

THE LAWWAY WITH LAWYERS JOURNAL

Website: www.the-lawway-with-lawyers.com

VOLUME:-35 ISSUE NO:- 35 , MAY 20, 2026

ISSN (ONLINE):- 2584-1106

Email: thelawwaywithlawyers@gmail.com

Digital Number : 2025-23534643

CC BY-NC-SA

Authored By :- Rajiv Kumar

Co Authored By:- Ms. Priyanka Gupta

PROCEDURAL SAFEGUARDS FOR CHILDREN UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

A Critical Analysis with Judicial Interpretation

Abstract

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is not simply a legal reform — it is a rethinking of how India's criminal justice system treats its most vulnerable participants. By replacing the Code of Criminal Procedure, 1973, BNSS signals a clear intent to build a system that is fairer, faster, and more humane. Nowhere is this shift more consequential than in its treatment of children, who may find themselves caught up in the justice system as victims, witnesses, or as persons accused of an offence.

Children cannot be treated the same way as adults in legal proceedings. Their emotional fragility, psychological development, and limited understanding of legal processes demand a procedural framework that actively protects them — not merely on

paper, but in practice. This paper undertakes a close examination of the procedural safeguards BNSS offers to children and honestly assesses how well the new law delivers on its promise.

The analysis spans a wide canvas: arrest and custody, bail, trial procedures, the recording of statements, evidentiary protections, and the role of institutions like Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs). It also examines how BNSS interacts with the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Protection of Children from Sexual Offences Act, 2012 (POCSO). The landmark decisions that have shaped child-centred criminal procedure in India are reviewed alongside a direct comparison between BNSS and the old CrPC framework.

The conclusion is measured: BNSS is a meaningful step forward. Its mandatory audio-video recording of statements, victim-centred procedures, and structured timelines reflect genuine progress. But legal reform alone is not enough. Implementation gaps, infrastructure deficits, definitional inconsistencies, and the absence of trauma-informed approaches across the system remain serious challenges that no statute can fix by itself.

Keywords: *BNSS, Child Rights, Juvenile Justice, Procedural Safeguards, POCSO, Criminal Procedure, Child Witnesses, Juvenile Justice Board.*

Chapter 1: Introduction

1.1 Background of the Study

The criminal justice system is built to deliver order and fairness. But for children who encounter it, it can be an intensely disorienting experience. Whether a child appears before the system as a victim of abuse, a witness to a crime, or as someone accused of an offence, the ordinary machinery of criminal procedure can cause harm if it is not thoughtfully adapted to their needs.

India has taken a significant step in addressing this through the Bharatiya Nagarik Suraksha Sanhita, 2023. The BNSS replaces the Code of Criminal Procedure, 1973 — a colonial-era law that had outlived much of its practical relevance — and introduces a

reformed framework that incorporates technology, prioritises victims, and builds in protections for vulnerable groups including women and children.

Among its most notable features are provisions for audio-video recording of statements, electronic court proceedings, and time-bound investigation and trial mechanisms. For child victims of sexual offences and children in conflict with the law, these changes carry real consequence.

The constitutional foundations for this approach are well established. Articles 15(3), 21, 21A, 24, and 39(f) of the Constitution collectively place a duty on the State to protect children from exploitation and ensure the conditions for their healthy development. India is also a signatory to the United Nations Convention on the Rights of the Child (UNCRC), 1989, which requires that the best interests of the child be the primary consideration in all legal and administrative matters concerning them.

Against this backdrop, an examination of whether BNSS truly delivers on its promise of child protection is both timely and necessary.

1.2 Research Problem

Despite having a robust body of child protection legislation, India continues to struggle with procedural violations against children in practice. Investigations are delayed. Police conduct is often insensitive. Statements are improperly recorded. Trials drag on for years. Custodial abuse remains a documented concern. BNSS addresses several of these problems in statute — but whether it does so adequately, and whether its provisions will translate into real change on the ground, is a question that deserves careful scrutiny.

