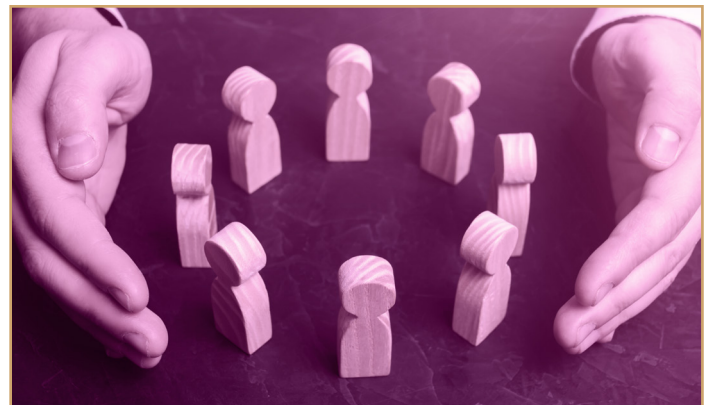


## The Bharatiya Nagarik Suraksha Sanhita, 2023: A primer on the proposed changes to the Code of Criminal Procedure, 1973 (2/3)

1. The Bharatiya Nagarik Suraksha Sanhita, 2023 (“**Bill**”) was introduced in the Lok Sabha<sup>1</sup> on August 11, 2023 with the aim to repeal and replace the existing Code of Criminal Procedure, 1973 (“**CrPC**”) along with two other Bills intended to replace the Indian Penal Code, 1860 (“**IPC**”) and the Indian Evidence Act, 1872 (“**Evidence Act**”). This note summarizes the most notable changes to the CrPC which have been proposed in the Bill. The ‘Clauses’ as referred to in the Bill are referred to as ‘Sections’ in this note for ease of reference.
2. Summarily, the Criminal Procedure Bill has sought to introduce stringent timelines in the investigation, inquiry and trial processes in our criminal justice system, apart from certain new provisions for conducting trial *in absentia* against persons who have absconded, and allowing police custody beyond 15 days, if there exist adequate grounds for doing so. The Bill also seeks to formalize the adoption of electronic communication and electronic forms in investigation, inquiry and trial including police processes, taking evidence and in Court processes. Some of the most significant changes which have been made to the CrPC are summarized as under:



newly inserted explanation that now states that if any provisions of a Special Act are inconsistent with the provisions of the Bill, the special Act shall prevail. Consequently, investigation or inquiry under acts such as the Prevention of Money Laundering Act, 2002 or the Narcotic Drugs and Psychotropic Substances Act, 1985 shall take precedence over the Bill in case of any inconsistency.

### Introduction of new definitions

3. In Section 2 of the Bill setting out definitions, the concept of “*audio-video electronic*” has been introduced. The expression “*investigation*” has a

### Introduction of new definitions

4. In Section 20 of the Bill, the concept of Directorate of Prosecution has been introduced for each of the states to establish (with a prescribed hierarchy) with

<sup>1</sup> The three bills were introduced on the last day of the Monsoon session of the Parliament and has been sent to a Parliamentary Committee for scrutiny. The Bill will require to be passed by the Lok Sabha, Rajya Sabha and receive the assent of the President before it becomes law and takes effect.

the stated purpose of monitoring cases by scrutinizing police reports, expediting proceedings and providing opinions on filing of appeals, wherever applicable.

## In relation to arrest

5. Section 35 of the Bill now consolidates Sections 41 and 41A of the CrPC<sup>2</sup> into one section. In case of an offence punishable for less than 3 years, and where a person is infirm or above 60 years of age, an arrest can be made only if an officer not below the rank of Deputy Superintendent of Police grants prior permission for such arrest.
6. As regards arrest by a private person, a time limit of six hours has now been introduced within which the private person will have to make over such person so arrested to the Police. Under Section 43 of the Bill, a police officer is permitted to use handcuffs when arresting an accused in certain cases, mostly relating to serious and heinous offences such as organized crime, terrorist act etc.
7. Further, as regards arrest of a woman, in Section 43(1) of the Bill, an obligation has been cast on the police to inform the relatives of a woman where she is being held and information about such arrest. Section 51(3) introduces an obligation upon a medical practitioner to forward without delay the examination report of an accused to the investigation officer.

