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A COMPARATIVE ANALYSIS OF BAIL PROVISIONS: CRPC v. BNSS – BALANCING LIBERTY AND PUBLIC ORDER

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Abstract

The Concept of Bail is an old or ancient literature concept. It has been brought forward from past years in order to reform the accused person through sentencing policies and provide Justice to society at large which is embedded under Criminal Procedure Code, 1973. However, the Code of Criminal Procedure, 1973 has now been replaced by the new Act introduced in year 2023 i.e., “Bharatiya Nagarik Suraksha Sanhita, 2023”. Therefore, this research reflects the analysis of new Provisions of Bail under Bharatiya Nagarik Suraksha Sanhita, 2023. In addition to this, this paper delves into Comparative Analysis of new Provisions of Bail with old Provisions of Bail as specified under Bharatiya Nagarik Suraksha Sanhita and the Code of Criminal Procedure, 1973 respectively. Moreover, this study examines the impact of Bail Provisions on individual rights as well as on Criminal Justice System in India. At the end this paper enlightens the applications of Bail Provisions in real world life which also involves some key challenges the the Judiciary face while granting Bail to accused and opportunities for its implementation in effective way.

Keywords: Bail, Sentencing Policies, Criminal Procedure Code, Bharatiya Nagarik Suraksha Sanhita, Criminal Justice System, Judiciary.

1. INTRODUCTION

The term “Bail” is derived from word ‘bailer’ which means “to release”. The “Section 2(1)(b)” of, ‘Bharatiya Nagarik Suraksha Sanhita’ defines the concept of term “Bail” which in earlier the Code of Criminal Procedure has not defined¹. The ‘Chapter XXXIII’ of “Section 436 to Section 450” contains the Bail Provisions under Code of Criminal Procedure², 1973 and “Chapter XXXV” of “Section 478 to 479” deals with Bail Provisions under “Bharatiya Nagarik Suraksha Sanhita”. The definition of “Bail” in “Bharatiya Nagarik Suraksha Sanhita, Act 2023” reflects the clarity for its interpretation. It is very crystal-clear concept under Criminal Justice System in India which indicates to provide fair Justice to Society at large. However, the new Act brings some new changes in Criminal Justice system. However, it also contains some barriers which needs to be reform for long period of life.

2. RESEARCH METHODOLOGY

The Doctrinal Research approach has been used for the study of “Comparison of Bail Provisions under Code of Criminal Procedure and Bharatiya Nagarik Suraksha Sanhita”, 2023 which includes sources such as books, e books, Journals, newspapers, Government reports and other surveys.

RESEARCH GAP

1. **Comparative analysis:** There is need to do a detailed comparison of Provisions upon concept of Bail under

“Code of Criminal Procedure” and “Bharatiya Nagarik Suraksha Sanhita”, 2023.

2. **Influence and Implications:** The change in Provisions of Bail under “Bharatiya Nagarik Suraksha Sanhita, 2023” needs for more explanation to clarify their impact on rights of individuals and on Criminal Justice System in India.
3. **Applications in Real world:** There is need to analyses the working of new Provisions of Bail in real world which would consist of key challenges and opportunities for its implementation in effective way.

RESEARCH OBJECTIVES

1. To Examine and Differentiate the various Bail Provisions under “Code of Criminal Procedure” and “Bharatiya Nagarik Suraksha Sanhita Act”.
2. To identify the impact of Bail Provisions on Individual Rights and Criminal Justice System.
3. To Analyze the key challenges and opportunities for implementation of Bail Provisions under “Bharatiya Nagarik Suraksha Sanhita” for Judiciary.

RESEARCH QUESTIONS

1. What are the key distinctions and similarities between “Code of Criminal Procedure and Bharatiya Nagarik Suraksha Sanhita” Act on Bail Provisions particularly with regards to rules granting Bail, different kinds of Bail and its application and cancellation Process?
2. To What extent the enforcement or Implementation of Bail Provisions

¹ The Bharatiya Nagarik Suraksha Sanhita Act, 2023, sec. 2(1)(b).

² The Code of Criminal Procedure, 1973, sec 436 to sec 450.

under “Bharatiya Nagarik Suraksha Sanhita” impacts the Criminal Justice System?