1.3 Objectives of the Study

1. To examine what procedural safeguards for children mean within the Indian criminal law framework.
2. To analyse BNSS provisions relating to child victims, child witnesses, and children in conflict with law.
3. To understand how BNSS interacts with the JJ Act and the POCSO Act.
4. To evaluate judicial decisions that have advanced child procedural rights.
5. To compare BNSS with the CrPC it replaced.
6. To identify what still needs to change, and to offer practical suggestions.

1.4 Research Questions

7. What procedural safeguards does BNSS, 2023 actually provide for children?
8. How does BNSS differ from the old CrPC in protecting child rights?
9. What has the judiciary contributed to strengthening these safeguards?
10. What are the main obstacles to effective implementation?

1.5 Research Methodology

This paper uses a doctrinal and analytical approach, grounding its analysis in statutory provisions, judicial decisions, constitutional principles, and child rights jurisprudence. The research is both descriptive and comparative: it examines the current framework in detail while holding it up against what came before.

Primary sources include the BNSS, the JJ Act, the POCSO Act, the Bharatiya Sakshya Adhiniyam, 2023, the Constitution of India, and relevant Supreme Court and High Court decisions. Secondary sources include academic texts, law journal articles, government and Law Commission reports, and materials from UNICEF and the UNCRC.

Because BNSS is newly enacted, practical implementation data remains limited. The analysis is accordingly focused on the legal framework and its potential, rather than on empirical outcomes that will only emerge over time.

Chapter 2: The Concept of 'Child' Under Indian Law

Before any discussion of legal safeguards, a foundational question must be answered: who exactly is a child? In India, the answer is not as straightforward as it might seem. Different statutes adopt different definitions depending on their purpose, and this inconsistency creates practical difficulties throughout the system.

2.1 Juvenile Justice Act, 2015

Under Section 2(12), a child is any person who has not completed eighteen years of age. This definition applies equally to children in need of care and protection and to children in conflict with law.

2.2 POCSO Act, 2012

The POCSO Act similarly defines a child as any person below eighteen years. Notably, the law is gender-neutral, covering all children regardless of sex.

2.3 Constitutional Perspective

The Constitution does not define 'child' in a single provision, but it speaks to child welfare throughout. Article 15(3) permits special legislation for children. Article 21 guarantees life and dignity. Article 24 prohibits hazardous child labour. Article 39(f) directs the State to ensure the healthy development of children.

2.4 International Standards

The UN Convention on the Rights of the Child defines a child as every human being below the age of eighteen unless majority is attained earlier under domestic law.

2.5 Position under BNSS

Here lies a meaningful gap. BNSS contains no comprehensive definition of its own. Courts are left to interpret the term by reading the law harmoniously with the JJ Act and POCSO Act. This is workable in practice, but it introduces a degree of procedural ambiguity that could have been avoided by a clear statutory definition.

Chapter 3: Overview of BNSS, 2023

The Bharatiya Nagarik Suraksha Sanhita, 2023 replaced the Code of Criminal Procedure that had governed India's criminal process since 1973. It is a substantial overhaul, not merely an amendment, and its ambitions are evident from the range of changes it introduces.

3.1 Salient Features

Technology-oriented procedure: BNSS formally recognises electronic FIRs, digital evidence, video conferencing, and mandatory audio-video recording of proceedings — a significant modernisation of a system that had long lagged behind technological reality.

Victim-centric reforms: Victims are granted greater participation in the process, including rights to information about the progress of investigations and bail applications.

Time-bound proceedings: Mandatory timelines are introduced for both investigation and trial, aimed at reducing the chronic delays that have long afflicted the criminal justice system.

Protection of vulnerable groups: The law includes specific provisions for women, children, and persons with disabilities.

Forensic investigation: For serious offences punishable with imprisonment of seven years or more, forensic experts are required to be involved.