## On Attachment and seizure of property

8. A new provision has been introduced under Section 107 of the Bill, by which a police officer can make an application to the Court or Judicial Magistrate with the approval of the Superintendent or Commissioner of Police for attachment of certain properties where such properties are derived or obtained, directly or indirectly, as a result of criminal activity or from the commission of any offence or which are proceeds of crime. Notably, as per the explanation to this section, the word 'proceeds of crime' is defined in Section 111 of the Bill (which provides certain definitions under the chapter VIII pertaining to reciprocal arrangements) and is akin

to the definition of the term under the Prevention of Money Laundering Act, 2002.

9. Further, under Section 499 of the Bill (corresponding to Section 451 of the CrPC<sup>3</sup>) a new provision has been inserted stipulating that the Magistrate shall within 14 days from the production of the property, prepare a statement of such property containing its description, along with photographs and videography of the property, if necessary.

## Power to remove obstructions by a police officer

10. Section 172 of the Bill is a newly inserted provision which casts an obligation on persons to conform to the lawful directions of a police officer in the fulfilment of any of his duty under this chapter pertaining to the preventive action of the Police. Further, the Police officer has the power to detain or remove any person resisting, refusing, ignoring or disregarding to conform to any direction given by such police officer. While seemingly innocuous, this provision appears to further empower the police in their exercise of authority under the provisions of the Bill.

## Introduction of timelines

### Preliminary enquiry and investigation

11. One of the more significant changes sought to be brought about through the Bill is the attempt to address delays in investigation and trial. Specified timelines have been prescribed for various stages of the criminal process including to complete the investigation and file a final report and for trial of the offence.
12. For instance, in Section 173(3) of the Bill (which corresponds to Section 154<sup>4</sup> of the CrPC), for offences punishable for 3 years or more but less than 7 years, the officer in charge may with the prior permission of the Deputy Superintendent of Police proceed to conduct a preliminary enquiry within 14 days to ascertain if there exists a *prima facie* case and proceed with the

<sup>2</sup> Section 41. When police may arrest without warrant; Section 41-A. Notice of appearance before police officer

<sup>3</sup> CrPC - Section 451. Order for custody and disposal of property pending trial in certain cases

<sup>4</sup> CrPC - Section 154. Information in Cognizable cases

investigation where there exists one. Section 173 of the Bill also specifies that information in relation to a cognizable offence can be given to police, irrespective of the area where the offence has been committed, either orally or through electronic communication.

13. Another change is found in Section 174(4) (corresponding to Section 154(4) of the CrPC), which provides that the complainant may file an application to the Magistrate to register an FIR only if the Superintendent of Police does not investigate the case.
14. Further, Section 155<sup>5</sup> of the CrPC (under Section 174(1) of the Bill) has been augmented by introducing a time period of a fortnight for a police officer to forward the daily diary report to the Magistrate.
15. As regards the police officer's power to investigate cognizable offence, the Bill now provides that the Superintendent of Police may himself investigate the offence or require the Deputy Superintendent of Police to investigate the offence. The Bill further provides that a Judicial Magistrate may take cognizance of a complaint against a public servant.
16. Crucially, Section 193 of the Bill (corresponding to Section 173<sup>6</sup> of the CrPC) now casts an obligation on the Police to inform the victim or informant of the progress of the investigation including by electronic communication within a period of 90 days. Further, the Bill also permits further investigation after the chargesheet has been submitted to the Magistrate but now requires that such further investigation shall be completed within 90 days but which may be extended with the permission of the Court.

