
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

ANALYSIS OF THE NEW LAWS BNSS, BNS, BSB- Pragya¹**Introduction**

By proposing these new Legislations, the Indian government is making an effort to modify the existing criminal justice system. These proposals include additions to or modifications to definitions, as well as revisions to the penalties for particular offences. Furthermore, the bills were introduced with the intention of address the problems and difficulties that the Indian criminal justice system is currently facing. These include the numerous cases that are pending in various courts, the lack of infrastructure and human resources, the inadequacy of thorough investigations and prosecutions, and the outdated laws and procedures that must be followed in order to prosecute a case. The bills were introduced with the clear intention of addressing these issues.

Every stage of a criminal investigation, from submitting a first information report (FIR) to preparing charge sheets and delivering verdicts, would be digitised by the Indian government in an effort to keep pace with the considerable technology improvements that have occurred over the past few years. As an illustration, the BNSS enables the electronic distribution of summonses to the parties involved, as well as the digital presentation of testimony obtained from experts, witnesses, accused individuals, and other parties.

Need for Introduction of New Laws

The government has swiftly withdrawn the Criminal Law Bills and subsequently introduced updated versions of the Bharatiya Nyaya Sanhita (BNS-II, replacing the IPC, 1860), the Bharatiya Nagarik Suraksha Sanhita (BNSS-II, replacing the Criminal Procedure Code, 1973), and the Bharatiya Sakshya Bill (BSB-II, replacing the Indian Evidence Act, 1872).

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Given the inclusion of the Parliamentary Standing Committee's report between the two versions, it is necessary to assess the ultimate shape that these alterations will assume. Although it is likely that the traditional devil lies in the details, there is significant reason to be concerned about the wording used in relation to these laws. When considering criminal law and justice, it is frequently challenging to imagine a transformational vision. It seems that we are heading towards a system that will greatly increase state control through excessive criminalization and greater police powers.

Although the BNSS will significantly impact civil liberties, one specific aspect of it has been mostly overlooked. The maintenance of civil freedoms is fundamentally dependent on the substantial increase in the allowable length of time that individuals can be held in police custody, as outlined in the BNSS. The maximum duration of police custody under general criminal law has been extended from 15 days to either 60 days or 90 days, depending on the severity of the offence. This is facilitated by the BNSS. Currently, the period of time during which a person can be held in police custody is limited to the first fifteen days after being arrested. As to the suggested BNSS, the expansion increases the likelihood of being subjected to excessive police interventions. The inclusion of this provision in the BNSS represents a significant increase in police authority, particularly in light of the widespread apprehensions raised about the well-being of detained individuals under police custody, as well as the heightened risk of manipulated or forced evidence during prolonged detention. Significantly, our regular criminal code will soon incorporate measures that were previously limited to "special laws." This is an extraordinary advancement. Indeed, these regulations go beyond the specific provisions of the "special laws" regarding the duration of police custody.

The introduction of new acts such as The Bharatiya Nagarik Suraksha Sanhita (BNS), Bharatiya Nyaya Sanhita (BNS), and Bharatiya Sakshya Bill (BSB) in place of older legislations reflects a concerted effort by the government to address contemporary challenges and adapt the legal framework to evolving societal needs. To delve into the reasons behind the enactment of these new acts, it's essential to understand the context in which they emerged and the shortcomings of the existing laws they seek to rectify.

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The Bharatiya Nagarik Suraksha Sanhita (BNS): The Bharatiya Nagarik Suraksha Sanhita was introduced as a comprehensive legislation aimed at safeguarding the rights and security of Indian citizens. The need for such a law arose from a myriad of factors:

- a) *Emerging Security Threats:* In the wake of increasing terrorism, cybercrime, and transnational threats, there was a pressing need for legislation that could effectively combat these challenges while upholding civil liberties.
- b) *Legal Vacuum:* The existing legal framework may have been inadequate or outdated to address modern security threats, leaving gaps in the legal response to emerging risks.
- c) *International Obligations:* India's commitments to international conventions and treaties on counterterrorism and human rights necessitated the enactment of new laws to align with global standards while ensuring national security.
- d) *Technological Advancements:* Rapid advancements in technology posed new challenges to national security, such as cyberattacks and digital surveillance, which required legislative measures to address effectively.
- e) *Protection of Civil Liberties:* Balancing security concerns with the protection of civil liberties and privacy rights was a key consideration in drafting the BNS, ensuring that the law struck an appropriate balance between security and individual freedoms.

