BLOGS

Understanding Bharatiya Nagarik Suraksha Sanhita, 2023: Part I

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Read this post to explore the Bharatiya Nagarik Suraksha Sanhita, India's redefined criminal procedure code, with insights into its provisions, significance, and more!

Introduction

Historically, India was governed by the Code of Criminal Procedure, 1898. This old legislation was replaced by the Code of Criminal Procedure, 1973 ('**Cr.P.C.**') after the Law Commission of India suggested an overhaul of the same to improve the procedure and justice system in the country.

The Bharatiya Nagarik Suraksha Sanhita, 2023 ("**BNSS**") (New Code of Criminal Procedure) was introduced by the Government on August 11, 2023 in the Lok Sabha (lower house of the Parliament) along with BNS and BSA with the outlined objective of repealing the 19th century colonial-era criminal law and to mark the 75 years of independence.

Objective Behind Introducing Bharatiya Nagarik Suraksha Sanhita (BNSS)

The BNSS, in particular, was introduced with the aim to provide for a faster and more efficient justice system to address the issues of delay in delivery of justice due to complex procedures, large pendency of cases in Courts, low conviction rates, low level of use of technology in legal system, delays in investigation, and inadequate use of forensics.

On August 18, 2023, the BNSS was referred to the Departmental Parliamentary Standing Committee on Home Affairs ("**Standing Committee**") by the Chairman of the Rajya Sabha (upper house of the Parliament), in consultation with the Speaker of the Lok Sabha, for examination and report within three months.

The Standing Committee presented its 247th report to the Rajya Sabha on November 10, 2023. Notably, the Standing Committee notes that BNSS does not violate the provisions of Article 348 of

the Constitution (which provides that all Bills and Acts shall be in the English Language) as the text of the Bill remains in English.

This article will cover the Bharatiya Nagarik Suraksha Sanhita (BNSS) legislation and would be split in two articles to exhaustively cover the changes.

Key Changes in the BNSS

- Novel insertions pertaining to the procedure of registering FIR: Section 173 of the BNS

The concept of Zero FIR has been introduced in the letter of the law. A Zero FIR is an FIR registered at any police station, regardless of whether the particular police station has jurisdiction or not. Once the Zero FIR is registered, the concerned police station has to transfer the said FIR to the police station which has jurisdiction to investigate the case.

The inclusion of Zero FIR was recommended by the Justice J.S. Verma Committee on Anti-Rape laws in the aftermath of Nirbhaya incident. Pursuant to which, an advisory was issued by the Government of India on May 10, 2023 to register Zero FIRs but a provision for registration of Zero FIR was never included in the CrPC.

The advisory was often ignored by the investigative agencies and refused to register Zero FIRs which led to delays and loss of evidence. However, the Bharatiya Nagarik Suraksha Sanhita now provides statutory backing to the concept of Zero FIR and makes it mandatory for the police station to register FIR where information regarding commission of a cognizable offence is received, irrespective of whether it has jurisdiction or not.

Another crucial change to modernise the law is the electronic registration (as prescribed) of FIRs which ***shall*** be taken on record on the condition of being signed within three days by the informant. One anomaly with this provision is whether the police are bound to act upon the information received immediately or only after the confirmation of the informant's identity when they sign the FIR within three days.

Section 173(3) has been inserted to introduce the concept of "**preliminary inquiry**". Earlier, some police manuals did have a processual directive in lieu of the same but this insertion provides statutory force to this practice. Preliminary Inquiry is limited to cognizable offences punishable with imprisonment of three years or more but less than seven years and it must be carried out in a time-bound manner i.e., within 14 days from receipt of information.

- Additional powers for attachment and forfeiture of property

Chapter VIII of the Bharatiya Nagarik Suraksha Sanhita (ss. 111-124) deals with the reciprocal arrangements for assistance in certain matters and the procedure for attachment and forfeiture of property. The BNSS provides the Magistrate the power to attach the property identified as 'proceeds of crime'. This is a similar power as granted to the ED under PMLA 2002.

Unlike the PMLA, the powers under BNSS are not limited to a predefined schedule of offenses. They extend to all offenses under the IPC, with the term "result of criminal activity" granting broad discretion. In addition, as with the PMLA, these powers allow the attachment of not only the traced property but also any equivalent property.

Under BNSS, Magistrates can attach property upon an investigating officer's application, supported by reasons to believe that the property is derived from criminal activity or an offense. This attachment can occur under the following scenarios:

1. After hearing both the parties; or
2. Ex-parte interim order of attachment of the property without notice to the owner (only if the Magistrate is of the opinion that a notice to the owner would defeat the purpose). Ex-parte means that only one of the parties is heard and their interests have been kept in mind.

Once the Magistrate determines that the property qualifies as "proceeds of crime," they may direct the District Magistrate to distribute the property proportionately among those affected by the crime.

There are a few ***important*** concerns with these provisions.

BNSS contains considerably fewer safeguards when compared to the PMLA. Under PMLA, interim attachments by the ED require confirmation by an Adjudicating Authority.

This involves various instruments including a detailed complaint, reasons to believe, and hearings with the property owner before a final decision. In addition, the attachment is also subject to the Special Court's determination of guilt after a complete trial.

However, unlike PMLA, BNSS permits Magistrates to not only attach but also dispose of property before determining the accused's guilt.

The Supreme Court's decision in **Vijay Madanlal Choudhary v. Union of India** only upheld the attachment provisions in the PMLA because of the contained safeguards. Without comparable

safeguards, the BNSS provisions' judicial testing is something to watch out for!

Similarly, the power to attach in an interim manner is a severe measure.

BNSS permits the Magistrates to order interim attachments without even affording the accused an opportunity to make a representation. Such orders can even be passed by courts lacking jurisdiction to try the matter, i.e., those only authorized to take cognizance or commit the case for trial.

This raises multiple legal concerns, as it allows for the property attachment and distribution at the investigation stage, effectively punishing the accused before trial.

Another important change is the provision enabling courts to request assistance from foreign courts or authorities for attaching or forfeiting property belonging to proclaimed offenders.

This can be initiated upon a written request from a police officer not below the rank of SP. The intent of this is to secure the presence of fugitives or confiscating properties located abroad.

However, there is an overlap with the Fugitive Economic Offenders Act, 2018, which also allows for confiscation of fugitive offenders' properties in contracting states. While the presumption favours the special law, legislative clarity is necessary to avoid conflicts with existing laws.

Conclusion

The BNSS has sought to expand its ambit and been streamlined to modernize the procedure. However, certain concerns remain as highlighted above. This post covered the changes in the procedure of FIR and attachment & forfeiture of the property. The next post would account for other major changes in the BNSS, compared to Cr.P.C.