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COMPARATIVE ANALYSIS OF BNSS AND CRPC: UNDERSTANDING THE SHIFTS IN INDIA'S CRIMINAL JUSTICE FRAMEWORK

ABSTRACT

India has undertaken a substantial legal transformation by replacing the colonial-era Code of Criminal Procedure, 1973 (CrPC), with the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). This transition isn't just about changing nomenclature—it signifies a deep-rooted effort to update, simplify, and Indianize the procedural framework of criminal law. This article undertakes a comparative review of both statutes, analyzing the rationale for change, key amendments introduced under BNSS, and their likely impact on various stakeholders, including the judiciary, legal practitioners, victims, and the general public.

Key words:- Bharatiya Nagarik Suraksha Sanhita (BNSS), Code of Criminal Procedure (CrPC) , Criminal justice reform, Procedural law, Arrest and bail reform & Victim rights

INTRODUCTION

For over five decades, the Code of Criminal Procedure, 1973, has governed the procedural aspects of criminal law in India. Based on the colonial model laid down in the 19th century, it had undergone several piecemeal amendments but retained its original colonial imprint. Recognizing the need for a comprehensive and citizen-centric criminal procedure, the Government of India introduced the Bharatiya Nagarik Suraksha Sanhita, 2023. The BNSS seeks to replace the CrPC and bring about a systematic overhaul with greater emphasis on transparency, victim participation, and the use of technology.

The comparison between CrPC and BNSS is not merely one of legal texts—it is a study in legislative evolution and the shifting priorities of a modern state. This article outlines the structural changes, substantive reforms, and broader implications of the shift from CrPC to BNSS.

Historical Context: From CrPC to BNSS

The CrPC, 1973, was enacted in the post-independence era but was essentially a continuation of the colonial Code of 1898. Despite India's progress in law and governance, many procedural aspects remained archaic, adversarial, and detached from the experiences of common citizens. The need for simplification, reduction in delays, inclusion of victim rights, and better technological integration had been widely discussed in Law Commission reports and Parliamentary debates.

The BNSS, 2023, was introduced alongside two other new laws—Bharatiya Nyaya Sanhita (BNS) and Bharatiya Sakshya Adhinyam (BSA)—collectively aiming to replace the Indian Penal Code and Indian

Evidence Act respectively. Together, these laws represent a paradigm shift in India's criminal jurisprudence.

1. Structural Reorganization and Simplification

The BNSS has 531 sections compared to the 484 sections in the CrPC. This increase is not due to added complexity, but rather to a better reorganization of provisions. Clauses that were previously clubbed together have been separated for clarity.

Example:

- Provisions related to FIRs, arrests, and bail have been categorized more systematically, enabling easier navigation for law enforcement officers and legal practitioners.

Furthermore, certain outdated terminologies, like “pleader” or “judicial magistrate, first class,” have been replaced with simplified and modernized expressions.

1. Technology Integration

One of the most significant differences between the CrPC and the BNSS lies in the introduction of technology.

BNSS Innovations:

- **Electronic FIRs:** Provision for filing FIRs online, especially for offences punishable up to three years, has been introduced.
- **Digital Evidence Handling:** Statements, confessions, and evidence can now be recorded electronically, including via video conferencing.
- **E-summons and warrants:** Service of summons, notices, and warrants may now be done through electronic communication such as emails and messaging apps.

These changes signify a major step forward in addressing delays in process service and modernizing procedural bottlenecks.

1. Victim-Centric Approach

While the CrPC was largely focused on the prosecution and the accused, the BNSS introduces several measures to protect and empower victims.

Notable Changes:

- **Victim Participation:** Victims of certain crimes are allowed to be heard at the stage of framing charges.
- **Information to Victims:** Police are required to keep the victim informed about the progress of the investigation and court proceedings.
- **Timely Compensation:** The BNSS mandates the State to provide interim relief to victims in a time-bound manner.

This indicates a more humane and rights-based approach to criminal procedure, bridging a long-existing gap in the system.

1. Stringent Timelines and Accountability

Another noteworthy feature of BNSS is the introduction of time limits for different stages of criminal proceedings, which was not rigidly present in CrPC.

Examples:

- **Charge-sheet filing:** Time limit of 90 days to complete investigation in cases involving punishments above 10 years, and 60 days for others.
- **Bail Disposal:** Magistrates must decide bail applications within 7 days.
- **Framing of Charges:** Courts must frame charges within 60 days from filing of charge-sheet.

These provisions aim to reduce the pendency of cases and ensure speedy justice—a long-standing concern under the CrPC framework.

1. Arrests and Bail Reforms

The CrPC has often been criticized for enabling unnecessary arrests. The BNSS incorporates Supreme Court directions and Law Commission recommendations to curb indiscriminate arrests.

BNSS Reforms:

- **Section 35 (BNSS):** Makes it mandatory for police officers to record reasons for arrest and non-arrest in offences punishable with less than 7 years.
- **Mandatory Bail Hearings:** In minor cases, anticipatory bail applications are encouraged, with specific conditions to ensure liberty is not unjustly denied.

This shift reflects a balance between individual liberty and public order, in line with constitutional values.