Bharatiya Nyaya Sanhita (BNS): The Bharatiya Nyaya Sanhita was introduced to reform and modernize the criminal justice system in India. Several factors contributed to the need for this legislation:

- a) *Backlog of Cases:* The Indian judiciary was grappling with a massive backlog of cases, leading to delays in the dispensation of justice and undermining public trust in the legal system.
- b) *Procedural Bottlenecks:* Cumbersome legal procedures and outdated practices hindered the efficient functioning of courts, exacerbating delays and inefficiencies in the adjudication of cases.
- c) *Access to Justice:* Many marginalized and vulnerable groups faced barriers in accessing justice, including high legal costs, lack of legal awareness, and procedural complexities, necessitating reforms to enhance access to justice for all.

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- d) *Victim Protection*: The rights and interests of victims often took a backseat in the criminal justice process, with limited provisions for victim compensation, support services, and participation in legal proceedings. The BNS sought to address these gaps and prioritize the rights of victims in the criminal justice system.
- e) *International Best Practices*: Drawing inspiration from international best practices in criminal justice reform, the BNS aimed to modernize legal procedures, enhance judicial efficiency, and promote restorative justice principles.

Bharatiya Sakshya Bill (BSB): The Bharatiya Sakshya Bill was introduced to overhaul the education system in India and address systemic deficiencies that impeded the realization of quality education for all. The rationale behind the enactment of this legislation includes:

- a) *Quality of Education*: Despite significant progress in expanding access to education, concerns persisted regarding the quality of education imparted in schools and higher education institutions, with issues such as outdated curricula, inadequate infrastructure, and teacher shortages undermining the effectiveness of the education system.
- b) *Skill Development*: India's growing economy required a skilled workforce equipped with relevant competencies and expertise to meet the demands of a rapidly evolving job market. The BSB emphasized the importance of skill development and vocational training to enhance employability and foster economic growth.
- c) *Equity and Inclusion*: Disparities in access to education persisted along lines of gender, socioeconomic status, and geographical location, perpetuating inequalities and hindering social mobility. The BSB aimed to promote equity and inclusion in education by addressing barriers to access and improving educational outcomes for marginalized communities.
- d) *Global Competitiveness*: In an increasingly interconnected and competitive world, India needed to strengthen its education system to equip students with the knowledge, skills, and values required to compete globally. The BSB sought to align the Indian education system with international standards and best practices to enhance its competitiveness on the global stage.

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In conclusion, the introduction of The Bharatiya Nagarik Suraksha Sanhita (BNS), Bharatiya Nyaya Sanhita (BNS), and Bharatiya Sakshya Bill (BSB) reflects the government's commitment to addressing contemporary challenges and modernizing key sectors such as security, justice, and education. These new legislations seek to fill existing gaps, adapt to changing realities, and uphold the principles of justice, security, and inclusivity in India's legal and social fabric.

The three bills' salient characteristics

The BNS, 2023:

The BNS serves as a substitute for the IPC. Under the new legislation, the list of criminal acts has been broadened to encompass additional offences, although the pertinent sections of the Indian Penal Code have been retained. The penalties for various egregious violations are also heightened, and any crimes that the Supreme Court deemed unconstitutional are eliminated from the roster of punishable offences. In addition, lawmakers have proposed a fresh criminal offence for activities that endanger India's sovereignty, unity, or integrity. Furthermore, they have incorporated community service as a means of penalising individuals who engage in such offences. The Bureau of National Statistics (BNS) categorises criminal breaches of trust, forgeries, financial scams, Ponzi schemes, mass marketing frauds, and cybercrimes as forms of "organised crime." As a direct result of this significant breakthrough, the harshness of penalties for organised crimes in India will escalate.

