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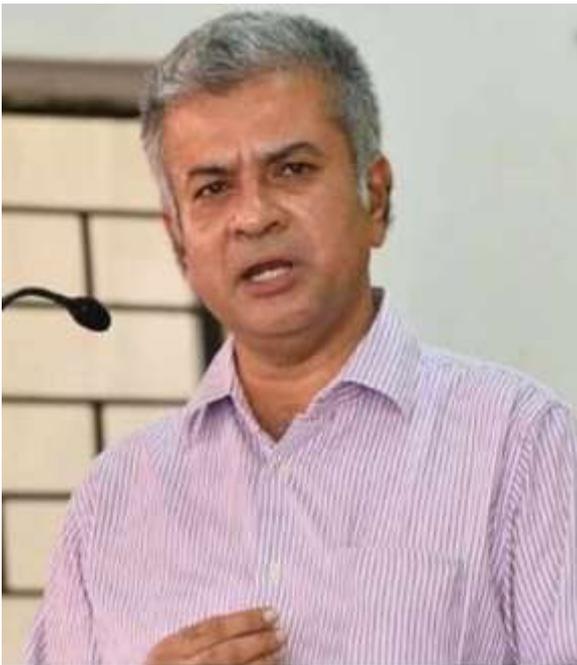
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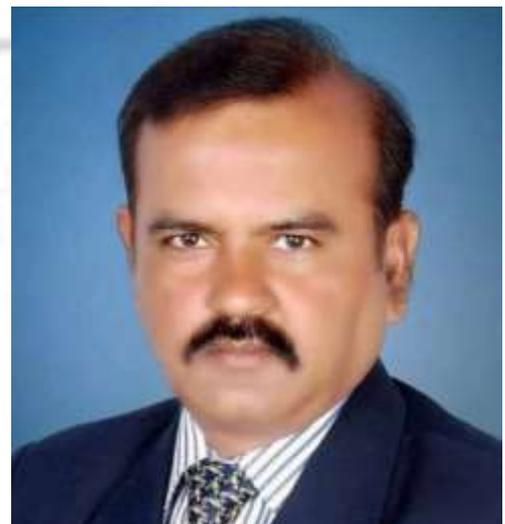


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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

REFORMS IN BAIL SYSTEM UNDER BNSS

AUTHORED BY - KANAK

Abstract:

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 introduces significant reforms to India's criminal justice system, with a specific focus on restructuring the bail framework previously governed by the Code of Criminal Procedure (CrPC). This study provides a critical analysis of the bail provisions under the BNSS, including anticipatory bail (Section 482), regular and default bail, monetary conditions, and bail for undertrial prisoners. Key shifts include gender- and age-sensitive considerations, time-bound trial safeguards, mandatory forensic procedures, and conditional bail linked to judicial discretion. The BNSS also enhances police and judicial powers, but its expanded scope—particularly in the use of handcuffs, pre-trial detentions, and limitations on plea bargaining—raises constitutional concerns regarding personal liberty under Article 21. The paper reviews legislative texts, judicial precedents, and recent Law Commission suggestions to assess whether the new provisions strike an equitable balance between ensuring justice, reducing undertrial incarceration, and protecting the rights of the accused. The analysis concludes that while BNSS modernizes certain procedural mechanisms, it requires vigilant judicial oversight to avoid disproportionate impacts on marginalized populations.

Keywords:

Bharatiya Nagarik Suraksha Sanhita, Bail Reforms, Anticipatory Bail, Criminal Justice, Undertrial Prisoners.

1.1. Introduction

Bail is a foundational element of criminal jurisprudence, serving as a mechanism to balance individual liberty with the interests of justice. Traditionally governed by the Code of Criminal Procedure, 1973, the concept and procedure of bail in India have undergone a paradigm shift with the introduction of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. This new legal framework seeks to modernize bail provisions, ensure speedy justice, and reduce prolonged detentions, while addressing systemic issues such as prison overcrowding and arbitrary police powers. The present study explores the structural and procedural reforms introduced under the

BNSS with a special emphasis on their implications for personal liberty and judicial accountability.