3.2 BNSS and Child Rights

Although BNSS is a general procedural law, many of its provisions carry direct implications for children. The framework makes a genuine effort to reduce secondary victimisation and to ensure that children who interact with the justice system — whether as victims, witnesses, or accused — are treated with fairness and dignity.

Chapter 4: Procedural Safeguards During Arrest and Custody

4.1 Protection Against Illegal Arrest

Children in conflict with law are entitled to heightened procedural protection from the moment they come into contact with the state. The Supreme Court has repeatedly affirmed that any deprivation of liberty must comply with constitutional safeguards under Article 21. For children, this is not merely a legal formality — unlawful or prolonged detention can cause lasting psychological harm.

4.2 Production Before a Magistrate

The requirement that an arrested person be produced before a magistrate within twenty-four hours applies with particular force to children. Delays beyond this period can expose children to conditions that compound trauma and undermine their dignity.

4.3 Prohibition on Handcuffing

The courts have consistently condemned the routine handcuffing of accused persons, and this prohibition is especially important for children. Handcuffing violates the presumption of innocence and can inflict lasting psychological damage. It must never be the default.

4.4 Medical Examination

Where medical examination of an accused child is required, it must be conducted sensitively and wherever possible in the presence of a parent or guardian. Clinical procedures in the absence of a trusted adult can be deeply distressing for a child.

4.5 Information to Guardian

The parent or guardian of an apprehended child must be informed immediately. Failure to do so is not merely a procedural lapse — it can render the detention legally suspect and deprives the child of vital support at a critical moment.

4.6 Juvenile Justice Board Jurisdiction

Children in conflict with law cannot ordinarily be produced before regular criminal courts. They must appear before the Juvenile Justice Board, which approaches cases with a reformatory and rehabilitative orientation rather than a punitive one.

4.7 Observation Homes Instead of Prisons

Children cannot be lodged in regular prisons, full stop. Observation Homes and Special Homes exist to provide rehabilitation, education, and care — not punishment. Any deviation from this requirement is a serious procedural violation.

Chapter 5: Bail Provisions for Children

5.1 The Philosophy of Juvenile Bail

The juvenile justice system is premised on reformation, not retribution. Consistent with this, bail is treated as the default and detention as the exception — a clear inversion of the standard calculus applied to adult accused persons.

5.2 Bail Under BNSS

BNSS incorporates several provisions on undertrial release that are especially significant for children.

Section 479 provides for the release of undertrial prisoners after they have served a specified fraction of their sentence. Courts are expected to apply this generously in cases involving children.

Section 480 preserves bail as a matter of right in bailable offences.

High Courts and Sessions Courts retain the power to grant anticipatory bail where the circumstances justify protecting a person's liberty.

5.3 Bail Under the JJ Act

Section 12 of the Juvenile Justice Act goes further: it mandates the release of a child — with or without surety — unless such release would expose the child to genuine danger, criminal association, or moral risk. The bar for refusing bail is deliberately high.

5.4 Rehabilitation as the Guiding Purpose

When courts consider bail for children, education, family support, counselling, and prospects for reintegration are all relevant considerations. The goal is not to manage risk — it is to restore the child.

Chapter 6: Trial Procedures and Child-Friendly Justice

6.1 In-Camera Proceedings

Proceedings involving child victims — particularly in sexual offence cases — are conducted in camera as a rule. Open proceedings in such matters are not simply uncomfortable; they can cause lasting harm to child victims and chill the willingness of future victims to come forward.

6.2 Child-Friendly Court Environments

The Supreme Court has emphasised that children should not face the full weight of formal courtroom procedure. Informal settings, the presence of support persons, breaks during testimony, and age-appropriate communication are not concessions — they are necessary conditions for reliable and fair testimony.

6.3 Identity Protection

The identity of child victims and child accused must not be disclosed publicly under any circumstances. Media publication of identifying information is prohibited, and the courts have enforced this prohibition firmly.