1. Community and Preventive Policing

The CrPC's provisions on preventive measures and maintenance of law and order have been broadened under the BNSS.

Additions:

- **Public Safety Orders:** Authorities can issue public safety orders in sensitive situations.
- **Community Policing:** The BNSS formally encourages the involvement of local communities in preventing crime, under the guidance of police and district magistrates.

This framework supports decentralization and strengthens law enforcement in rural and semi-urban areas.

1. Juvenile Justice and Gender Sensitivity

Though the Juvenile Justice Act continues to apply, the BNSS ensures alignment with child-sensitive procedures.

- **Protection of identity:** BNSS reinforces the ban on disclosure of identity of victims in sexual offences.
- **Female Officers for Women Victims:** Statements of female victims must be recorded by female officers.

While CrPC had provisions on these, the BNSS codifies them more strongly and makes compliance mandatory.

1. **Withdrawal of Prosecution and Plea Bargaining**

The BNSS provides clarity and expands the scope for plea bargaining and compounding of offences.

Under BNSS:

- **Plea Bargaining:** More offences are eligible for plea bargaining to expedite case disposal.
- **State Withdrawal:** Prosecution cannot be withdrawn without prior notice to the victim and the court.

These features prevent arbitrary use of discretion and promote transparency.

1. **Trials In Absentia and Fugitive Accused**

The CrPC lacked comprehensive provisions to deal with absconding or fugitive accused. BNSS introduces trials in absentia for proclaimed offenders of serious crimes like terrorism, organized crime, and rape.

Implication:

- This enables courts to proceed with cases without allowing absconders to frustrate justice.

However, the provision must be applied cautiously to safeguard due process and prevent misuse.

1. **De-colonial and Indigenous Language Shift**

The most symbolic departure from CrPC lies in the intent to decolonize Indian law. The very name “Bharatiya Nagarik Suraksha Sanhita” reflects an indigenous identity.

The terminology has been made simpler and more rooted in Indian languages. The drafters also aim to translate these laws into all Scheduled languages, making law more accessible to the common citizen.

Challenges and Criticisms

Despite the Bharatiya Nagarik Suraksha Sanhita (BNSS) marking a decisive step towards a modernized criminal justice system, it has not been without criticisms and concerns from legal experts, practitioners, and

civil society. One of the primary challenges is the **implementation burden**, particularly with regard to the technological advancements proposed under the new framework. The mandate for electronic filing of FIRs, video recordings of statements, and digital management of trial proceedings, while laudable in principle, demands robust digital infrastructure and internet connectivity. This poses a serious obstacle in rural and remote regions of India, where even basic access to electricity and internet remains sporadic. Without necessary infrastructural support, these reforms may remain on paper and not reach the grassroots level where they are needed most.

Another critical concern is the **fear of executive overreach**. The BNSS enhances police powers in various areas, including search, seizure, and extended detention periods, which, in the absence of stringent safeguards, could potentially lead to abuse. Human rights activists have cautioned that increasing discretionary powers without parallel accountability mechanisms might result in arbitrary arrests, custodial torture, and suppression of dissent—especially affecting marginalized communities who already face systemic bias in the criminal justice system.

The **training gap** also emerges as a significant hurdle. Police officers, public prosecutors, defense lawyers, judicial officers, and court staff must all be comprehensively trained in the new provisions of the BNSS. However, such a nationwide retraining program requires not only time but also significant budgetary allocation, planning, and monitoring. The lack of a coordinated strategy could lead to inconsistent application of the law across different jurisdictions, defeating the purpose of codification and simplification.

Furthermore, there are apprehensions that **some procedural safeguards provided under the CrPC might have been diluted** under the BNSS in the name of efficiency. For instance, concerns have been raised regarding the limited judicial oversight in certain preliminary processes and the extended detention timelines which may impact the fundamental rights of accused persons. Critics argue that such provisions could violate the presumption of innocence and tilt the balance of power in favour of the State.

Transitional uncertainty is another issue. As the BNSS replaces a century-old CrPC, questions remain on how pending cases under the CrPC will be transitioned, and whether dual procedural standards might coexist temporarily, creating confusion for litigants and courts alike. This phase will require clear guidelines and careful judicial interpretation to ensure continuity and fairness.

Lastly, **the lack of public and expert consultation during the drafting of the BNSS** has been criticized. Many stakeholders, including legal scholars, Bar Associations, and human rights bodies, have pointed out that meaningful participatory deliberations were either absent or minimal. For a legislation that fundamentally alters how justice is delivered in India, a more transparent and consultative process was expected.

CONCLUSION

The transition from the CrPC to the BNSS marks a watershed moment in India's legal history. The BNSS attempts to replace a colonial legacy with a modern, technology-driven, victim-centric, and rights-based procedural

law. While the intent is reformatory and forward-looking, the success of this transformation depends largely on effective implementation, infrastructure readiness, and stakeholder sensitization.

In sum, BNSS reflects an earnest effort to balance the scales of justice—ensuring not only that the guilty are punished, but also that victims receive timely redressal and the innocent are not wrongfully persecuted. This comparative analysis of BNSS and CrPC shows how the Indian legal system is stepping into a new era with hope, caution, and a commitment to constitutional values.

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