### **Sanction for prosecution**

17. Section 218 of the Bill (corresponding to Section 197<sup>7</sup> of the CrPC) now provides that the Government shall take the decision of whether to grant sanction for prosecution of judges or public servants within 120 days from the date of receipt of the request for



sanction and if it fails to do so, the sanction shall be deemed to have been accorded.

### **Committal to the Sessions Court**

18. In cases involving offences which are triable exclusively by a sessions court, which are required to be committed by the Magistrate under Section 209<sup>8</sup> of the CrPC, the corresponding Section 232 of Bill stipulates a time period of 90 days to commit the offences to the sessions court, which may be extended for a period not exceeding 180 days for reasons to be recorded in writing.

### **Framing of charge, trial and judgement**

19. In relation to framing of charges, a timeline of 60 days has been specified (in Section 251(1)(b) of the Bill) for the Sessions judge from the date of the first hearing to frame in writing a charge against the accused.
20. Section 257(1) of the Bill (corresponding to Section 235(1)<sup>9</sup> of the CrPC) provides that after hearing arguments and points of law, the judge shall give a judgment within 30 days from the completion of arguments, which may for specific reasons extend to a period of 60 days.

<sup>5</sup> CrPC – Section 155. Information as to non-cognizable cases and investigation of such offences

<sup>6</sup> CrPC – Section 173. Report of police officer on completion of investigation (also referred to as Final Report or Charge Sheet)

<sup>7</sup> CrPC – Section 197. Prosecution of Judges and public servants

<sup>8</sup> CrPC – Section 209. Commitment of case to Court of Session when offence is triable exclusively by it

<sup>9</sup> CrPC – Section 235. Judgement of acquittal or conviction

21. Finally, the Bill under Section 392, provides that the Court shall upload a copy of the judgment on its portal within 7 days from the date of judgment.

## **Discharge**

22. In relation to discharge, Section 262 (corresponding to Section 239<sup>10</sup> of the CrPC) provides a time limit to the accused to prefer an application for discharge within a period of 60 days from the date of framing of charges. On the same subject of discharge, Section 274 of the Bill (corresponding to Section 251<sup>11</sup> of the CrPC) has a newly inserted proviso providing that if the Magistrate considers the accusation as groundless, he shall, after recording reasons in writing, release the accused and such release shall have the effect of discharge.

## **Summary trial**

23. The Bill now provides that the Magistrate may, after giving the accused a reasonable opportunity of being heard, for reasons to be recorded in writing, try in a summary way, all or any of the offences not punishable with death or imprisonment for life or imprisonment for a term exceeding 3 years.

## **Use of electronic communication and video conferencing in investigation, inquiry and trial**

24. The Bill has sought to adopt electronic communication and video conferencing facilities at various stages including at the time of inquiry, investigation, and trial. For instance, the Bill permits giving information as regards commission of a cognizable in electronic form.

## **Issuance of process**

25. Further, a summons issued by a Court under Section 63 (corresponding to Section 61<sup>12</sup> of the CrPC), or a Police officer under the newly inserted Section 64(2), or a witness under Section 71, or a warrant may also be in the form of electronic communication. Section 94 of the Bill (corresponding to Section 91<sup>13</sup> of the CrPC) now permits a Court or an officer in charge of a police

station to summon electronic communication which is likely to contain digital evidence. Section 231 of the Bill provides that supply of copies of statements and documents to accused in other cases triable by Court of Session are permitted to be issued by the Magistrate in an electronic form.

## **Use of audio-visual electronic means in investigations**

26. Under Section 176 of the Bill providing for procedure for investigation of cognizable offence (corresponding to Section 157<sup>14</sup> of the CrPC), the statement of the victim may also be recorded through audio-video electronic means including a cell phone, as also that of a witness under Section 265(3) of the Bill. Similarly, Section 185 of the Bill (dealing with search by a police officer corresponding to Section 165<sup>15</sup> of the CrPC) requires the search to be recorded through audio-visual electronic means preferably by cell phone.