BNSS, 2023:

This legislation is designed to replace the Criminal Procedure Code. The recently enacted legislation mandates the integration of technology throughout the entire court process, encompassing trials, appeals, submission recording, and video conferencing, with the aim of promoting its utilisation, as emphasised by legislators. Furthermore, it grants magistrates the authority to assess allegations using digital records, such as emails, text messages, and instant chats, so expediting the collection of evidence and verification of proof. Under the BNSS, members of parliament have adopted a new rule stating that a forensic examination will be required in cases involving severe felonies that carry a prison sentence of seven years or longer. Furthermore, the new legislation stipulates that the entire event must be recorded on

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camera.

Legislators are optimistic about improving the protocols for conducting investigations and criminal inquiries by implementing a team of specialists who will conduct on-site examinations and gather evidence in the most efficient manner feasible.

BSB 2023:

The BSB has replaced the IEA. The new law recognises and endorses the need to modernise India's current legal system through the utilisation of technology. The Act covers digital or electronic records, such as online discussions on various personal devices, and categorises them as "documents." This comprehensive definition includes all types of electronic communication, such as emails and messages, server logs, user files (which may contain images and call recordings), as well as any other electronic device that the Government may designate in the future. Furthermore, it includes a wide range of communication devices, including notebook computers, mobile phones, websites, and cameras. It is important to note that the perception of electronic records has changed from being considered secondary evidence to being considered primary evidence due to their classification as "documents."

The incorporation of advanced forensic techniques, such as DNA profiling and digital evidence collection, along with the utilisation of expert opinion, may be crucial in bolstering the new law's dedication to establishing an efficient and modern criminal justice system and legal framework in India. Most of the legislation in India's criminal justice system are derived from the legal traditions of different areas or originate from the period when India was under colonial administration. The Indian government's recent introduction of the Digital Personal Data Protection Act 2023, the Mediation Bill, the Taxation Laws (Amendment) Bill, 2021, and three new criminal law legislation has resulted in significant alterations within the legal system.

Legislators have mandated specific deadlines for enforcement agencies to ensure their compliance with the requirements of these three new measures. The specified timelines encompass various tasks such as handling complaints and mercy petitions, submitting chargesheets and electronic initial information reports for women, and arranging hearings to address ongoing matters. The regulations also ensure the preservation of the principles of justice, equity, and fairness by permitting the use of digital forensics, the acceptance of

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digital evidence, and the cooperation between law enforcement agencies, forensic accountants, and legal counsel.

Comparing Bhartiya Nyay Sahita with IPC

1. Major Highlights of the Bill

- A significant proportion of transgressions that are currently classified under the Indian Penal Code remain classified under the Bharatiya Nyaya Sanhita. Community service is one of the forms of punishment that are encompassed.
- Seditiousness is no longer regarded as a punishable offence. A potential alternative entails the creation of a novel criminal offence to punish conduct that compromises the sovereignty, unity, and integrity of India.
- The BNS is the addition of terrorism as a criminal offence. Acts of terrorism are defined as behaviours that are executed with the explicit purpose of endangering the security, cohesion, and unity of the nation, instilling fear among the general populace, or upsetting public order.
- Incorporated as a novel criminal offence is organised crime. It encompasses a range of illicit activities, including extortion, abduction, and cybercrime, which are perpetrated on behalf of a criminal organisation. Presently, even minor organised crime is classified as a criminal offence.
- The commission of homicide by a group of five or more individuals motivated by particular identification markers (e.g., personal belief, language, or caste) shall be classified as a criminal offence carrying a penalty ranging from seven years to life imprisonment or execution.

2. Analyzing the key Issues

- An individual who is deemed mentally incapacitated is granted legal immunity under the Indian Penal Code. In the BNS, term is modified to refer to an individual who has mental illness. The definition of mental illness encompasses addiction to substances such as alcohol and opioids, but does not encompass mental impairment. Individuals who willingly become intoxicated may be absolved of blame, unlike individuals with mental retardation who may be liable to legal action.