1.2. Definitions related to Bail under BNSS

Definitions of key phrases are of utmost relevance in the legal field. Bail, bail bond, and bond are all defined by BNSS, even though they are not found in the Code of Criminal Procedure. Given below are the definitions of bail related facets in BNSS:

- Section 2(b) - "bail" signifies the release of an individual from custody by a law enforcement official or court after the individual posts bond or posts a bail, subject to specific terms set by the official or court.;
- Section 2 (d) "bail bond" means an undertaking for release with surety;
- Section 2 (e) "bond" means a personal bond or an undertaking for release without surety;

1.3. What is Section 437 CrPC in BNSS?

Section 437 of CrPC Restoring the ability to post bail for non-bailable offenses is Section 480 of the BNSS. When comparing the provisions of CrPC and BNSS Section 437 regarding bail, it is important to note that the latter does not set a minimum age of 16 years, as the former does, due to the fact that the term "child" has been defined under new criminal laws. Additionally, it established that an accused individual must be able to be positively identified by witnesses while the investigation is underway "or for police custody beyond the first fifteen days" in order for the rejection of bail to be considered valid.

The rules governing this bail in cases when the offence is not bailable are sometimes confused with those pertaining to anticipatory bail. Section 480 permits bail in situations where the defendant is already in jail, as opposed to anticipatory bail, which is granted in cases of non-bailable offenses prior to the suspect's anticipated arrest. Section 480 of BNSS lays that:

“480. When bail may be taken in case of non-bailable offence:

- (1) *When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but—*
 - (i) *such person shall not be so released if there appear reasonable grounds for believing*

that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is a child or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation or for police custody beyond the first fifteen days shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court: Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of section 494 and pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter VII or Chapter XVII of the Bharatiya Nyaya Sanhita, 2023 or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court shall impose the conditions,—

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter;

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected; and

(c) that such person shall not directly or indirectly make any inducement, threat or promise

to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence,

and may also impose, in the interests of justice, such other conditions as it considers necessary.

(4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.

(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time, after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond for his appearance to hear judgment delivered.”

Case Law on Section 437 of CrPC - Section 480 of BNSS

The Supreme Court in *Bashir and Others v. State of Haryana* (decided on 3/10/1977) clarified the dilemma regarding cancellation of bail under Section 437 of CrPC. The Court illuminated that - “Subsection (5) to section 437 is important. It provides that any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody. As under section 167(2) a person who has been released on the ground that he had been in custody for a period of over sixty days is deemed to be released under the provisions of Chapter XXXIII, his release should be considered as one under section 437(1) or (2). Section 437(5) empowers the court to direct that the person so released may be arrested if it considers it necessary to do so. The power of the court to cancel bail if it considers it necessary is preserved in cases where a person has been released on bail under section 437(1) or

(2) and these provisions are applicable to a person who has been released under section 167(2). Under section 437(2) when a person is released pending inquiry on the ground that there are not sufficient grounds to believe that he had committed a non-bailable offence may

be committed to custody by court which released him on bail if it is satisfied that there are sufficient grounds for so doing after inquiry is completed. As the provisions of section 437(1), (2) and (5) are applicable to a person who has been released under section 167(2) the mere fact that subsequent to his release a challan has been filed is not sufficient to commit him to custody.”

1.4. Case Law on Anticipatory Bail under CrPC - Section 482 of BNSS

The Supreme Court in *Lavesh vs. State (NCT of Delhi)* ((2012) 8 SCC 730) held that “Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

1.5. Special Powers of High Court/Sessions Court

Section 439 of CrPC underwent a rebirth as the BNSS in accordance with Section 483. The High Court and the Sessions Court are given unique authority to grant bail under BNSS under this provision. The power to revoke bail, as well as the authority to forcibly remove a person from freedom on bond, is at the discretion of the court. The provision reads as:

“483. *Special powers of High Court or Court of Session regarding bail:*

(1) A High Court or Court of Session may direct,— (a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 480, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified: Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice: Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under section 65 or sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023, give notice of the application for bail to the Public Prosecutor within a period of fifteen days

from the date of receipt of the notice of such application.

(2) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under section 65 or sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.

(3) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

Case Law on Section 439 of CrPC - Section 483 of BNSS

The Supreme Court in *Sundeeep Kumar Bafna vs State Of Maharashtra & Anr* (2014 AIR SCW 2115) negated any compulsion over High Court to entertain bail applications under Section 437 of CrPC. The Court said that “there are no provisions in the CrPC contemplating the committal of a case to the High Court, thereby logically leaving its powers untrammelled. There are no restrictions on the High Court to entertain an application for bail provided always the accused and this position obtains as soon as the accused actually surrenders himself to the Court.”