3. What kinds of key challenges and area of improvement the Judicial officers will face while implementing these, Laws?

LIMITATIONS OF RESEARCH

1. **Lack of Empirical Research:** This study lacks of the Empirical Data on application and implementation of processes of Bail in real world life.
2. **Lack of analysis of Socio-Economic factors:** The main aim of thus is to compare the Provisions of Bail as specified under Code of Criminal Procedure and Bharatiya Nagarik Suraksha Sanhita Act. Thus, it doesn't contain the impact of factors such as socio economic factor on Bail Process.
3. **Limited in Scope:** This paper may focus on particular aspects of Provisions of Bail which may limit its scope.

RESEARCH OUTCOMES

1. This study highlights the Comparative analysis of Bail Provisions which identifies the major differences and Key similarities among both the Acts.
2. This paper shows the impact and implementation of Bail Provisions under Criminal Justice System.
3. This outcome would result into various reforms needed to curve the challenges faced by Judiciary under Process of Bail applications as per Bharatiya Nagarik Suraksha Sanhita, 2023.

3. DIFFERENTIATION OF BAIL PROVISIONS BETWEEN CRPC AND BNSS, 2023

The new Act, which is introduced in India in 2023, contains several key Provisions which distinguishes it from old code i.e, Code of Criminal Procedure, 1973. The India's legal framework for Bail has long been governed by the “**Code of Criminal Procedure**” (CrPC), 1973, which separates offences into **categories** that are subject to Bail and those that are not, with distinct regulations governing the granting of release of accused person in both the cases. The foundation of Bail jurisprudence is showed in “Sections 436 to 439” of the “Code of Criminal Procedure” “Section 436” deals with the Provision that Bail is granted automatically³. “Section 437” deals with offences that are not subject to bail, where the court or police have the authority to decide whether to issue Bail based on the specifics of the case, the accused's personality, and the possibility of absconding⁴. The concept of ‘Anticipatory bail’ was established by “Section 438”, which permits people to request bail in advance of being arrested for a crime for which there is no bond. The High Courts and Sessions Courts are given more discretionary authority to grant bail under ‘Section 439’⁵.

Now, these provisions have been kept in place with the introduction of the “**Bharatiya Nagarik Suraksha Sanhita (BNSS)**”, 2023, which aims to modernise and replace the “Code of Criminal Procedure”. However, there are some significant changes and new section numbers added in it. The Right to Bail in offences that are subject to Bail is maintained by “Section 479”, which is equivalent to “Section 436 of the Code of Criminal

³ The Arrest and Bail – the legal framework, available at: <https://publications.clpr.org.in/re-imagining-bail-decision-making/chapter/arrest-and-bail-the-legal-framework/> (Last visited on April 4, 2025).

⁴ Bailable and non bailable offences under CRPC, available at: www.lawctopus.com/clatalogue/clatug/bailable-and-non-bailable-offences-under-crpc/ (Last visited on April 4, 2025).

⁵ The types of Bail, available at: <https://blog.ipleaders.in/types-of-bail/> (Last visited on April 4, 2025).

Procedure”⁶. In accordance with “Section 437 of the Code of Criminal Procedure”, “Section 480” governs Bail for non-bailable offences with comparable discretionary powers, although it clarifies the process⁷. The fact that “Section 481” still has the anticipatory bail provision is noteworthy because there was initial conjecture that it would be eliminated when “Bharatiya Nagarik Suraksha Sanhita Act” was being drafted. Higher courts continue to have the authority to grant bail with improved procedural safeguards under “Section 482”, which is equivalent to “Section 439 CrPC”⁸.

The explicit recognition of the victim's right to be heard during bail proceedings particularly in cases involving serious offences like sexual crimes is a significant change brought about by the “Bharatiya Nagarik Suraksha Sanhita”⁹. Although previously recognised under old Code which reflects with case law such as *Jagjeet Singh v. Ashish Mishra*¹⁰, this formulation of victim rights is now required by law. Additionally, in line with the larger objective of digitising the justice delivery system, “Bharatiya Nagarik Suraksha Sanhita” encourages the use of technology by permitting the processing of bail bonds and sureties by electronic means.¹¹ The BNSS's emphasis on expedited bail hearings for marginalised communities, women, and

children is refers to its another difference¹². The Code lacked this emphasis, treating everyone equally under the same general requirements while letting judges decide on the specifics. Additionally, BNSS takes a harsher stance against repeat offenders and adds restrictions to avoid anticipatory bail being abused, like possible exclusion in cases involving terrorism or organised crime¹³.

