuance of judgments. According to Section 258 of the BNSS, the judgment is required to be delivered within 30 days from the conclusion of arguments, and if necessary, this period can be extended to 45 days, provided there are recorded written reasons for the extension. In this regard, Advocate Kushal Mor stated that, *“The stipulated 30 or 45-day timeframe, while well-intentioned, may appear somewhat rigid, particularly in contexts where courts are burdened with numerous cases. The concern arises, particularly in complex trials such as those involving the Central Bureau of Investigation (CBI), PMLA, or terrorist sessions, where voluminous documents and a large number of witnesses often exceed 100. In such scenarios, the strict adherence to these timelines may exert undue pressure on the court, potentially leading to rushed judgments. The unintended consequence could be a compromise in the thorough examination of evidence and legal arguments, raising questions about the quality and fairness of the judicial process. While the introduction of timeframes is a positive step towards addressing delays and backlog, a nuanced approach may be necessary, especially when dealing with complex cases. Balancing the need for expeditious justice with the intricacies of extensive trials is crucial to avoid inadvertent compromises.”*
- 2. Section 392 (1) of the BNSS**<sup>130</sup> provides that judgment in every trial in any criminal court shall be pronounced no later than 45 days after the termination of trial, thereby rectifying the vague timeline, *i.e.*, *“immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders”*, provided under Section 353(1) of the CrPC. Further, if the accused is in custody, he may be produced through audio video electronic means to hear the judgment.<sup>131</sup> The Proviso to Section 392(4) of the BNSS also provides that the court shall, within 7 days from the date of judgment, upload its copy on the portal, which provision is absent in the CrPC. The use of technology in requirements like uploading judgments on a portal within specified days, also reflects a commitment to transparency and accessibility in line with modern legal practices.
- 3. Increased limit of sentences that a Magistrate may pass:** Section 23 of the BNSS<sup>132</sup> increases the permissible fine amounts that a Magistrate of the first class and a Magistrate of the second class can impose.<sup>133</sup> Additionally, both classes of Magistrates are now authorized to impose community service as a type of sentence<sup>134</sup>.
- 4. Revision in sentence in case of conviction of several offences at one trial:**<sup>135</sup> In respect of sentences in several offences, Section 25 of the BNSS has been amended to omit the default rule that punishments shall run consecutively in the order directed by the court, unless specified otherwise. Section 25 now requires consideration of the gravity of the offences and specifically order punishments to run concurrently or consecutively. Further, Section 31 of CrPC provided that maximum punishment in this case cannot exceed 14 years. This has been extended to 20 years under Section 25 of the BNSS.

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You can direct your queries or comments to the authors.

(We thank Advocate Kushal Mor, a criminal law expert, for his valuable contributions and inputs to this hotline).

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<sup>1</sup>Section 1(3) of the BNSS

<sup>2</sup>Section 531(2)(a) of the BNSS

<sup>3</sup>Section 531(2)(b) of the BNSS

<sup>4</sup>Section 531(2)(c) of the BNSS

<sup>5</sup>Section 531(3) of the BNSS

<sup>6</sup>Section 2 of the BNSS

<sup>7</sup>Section 2(1)(a) of the BNSS

<sup>8</sup>Section 2(1)(b) of the BNSS

<sup>9</sup>Section 2(1)(d) of the BNSS

<sup>10</sup>Section 2(1)(e) of BNSS

<sup>11</sup>Section 2(1)(i) of the BNSS

<sup>12</sup>Section 2(1)(y) of the BNSS (corresponds to Section 2(wa) of the CrPC)

<sup>13</sup>Section 2(1)(l) of the BNSS (corresponds to Section 2(h) of the CrPC)

<sup>14</sup>Section 6 of the BNSS (corresponds to Section 6 of the CrPC)

<sup>15</sup>To achieve this consolidation, consequential amendments have been introduced to various sections of the Sections 8, 11, 12, 14, 17, 22, 29, 113, 196, 214, 320, 321, 415, 422, and 436 of the BNSS.

<sup>16</sup>Section 63 (ii) of the BNSS (Corresponds to Section 61 of the CrPC)

<sup>17</sup>Corresponds to Section 62 of the CrPC

<sup>18</sup>Corresponds to Section 69 of the CrPC

<sup>19</sup>Section 70(3) of the BNSS (Corresponds to Section 68 of the CrPC)

<sup>20</sup>Section 202 of the BNSS (Corresponds to Section 182 of the CrPC)

<sup>21</sup>Section 65 of BNSS (Corresponds to Section 63 of the CrPC)

<sup>22</sup>In the case of *State of AP Vs Punati Ramulu and others*, (AIR 1993 SC 2644) the court held that "Any lack of territorial jurisdiction should not have prevented the constable from recording information about cognizable offence and forwarding the same to the police station having jurisdiction over the area in which the crime was said to have been committed."