6.4 Speedy Trial

Delayed trials are not merely inconvenient — for children, they can permanently distort memory, deepen trauma, and disrupt the child's development. BNSS's introduction of mandatory timelines is therefore especially significant in child-related cases.

6.5 Protection from Secondary Victimization

Repeated questioning, intimidating cross-examination, and hostile courtroom conduct can traumatise child witnesses and victims all over again. Procedural safeguards exist to limit this. Whether they are consistently applied is a different question — one that the paper returns to in the discussion of implementation.

Chapter 7: Recording of Statements — Section 183 BNSS

7.1 Why Statement Recording Matters

The way a child's statement is taken shapes everything that follows — its evidential value, the child's willingness to cooperate, and the psychological cost of the process. Done well, statement recording can be both reliable and humane. Done badly, it can contaminate evidence and cause lasting harm.

7.2 What Section 183 Requires

Section 183 is among the most progressive provisions in BNSS where children are concerned. It mandates that statements of women and child victims in specified offences be recorded by a woman police officer — a recognition that the gender of the officer conducting the interview can materially affect the willingness and ability of a child to speak.

7.3 Audio-Video Recording

Mandatory audio-video recording serves two important purposes. First, it creates a transparent record that is harder to tamper with or misrepresent. Second, and perhaps more importantly from the child's perspective, it reduces the need for the child to retell their experience multiple times throughout the proceeding — each repetition being a potential source of re-traumatisation.

7.4 Where the Statement Should Be Recorded

The statement should preferably be taken at the child's home or another place chosen by the child — not at a police station. The environment in which a child is questioned affects both their comfort and the reliability of their account.

7.5 Evidentiary Value

Statements recorded before a magistrate may be used as substantive evidence during trial. The audio-video record further strengthens this by providing corroboration of how the statement was taken.

7.6 Judicial Recognition

In *Sakshi v. Union of India*, the Supreme Court recognised the inherent vulnerability of child sexual abuse victims and endorsed protective procedures such as testimony through screens and video-link. Section 183 builds directly on this judicial recognition.

Chapter 8: Evidentiary Protections for Child Witnesses

8.1 Competency of Child Witnesses

There is no minimum age at which a child becomes competent to give evidence. The court assesses competency on a case-by-case basis, asking whether the child can understand questions and respond to them rationally. Age is relevant but not determinative.

8.2 The Corroboration Rule

Indian courts have consistently held that conviction can be founded on the uncorroborated testimony of a child witness, provided the evidence is credible. The child's word is not treated as inherently less reliable than that of an adult.

8.3 Regulating Cross-Examination

Aggressive or humiliating questioning directed at child witnesses can do serious psychological damage — and it can also undermine the quality of the evidence. Courts are therefore expected to exercise close oversight over the manner in which child witnesses are cross-examined.

8.4 Prior Statements and Digital Evidence

Statements captured through audio-video recording can significantly strengthen evidentiary reliability, particularly where memory may fade between the incident and the trial.

8.5 Oath and Affirmation

Even where a child does not fully understand the nature of an oath, their unsworn testimony remains admissible if the court is satisfied that the evidence is reliable. The formal requirement of an oath is not a barrier to a child being heard.

Chapter 9: Institutional Safeguards — JJB and CWC

9.1 Juvenile Justice Board

The Juvenile Justice Board is the primary institution dealing with children in conflict with law. It is designed to function very differently from an ordinary criminal court — informally, collaboratively, and with the child's reformation as its central objective.

The Board's functions include: conducting inquiries into offences involving children; considering bail; directing rehabilitation and counselling; commissioning social investigation reports; and making rehabilitation orders. Throughout, the approach is child-friendly rather than adversarial.

9.2 Child Welfare Committee

The Child Welfare Committee handles children in need of care and protection — those who are not accused of any offence but who are vulnerable for other reasons.

The CWC's functions include: rescuing and rehabilitating children in distress; arranging placement for abandoned children; coordinating with police and NGOs; and overseeing restoration to families where appropriate.