Thus, in summary this Act consist of new Provisions as compare to old Act which are as follows;

1. The Structural Changes

The Sections and terms have been renamed and renumbered as part of the fundamental modifications made to new Act. Although the fundamental ideas of Bailable and Non-Bailable offences are still there, the new Act has made an effort to streamline and combine certain sections like the “Sections 436 to 439” of old Act which addressed different facets of Bail, have been reorganised under the as “Sections 479 to 483 of the “Bharatiya Nagarik Suraksha Sanhita”¹⁴.

2. The Enforcement of New ground for Bail

The “Bharatiya Nagarik Suraksha Sanhita” places a special emphasis on the Rights of victims and the seriousness of offences,

⁶ The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, sec.479.

⁷ The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, sec.480.

⁸ The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, sec.482.

⁹ The three criminal Laws, *available at*: www.commoncause.in/wotadmin/upload/july_sept_2024_Colour_Copy_for_Scroll.pdf (Last visited on April 4, 2025).

¹⁰ C.R.M. (DB) 1977 of 2023.

¹¹ The victim and Bail, *available at*: <https://criminallawstudiesnluj.wordpress.com/2022/04/23/victims-and-bail-the-judgment-in-jagjeet-singh-v-ashish-mishra/> (Last visited on April 4, 2025).

¹² The all major and minor changes in BNSS, 2023, *available at*: <https://legalonus.com/all-major-and-minor-changes-in-indias-new-criminal-codes-bns-bnss-and-bsa-explained/> (Last visited on April 4, 2025).

¹³ The Laws on Crime, *available at*: <https://lawfaculty.du.ac.in/userfiles/downloads/LL-BCM/LB%20203%20-%20Law%20of%20Crimes-II%20Revised%20CM.pdf> (Last visited on April 4, 2025).

¹⁴ The evolution of new Bail Laws in India – A comparison in BNSS and CRPC, *available at*: www.nayalegal.com/evolution-of-provision-of-bail-in-indian-law-a-comparison-of-bnss-2023-with-crpc-1973-and-crpc-1898 (Last visited on April 25, 2025).

particularly when it comes to “Sexual offences and Crimes against women and children”. Conditions like the requirement to speak with the victim before granting bail for specific offences are introduced by the “Bharatiya Nagarik Suraksha Sanhita”, reflecting the victim-centric approach that was previously interpreted by Courts but not specifically stated in the Code of Criminal Procedure¹⁵. This is a substantial improvement in procedure.

3. Sections Concerning Sureties and Bail Bonds

The Release on Bail with or without sureties is permitted for both “Bailable and that of Non-Bailable offences” under “Sections 436 and 437 of the Code of Criminal Procedure”. This strategy is maintained by new Act, which formalises and clarifies the procedure. It also aims to limit the room for arbitrary judgement by using time-bound processes and digital recordings. Additionally, the new law strengthens judicial accountability by emphasising the need to document the grounds for granting or rejecting bail¹⁶.

4. The Provisions for Time Bound

The Timeliness is a major priority for “Bharatiya Nagarik Suraksha Sanhita”. With more precise procedural timetables and a focus on electronic recording, BNSS “Section 187” preserves the idea of default bail, which was established under Section 167(2) of the CRPC¹⁷. By guaranteeing effectiveness and accountability in pre-trial custody, this lessens

extended confinement without trial, which is a common complaint under the old act.

5. Digital Tools and Online Hearings

One of “Bharatiya Nagarik Suraksha Sanhita” forward-thinking features is the clear clause allowing bail hearings to be held electronically when appropriate. In reaction to technology advancements and the knowledge obtained during the COVID-19 pandemic, this was not included in CRPC¹⁸. This modification is meant to cut down on delays and enhance access to justice, particularly in rural areas.

6. The Provision for Anticipatory Bail

“Section 482 of the BNSS” retains the anticipatory bail provision found in Section 438 of the CrPC, which is a noteworthy continuance. In contrast, the BNSS establishes particular protections, like more compelling arguments against bail for major offences. Furthermore, courts now have additional authority to set restrictions in order to stop the misuse of anticipatory bail, guaranteeing a balance between the interests of society and individual liberty¹⁹.

7. Judicial supervision and the expanded role of magistrates

When handling bail applications, BNSS gives magistrates more precise instructions on why to document the reasons. In particular, it promotes thorough judicial review for offences that are not subject to bail. BNSS aims to standardise judicial thinking in order to avoid arbitrary choices and guarantee openness, in contrast to

¹⁵ CRPC and BNSS, comparison table, *available at*: www.scribd.com/document/757141325/CrPC-BNSS-Comparison-Table (Last visited on April 25, 2025).