1.6. HIGHLIGHTS OF THE BNSS

Context

“The Indian Penal Code, 1860 (IPC) is administered in accordance with the 1973 Code of Criminal Procedure (CrPC), a body of procedural legislation. It regulates how crimes are investigated, arrested, prosecuted, and bail is set. In 1861, the CrPC was initially enacted to resolve the issue of India's several legal systems.¹ Several revisions have been made to it since then. The current Criminal Procedure Code (CrPC) superseded the previous legislation in 1973, and it included amendments such as anticipatory bail”.² Among the changes introduced in 2005 were provisions regarding the rights of individuals arrested and plea bargains.³

Over the years, the Supreme Court has interpreted the CrPC in varied ways and revised its application. These include: “(i) require the filing of a First Information Report (FIR) in the event that the allegation pertains to a crime that can be legally prosecuted, (ii) providing an exception for arrests in cases where the sentence does not exceed seven years in prison, (iii)

¹ “Stokes, Anglo-Indian Codes, Vol. 2, pages 2-3”.

² “The Code of Criminal procedure, 1973”

³ “The Code of Criminal Procedure (Amendment) Act, 2005”

The right to post bail for a bailable offense is absolute and unassailable; discretion is not exercised in this regard. ⁴ Additionally, the Court has made rulings regarding procedural matters, such as outlining standards for interrogations conducted in custody and stressing the significance of expedited trials.⁴ But problems like case backlogs and trial delays persist, and many are worried about how the criminal justice system treats disadvantaged populations”.⁵

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) took the role of the CrPC and was implemented on August 11, 2023. It changes the authority of the police and magistrates, broadens the extent of property seizure, and changes the provisions on bail. After the Standing Committee on Home Affairs reviewed the bill, it became law on July 1, 2024..

1.7. Key Features

The CrPC governs the procedural aspects of criminal justice in India. The key features of the Act include:

- **Separation of offences:** “The CrPC classifies offences into two categories: cognisable and non-cognisable. Cognisable offences are those in which the police can arrest and initiate an investigation without a warrant. Non-cognisable offences require a warrant, and in some cases, a complaint by the victim or a third party”.
- **Nature of offences:** everything the way from murder to traffic infractions, the CrPC handles it everything. It defines the crimes for which an accused person can be granted bail from police custody and those for which this right is not available.

The BNSS retains most of the provisions of the CrPC. Key changes proposed include:

- **Detention of undertrials:** “After serving half of the maximum sentence, an accused individual is eligible for personal bond release, as per the CrPC. For crimes carrying the death penalty, this is not applicable”. The Bill adds that this provision will also not apply to:
(i) crimes carrying the death penalty, and (ii) people who are currently facing charges for several offenses.
- **Medical examination:** “The CrPC permits medical examinations of accused

⁴ “AIR 1997 SC 610, D.K. Basu v. State of West Bengal, Supreme Court, December 18, 1996, 1979 AIR 1360, Hussainara Khatoon v. State of Bihar, Supreme Court, February 12, 1979”

⁵ “Report No. 78, Law Commission of India, 1979”

individuals in specific instances, such as rape prosecutions. At least a sub-inspector-level police officer must request that a licensed medical professional conduct such an evaluation”. Any law enforcement official is authorized to seek such a test under the new law..

- **Forensic investigation:** “According to the bill, forensic investigation is necessary for crimes that carry a minimum prison term of seven years or longer. As they collect evidence at crime scenes, forensic experts will use their mobile phones or other electronic devices to document their trips. If a state does not have its own forensics lab, it must use one in another state”.
- **Signatures and finger impressions:** “Any individual can be ordered by a Magistrate to produce specimen signatures or handwriting under the CrPC”. This is broadened in the bill to encompass voice samples and fingerprints as well. A person who has not yet been arrested can have these samples taken from them.
- **Timelines for procedures:** The Bill prescribes timelines for various procedures. For example, investigators must receive reports from doctors who treat rape victims no later than seven days after the incident. The following additional deadlines are also specified: (i) a verdict must be handed down within 30 days of arguments being finalized (with a possible extension to 60 days); (ii) “the victim must be apprised of the investigation's progress within 90 days; and (iii) sessions courts must formulate charges within 60 days of the initial hearing on such charges”.
- **Hierarchy of Courts:** To resolve criminal cases in India, the CrPC sets up a system of courts with varying levels of authority. There are four levels of courts in our legal system:
 - (i) the subordinate magistrate's courts, which hear the majority of criminal cases; (ii) the sessions courts, which are headed by a sessions judge and handle appeals from the lower courts; (iii) the supreme courts, endowed with the authority to consider and rule upon appeals and criminal matters; and (iv) this court's original jurisdiction extends to hearing appeals from lower courts as well as some cases brought before it by the supreme court. “The CrPC allows state governments to designate any municipality with a population more than one million as a metropolitan region. Such areas are supervised by Metropolitan Magistrates. This clause is missing from the Bill”.