<sup>23</sup>Section 173(1) of the BNSS

<sup>24</sup>Justice J.S. Verma, Justice Leila Seth and Gopal Subramanian, Report of the Committee on Amendments to Criminal Law, dated 23 January 2013 (Available at: <https://spuwac.in/pdf/jsvermacommitteereport.pdf>)

<sup>25</sup>Proviso to Section 193(9) of the BNSS

<sup>26</sup>Section 193(3)(ii) of the BNSS

<sup>27</sup>Section 230 of the BNSS

<sup>28</sup>Section 251(1) of the BNSS

<sup>29</sup>Section 263 of the BNSS

<sup>30</sup>Section 258 of the BNSS

<sup>31</sup>Corresponds to Section 321 of the CrPC

<sup>32</sup>Second Proviso to Section 231 of the BNSS (Corresponds to Section 208 of the CrPC)

<sup>33</sup>Section 20(7) of the BNSS.

<sup>34</sup>Section 20(8) of the BNSS.

<sup>35</sup>In the case of *Mahendra Chawla v Union of India*, 2018 SCC OnLine SC 2679, the Supreme Court sanctioned the Witness Protection Scheme 2018 (draft).

<sup>36</sup>Jagjeet Singh & Ors. v Ashish Mishra @ Monu & Anr., Criminal Appeal No. 632 of 2022 in SLP (Crl.) No. 2640 of 2022

<sup>37</sup>Corresponds to Section 202, CrPC

<sup>38</sup>'Sentencing – Overview, General Principles and Mandatory Custodial Sentences', Crown Prosecution Service, United Kingdom, June 2023

<sup>39</sup>The Minnesota Sentencing Guideline Commission

<sup>40</sup>Rule 4.420 - Selection of term of imprisonment for offense, California Rules of Court

<sup>41</sup>Committee on Reforms of Criminal Justice System, Dr. Justice V.S. Malimath, et.al., Report: Volume I, 2003, Ministry of Home Affairs, Paragraph 14.4, Page 170.

<sup>42</sup>Corresponds to Section 154 of the CrPC

<sup>43</sup>Section 173 (1) (ii) of the BNSS

<sup>44</sup>Corresponds to Section 155 of the CrPC

<sup>45</sup>Section 156 of the CrPC

<sup>46</sup>Section 175(3) of BNSS

<sup>47</sup>Section 179 of the BNSS (Corresponds to Section 160 of the CrPC)

<sup>48</sup>First Proviso to Section 179(1) of the BNSS

<sup>49</sup>Second Proviso to Section 179(1) of the BNSS

<sup>50</sup>Proviso to Section 195(1) of the BNSS

<sup>51</sup>Corresponds to Section 165 of CrPC

<sup>52</sup>Section 185(1) of the BNSS

<sup>53</sup>Section 185(2) of the BNSS

<sup>54</sup>Section 185(5) of the BNSS

<sup>55</sup>Corresponds to Section 173 of the CrPC

<sup>56</sup>Corresponds to Section 170 of CrPC

<sup>57</sup>The Supreme Court clarified the correct interpretation of Section 170 of CrPC in *Siddharth v. State of U.P.* (2022) 1 SCC 676 and *Satender Kumar Antil v. CBI* (2022) 10 SCC 51. These judgments emphasized that the term "custody" in Section 170 does not necessarily mean police or judicial custody but only requires the accused to be presented before the Magistrate when filing the charge-sheet. The Court clarified that it is not mandatory to arrest the accused during the filing of the charge-sheet, especially if they were not arrested during the investigation.

<sup>58</sup>Corresponds to Section 167 of CrPC

<sup>59</sup>Section 187(3) of the BNSS stipulates that where the investigation cannot be completed in 24 hours, the Magistrate custody cannot authorize custody beyond i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more; (ii) sixty days, where the investigation relates to any other offence.

<sup>60</sup>Corresponds to Section 437 of CrPC

<sup>61</sup>Section 482 of the BNSS (Corresponds to Section 438 of the CrPC)

<sup>62</sup>Section 35 of the BNSS (Corresponds to Section 41 of the CrPC)

<sup>63</sup>Section 36(c) of the BNSS (Corresponds to Section 41B (c) of the CrPC)