¹⁶ The Bail Provisions in BNSS, *available at*: <https://blog.finology.in/Legal-news/Bail-provisions-in-BNSS> (Last visited on April 25, 2025).

¹⁷ The Bharatiya Nagarik Suraksha Sanhita Act, sec. 187.

¹⁸ *Supra* note 15 at

¹⁹ The Bharatiya Nagarik Suraksha Sanhita Act, sec. 187, *available at*: www.drishtijudiciary.com/current-affairs/section-482-of-bnss (Last visited on April 25, 2025).

CrPC, where this discretion of Judges expands in all areas and is frequently applied inconsistent manner²⁰.

8. The Bail under Specific Situations

The Bail for repeat criminals and those charged with specific serious crimes, such as organised crime or terrorism, is an important addition. These factors were left up to court interpretation under the CrPC, but the BNSS codifies them, formalising risk assessment in Bail jurisprudence²¹.

Overall, the fundamentals of bail are the same under the old Act and new Act, the new Act takes a more organised, rights-based, and digital approach in an effort to fill in the gaps left by the Code of Criminal Procedure and improve the accessibility, effectiveness, and transparency of the bail procedure. The distinction shows an attempt to both restructure procedural law and bring it into line with modern social norms and justice standards.

I. THE KEY SIMILARITIES IN PROVISIONS OF BAIL UNDER BOTH THE ACTS

The Similarities consist of the following.

1. The Categorization of Offences

The fundamental division of offences into groups that are subject to bail and those that are not, which determines the application of bail, is maintained by both the CrPC and the BNSS. Bailable offences grant the accused the right to bail under both legislations, but non-bailable offences leave the granting of bail up to the judge's discretion. This continuity maintains legal familiarity for both practitioners and courts by guaranteeing procedural consistency

²⁰ *Supra* note 16 at

²¹ The Bail Provisions under BNSS, *available at*: <https://legalonus.com/bail-provision-under-bnss-2023/> (Last visited on April 25, 2025).

and upholding the harmony between individual liberty and social interest²².

2. The Power of Authorities

Under the CRPC and BNSS, police can grant bail for crimes that are subject to it, and they can also provide bail for crimes that are not, subject to judicial supervision. Both laws provide for consideration of considerations like the nature of the offence, the severity of the sentence, the likelihood of evading justice, and tampering with evidence. As a result, the magistrate's powers to accept or reject the bail also remain consistent. These clauses, which emphasise the assumption of innocence unless proven guilty, are consistent with the fundamental ideas of criminal jurisprudence²³.

3. The Provisions of Bail for Arrest and Investigation

Both statutes offer comparable procedures for bail following an arrest, particularly when the subject is in police custody or on judicial remand. Under both the CRPC and the BNSS, the processes for requesting anticipatory bail and normal bail are essentially the same, with comparable requirements and judicial considerations. In the absence of *prima facie* evidence, the need for in-custody questioning, the emphasis on granting bail when there are reasonable grounds for it emphasises the common goal of protecting individual

²² The Comparative analysis of Bail Provision of BNSS and CRPC, *available at*: www.ijcrt.org/papers/IJCRT21X0311.pdf (Last visited on April 27, 2025).

²³ The Bail under new Criminal Law and CRPC, *available at*: <https://www.drishtijudiciary.com/current-affairs/bail-under-new-criminal-law-and-crpc> (Last visited on April 27, 2025).

freedoms while facilitating efficient law enforcement²⁴.

4. The Provision of Default Bail

Additionally, BNSS has the right to default bail under Section 167(2) of the CRPC, which is invoked when the investigating agency does not file a charge sheet within the allotted time. The right to default bail is a fundamental and statutory provision under both codes that prevents extended incarceration without trial. If the statutory time limit is reached and bail is requested, the accused must be released by the court²⁵.

II. HOW NEW PROVISIONS OF BAIL UNDER BNSS IMPACTS THE CRIMINAL JUSTICE SYSTEM?

The “Bharatiya Nagarik Suraksha Sanhita (BNSS)”, 2023's enforcement and application of bail rules could have a big effect on India's criminal justice system. The following paragraphs reflects the same;

1. Increasing Uniformity and Clarity of Procedures

With sections that have been renumbered and reorganised, the BNSS gives bail provisions more structural clarity. The simplified structure and updated terminology improve the law's understandability and accessibility for police officers, solicitors and judges, even

if the core of the bail statute has not altered much. It is anticipated that this clarity will lessen procedural ambiguity, reducing bail adjudication delays and boosting criminal trial efficiency²⁶.

