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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide 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

PRE-TRIAL DETENTION AND HUMAN RIGHTS: A CRITICAL. EXAMINATION UNDER BNSS (2023)

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Abstract

Pretrial custody frequently leads to extended incarceration and human rights abuses, despite its stated purpose of ensuring the accused's presence and maintaining the integrity of the judicial process. Undertrial inmates make up a sizable portion of India's prison population; many are held for lengths of time longer than the maximum penalty allowed for their claimed offences. By amending the arrest process, remand limitations, bail conditions, and investigation deadlines. The Bhartiya Nagarik Suraksha Sanhita, 2023(BNSS), which replaced the Criminal Procedure Code, 1973(CrPC), intends to reduce the criminal justice system's delays and procedural inefficiencies. In this essay, the BNSS framework on pre-trial detention is critically examined from a human rights standpoint, with an emphasis on how well it complies with international commitments under safeguards provided by Articles 21 and 22 of the Constitution, the Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR), as well as constitutional protections under Articles 21 and 22. The study assesses judicial interpretations and contrasts the provisions of the BNSS with those of the previous CrPC in order to ascertain whether the reforms effectively strike a balance between the accused's right to liberty and a speedy trial and the State's interest in reducing crime. Although BNSS brings about positive procedural reforms, the study shows that their actual impact will depend on rigorous deadline adherence, court scrutiny, and efficient enforcement. In order to protect human rights during the pre-trial phase, the paper ends with suggestions for establishing bail jurisprudence, implementing alternative non-custodial alternatives, and making pre-trial detention a measure of last resort.

Keywords: Pre-trial detention, BNSS 2023, human rights, bail, speedy trial, under trial prisoners.

Introduction

A person who is detained before their trial is over is said to be in pre-trial detention. It is mainly supported by the need to protect public order, ensure the accused's appearance in court, and avoid interfering with witnesses or evidence. However, it infringes with the fundamental rights guaranteed by the Indian Constitution, including as the right to life and personal liberty, when used arbitrarily or for an extended length of time. (Article 21) and the safeguard against capricious (Article 22) arrest and custody. Undertrial inmates, who make up a sizable portion of the prison population, have long been an issue for India's criminal justice system. Due to judicial backlogs, delays in investigations, and trouble obtaining bail, many of these people are held for years. Along with contributing to jail overcrowding, this has detrimental social, economic, and psychological repercussions for prisoners and their family. In this context, a significant piece of legislation aimed at making pre-trial procedures is the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which supersedes the Criminal Procedure Code, 1973. With a specific focus on guaranteeing effectiveness and minimizing procedural abuse, the BNSS implements modifications to arrest procedures, remand durations, bail arrangements, and investigation schedules. However, these provisions must be faithfully implemented in practice and in accordance with human rights norms in order to be successful. Through the prism of human rights legislation, this research study critically examines pre-trial detention under the BNSS, 2023. It assesses whether the new framework satisfies India's responsibilities under international agreements like the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR), as well as whether it appropriately addresses the long-standing problems of arbitrary detention and delay. This study attempts to evaluate the harmony achieved between the demands of justice administration and the preservation of individual liberty by examining legislative measures, court decisions, and comparative practices.

REVIEW OF LITERATURE

In order to understand why undertrials suffer in the system and how reforms like BNSS, 2023 seek to address them, the study of pre-trial detention and human rights incorporates a variety of viewpoints from laws, judicial rulings, and research studies:

- 1. Judicial and Constitutional Recognition:** In *Hussainara Khatoon v., State of Bihar* (1979) that Article 21 guarantees the right to a timely trial. Guidelines to stop arbitrary arrest and violence in detention were established in *D.K. Basu v. State of West Bengal*

(1997). According to *Joginder Kumar v. State of U.P.* (1994), an arrest must be warranted and not commonplace.

- 2. Law Commission Reports:** The issue of prolonged detention of undertrials and investigation delays was brought to light in the 78th and 154th Reports. The 268th Report placed a strong emphasis on alternatives to incarceration, swift trials, and bail changes.
- 3. Scholarly Writings:** Poverty frequently prevents equitable access to bail, according to authors like K.N.C. Pillai and Ratanlal & Dhirajlal, who have researched bail jurisprudence and the abuse of remand powers. Research indicates that pre-trial confinement has an impact on the accused as well as their communities and families.
- 4. International Standards:**
According to the 1966 International Covenant on Civil and Political Rights (ICCPR), incarceration prior to trial ought to be the exception rather than the rule. UN reports emphasize that those awaiting trial shouldn't be detained for longer than is required.
- 5. BNSS, 2023 and Contemporary Commentaries:** In an effort to cut down on delays, BNSS establishes inquiry timelines (90–180 days) and restricts adjournments. By guaranteeing regular reviews of incarceration and acknowledging the victim's voice at bail hearings, it improves the rights of those awaiting trial.