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- Terrorism encompasses any deliberate action aimed at destabilising public order. There is a potential for categorising isolated breaches of peace as acts of terrorism.
- The age of seven is the threshold at which an individual becomes eligible for criminal liability. The duration of the sentence can extend up to twelve years, contingent upon the accused individual's degree of maturity. Is it possible that this violates the recommendations of the international convention?
- There are certain offences that intersect with specific legislation. It is typical for both to entail separate penalties or to allow for different procedures in different circumstances. There is a likelihood that this will lead to the establishment of various regulatory systems, increased expenses related to adhering to regulations, and the possibility of facing multiple accusations.
- The penalty for murder committed by a group of five or more individuals based on specific identity criteria is comparatively less harsh than the sentence for murder.
- Section 377 of the Indian Penal Code, as construed by the Supreme Court, is not part of the BNS. Consequently, the acts of sexually assaulting men and engaging in sexual activities with animals are no longer classified as criminal offences.

3. Key Changes in the BNS includes from IPC

- The BNS does away with the criminal offence of sedition. Those who engage in the following activities are subject to the legal consequences: (i) encouraging or attempting to provoke secession, armed insurrection, or subversive acts; (ii) spreading feelings of separatist activities; or (iii) putting India's sovereignty, unity, or integrity in jeopardy. Verbal or nonverbal communication, internet interaction, or the use of monetary resources are all examples of the kind of offences that fall under this category.
- The Indian Penal Code (IPC) specifies and punishes acts such as homicide, instigation of suicide, physical assault, and causing severe injury. These are all examples of offences that are considered to be against the body. These provisions are kept up to date by the BNS. This piece of law includes the introduction of new criminal offences, such as organised crime, terrorism, and group-based murder or serious bodily harm on specific grounds.

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- The Indian Penal Code (IPC) defines sexual offences against women as including acts such as voyeurism, stalking, rape, and insulting a woman's modesty. These are all behaviours that are considered to be sexual offences. These provisions are kept up to date by the BNS. A victim of gangrape must now be at least 18 years old in order to be considered a minor. The previous age minimum for this classification was 16 years old.
- In addition, it makes it a criminal crime to engage in sexual activity with a woman. This can be accomplished through the use of misleading means or by making false commitments.
- The term "organised crime" refers to a wide variety of illegal acts that are carried out on behalf of a criminal syndicate. These crimes include kidnapping, blackmail, targeted assassination, illegal seizure of property, fraudulent schemes, and cybercriminal activities. If you are found guilty of engaging in or committing organised crime, you will be subject to the following penalties: (i) the death penalty or permanent incarceration and a fine of Rs 10 lakh, if it results in the death of an individual; or (ii) imprisonment ranging from five years to life, together with a fine of at least five lakh rupees.
- Court decisions: The BNS is committed to adhering to specific decisions that have been handed down by the Supreme Court. The removal of adultery as a criminal offence and the introduction of life imprisonment as a punishment, in addition to the death penalty, for murder or attempted murder committed by an individual who is currently serving a life sentence are the two principal amendments that will be implemented.
- A person is said to have been subjected to mob lynching when a group of five or more people commit the act of causing the death or serious injury of another individual for a set of predetermined reasons. According to the BNS, there is a criminal offence that can be committed by this act. These grounds include things like racial or caste discrimination, gender bias, language barriers, and personal convictions. When it comes to the punishment for perpetrating such a homicide, the range of possible sentences is from a minimum of seven years in jail to life in prison or even the death penalty.

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- In accordance with the definition provided by the BNS, activities that are committed with the goal of (i) posing a threat to the unity, integrity, and security of the country, (ii) inciting fear in the general public, or (iii) disrupting public order are considered to be terrorist operations. Those who commit acts of terrorism or seek to commit such actions are subject to the following penalties: (i) the death penalty or permanent incarceration in addition to a fine of ten lakh rupees, in the event that it results in the death of an individual; or (ii) imprisonment ranging from five years to life, together with a payment of at least five lakh rupees

4. Important problem and Analysis

- *The definition of terrorism may be very expansive.*

Including terrorism as a criminal offence is the Bureau of National Security's (BNS) proposal. Terrorism, as per this definition, refers to an act that aims to: (i) jeopardise the unity, integrity, and security of a nation; (ii) instill fear in the general population; or (iii) disturb public order. Here are some instances of terrorist acts: (i) The utilisation of weapons, explosives, or hazardous materials with the deliberate aim of inflicting fatalities, endangering lives, or instilling fear; or (ii) The act of damaging property or interfering with essential services. Given that the intention to disturb public order is regarded as an act of terrorism, a diverse range of actions possess the potential to be classified as acts of terrorism. Instances of mob violence and rioting exemplify these forms of behaviour. Armed rebellion and conflict against the government are more instances.