<sup>64</sup>Corresponds to Section 80 of the CrPC

<sup>65</sup>Corresponds to Section 50A of the CrPC

<sup>66</sup>Corresponds to Section 41C of the CrPC

- <sup>67</sup>Section 39 of the BNSS (Corresponds to Section 42 of the CrPC)
- <sup>68</sup>Supra at 9
- <sup>69</sup>Section 40 of the BNSS (Corresponds to Section 43 of the CrPC)
- <sup>70</sup>First Proviso to Section 479(1) of the BNSS
- <sup>71</sup>Section 479(3) of the BNSS
- <sup>72</sup>Section 479(2) of the BNSS
- <sup>73</sup>Third Proviso to Section 479(1) of the BNSS
- <sup>74</sup>Section 479(1) of the BNSS
- <sup>75</sup>Corresponds to Section 190 of the CrPC
- <sup>76</sup>Corresponds to Section 200 of the CrPC
- <sup>77</sup>Proviso to Section 223(1) of the BNSS
- <sup>78</sup>Section 223(2) of the BNSS
- <sup>79</sup>Corresponds to Section 204 of the CrPC
- <sup>80</sup>Corresponds to Section 207 of the CrPC
- <sup>81</sup>Corresponds to Section 209 of the CrPC
- <sup>82</sup>Corresponds to Section 91 of the CrPC
- <sup>83</sup>Section 94(1) of the BNSS.
- <sup>84</sup>Ram Ramaswamy vs. Union of India, WP(Crl) No. 138/2021
- <sup>85</sup>Section 105 of the BNSS
- <sup>86</sup>Section 111(a) BNSS (corresponding to Section 105A(a) CrPC): 'contracting State' means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise.
- <sup>87</sup>Section 86 of the BNSS
- <sup>88</sup>Section 107(1) of the BNSS
- <sup>89</sup>Section 107(2) of the BNSS
- <sup>90</sup>Section 107(4) of the BNSS
- <sup>91</sup>Proviso to Section 107(4) of the BNSS
- <sup>92</sup>Section 107(5) of the BNSS
- <sup>93</sup>Section 107(6) of the BNSS
- <sup>94</sup>Section 107(7) of the BNSS
- <sup>95</sup>Section 107(8) of the BNSS
- <sup>96</sup>Section 111(c) of the BNSS (corresponds to Section 105 A (c) of CrPC)
- <sup>97</sup>Section 3, 5, 8, the Prevention of Money Laundering Act, 2002 (PMLA)
- <sup>98</sup>Corresponds to Section 188 of CrPC
- <sup>99</sup>Corresponds to Section 189 of CrPC
- <sup>100</sup>Section 209 of the BNSS.
- <sup>101</sup>Section 272 of the BNSS (corresponds to Section 249 of the CrPC); Section 279 of the BNSS (corresponds to Section 256 of the CrPC)
- <sup>102</sup>Proviso to Section 274 of BNSS (Corresponds to Section 251 of the CrPC)
- <sup>103</sup>Corresponds to Section 227 of the CrPC
- <sup>104</sup>Section 232 of the BNSS.
- <sup>105</sup>Corresponds to Section 239 of the CrPC
- <sup>106</sup>Corresponds to Section 228 of the CrPC
- <sup>107</sup>Corresponds to Section 240 of the CrPC
- <sup>108</sup>Section 242 of the BNSS (Corresponds to Section 219 of the CrPC)
- <sup>109</sup>Corresponds to Section 260 of CrPC
- <sup>110</sup>Section 283(1)(i), (ii), and (iii) of BNSS
- <sup>111</sup>Section 283(2) of the BNSS
- <sup>112</sup>Corresponds to Section 265 B(1) of the CrPC
- <sup>113</sup>Section 293(c) of the BNSS
- <sup>114</sup>Section 293(d) of the BNSS
- <sup>115</sup>Corresponds to Section 273 of the CrPC
- <sup>116</sup>Corresponds to Section 231 of the CrPC
- <sup>117</sup>Section 254 of the BNSS
- <sup>118</sup>Corresponds to Section 242 of the CrPC
- <sup>119</sup>Corresponds to Section 243 of the CrPC



<sup>120</sup>Corresponds to Section 281 of the CrPC

<sup>121</sup>Corresponds to Section 294 of the CrPC

<sup>122</sup>Corresponds to Section 246 of the CrPC

<sup>123</sup>Section 40(2)(ii) of the CrPC defined 'proclaimed offender' with reference to specific provisions of the IPC. Section 34(2)(ii) of the BNSS defines 'proclaimed offender' to include any person proclaimed as an offender by any Court or authority in any territory in India to which the BNSS does not extend, in respect of any act which if committed in the territories to which the BNSS extends, would be an offence punishable under any of the offence *punishable with imprisonment for ten years or more or with imprisonment for life or with death* under the Bharatiya Nyaya Sanhita, 2023

<sup>124</sup>Section 356(2) of the BNSS

<sup>125</sup>Section 356(5) of the BNSS

<sup>126</sup>Section 356(6) of the BNSS

<sup>127</sup>Proviso to Section 356(4) of the BNSS

<sup>128</sup>Section 356(7) of the BNSS

<sup>129</sup>Corresponds to Section 235 of the CrPC

<sup>130</sup>Corresponds to Section 353(1) of the CrPC

<sup>131</sup>Section 392(5) of the BNSS

<sup>132</sup>Corresponds to Section 29 of CrPC

<sup>133</sup>For Magistrate of the first class, the upper limit has been raised from ten thousand rupees to a maximum of fifty thousand rupees, while for Magistrate of the second class, it has been increased from five thousand rupees to ten thousand rupees.

<sup>134</sup>Explanation to Section 23 of the BNSS defines community service as Court ordered work that benefits the community, and which is not entitled to any remuneration.

<sup>135</sup>Section 25 of the BNSS (corresponds to Section 31 of the CrPC)

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