## **Conduct of proceedings through electronic means**

27. Section 355 of the Bill (corresponding to Section 317<sup>16</sup> of the CrPC) now inserts a new explanation to sub-section (2) providing that personal attendance of the accused includes attendance through audio video electronic means.

28. In the same vein, Section 532 of the Bill now allows that all trials, inquiries and proceedings including summons and warrant; holding of inquiry, examination of complaint and witnesses; trials before a Court of Session, recording of evidence in inquiries and trials, trials before High Court, all appellate proceedings and such other proceedings may be held in electronic mode, by use of electronic communication or use of audio-video electronic means.

## **Forensic experts**

29. Another significant introduction under Section 176(3) of the Bill, particularly in investigation offences which are punishable for 7 years or more is the requirement for the officer in charge of a police station to cause a forensic expert to visit the crimes scene to collect

<sup>10</sup> CrPC – Section 238. When accused shall be discharged  
<sup>11</sup> CrPC – Section 251. Substance of accusation to be stated  
<sup>12</sup> CrPC – Section 61. Form of summons  
<sup>13</sup> CrPC – Section 91. Summons to produce document or thing

<sup>14</sup> CrPC – Section 157. Procedure for investigation  
<sup>15</sup> CrPC – Section 165. Search of police officer  
<sup>16</sup> CrPC – Section 317. Provision for inquiries and trial being held in the absence of the accused in certain cases

forensic evidence in the offence and also cause videography of the process on mobile phone or any other electronic device. Further, this provision also confers powers on a State Government to notify utilization of the forensics facilities of another state until forensics facility is available in that state.

### **Cheating through electronic means**

30. From the perspective of economic offences, particularly in relation to the offence of cheating, Section 202(1) of the Bill corresponding to Section 182<sup>17</sup> of the CrPC now includes cheating by electronic communications and a Court within whose local jurisdiction such electronic communications or letters or messages were sent or were received has been empowered to try such offence.

### **Custody of an accused**

31. Under Section 187(2) of the Bill (corresponding to Section 167(2)<sup>18</sup> of the CrPC), a judicial magistrate to whom an accused is forwarded, may authorize detention of custody of the accused for a term not exceeding 15 days in the whole, or in parts at any time during the initial 40 days out of 60 days or 60 days out of 90 days. Notably however, the Magistrate may now authorize detention in police custody beyond the period of 15 days if there exist adequate grounds for doing so. However, such detention shall not exceed 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or

imprisonment for a term not less than 10 years or 60 days in case of any other offence. While this change is seemingly applicable for serious crimes, the intended usage and effect, when viewed in conjunction with the proposed changes to the IPC, will have to be examined further to avoid abuse or arbitrariness, before such provisions are made into law.

32. Further, the Bill provides that if the accused is not in custody (corresponding to Section 170 of the CrPC), the police officer shall take the security from such person for his appearance before the Judicial Magistrate and the Judicial Magistrate to whom such report is forwarded shall not refuse to accept the same on the ground that the accused is not taken in custody.

### **Bail and Anticipatory Bail**

33. Section 479 provides definitions of bail, bond, and bail bond. The Bill now provides that where an investigation, inquiry or trial in more than one offence in multiple cases are pending against a person, he shall not be released on bail by the Court.

34. More importantly, with regard to anticipatory bail under Section 438<sup>19</sup> of the CrPC, the new Section 484 of the Bill omits the factors contained in Section 438(1) for grant of anticipatory bail. Further, Section 438(1A) and (1B) stand omitted.

<sup>17</sup> CrPC – Section 182. Offence committed by letters etc.

<sup>18</sup> CrPC – Section 167. Procedure when investigation cannot be completed in twenty-four hours

<sup>19</sup> CrPC – **Section 438. Direction for grant of bail to person apprehending arrest.**

1 When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

2 When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

i a condition that the person shall make himself available for interrogation by a police officer as and when required;  
ii a condition that the 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;  
iii a condition that the person shall not leave India without the previous permission of the Court;  
iv such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

## Cognizance of special law and cases against public servants

35. The Bill, under Section 210(1) now permits a magistrate to take cognizance of any offence also in relation to a complaint filed by a person authorized under any special law which constitutes an offence.
36. Further, the Magistrate may also take cognizance against a public servant arising in the course of discharge of his official duties subject to (i) receiving a report containing facts and circumstances of the incident from the officer superior to such public servant; and (ii) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.