As per the Supreme Court's 1960 view, public order refers to the state of affairs where there is no disruption caused by breaches of peace at the local level². This type of disorder is differentiated from national upheavals, such as revolution, struggle, and war, which all have the capacity to jeopardise the security of the state. In the context of the BNS, acts of terrorism encompass the act of threatening individuals who are part of the general population. The Standing Committee on Home Affairs (2023) proposed defining the term "intimidation" to eliminate any ambiguity in categorising terrorist operations.

²1960 AIR 633, The Superintendent Central Jail, Fatehgarh vs. Ram Manohar Lohia, Supreme Court, January 21, 1960.

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- ***Homicide committed by a collective based on specific criteria of personal characteristics***

The Bill lays out a specific punishment for murder committed by five or more people under certain conditions. In addition to monetary penalties, the offence carries a minimum prison sentence of seven years and a maximum sentence of life in prison or death. The explanations can be based on any comparable factor, such as race, caste, community, sex, place of birth, language, or personal beliefs.

The same intent and consequences as murder are covered under this offence, which is already covered by the Indian Penal Code (IPC)³. The death sentence or life in prison is the maximum punishment for murder committed by a group on these specified reasons; it is not as harsh as the minimum penalty. There's no clear explanation for the differences in penalties. The seven-year jail sentence was suggested to be removed from the section by the Standing Committee on Home Affairs (2023). The Bill outlines particular markers of identity, such language and caste, but it makes no mention of religion.

- **General exclusions to criminal liability are not recognised under the grounds of mental illness.**

As to the Indian Penal Code, any action performed by an individual who lacks mental capacity is not considered a criminal offence. The clause remains effective in the BNS, however, the term "unsound mind" has been replaced with the phrase "mental illness" in its meaning. The precise definition of mental illness is derived from the Mental Healthcare Act of 2017 (MHA, 2017), as outlined in the aforementioned document. As to the provisions of the Mental Health Act of 2017, mental illness is characterised as a substantial impairment in cognitive functions such as thinking, orienting, or memory, which greatly impedes the individual's capacity to accurately perceive and comprehend reality. According to this definition, it is important to note that mental retardation or insufficient development of the mind are not classified as mental diseases. If this concept of mental illness is employed to absolve a person of criminal culpability, it is conceivable that individuals with cognitive impairment may be deprived of legal safeguards against prosecution. In 2008, the Code of

³Report No. 246, The Bharatiya Nyaya Sanhita, Standing Committee on Home Affairs, Rajya Sabha, November 10, 2023

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Criminal Procedure (CrPC)⁴, which had been in force since 1972, was amended to require a clinical assessment to ascertain whether the person in question was experiencing mental retardation or unsoundness of mind. Both of these conditions could serve as justifications for acquittal.

As per the provisions of the Mental Health Act of 2017, the concept of mental illness includes the use of substances such as alcohol and narcotics as a form of mental disorder. If an individual who suffers from alcoholism is convicted of a crime committed while intoxicated, they may potentially employ the defence of mental illness to justify their actions⁵. Even if he willingly consumed alcohol or drugs, this argument may still be relevant. According to the Indian Penal Code, the defence of drunkenness only excuses acts performed while under the effect of involuntary intoxication from being held criminally responsible. This statement contradicts the commonly held argument in favour of intoxication. As per the 2023 suggestion of the Standing Committee on Home Affairs, it is advised to restore the usage of the term "unsound mind"⁶.

- **The age threshold for such acts against children differs among victims.**

When it comes to crimes against children, the BNS wants harsher punishments to be used. Most of the time, it says that anyone younger than 18 should be treated and thought of as a child. For rape and gang rape that happen to women and children, the punishment is different. On the other hand, the severity of the punishments for rape cases varies because of the criteria used to decide if the victim is a child. There are different sentences for people who are gang raped based on their age, with different sentences for people who are under 18 years old. In rape cases, the severity of the sentence depends on how old the victim is: under 12 years old, between 12 and 16 years old, or over 12 years old. This comment goes against the Protection of Children from Sexual Offences Act of 2012, which says that people younger than 18 are considered minors.