RESEARCH METHODOLOGY

Method of data collection: The Doctrinal Methodology was used in this investigation. For my research, I have also gathered secondary data from a variety of websites, books, journals, and articles.

Objective of the study

- 6.** To research the idea of pre-trial imprisonment in the criminal justice system of India.
- 7.** To understand the impact of pre-trial detention on human rights, especially the right to life and personal liberty under Article 21 of the Constitution.
- 8.** To study the changes introduced by BNSS, 2023 in relation to pre-trial detention, bail, and under trial rights.
- 9.** To examine the judicial approach towards pre-trial detention through important case laws.
- 10.** To suggest measures and reforms for balancing the goals of speedy justice, fair trial, and protection of human rights.

Pre-Trial Procedure under CrPC, 1973

The Code of Criminal Procedure, 1973 (CrPC) laid down the legal framework for investigation, bail, and charge framing in India for almost five decades. These provisions shaped the entire pretrial process, but over time, several challenges emerged in their application.

1. Investigation Rules & Timelines

Investigation Procedure: In accordance with the CrPC, a FIR (First Information Report) filed under Section 154 initiates the investigation. Then, in accordance with Section 173, the police officer must gather evidence, question witnesses, confiscate property, and submit a final report (charge sheet).

2. According to the CrPC, an inquiry must be finished within:

- a) 60 days if the offense carried a maximum sentence of 10 years in prison.
- b) Ninety days if the offense carried a life sentence or the death penalty. In accordance with Section 167(2), the accused may request "default bail" if the investigation is not finished at this time. In reality, these schedules were hardly ever adhered to. Due to staffing shortages, a lack of forensic support, and improper use of adjournments, investigations frequently took months or even years to complete.

3. Bail Provisions

Bailable and Non-Bailable Offences:

According to Section 436, bail was a matter of right for offenses that were subject to it. The court had the authority to set bail for offenses that were not subject to it (Section 437). Anticipatory Bail: A person who was arrested was protected by Section 438, which permitted them to request anticipatory bail. Release under trial: Section 436A stipulated that a person awaiting trial who has been detained for half of the maximum penalty must be released on bail.

4. Charge Framing Process

Phases: Following the police filing of the charge sheet, the magistrate or sessions court reviewed the evidence and made a determination regarding the possibility of charging the accused.

Provisions: Section 228 CrPC: If there is enough justification to proceed, the judge will frame charges in sessions. Sections 240 and 246 of the CrPC state that charges are formulated following consideration of the evidence in warrant cases before a magistrate.

No Set Timeline:

There was no set timeframe for framing charges in the CrPC. This frequently resulted in considerable delays between the charge sheet's filing and the start of the trial.

5. Shortcomings in Practice

1. Investigational Delays: Police frequently did not finish investigations within the allotted time, which resulted in the accused being held for an extended period of time.
2. Prison Overcrowding: Undertrials made up the bulk of inmates in India as a result of inadequate bail enforcement and ignorance.
3. Arbitrariness in Bail Decisions: Whether or not bail was granted was frequently influenced by socioeconomic inequality.
4. Lack of a Clear Charge Framing Timeline: Courts routinely postponed charge framing, which resulted in cases going unresolved for years.
5. Limited Technology Use: CrPC failed to sufficiently adjust to internet communication, digital evidence, and contemporary investigation methods.
6. Burdened Judiciary: Trial delays were made worse by a lack of facilities, personnel, and frequent adjournments.

Pre-Trial Procedure under BNSS, 2023

The 1973 Code of Criminal Procedure has been superseded by the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. One of its primary objectives is to ensure that victims and accused people are treated fairly, modernize processes with technology, and cut down on delays in the criminal court system. Under BNSS, the pre-trial phase introduces a number of significant improvements.

1. New Timelines for Investigation

Explicit deadlines: Section 193(3) BNSS: For offenses carrying a maximum sentence of ten years in prison, an investigation must be finished within ninety days. 180 days for offenses carrying a death sentence or life in prison.