2. Re enforcement of Presumption of Innocence Principle

The presumption of innocence is upheld by the BNSS by keeping rules pertaining to anticipatory bail, and the court's discretionary bail powers. Those who have not yet been found guilty benefit from this continuity in protecting their personal freedom. By maintaining protection against any kind of detention which is arbitrary, the focus on fair circumstances and judicial discretion serves to strengthen public trust in the criminal justice system²⁷.

3. Effect on the Population of Undertrials and Prison Reforms

The BNSS is expected to have a favourable impact on the long-standing problem of prison overcrowding, particularly with regard to inmates awaiting trial. By strengthening time-bound processes and stressing the Right to Bail when appropriate, the Law may speed up the processing of bail applications and possibly lower the number of people awaiting trial. This change has the potential to reduce jail overcrowding and

²⁴ The BNSS, 2023, *available at*: <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-second-sanhita-2023> (Last visited on April 27, 2025).

²⁵ The Bail Provisions under BNSS, *available at*: www.livelaw.in/top-stories/bail-provisions-in-bharatiya-nagarik-suraksha-sanhita-new-crpc-understanding-changes-246680 (Last visited on April 27, 2025).

²⁶ The grant and cancellation of Bail, *available at*: <https://ijnrd.org/papers/IJNRD2408262.pdf> (Last visited on April 28, 2025).

²⁷ The Provisions pertaining to Bail and Bail bonds, *available at*: <https://p39ablog.com/2023/11/criminal-law-bills-2023-decoded-22-provisions-pertaining-to-bail-and-bonds/> (Last visited on April 28, 2025).

improve the treatment of those who are charged if it is implemented successfully²⁸.

4. Increased Accountability and the Role of Technology

In procedural matters, such as the issuance of “summonses and warrants”, and even bail hearings, BNSS encourages the use of technology. Better police-judiciary coordination and quicker process of applications of Bail could result from this modernisation. Furthermore, electronic paperwork and digitised records might lessen corruption chances and promote openness, especially at the police station and lower court levels where discretion and delays frequently result in systemic misuse²⁹.

5. Difficulties in Implementation and Judicial Discretion

The effectiveness of the BNSS's bail provisions is mostly dependent on judicial interpretation and enforcement, notwithstanding these admirable goals. In circumstances involving anticipatory and non-bailable bail, discretionary power is still quite important. The full benefits of the updated framework might not be realised if police officers abuse their arrest authority or if courts continue to be overworked or inconsistent in their approach³⁰. As a result, rigorous adherence to procedural fairness, legal education, and

capacity building will be necessary for effective implementation.

6. The Protection of Victim and Witness Rights

The BNSS upholds the harmony between providing bail and guaranteeing the safety of witnesses and victims. The accused's possible threats should they be freed on bail are supposed to be taken into account by the courts. This strengthens the public's faith in the legal system, particularly in delicate situations like sexual offences, organised crime, or situations involving witnesses who are at risk. Strict adherence to these rules can guarantee that bail doesn't turn into a pretext for coercion or evidence manipulation³¹.

Thus, The BNSS's bail provisions have the potential to revolutionise the criminal justice system, but their implementation will largely depend on institutional changes, judicial discipline, and practical enforcement.

4. KEY CHALLENGES THE JUDICIARY FACES WHILE IMPLEMENTING NEW BAIL LAWS

The Key Challenges the Judicial officer may face while implementing the Bail Provisions of “Bharatiya Nagarik Suraksha Sanhita (BNSS)” are as follows;

1. Making the Switch to New Legal Framework

The change from the CRPC, 1973 to the BNSS, 2023, would be one of the most pressing issues facing judicial officers. Judicial officers will have to relearn and reinterpret legal references due to the

²⁸ The highlights of New Criminal Law, *available at*:

<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2039055> (Last visited on April 28, 2025).

²⁹ *Supra* note 26 at

³⁰ Power of Court in BNSS, *available at*: www.drishtijudiciary.com/bharatiya-nagarik-suraksha-sanhita-&-code-of-criminal-procedure/power-of-courts-under-bnss (Last visited on April 28, 2025).