The BNS also says that victims of some crimes against children must not be at least 18 years old, which makes an already upsetting scenario even worse. For instance, kidnapping or

⁴Section 330, The Code of Criminal Procedure, 1973.

⁵Section 85, Indian Penal Code, 1860.

⁶ Ibid.

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removing a child from a parent with the intent to keep them is only illegal for kids younger than 10 years old. Based on this, it seems likely that the punishment for kidnapping an 11-year-old is the same as the punishment for kidnapping an adult. In addition, the BNS supports the law that people must be at least 21 years old to be charged with importing a foreign woman from another country, which is the same age that the IPC sets. It raises the minimum age for boys, on the other hand, to 18. In 2023, the Standing Committee on Home Affairs suggested that a child be someone younger than 18 years old⁷.

- **Not being clear about what small organised crime means**

The BNS classifies one of the offences as a form of minor organised crime. This category encompasses several forms of organised crime, such as vehicle theft, pickpocketing, the illicit sale of public exam question papers, and other similar activities carried out by criminal gangs. To meet the criteria, actions must satisfy two conditions: (i) they must be perpetrated by organised criminal syndicates or gangs (including mobile organised crime groups), and (ii) they must generate a widespread sense of insecurity among the population. These infractions entail both a monetary penalty and a prison term that can span from one to seven years. The precise definition of the term "general feelings of insecurity" is not fully evident. Furthermore, the National Bureau of Statistics lacks definitions for terms such as "gang," "anchor points," and "mobile organised crime groups." The Standing Committee on Home Affairs (2023) has proposed the revision of the provision.

- **The minimum age for criminal responsibility is greater than in some other countries.**

The age of criminal responsibility refers to the minimum age at which a juvenile can be legally charged and penalised for committing a criminal offence. As our understanding of how brain biology affects the behaviour of teenagers has progressed, concerns have emerged over the proper degree of accountability that should be assigned to young individuals for their actions. As to the Indian Penal Code, a kid below the age of seven cannot be held liable for any criminal offence⁸. If it is established that a child has not yet reached the age at which they can fully understand the nature and consequences of their conduct, the age at which they can

⁷ Ibid.

⁸PostNote 588, Age of Criminal Responsibility, Parliamentary Office of Science and Technology, The United Kingdom, June 2018.

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be held legally responsible for their activities is increased to twelve years. The aforementioned provisions remain in effect within the BNS⁹. The age of criminal responsibility in other countries exceeds this age, which is comparatively lower. In 2007, a United Nations Committee proposed that states increase the age at which a person can be held criminally responsible to be higher than 12 years old.

The age of criminal responsibility differs across nations. In contrast to England and Wales, where the age of criminal responsibility is 10 years¹⁰, Germany has a higher age of criminal liability set at fourteen years old. The current age at which an individual in Scotland can be held legally responsible for criminal actions is 12 years old¹¹.

5. Intersection between the BNS and special legislation

- *Inclusion of offences associated with organised crime and terrorism*

At the present time, the Indian Penal Code does not include organisations that commit acts of terrorism or organised crime. Within the scope of the Unlawful Activities (Prevention) Act, 1967 (UAPA), terrorist acts are considered to be illegal activities. There are state laws that address the problem of organised crime. Some examples of these laws are the Maharashtra Control of Organised Crime Act, 1999 (MCOCA), as well as legislation that are comparable in Karnataka, Gujarat, Uttar Pradesh, Haryana, and Rajasthan. The Basic National Security Act (BNS) has included provisions for acts that are related to both organised crime and terrorism. The incorporation of organised crime as a criminal offence within the BNS closes a gap, as these illegal activities can take place in any state, including those states that have not yet established special legislation. On the other hand, this also results in the repetition of laws in states that already have laws that are distinct from one another¹².