9.3 Coordination Under BNSS

The effectiveness of any procedural safeguard ultimately depends on the institutions charged with implementing it. The JJB, CWC, police, courts, prosecutors, and social workers must work in concert. When they do not — when information is siloed, when responsibilities are unclear, when inter-agency communication breaks down — children fall through the gaps.

Chapter 10: Landmark Judicial Decisions

10.1 Gopinath Ghosh v. State of West Bengal (1984)

The Supreme Court held that age determination must be undertaken with care, and that the benefit of doubt should be extended in favour of juvenility. Where the evidence on age is equivocal, the child's claim should be preferred.

10.2 Sakshi v. Union of India (2004)

A watershed decision. The Court recognised the particular vulnerability of child sexual abuse victims and recommended the adoption of protective procedures: testimony through screens, video-link evidence, and restrictions on direct confrontation with the accused.

10.3 Shilpa Mittal v. State of NCT Delhi (2020)

The Court clarified how heinous offences are defined under the JJ Act and called for legislative clarity on gaps that had caused inconsistency in how children were treated under the law.

10.4 Satbir Singh v. State of Haryana (2021)

The Court stressed the importance of sensitive examination of child witnesses, acknowledging that delays between incident and testimony can affect reliability and that the manner of questioning matters profoundly.

10.5 In Re: Inhuman Conditions in 1382 Prisons (2016)

The Court affirmed in the strongest terms that children must never be lodged in regular prisons, and directed improvement of rehabilitation facilities across the country.

Chapter 11: Comparative Analysis — BNSS and CrPC

The following table summarises the key differences between the old CrPC framework and the new BNSS:

Aspect	CrPC, 1973	BNSS, 2023
Statement Recording	No mandatory video recording	Audio-video recording mandated
Undertrial Release	After one-half sentence	After one-third sentence for first offenders
Technology Integration	Limited	Extensive recognition
Victim Rights	Restricted participation	Enhanced participation rights
Investigation Approach	Conventional methods	Forensic-focused approach
Trial Timelines	No strict limits	Time-bound procedure
Child-Centric Measures	Scattered across provisions	More structured and coherent

The table tells a clear story: BNSS is materially more advanced than the framework it replaced. The shift toward technology, victim participation, and structured timelines represents genuine progress. But, as the following chapter explores, progress in statute is not the same as progress in practice.

Chapter 12: Challenges and Gaps in the Framework

12.1 No Uniform Definition of 'Child'

The absence of a consistent definition of 'child' across statutes is not a technicality — it creates real confusion in court. Different laws applying different age thresholds to the same situation produces uncertainty and inconsistency.

12.2 Infrastructure Deficit

Audio-video recording facilities are not universally available. Child-friendly interview rooms, separate waiting areas, and one-way mirrors for testimony are absent from many courts and police stations, particularly in smaller districts and rural areas.

12.3 Training Gap

Many police officers, prosecutors, and judicial officers lack the training to work effectively with child witnesses and child accused. Trauma-informed practice is not yet embedded in how criminal justice professionals are prepared for their roles.

12.4 Rural and Digital Divide

BNSS's technology-dependent reforms are only as effective as the infrastructure that supports them. In remote areas, unreliable internet connectivity and the absence of equipment can render digital provisions largely theoretical.

12.5 Persistent Delays

Despite statutory timelines, child-related cases continue to suffer from delays at every stage. Overburdened courts and stretched investigation resources mean that the spirit of the law is not yet consistently matched by its practical application.

12.6 Psychological Support

Counselling and psychological support services are critically inadequate in many jurisdictions. Children who have experienced trauma need sustained, professional assistance — not just during the legal process, but throughout it and beyond.

12.7 Institutional Coordination Failures

The system works best when police, JJBs, CWCs, prosecutors, courts, and child protection agencies work together as a coordinated whole. In reality, weak communication channels and unclear responsibilities regularly undermine effective implementation.