1.8. MAJOR CHANGES DONE BY BNSS, 2023

The Sanhita may expand the powers of the police

The CrPC controls the authority of law enforcement to ensure the safety of the public, deter criminal activity, and investigate suspected offenses. Among these authorities' purview are the powers to detain, search, seize, and employ force. These authorities are limited so that people can be protected from police brutality, unlawful detentions, torture in prison, and other abuses of power.⁶ Another step to curb the government's ability to act arbitrarily is the set of rules put out by the Supreme Court^{4,7} Some problems may arise as a result of the Sanhita's revisions to the sections dealing with incarceration, police custody, and the use of handcuffs.

Procedure of police custody altered

The Constitution and CrPC prohibit detention in police custody beyond 24 hours.⁸ The Magistrate has the power to extend the investigation deadline by up to fifteen days if it exceeds twenty-four hours. "Judicial custody can be extended beyond the initial 15 days if he finds enough grounds. The maximum amount of time a person can spend in prison for any one crime is sixty or ninety days, depending. The BNSS changes this procedure. Furthermore, it states that the 15-day police custody can be authorized in whole or in part at any moment during the first 40 or 60 days of the 90-day term". One possible outcome is the denial of bail while the authorities insist on returning the person to their custody.

In contrast, statutes such as the Unlawful Activities (Prevention) Act, 1976, restrict police custody to a maximum of 30 days.⁹ "According to the Supreme Court's precedent, the initial fifteen days of remand are the most appropriate for placing the suspect in police custody."¹⁰

The 40- or 60-day extension should be your exception. The investigating officer is not required to provide a reason to request police custody under the BNSS if the suspect is already in judicial custody. The Standing Committee (2023) recommended elaborating on the meaning of this clause".¹¹

⁶ "Report No. 273, Law Commission of India, 2017"

⁷ "1978 AIR 597, Maneka Gandhi v. Union of India, Supreme Court, January 25, 1978"

⁸ "Article 22, The Constitution of India, 1950, Section 51, The Code of Criminal Procedure, 1973"

⁹ "Section 43D, the Unlawful Activities (Prevention Act), 1967"

¹⁰ "1992 AIR 1768, Central Bureau of Investigation v. Anupam J. Kulkarni, Supreme Court, May 8, 1992"

¹¹ "Report No. 247, 'the Bharatiya Nagarik Suraksha Sanhita', Standing Committee on Home Affairs, November 10, 2023"

Powers of detention amended

Article 22 of the Constitution necessitates the immediate presentation of an individual detained by the police to a court Magistrate. You may get this from the CrPC as well. That clause is still in place in the BNSS. It further states that anyone who refuses, resists, or disregards an officer's orders to prevent cognizable offenses may be detained or removed by the police. The detainee has two options following their detention: (i) they can be brought before a Magistrate, or (ii) they can be released once the event has passed, if the charge is minor. We don't know what the term "occasion is past" means. In such cases, the Standing Committee (2023) suggested setting a specific duration for detention.