Both the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and the Bharatiya Sakshya Bill, 2023 (BSB) do not have a separate criminal procedure for these offences among their provisions. The Code of Criminal Procedure from 1973 and the Indian Evidence Act from 1872 are both being replaced by these legislation, respectively. There are a number of ways

⁹Report of the Committee on Rights of the Child, United Nations.

¹⁰Section 19, The German Criminal Code, 1998.

¹¹"If a young person gets in trouble with the police", The Government of Scotland.

¹²Maharashtra Control of Organized Crime Act, 1999, Gujarat Control of Terrorism and Organised Crime Act, 2015.

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in which the legislation that pertains to terrorism and organised crime operates differently from the ordinary criminal process. The defendant loses some protections, such as the requirements for granting bail and the criteria for accepting police confessions as evidence. These protections are eliminated. In accordance with the National Investigation Agency Act of 2008, which was passed in order to establish Special Courts particularly for the purpose of considering cases of this nature, cases involving the UAPA are decided. Cases of terrorism would be brought to Sessions Courts, as stated by the Bureau of National Security Services (BNSS)¹³. Because of this, separate investigation and trial procedures would be used for crimes that are otherwise comparable. A proposal was made by the Standing Committee on Home Affairs (2023) to establish separate legal procedures for the purpose of dealing with organised crime within the BNSS.

- ***Women related Offences***

Rape-related sections of the Indian Penal Code are preserved in the BNS. Several proposals about the reform of offences committed against women that were made by the Justice Verma Committee (2013) and the Supreme Court have not been addressed by this document.

The table shows the subject of offences committed against women, recommendations

<p>Rape (as defined in Section 375 of the Indian Penal Code) should not be restricted to the act of forcefully penetrating the vagina, mouth, or anus. Non-consensual sexual penetration should be encompassed within the concept of rape. The exemption for marital rape should be eliminated.</p>	<p>Not at all; the original provision is still present in Clause 63.</p>
<p>Words, gestures, or acts meant to insult a woman's modesty (IPC Section 509) should be repealed. The offence of 'eve-teasing' is punishable under Section 354 of the Indian Penal Code (section 73). Remove the</p>	<p>Not at all; the original provision is still present in Clause 78.</p>

¹³National Investigation Agency Act, 2008.

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term 'modesty of women' from the IPC.	
IPC \354B: Assault or use of criminal force against a woman with intent to undress carries a mandatory minimum five-year or maximum ten-year jail sentence.	No, the penalty for this offence is a minimum of three years imprisonment and a maximum of seven years imprisonment, as stated in Clause 75.
Section 497 of the Indian Penal Code has a provision that breaches Articles 14 and 21. In addition to being arbitrary, it establishes a division between men and women on the basis of different gender stereotypes. In light of the fact that it breaches the right to private, adultery ought not to be considered a criminal offence.	Indeed. No mention of adultery has been made. The BNS, on the other hand, continues to uphold Section 498 of the Indian Penal Code (Clause 83), which makes it illegal for a man to entice the wife of another man in order to allow her to engage in sexual activity with him.

- ***It's possible that solitary confinement violates many fundamental rights.***

Solitary confinement is permissible under the Indian Penal Code for offences punishable by long durations of imprisonment. Such acts include crimes like criminal conspiracy, sexual harassment, kidnapping, and abduction with the purpose to murder. These provisions remain in existence in the BNS. A large number of state laws have adopted the Prisons Act of 1894, which permits for the use of solitary confinement on occasion. Neither judicial decisions nor expert opinions are consistent with the statutes governing solitary confinement¹⁴.

¹⁴Section 29, Prisons Act, 1894.

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In 1979, the Supreme Court of the United States determined that placing criminals into solitary confinement violates Article 21 of the Constitution, which guarantees individuals the right to life and liberty¹⁵. In 1971, the Law Commission recommended that solitary imprisonment be removed from the International Penal Code. The report stated that such incarceration is not consistent with current thinking and should not be utilised as a form of punishment by any criminal court¹⁶. The Supreme Court acknowledged the Law Commission's advice in 1978, ruling that the use of solitary confinement should be justified only in extreme circumstances¹⁷.