Court clearance for extension: A magistrate must grant authorization for any delay

that goes beyond these bounds, along with documented justifications.

Default bail: The accused has the ability to request bail if the investigation is not finished within these time frames.

Impact: This provision aims to check prolonged investigations and prevent unnecessary pre-trial detention.

2. Use of Technology & Electronic Evidence

Electronic communication: BNSS permits the serving of summonses, warrants, and other notifications via email or SMS. Video-conferencing: To cut down on delays brought on by absences from court, accused parties, witnesses, and even victims can participate in hearings by video link. Electronic evidence: By increasing its dependence on digital evidence, CCTV footage, and electronic records, BNSS incorporates technology.

3. Bail Classification & Victim Participation

Clarity in offenses: In order to eliminate previous ambiguity, BNSS clarifies the classification of offences into those that are bailable and those that are not, depending on the maximum sentence. Under the protections of a trial: preserves and fortifies Section 436A, which states that a person may be released from custody after serving half of their maximum term. Voice of the victim: Courts must hear the victim's perspective and ensure their involvement in the process before granting bail for major offenses.

4. Charge Framing Timeline

Charges must be formed within 60 days after the date of the initial hearing following the submission of the charge sheet, per BNSS's strict deadline. As was typical under CrPC, this guarantees that cases proceed from investigation to trial rather than being stalled at the pre-trial stage for years..

5. Adjournment Limits

Adjournments are limited to two per party under BNSS, unless the court records extraordinary circumstances in writing. In order to ensure a more seamless trial flow, this clause directly addresses the delay tactics frequently employed by attorneys and parties.

6. Summary of Reforms.

Stricter deadlines, increased technological use, and improved protections for both victims and offenders are all brought about by the BNSS. Its emphasis is on enhancing accountability and cutting down on procedural delays, even if it

maintains some CrPC principles. However, how well the police, courts, and supporting infrastructure adjust to these changes will determine how successful it is.

Comparative Analysis: CrPC, 1973 vs. BNSS, 2023

India's criminal procedure system has seen a substantial change with the passage of the BNSS, 2023, from the CrPC, 1973, especially at the pre-trial phase. Although the CrPC established the framework for contemporary criminal procedure, its flaws—such as protracted incarceration before trial, abuse of adjournments, and procedural delays—made revision necessary. By implementing more stringent deadlines, integrating technology, and striking a balance between the rights of the accused and victims, the BNSS, 2023, aims to address these issues.

The investigative timelines are one significant improvement. Despite the fact that Section 167 of the CrPC stipulated 60 or 90 days for default bail, investigations frequently dragged on indefinitely because of a lack of accountability. To ensure that investigations don't drag on interminably, the BNSS introduces a more structured framework (90/180 days) with stronger judicial control. Notable changes have also been made to the bail framework. The BNSS strengthens the involvement of victims in pre-trial processes by adding a victim participation clause in major offenses, whereas the CrPC concentrates on classifying offences that are subject to bail and those that are not. Additionally, it upholds human rights values by maintaining protections including the release of defendants pending trial after serving half of the maximum penalty (Section 436A CrPC). Because CrPC did not have a clear timeframe for charge formulation, cases frequently remained in the pre-trial stage for years. One important step in accelerating trials is the introduction of a 60-day charge framing timeline by BNSS. Finally, one of the CrPC's most misused clauses was the adjournment issue. Multiple adjournments were routinely permitted by courts, which resulted in systematic delays. Only in extreme circumstances will BNSS allow more than two adjournments per side. This reform could discourage dilatory tactics and alter the ethos of the courtroom.

Constitutional & Judicial Perspective

The pre-trial stage in criminal justice must be seen not just through the lens of statutory law but also the Constitution of India and judicial interpretations that safeguard individual liberty. The BNSS, 2023, like its predecessor CrPC, must operate within these constitutional boundaries.

1. Article 21: Right to Fair and Speedy Trial

The Constitution's Article 21 states that "no one shall lose the value of his life or personal freedom except in accordance with procedure established by law. "According to the Supreme Court's interpretation, every accused person's fundamental rights include the right to a fair, just, and expeditious trial. Prolonged detention, improper use of adjournments under the CrPC, and investigation delays were frequently cited as violations of Article 21. By enforcing stringent deadlines for investigations, charge formulation, and adjournment, the BNSS aims to satisfy the constitutional requirement for prompt justice.