## Trial against an absconding person

37. Another significant addition through the Bill is the introduction of Section 356, which provides for an inquiry, trial to be conducted or a judgement to be passed against a proclaimed offender, *in absentia*.
38. In trying a proclaimed offender who has absconded to evade trial and where there is no immediate prospect of arresting him, it shall be deemed to operate as waiver of the right of such person to be present and tried in person, and the Court shall, after recording reasons in writing, in the interest of justice, proceed with the trial in the like manner and with like effect as if he was present, under this Bill and pronounce the judgment. Further, the proclaimed offender shall not prefer an appeal unless he presents himself before the Court of Appeal. Further, no appeal against conviction shall lie after the expiry of three years from the date of judgment. This introduction appears to be squarely aimed at prosecuting those accused who have escaped Indian jurisdiction, and its efficacy will lie on how such inquiries and trials are actually conducted.



## Other relevant provisions

### *In relation to trial*

39. Section 269(7) of the Bill (corresponding to Section 246<sup>20</sup> of the CrPC) which is newly inserted provides that where despite giving opportunity to the prosecution and after taking all reasonable measures,, if the attendance of prosecution witnesses cannot be secured for cross examination, it shall be deemed that such witness has not been examined for not being available, and the Magistrate may close the prosecution evidence for reasons to be recorded in writing and proceed with the case on the basis of the materials on record.
40. Section 336 of the Bill provides that where any document or report prepared by a public servant, scientific expert, medical officer of investigating officer is purported to be used as evidence in any enquiry, trial or other proceeding under this Code and (i) such public servant, expert of officer is either transferred, retired or dead; or (ii) such public servant, expert or officer cannot be found or is incapable of giving deposition or securing the presence of such public servant, expert or officer is likely to cause delay in holding the inquiry,

<sup>20</sup> CrPC – Section 246. Procedure where accused is not discharged

trial or proceeding, the Court shall secure presence of successor officer of such public servant, expert or officer who is holding that post at the time of such deposition to give deposition on such document or report.

### ***Witness protection program***

41. By virtue of Section 398 of the Bill, the concept of witness protection scheme has been formalized, which it is provided shall be notified by every state government.

### ***Witness protection program***

42. In relation to withdrawal from prosecution covered under Section 321<sup>21</sup> of the CrPC, Section 360 of the Bill now provides that no Court shall allow withdrawal from prosecution without giving the victim an opportunity of being heard in that case.

### ***Compoundable Offences***

43. Section 359 of the Bill (corresponding to Section 320<sup>22</sup> of the CrPC) now removes adultery from the table of compoundable offences and also excludes defamation against the President or the Vice- President or the

Governor of a State or the Administrator of a Union Territory or a minister in respect of his public functions when instituted upon a complaint made by the public prosecutor.

### ***Clarifications with respect to Limitation period and Superintendence of the High Court***

44. The Bill now clarifies that (i) for computing the period of limitation, the relevant date shall be the date of filing complaint under Section 223 or the date of recording information under Section 173; and (ii) that every High Court shall so exercise its superintendence over Sessions Courts in the state.

### ***Conclusion***

In a nutshell, in so far as the prescription of timelines for inquiry, investigation and trial and formal adoption of audio-visual and electronic means for to undertake various processes, the proposed changes can be considered as a much-needed panacea to improve the functioning of the criminal justice system. However, its efficacy in the real world depends on the manner in which such provisions are implemented and adhered to in letter and spirit.

<sup>21</sup> CrPC – Section 321. Withdrawal from prosecution

<sup>22</sup> CrPC – Section 321. Withdrawal from prosecution

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