³¹ The Victims rights in BNSS, *available at*: <https://restthecase.com/knowledge-bank/victim-s-rights-in-bns> (Last visited on April 28, 2025).

renumbering of sections, changes in terminology, and new procedural standards, even if many provisions remain substantially comparable. Routine processes like setting bail, sending out summonses, or referencing prior cases may become momentarily unclear as a result. Judicial officers may interpret the amended provisions slowly or inconsistently if they are not given thorough training and a methodical orientation³².

2. Striking a balance between thorough scrutiny and prompt justice

The BNSS places a strong emphasis on technology and time-bound processes, which may put more pressure on courts to consider bail requests promptly. However, deciding whether to grant or deny bail frequently necessitates carefully examining the facts, police reports, and risks like tampering or absconding, especially in delicate or non-bailable situations. If procedural completeness is compromised for speed, judicial officers may feel pressured to make rulings quickly, which could result in poor decisions or injustices³³.

3. Long-Term Systemic Hold-Ups and Resource Limitations

Particularly in lower courts, judicial officers still deal with a large workload, inadequate infrastructure, and a lack of staff notwithstanding legislative reforms.

³² The challenges to advancing Bail reforms, *available at*: www.brennancenter.org/our-work/research-reports/challenges-advancing-bail-reform (Last visited on April 30, 2025).

³³ Major challenges faced by Judiciary, *available at*: www.lloydlawcollege.edu.in/blog/challenges-faced-indian-judiciary.html (Last visited on April 30, 2025).

The efficient implementation of the BNSS's bail provisions may be hampered by these systemic issues. Notwithstanding the judge's desire to act quickly, for example, processing of bail bonds, orders, and sureties may be delayed due to a shortage of support personnel or outdated digital systems. As so, there may continue to be a gap between the law and its practical application³⁴.

4. Insufficient independent verification and an excessive dependence on police reports

When determining bail, judges frequently need to consult police case diaries, arrest notes, and remand reports. The judge may unintentionally render a ruling that infringes upon the accused's rights or puts the victim in risk if these documents are erroneous, falsified, or delayed. Judicial officers still have to make important decisions based on possibly faulty or biased information even though BNSS requires better adherence to procedural procedures. This is because there is no independent verification mechanism in place³⁵.

5. Controlling Public Opinion and Media Influence

Judicial personnel frequently come under significant public pressure and media scrutiny in high-profile cases, especially those involving political figures, terrorism, or sexual offences. Judges' independence

³⁴ The CRPC and BNSS Comparison, *available at*: <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2024/may/doc2024522337501.pdf> (Last visited on April 30, 2025).

³⁵ BNSS v. CRPC, *available at*: <https://edzorblaw.com/2024/08/31/a-comparative-analysis-the-bharatiya-nagarik-suraksha-sanhita-2023-vs-the-code-of-criminal-procedure-1973/> (Last visited on April 30, 2025).

may be impacted by extra-legal influence, even while BNSS seeks to modernise and simplify bail proceedings. In contentious instances, granting bail could result in charges of prejudice; while refusing it could draw criticism for the severity of the legal system. Judges may become hesitant due to this tension, which could impair their capacity to administer fair justice³⁶.

6. Lack of precedent and differing interpretations

A strong body of case law will take time to emerge because BNSS is a new law. Judicial officers may encounter ambiguity while interpreting new legislation or addressing unique legal concerns if there are no guiding precedents from higher courts. This could result in conflicting interpretations in situations that are similar, which would be confusing and put more strain on appellate courts³⁷.

5. KEY AREA OF IMPROVEMENT; THE JUDICIARY SHOULD FOCUS

It consists of following areas.

1. The New Statute's Legal and Procedural Awareness

The primary area for development is a thorough understanding of the BNSS, 2023, including its structural modifications, renumbered sections, and the subtle changes in legal interpretation from the CrPC, 1973. To guarantee the correct and uniform application of bail regulations, judicial personnel must keep up to date on the latest developments. Frequent statutory literacy training, legal seminars, and workshops that emphasise

³⁶ Media Pressure – New criminal laws, *available at*: www.newsclick.in/new-criminal-laws-media-needs-be-careful (Last visited on April 30, 2025).

³⁷ *Supra* note 33 at

comparative analysis with the CrPC can help to improve legal uniformity across jurisdictions, reduce misunderstandings, and increase statutory literacy³⁸.