2. Article 22: Protection against Arbitrary Arrest

Protections against arbitrary detention and arrest are offered by Article 22. It is impossible to imprison someone without telling them why. Everyone who has been arrested is entitled to legal advice. Within twenty-four hours, the arrested individual must appear before a magistrate.

Court rulings, including in *Joginder Kumar v. State of U.P.* (1994), have highlighted the need for arrests to be justified and necessary rather than regular. By promoting electronic arrest records, search and seizure videography, and judicial supervision of pre-trial detention, BNSS reinforces these protections.

3. Important Judicial Pronouncements

1. Hussainara Khaton v. State of Bihar (1979)

For thousands of undertrial inmates in Bihar who had been lingering in jails for years without a trial, a Public Interest Litigation (PIL) was filed. Under Article 21, the Supreme Court, presided over by Justice P.N. Bhagwati, acknowledged that a quick trial is a basic right. As people were detained longer than the maximum penalty for their claimed offenses, the Court observed that the delays in the investigation and prosecution were leading to grave human rights breaches. The Court instructed the government to expedite proceedings and ordered the release of several undertrials.

Pertinence to BNSS: It is possible to interpret the BNSS's rules on charge wording, bail, and investigation deadlines as a reaction to the constitutional mandate that was emphasized in this particular instance.

2. D.K. Basu v. State of West Bengal (1997)

Custodial brutality and deaths were the subject of this case. The petitioner asked for rules to stop torture and arbitrary detention. The creation of an arrest document signed by an accused person's relative is one of the eleven historic rules established by the Supreme Court. The accused's right to notify a friend or family member right away. periodic medical examinations while in jail. keeping up with custody records. Later, these rules were included in the 2009 CrPC revisions.

Pertinence to BNSS: In order to prevent custodial abuse, the BNSS expands on these ideas by requiring computerized recordkeeping, videotaped searches and seizures, and judicial monitoring.

3. Joginder Kumar v. State of U.P. (1994)

Police arrested Joginder Kumar, a young lawyer, without providing an explanation. According to the Supreme Court, arrests must be warranted by need and legal justification. The Court stressed that "since it is legal for the police officer to make an arrest, no arrest can be made." The rationale for the use of power is distinct from its existence. The ruling also emphasized that the person who was detained has a right to legal counsel and a right to know why they were arrested.

Applicability to BNSS: These safeguards are upheld by the BNSS through increased judicial control and required electronic arrest recording.

4. Kartar Singh v. State of Punjab (1994)

In this case, the constitutionality of the 1987 Terrorist and Disruptive Activities (Prevention) Act (TADA), which permitted prolonged detention and unique trial procedures, was contested. Although the Supreme Court maintained the Act's legality, it also gave significant guidelines:

Preventive detention must not be excessive or arbitrary. Articles 21 and 22 provide fundamental rights that cannot be fully suspended, even in the event of terrorism. Courts are required to make sure that preventative detention is applied carefully and with protections.

Challenges in Implementation

1. Police and Judicial Capacity

The effectiveness of the courts and police is crucial to BNSS's success. India already lacks judges (a significant backlog of cases) and police officers (the ratio of police to

population is well below UN guidelines). An already overworked system may become overburdened by additional duties under BNSS, such as the prompt filing of charge sheets, the use of electronic evidence, and the periodic review of detention. Timelines established under BNSS might just exist on paper if there is not enough staff and training.

2. Infrastructure and Digital Readiness

BNSS places a strong emphasis on technology, including digital evidence, electronic summonses, video recordings of searches, and e-FIRs. However, many lesser courts and police stations lack technical know-how, modern technology, and dependable internet. Due to inadequate digital infrastructure in rural and semi-urban areas, implementation varies by location. Concerns about data protection and cybersecurity are also yet unresolved.

3. Resistance to Change

A change in institutional culture is necessary when implementing new procedures. Due to discomfort or a fear of accountability, police officers and judicial officials may oppose digitization and instead favor more conventional paper-based procedures. Because they doubt its admissibility and dependability, attorneys and even some judges may be wary of electronic evidence and online hearings. The BNSS's planned reforms may be slowed down or weakened by this opposition.

