



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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ABOUT US

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

“FROM COLONIAL LEGACY TO DIGITAL REFORM: A CRITICAL APPRAISAL OF THE BNSS AS A REPLACEMENT FOR THE CRPC”

AUTHORED BY - IFRA SHAIKH

The replacement of the CrPC with the BNSS in 2023 marks one of the most significant reforms in Indian criminal law in decades. It is not just a procedural change but a complete re-imagining of the criminal justice framework.

I was drawn to it because it sits at the intersection of modernization and civil liberties. On one hand, the BNSS promises digitization, speed, and efficiency, but on the other hand, it also grants expanded powers to the police. This tension—between state convenience and citizens’ rights—is what makes the subject both timely and important for critical analysis.

The central research question I explored in my paper was whether the BNSS genuinely makes justice more citizen-centric, or whether it is primarily designed to improve administrative convenience and state control. To answer this, I compared the BNSS with the CrPC in terms of procedures, rights, timelines, and institutional safeguards.

In terms of differences, the BNSS departs from the CrPC in several key ways. For example, FIR registration under the CrPC was an offline and jurisdiction-bound process, often creating barriers for victims.

The BNSS, however, introduces e-FIRs and Zero FIRs, making the process more accessible. Another important change is the imposition of strict timelines—for instance, charges must be framed within 60 days and judgments delivered within 45 days after evidence is recorded.

Technology plays a central role in BNSS through provisions like virtual hearings, digital summons, and audio-video recording of custodial interrogations. The BNSS also expands police custody beyond the traditional 15 continuous days allowed under the CrPC, permitting staggered custody up to 90 days in serious cases.

Finally, victim rights have been enhanced, giving victims more participatory roles in trials and stronger protection and compensation mechanisms.

Of course, the BNSS is not without its positives. It seeks to tackle India's massive case pendency by enforcing timelines, and it makes the justice system more accessible through digital tools like e-FIRs and virtual courts.

Mandatory forensic investigations in heinous crimes are also a progressive step toward ensuring reliability in evidence. The recognition of victims as active participants in the justice process is a landmark improvement over the CrPC.

However, my research also identified several criticisms and loopholes. One of the most serious concerns is the expansion of police powers without equally strong safeguards or oversight mechanisms, which raises the risk of arbitrary arrests or custodial abuse.

The introduction of digital processes also creates the problem of a digital divide: rural, poor, and digitally illiterate citizens may not be able to access justice as easily as urban, educated populations.

Another issue is the lack of judicial infrastructure. Courts are already overburdened, and without increasing judges and court staff, simply mandating faster timelines might result in rushed trials.

Additionally, marginalized groups may still face barriers due to weak legal aid systems.

To ground my arguments, I relied on several landmark cases. For example, *Maneka Gandhi v. Union of India* emphasized that procedure under Article 21 must be fair, just, and reasonable, which forms the constitutional backdrop for any new criminal procedure law.

D.K. Basu v. State of West Bengal highlighted safeguards against custodial torture.

The right to a speedy trial was articulated in *Hussainara Khatoon v. State of Bihar*, which directly relates to BNSS's strict timelines.

K.S. Puttaswamy v. Union of India raised privacy concerns relevant to BNSS's digitalization

provisions, and *Arnesh Kumar v. State of Bihar* cautioned against unnecessary arrests, a principle that must be respected in light of BNSS's expanded police powers.

In conclusion, I would say that BNSS is undoubtedly a bold step toward modernization of India's criminal justice system. It introduces reforms that could make justice faster, more transparent, and more victim-oriented.

But its success depends entirely on implementation. Without strengthening infrastructure, ensuring digital inclusivity, training law enforcement and judiciary, and embedding robust human rights safeguards, the BNSS could risk becoming more about administrative convenience than genuine justice.

Thus, while it represents progress, its transformative potential will only be realized if efficiency is carefully balanced with fairness and protection of individual rights.

POINTERS FORM:

1. Why did you choose this topic?

I chose this topic because the replacement of the CrPC by the BNSS in 2023 is a landmark reform in Indian criminal law. It directly impacts citizens' rights, police powers, and judicial efficiency. Since it is both timely and controversial—balancing modernization with civil liberties—it provides rich ground for critical analysis.

2. What is the central research question of your paper?

My paper asks whether the BNSS truly advances citizen-centric justice or whether it primarily serves as an instrument for administrative efficiency and state power. I critically assess whether modernization ensures fairness or risks rights infringement.

3. What are the main differences between CrPC and BNSS?

Key differences include:

- **FIRs:** CrPC required physical filing, BNSS allows e-FIR and Zero FIR.
- **Timelines:** CrPC had no strict deadlines, BNSS mandates fixed timelines for investigation, charge framing, and judgment.
- **Technology:** CrPC had minimal role; BNSS integrates virtual hearings, digital summons, and AV recording.

- **Police Powers:** BNSS expands custody up to 90 days (staggered), introduces wider arrest powers.
- **Victim Rights:** BNSS enhances participation, protection, and compensation compared to CrPC.

4. What are the positive aspects of BNSS?

It introduces strict timelines to reduce pendency, digitization (e-FIR, virtual courts) to improve accessibility, mandatory forensic investigation for heinous crimes to strengthen evidence, and victim-centric rights like participation and compensation.

5. What are the criticisms or loopholes in BNSS?

Major issues include:

- Expanded police powers without adequate safeguards (risk of misuse).
- Digital divide—many rural/poor citizens may be excluded.
- Lack of judicial infrastructure to meet strict timelines.
- Limited legal aid support for marginalized groups.

6. Which landmark cases are relevant to your research?

- *Maneka Gandhi v. Union of India (1978)* – fairness in procedure under Art. 21.
- *D.K. Basu v. State of West Bengal (1997)* – custodial safeguards.
- *Hussainara Khatoon v. State of Bihar (1979)* – right to speedy trial.
- *K.S. Puttaswamy v. Union of India (2017)* – privacy concerns with digital reforms.
- *Armesh Kumar v. State of Bihar (2014)* – safeguards against arbitrary arrests.

7. What is your conclusion?

BNSS is a bold step toward modernization and efficiency. But unless capacity building, digital access, oversight, and human rights protections are strengthened, it risks prioritizing state convenience over citizens' rights. Its real test lies in implementation.