The power to use handcuffs may infringe on the accused's personal liberty

Arrests involving the use of handcuffs are authorized by the BNSS. The only individuals who can be apprehended using handcuffs are those who are either (i) known to have a history of evading capture or (ii) facing charges related to serious crimes including rape, acid attacks, organized crime, economic crimes, or anything that could compromise India's sovereignty, unity, or integrity. Both Supreme Court rulings and National Human Rights Commission recommendations are at odds with the clause.¹²

The usage of handcuffs is deemed harsh, irrational, arbitrary, and contrary to Article 21 by the Supreme Court.¹³ The escort in charge is required to document the particular reasons for the use of handcuffs when they are absolutely essential. Thirteenthly, it has decided that no defendant in a pending trial can be handcuffed without the judge's permission. The use of handcuffs is thus a matter for the trial court to decide. "A recommendation from the Standing Committee (2023) was to exclude economic offenses from the list of crimes that permit the use of handcuffs". According to a dissenting comment in the Committee report, handcuffs should only be applied in cases where there is a probable danger of physical harm or if the suspect poses a significant risk of evading capture.¹⁴

Rights of the accused

Scope of mandatory bail limited in case of multiple charges

"A defendant who has already served half of the maximum term for a crime may be released

¹² 'Guidelines regarding Arrest', National Human Rights Commission

¹³ 1980 AIR 1535,

¹⁴ 1995 3 SCC 743,

from custody on a personal bail, according to the CrPC. All crimes that entail the death penalty are not subject to this provision. The BNSS retains this option, but first-time offenders can now be granted bail after completing one-third of their maximum sentence”. It does, however, provide that (i) crimes carrying a life sentence will not be subject to this provision, and (ii) situations where there are ongoing investigations, inquiries, or trials involving more than one crime or cases will not be affected. A large number of defendants now awaiting trial may not be eligible for required bail due to the lengthy list of charges against them.

“In 2014, for instance, the Supreme Court ruled that, in addition to being a crime under the Mines and Minerals (Development and Regulations) Act, 1957, unlawful mining also counts as theft under the Indian Penal Code (IPC).¹⁵ The Motor Vehicles Act, 1988 and the Indian Penal Code both make reckless and dangerous driving illegal”.¹⁶ Those facing accusations in these circumstances will not have the option to obtain required bail.

Through the bail process, individuals can be granted freedom from detention while they await trial, provided they fulfill certain conditions. The purposes of pretrial detention include ensuring the accused is present for trial and preventing the tampering of evidence. It is not required to detain if they are assured. The Supreme Court decided that bail should be the standard, not the exception, after hearing arguments on the matter. It has also been pointed out that those in jail should be freed quickly from their pending trials; it is unfair to keep them in jail only because they cannot afford bail, which is often a consequence of poverty.¹⁷

Scope for plea bargaining may be limited

In a plea bargain, the prosecutor and defense attorney work together to lessen the defendant's punishment by having him or her plead guilty to a lesser charge. “Plea bargaining was inserted into the Criminal Procedure Code in 2005. It is not permissible to commit crimes that carry sentences of seven years or longer in prison, life without parole, or the death penalty. A plea bargain for a lesser charge or to compound the offense will be considered as an admission of guilt and a finding of guilt, as this is not allowed under the Criminal Procedure Code. That provision remains in the BNSS. As a result, the only option for a plea bargain in India is sentence negotiating, where the accused might agree to a lesser sentence in exchange for

¹⁵ Criminal Appeal 499 of 2011,

¹⁶ “Section 184, the Motor Vehicles Act, 1988, Section 279, The Indian Penal Code, 1860”

¹⁷ “2016 3 SCC 700”

admitting guilt”.

Additionally, the accused must file for plea negotiation within 30 days of the charge being formed, as stipulated by the BNSS. The efficacy of plea negotiating may be diminished due to the reduced amount of time to seek a lesser sentence.

Congestion in the prison system

Deterring prison overcrowding may be as simple as imposing stricter bail requirements and reducing the room for plea bargaining. The entire occupancy rate of India's jails was 130% as of December 2021, with over 5.5 lakh inmates being confined. “The majority of India's inmates in 2021 were those awaiting trial.¹⁸ A year or more was spent in detention by almost 30% of those still awaiting trial. The percentage of inmates awaiting trial who spent three years or more behind bars is around 8%”.

Successors deposing for transferred or retired officers

If an officer who was supposed to depose on a document or report for an investigation or trial is unable to do so, the Court will make sure that their replacement does so, according to the BNSS. Public officials, medical personnel, and Investigating Officers (IOs) are all encompassed under this clause. Illness, transfer, retirement, and (iv) delay are the four main causes of unavailability. Although it could speed up cases, letting replacement officers depose before the court might go against the usual principles of proof.