2. Technology Adoption for Bail Procedures

Technology integration in criminal proceedings is emphasised by the BNSS. Examples of this include electronic paperwork, digital bail application submission, and video conferencing. The use of technology in bail hearings should be encouraged and judicial staff should become more digitally literate. Efficient use of technology can facilitate real-time communication between police and prisoners, expedite bail decisions, and lessen administrative responsibilities. In today's court system, knowledge of digital evidence handling and case management systems is becoming more and more crucial³⁹.

3. Awareness of the Victims' and Accused's Rights

Decisions about bail must balance public safety and individual liberty. Judicial officers must always strive to increase their awareness of the fundamental rights of those who are charged, particularly undertrials, first-time offenders, minors, and economically disadvantaged groups who frequently lack adequate legal counsel. They must, however, respect

³⁸ Implementation of new Criminal Laws in India, *available at*: www.jusscriptumlaw.com/post/implementation-of-new-criminal-laws-in-india (Last visited on May 1, 2025).

³⁹ Electronic Trials under BNSS, *available at*: www.drishtijudiciary.com/to-the-point/bharatiya-nagarik-suraksha-sanhita-&-code-of-criminal-procedure/electronic-trials-under-bnss (Last visited on May 1, 2025).

victim rights and make sure that bail is not given in a way that puts witnesses in risk or intimidates them. Training in human rights-based and victim-centric jurisprudence can contribute to more equitable results⁴⁰.

4. Improving Communication with the Legal Aid and Police Systems

Timely and accurate information from the legal aid and police departments is often essential for an effective bail decision. In order to ensure that arrest notes, case diaries, and remand reports are filed on time and accurately, judicial authorities must better coordinate with law enforcement. Judges must also work with legal aid organisations to make sure that no one is denied bail in situations involving impoverished defendants only because they are not represented. Access to justice is maintained and inclusivity is promoted⁴¹.

5. Monitoring Bail Condition Compliance

Judicial obligation does not cease with the granting of bail. Officers must improve their monitoring of adherence to bail requirements, particularly in delicate or serious instances. At the moment, infractions of bail terms go unpunished due to a lack of enforcement measures. When necessary, judicial authorities ought to make active use of their BNSS authority to call sureties, cancel bail for noncompliance, or impose more stringent requirements. Enhancements in this area

would guarantee the integrity of the bail system and discourage abuse of liberty⁴².

6. Strong moral character and autonomy from outside influences

Judges are frequently the target of media attention, political pressure, or popular outrage regarding bail judgements in high-stakes or well-publicized cases. Respecting the moral principles of judicial independence, impartiality, and bravery is essential. Officers who receive training on judicial ethics and accountability might become more resilient to other influences and make choices that are solely based on the law and their conscience. Enhancement of moral judgement has a direct effect on public confidence in the legal system⁴³.

6. CONCLUSION

To recapitulate, a considerable amount of consistency in the fundamental legal framework controlling bail in India may be seen in the comparison of the bail rules under the “Code of Criminal Procedure” and “Bharatiya Nagarik Suraksha Sanhita”. The basic elements of both legislations are still in place, including the division of offences into those that are Bailable and those that are not, the discretion of the judge in cases that are not subject to bail, and the option for anticipatory bail. While modernising and reforming the procedural components, the BNSS maintains the core of bail jurisprudence as it developed under the CRPC. The assumption of innocence, the importance of individual liberty, and the need to strike a balance between public safety and individual rights are all reaffirmed. But the BNSS brings more

⁴⁰ Victims’ awareness in BNSS, *available at*: www.drishtijudiciary.com/current-affairs/victim-under-bnss (Last visited on May 1, 2025).

⁴¹ Secure legal aid for defendants, *available at*: www.bharatlaw.ai/post/how-to-secure-legal-aid-for-defendants-under-bnss (Last visited on May 1, 2025).

⁴² *Supra* note 38 at

⁴³ *Supra* note 36 at

clarity, procedural improvements, and a push for digitisation, which signals a change towards a justice system that is more easily accessible and effective.

Although these revisions have good intentions, how well the new provisions are implemented by judges, law enforcement, and attorneys will determine how effective they are. The true test is not whether the content has changed, but rather how these laws are really implemented to address persistent problems like systemic inequity, judicial delays, and undertrial detention. As a result, even while the BNSS has the potential to modernise criminal procedure, its ability to improve bail administration will ultimately depend on strong institutional backing, judicial training, and a commitment to justice and equity.