Chapter 13: Suggestions and Recommendations

11. BNSS should incorporate a clear, uniform definition of 'child' to eliminate interpretational ambiguity.
12. Mandatory trauma-informed training should be introduced for all criminal justice stakeholders — police, prosecutors, judges, and court staff alike.
13. Child-friendly infrastructure — interview rooms, separate entrances, support person facilities — should be developed in all courts and police stations receiving child-related cases.
14. Audio-video recording facilities should be treated as essential infrastructure, not optional additions, and made universally available.
15. Fast-track courts handling child-related cases should be adequately resourced and their jurisdiction clearly defined.
16. Formal coordination mechanisms should be established among JJBs, CWCs, police, and child protection agencies, with clear accountability at each stage.
17. Psychological counselling and rehabilitation services should be funded and expanded as part of the criminal justice response to child victimisation.

18. Legal aid and awareness programmes should be made accessible to children and their guardians, particularly in rural and marginalised communities.
19. Independent monitoring mechanisms should be established to ensure procedural compliance across the system.
20. A statutory Child Rights Ombudsman should be created with a clear mandate to oversee implementation of child protection laws and to receive and investigate complaints.

Chapter 14: Conclusion

BNSS, 2023 is a serious and substantive reform of India's criminal procedural framework. Its provisions on audio-video recording, victim participation, forensic investigation, and time-bound proceedings reflect a genuine effort to build a system that is more transparent, more accountable, and more responsive to the particular needs of vulnerable participants.

For children, the shift is meaningful. The procedural safeguards available under BNSS — when read alongside the JJ Act, POCSO, and the accumulated wisdom of the Supreme Court — constitute a framework that takes child rights seriously. The emphasis on dignity, rehabilitation, privacy, and the best interests of the child runs through the statute and through the jurisprudence that surrounds it.

But laws are only as effective as the systems that implement them. And here, honest assessment requires acknowledging that significant challenges remain. Infrastructure is uneven. Training is inadequate. Delays persist. Psychological support is thin. Institutional coordination is unreliable. These are not minor technical problems — they are systemic failures that affect real children in real cases.

The task ahead is not simply legislative. It is administrative, cultural, and financial. It requires sustained investment in training, infrastructure, and inter-agency coordination. It requires courts and police and prosecutors who understand not just the law, but the children the law is designed to protect.

BNSS marks an important milestone. The next milestone — effective, consistent, compassionate implementation — still lies ahead.

References

Statutes

- Bharatiya Nagarik Suraksha Sanhita, 2023
- Bharatiya Sakshya Adhiniyam, 2023
- Juvenile Justice (Care and Protection of Children) Act, 2015
- Protection of Children from Sexual Offences Act, 2012
- Constitution of India
- Code of Criminal Procedure, 1973

Cases

- Gopinath Ghosh v. State of West Bengal, AIR 1984 SC 237
- Sakshi v. Union of India, (2004) 5 SCC 518
- Shilpa Mittal v. State of NCT Delhi, (2020) 2 SCC 787
- Satbir Singh v. State of Haryana, (2021) SCC Online SC 404
- In Re: Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700

Books

- Ratanlal & Dhirajlal, Criminal Procedure
- Vepa P. Sarathi, Law of Evidence
- Paras Diwan, Juvenile Justice System in India
- Dr. S.R. Myneni, Criminal Law

Articles and Reports

- National Commission for Protection of Child Rights Reports
- Law Commission of India Reports on Criminal Justice Reform
- UNICEF Reports on Child Protection
- UN Convention on the Rights of the Child, 1989

Declaration

I hereby declare that this research paper titled “Procedural Safeguards for Children under the Bharatiya Nagarik Suraksha Sanhita, 2023: A Critical Analysis with Judicial Interpretation” is an original work prepared for academic purposes. All sources referred to in this paper have been duly acknowledged.

Submitted by:

Rajiv Kumar

LLM Scholar, Criminal Law

IILM University, Greater Noida