4. Urban–Rural Gap

Urban police stations and courts are more likely to have access to resources, greater training, and digital technologies. The majority of Indians reside in rural areas, which continue to struggle with issues including poor connectivity, a lack of energy, and a paucity of qualified workers. This disparity could lead to unequal access to justice, with rural litigants possibly still experiencing delays while urban accused and victims may benefit from quick processes.

Findings

1. Positive Developments under BNSS, 2023

The implementation of precise deadlines for the investigation and charge formulation shows a concerted effort to solve the issue of extended pre-trial detention. The legal system might become more transparent and effective with the use of digital technologies including electronic summonses, videography of searches, and e-FIRs.

The regular, anticipatory, and statutory classifications of bail as well as provisions for victim participation ensure a more balanced approach by strengthening the rights of both the victim and the accused. A step toward bringing statutory law into compliance with constitutional demands is demonstrated by the BNSS's provisions, which echo the judiciary's acceptance of the right to a prompt trial under Article 21 (Hussainara Khatoon case).

2. Persistent Problems and Gaps

Due to the lack of effective enforcement of bail laws, jail overcrowding caused by undertrial inmates is a major human rights concern. Lack of police and judicial personnel could make it challenging to fulfill stringent BNSS deadlines, increasing the possibility of "mechanical compliance" rather than real progress. There are differences in the way BNSS is deployed nationwide due to uneven infrastructure and digital preparedness, particularly in rural areas. Effective adoption of new processes may be delayed by resistance to change among law enforcement, attorneys, and even lower judicial levels. Despite advances, human rights issues—such as arbitrary arrests, extended incarceration, and a lack of legal aid—remain, indicating that the constitutional guarantee of a "fair and speedy trial" is not entirely fulfilled in reality.

Conclusion

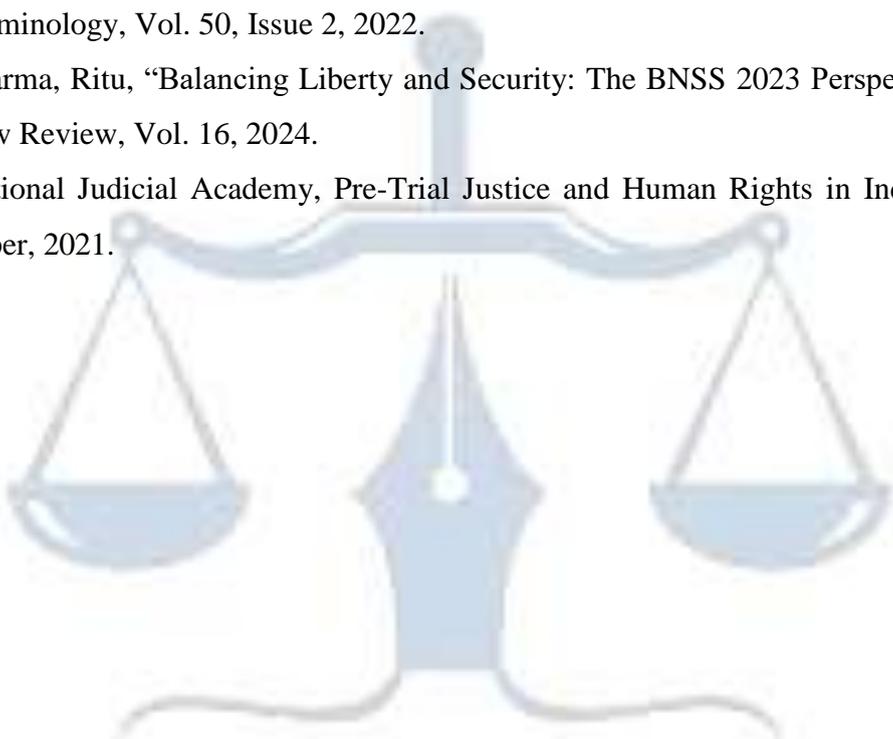
The 2023 Bharatiya Nagarik Suraksha Sanhita (BNSS) has attempted to significantly enhance India's pre-trial procedures. It makes greater use of technology, clarifies bail conditions, and introduces set timetables for the investigation and charge framing. These actions are intended to cut down on delays and address the issue of an excessive number of incarcerated undertrial inmates.

The implementation, however, is the true test. Many issues like shortage of police and judges, lack of digital infrastructure in remote areas, and insufficient legal aid services also continue. People may not completely benefit from BNSS if these issues are not resolved.

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