“Some may contend that statements taken by an IO must be given by the same officer, since the IO's successor might not be able to verify the IO's inquiry”. According to the Standing Committee on Home Affairs (2023), IOs have vital information about the matter that is being investigated. 11 Their ability to cross-examine witnesses is invaluable, particularly when their own records are presented as proof. It was suggested by the Committee that IOs be removed from this clause. A member who disagreed with the majority thought that, barring the officer's death, every officer should be accessible for cross-examination.¹¹

Safeguards on attachment of property

“The term proceeds of crime describes any kind of wealth that is acquired through illegal

¹⁸ “[Prison Statistics of India \(2021\)](#), National Crime Records Bureau”

means. When property is (i) believed or suspected to have been stolen, or (ii) discovered under circumstances causing suspicion of commission of any offence, the police have the power to confiscate it according to the CrPC”. This solely applies to properties that can be moved.¹⁹ Additionally, the BNSS applies this to real estate. When compared to the Prevention of Money Laundering Act of 2002 (PMLA), The protocols for dealing with confiscated assets are distinct from those of BNSS. In the event of specific offenses, the PMLA permits the seizure of assets acquired through money laundering.²⁰

In contrast to the BNSS, PMLA offers a number of protections. Under the PMLA, an attachment can be considered provisional for up to 180 days. You must give thirty days' notice in order to give an explanation for why an attachment order should not be issued. “While the attachment is being processed, no one has the right to prevent you from using the immovable property. Until the BNSS sets a deadline, property can be attached. A 14-day notice to demonstrate cause is served upon the accused”.

Overlaps with existing laws

Various parts of criminal procedure have been regulated by particular laws that have been passed over the years. Nevertheless, the BNSS continues to use a portion of the.

Data collection for criminal identification

To allow a Magistrate to collect specimens of handwriting or signatures from individuals who have been arrested, the Criminal Procedure Code was changed in 2005.²¹ This provision is expanded in the bill so that the Magistrate can collect more than just fingerprints and DNA; they can also take audio samples and physical impressions. “It also allows for the collection of this data from individuals who have not been arrested in relation to any investigation. The Criminal Procedure (Identification) Act, 2022 made it possible to collect a broader range of data, including biological samples, fingerprints, and handwriting”.²² Any person—from convicted criminals to those currently in custody to those who have not yet faced criminal charges—may have their personal information preserved for up to seventy-five years. The necessity for the BNSS to continue or even increase data collection procedures is debatable

¹⁹ “2019 20 SCC 119, *Nevada Properties Pvt. Ltd. V. State of Maharashtra*, Supreme Court, September 24, 2019”

²⁰ Section 3, 5, 8, the Prevention of Money Laundering Act, 2002.

²¹ Section 311A, The Code of Criminal Procedure, 1973

²² [The Criminal Procedure \(Identification\) Act, 2022](#).

in light of the recent enactment of a more comprehensive statute permitting the collection of data on both accused and convicts. The constitutionality of the 2022 Act is at the heart of the present issue before the Delhi High Court.²³

Maintenance of senior citizens

“The Magistrate has the authority to order a financially stable person to pay a specific sum to a parent who is unable to do so on their own. In the event that the order is not followed, the Magistrate might levy the sum and impose a jail sentence of up to one month, or until the payment is made. This portion of the BNSS remains in force as it is an exact replica of the 2007 Maintenance and Welfare of Parents and Senior Citizens Act. State governments are required to create support tribunals in order to ascertain the amount of support that is due to parents and elderly individuals under that statute²⁴ The Tribunal can demand payment in full or impose a jail term of up to one month, whichever comes first, until the money is collected. It is clear that that Act supersedes all previous legislation”.

Public order functions retained in BNSS

Examination and judgment of criminal accusations are outlined in the CrPC. It also contains security measures to maintain peace and guarantee public order and calm. It grants the District Magistrate the authority to make certain orders for the purpose of preserving public order. “The relevant sections of the BNSS have maintained these provisions. Given their differences, the question arises as to whether the two tasks—trial procedure and public order maintenance—should be treated separately or combined under a single act. The responsibility for ensuring the general welfare rests with the individual states, as stated in the Seventh Schedule of the Constitution”.²⁵ Things that were subject to the Criminal Procedure Code (before the Constitution took effect) are, however, included in the Concurrent List.²⁶

1.9. CANCELLATION OF BAIL IN BAILABLE OFFENCES (SECTION 478(2)) OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

Posting bail allows a person facing criminal charges to be released from custody, but only if specific conditions are met. Consequently, it is reasonable to assume that the benefit of bail

²³ W.P. (CRL) 869/2022,

²⁴ “The Maintenance and Welfare of Parents and Senior Citizens Act, 2007”

²⁵ “Entry 1, List II, Seventh Schedule, The Constitution of India”

²⁶ “Entry 2, List III, Seventh Schedule, The Constitution of India”

would be rendered null and void if the released individual violates the most fundamental requirement of appearing before a court for an investigation or trial.

In *Mahendra C. Vakharia v. State of Maharashtra*²⁷, The Bombay High Court established that the bail order should remain in effect because no infraction of the bail bond's terms occurred. “This means that the court cannot cancel bail for a bailable offense unless the bail bond is breached in some way”.

1.10. POLICE REMAND NOT PERMISSIBLE IN BAILABLE OFFENCES

“Maintaining these standards is the duty of both the court and the police officer”. If a person is able to post bail and their crime does not qualify for an exception to the rule, they will be released from custody.

“Keeping track of the reasons for placing the accused in police custody for the purpose of conducting custodial questioning is a significant matter for the Magistrate. For a bailable offense, it would be absurd to let the accused remain in police custody as the law requires the release of those accused.. In *Pravinkumar Chandrakant Vyas v. State of Gujarat the High Court of Gujarat*²⁸ has ruled that the police do not have the authority to request a pretrial detention, often known as police remand, for crimes that are eligible for bail.

NON BAILABLE OFFENCES

Section 480 of The Bharatiya Nagarik Suraksha Sanhita, 2023, allows magistrates to grant bail in exceptional cases for non-bailable offenses, particularly for lesser charges or under special circumstances like age, gender, illness, or disability. Bail decisions must be made with judicial discretion, and reasons for granting bail must be documented. Magistrates can release on personal recognizance for minor offenses, but they can also impose conditions or order custody if necessary. The public prosecutor must be notified in certain cases involving sentences of less than seven years, ensuring fair consideration of bail applications²⁹.

²⁷ “1998 Cr LJ 1924 (Bom)”

²⁸ “Pravinkumar Chandrakant Vyas v. State of Gujarat the High Court of Gujarat, 2001 (3) GLR 2755”

²⁹ “G.Sharma. (ed.), *Feminine Jurisprudence in India*, (Deep & Deep Publications, New Delhi, 2008)”

ANTICIPATORY BAIL UNDER SECTION 482 OF THE SANHITA

The High Court and the Court of Session are two options available to anyone who is worried about an impending arrest for a crime if bail is not an option.

In order to give the prosecutor a level playing field, this measure is implemented.

“If the anticipatory bail application is denied or the court does not provide an intermediate decision on the matter, the person in charge of the police station can arrest the defendant without a warrant.

As mentioned in paragraph (IA), this ensures that the Public Prosecutor has an equal opportunity to present their position when the Court reviews the application”.

ANTICIPATORY BAIL IS A PRE-ARREST BAIL

In accordance with Section 482 of the BNSS, anticipatory bail should not be granted to all individuals who request it. A judge's discretion in determining the need for anticipatory bail is, at best, limited.

In the case of Pokar Ram v. State of Rajasthan³⁰, In instances involving serious offenses, anticipatory relief can only be given if exceptionally convincing facts are proven, according to a warning from the Supreme Court.

DEFAULT BAIL (Section 187)

The term "default bail" is not utilized in any section of the Sanhita. The phrase "default bail" was coined by attorneys and judges who deal with bail matters as a convenience. The authority conducting the investigation has a legal obligation to finish their work by a certain date; otherwise, the accused person in jail can be granted default bail.

OBJECT OF DEFAULT BAIL

The object of default bail, as outlined in Section 187 of The Bharatiya Nagarik Suraksha Sanhita, 2023, is to ensure timely investigation and prevent prolonged detentions. It mandates that the investigative agency completes its work within a specified time frame, typically 24 hours, although this may be challenging in practice. The provision protects public and state interests by allowing detention up to 90 or 60 days, depending on the case, after which continued incarceration is not unconstitutional unless bail is posted. Sections 187(2) and 193(8)

³⁰ “Pokar Ram v. State of Rajasthan, AIR 985 SC 969”

govern these timelines and procedures.

BAIL UNDER SECTION 483 OF THE SANHITA (REGULAR BAIL)

Section 439 lays out the process by which Session Courts or High Courts can grant bail.

“According to Section 483 of the BNSS, 2023, a defendant whose previous bail application was denied by the Sessions Judge and who is currently subject to an investigation can petition the Sessions Judge to reconsider the bail”. However, reasonable bail restrictions can be set by the Sessions Judge. Section 483 states that if the Sessions court decides to change or remove bail requirements, it can do so.

THE POWER OF THE APPELLATE COURT TO SUSPEND THE SENTENCE:

In accordance with Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023, an appellate court may provide bail to a convicted criminal who has appealed their case.³¹

THE POWER TO AWARD BAIL POST-CONVICTION IS NOT VERY WIDE.

The appellant's conviction remains in effect following the issuance of the order pursuant to Section 430 of the BNSS. Regardless of the outcome of the appeal, the appellant will continue to endure the consequences of his conviction if he has already started serving his sentence before a judgement is rendered proclaiming him innocent.³²

MONETARY BAIL (SECTIONS 484 to 496)

Monetary bail, covered in Sections 484 to 496 of The Bharatiya Nagarik Suraksha Sanhita, 2023, has been criticized for disproportionately affecting low-income individuals. Those who can't afford bail may remain incarcerated, as seen in *Rudal Shah v. State of Bihar*. The system, relying on financial assets for release, is seen as discriminatory. Bail terms, including bonds and fines, ensure court attendance but may lead to civil imprisonment if unpaid. Section 484 requires that bail amounts not be disproportionately high, and the HC or Sessions Court can reduce fees. Bail can be canceled for non-compliance, as outlined in Section 229A of the IPC.

AUTHORITIES EMPOWERED TO CANCEL BAIL

In criminal cases in India, there are multiple legal ways to obtain remedy. “A Court of Session

³¹ “P. Harris, *An Introduction to Law*, (Cambridge University Press, U.K., 2007)”

³² “Pillai Chandrasekharan, *R.V. Kelkar, (6th edn.), Criminal Procedure Code*, (Eastern Book Company, 2014)”

can also be approached in accordance with Section 439(2) of the same code, either by filing an application or even by moving to do so on its own initiative”.

Once issued, a bail cancellation order must have strong and convincing grounds. The accused's willful interference with the court process, willful evasion of legal processes, or willful abuse of the rights granted to them are among the many reasons a bail revocation may occur. When the court finds evidence in the case file that the defendant is likely to flee from legal proceedings, it is another reason to revoke bail. However, bail should not be automatically overturned once granted unless fresh information suggests that allowing the accused freedom through release compromises a fair trial.³³

BAIL FOR UNDER TRIAL PRISONERS (SECTION 479)

Section 479 of The Bharatiya Nagarik Suraksha Sanhita, 2023, controls the release of defendants awaiting trial. The offender must be granted bail, with or without sureties, if their confinement exceeds half of the maximum punishment for the offense. This rule guarantees that no one can be unfairly held while they are being investigated or tried. Those who are about to face the death penalty, though, are exempt. Reasons for granting bail must be documented by the court, and the release must be facilitated promptly. If an accused person has served more than half of their maximum sentence in prison, they are required by Section 436A of the Criminal Procedure Code to be released on personal bond³⁴.

CONCLUSION:

Arrested or jailed individuals may be eligible for bail, which allows them to be released from prison if they promise to appear in court when their case is called. The release of a person from detention, typically from police custody, is known as bail. An order issued under Section 438 of the Code takes into effect immediately and differs from a typical bail order in that it is granted before an arrest is made, rather than after, and results in the defendant being freed from police custody.

A person's freedom can only be restricted through lawful means. A balance between personal liberty and the protection of the community is necessary. The rights of the accused must

³³ “S. Iyer, *The Struggle to be Human*, (Books for Change, Bangalore, 1999)”

³⁴ “S.C.Joshi, *Human Rights: Concepts, Issues and Laws*, (Akansha Publishing, New Delhi, 2006)”

not be compromised in order for the police to carry out their investigation. There should be minimal interference with the accused's freedom and the police's capacity to conduct investigations. One can experience more independence if they are able to regulate themselves enough to keep other people at arm's length.

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