- *The extent of community service is ambiguous.*

Community service is a form of punishment that is included in the BNS. This punishment is expanded to cover offences such as (i) stealing goods with a value of less than Rs. 5,000, (ii) attempting suicide with the intention of restraining a public official, and (iii) appearing in a public place while under the influence of alcohol and creating anger. Neither the nature of the community service nor the manner in which it will be carried out are specified in the BNS. According to the proposal made by the Standing Committee on Home Affairs (2023), the phrase and concept of "community service" should be simplified.

- *Elements of sedition are preserved.*

According to the Indian Penal Code (IPC), the act of encouraging hatred, contempt, or disaffection towards the government is considered to be a form of seditious activity. The enforcement of the crime of sedition has been temporarily suspended by the Supreme Court; this suspension will remain in place until a Constitution bench considers it. This infraction is brought to an end by the BNS. In its place, it contains a provision that prescribes penalties for the following offences: (i) encouraging or attempting to provoke secession, armed rebellion, or subversive operations; (ii) promoting sentiments of separatist activities; and (iii) putting India's sovereignty, unity, or integrity in jeopardy. The use of monetary resources, verbal or nonverbal interaction, computer communications, and other forms of communication may all fall under this category of offences. It is possible to make the case that the new section preserves certain aspects of the crime of sedition and broadens the range of activities that

¹⁵1980 AIR 1579, Sunil Batra(II) vs. Delhi Administration, Supreme Court, December 20, 1979.

¹⁶Report No. 42, Law Commission of India, 1971.

¹⁷1978 AIR 1675, Sunil Batra vs. Delhi Administration and Ors, Supreme Court, August 30, 1978.

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could be seen as posing a threat to the unity and integrity of India. There is a lack of clarity on the definition of the word "subversive activity," which results in a lack of clarity regarding the acts that would be considered to fit this criteria.

The Supreme Court of the United States limited the definition of sedition to conduct that have the intention or the propensity to produce public disorder or to provoke violence in the year 1962. It is essential to take note of the fact that the BNSS makes reference to 'seditious matters'¹⁸ in BNS (clauses 150, 195, 297), despite the fact that the term sedition is not specifically defined in BNS.

Table Showing Overlap between Special Laws, IPC and BNS

IPC/BNS	SPECIAL LAWS
<p>1. Rash Driving</p> <p>Punishable with imprisonment up to 6 months, fine up to Rs 1,000 or both.</p> <p>Cognizable, bailable, non-compoundable. (IPC Sec 279; BNS Clause 279)</p>	<p>Those who commit their first offence under the Motor Vehicles Act of 1988 face a maximum sentence of six months in prison and/or a fine of up to five thousand rupees.</p> <p>The subsequent crime within three years carries a maximum sentence of two years in prison and/or a fine of up to ten thousand rupees. Compoundable, bailable, and definable in nature. In Section 184 .</p>
<p>2. Compulsory unlawful Labor</p> <p>Imprisonment up to one year, fine, or both.</p> <p>Cognizable, Bailable. (IPC Sec. 374; BNS Clause 144)</p>	<p>Provisions of the Bonded Labour System (Abolition) Act, 1976 include a maximum sentence of three years in prison and a fine of up to two thousand rupees (Sections 16, 17, 18).</p>

¹⁸ 1962 AIR, Kedar Nath Singh vs. State of Bihar, Supreme Court, January 20, 1962.

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<p>3. Drug adulteration and the sale of contaminated pharmaceuticals</p> <p>Adulteration penalised with imprisonment up to a year, fine up to Rs 5,000, or both.</p> <p>Sale of adulterated drugs penalised with imprisonment up to 6 months, fine up to Rs 5,000 or both.</p> <p>Non-Cognizable, bailable. (<i>IPC Sec. 274, 275; BNS Clause 274, 275</i>)</p>	<p>Under the pharmaceuticals and Cosmetics Act of 1940, the act of consuming contaminated pharmaceuticals that result in death or serious injury is punishable by imprisonment ranging from 10 years to life. Additionally, a fine of at least Rs 10 lakh, or three times the value of the confiscated drugs, whichever is greater, will be imposed.</p> <p>Alternatively, in certain instances, the punishment is a prison sentence ranging from 3 to 5 years, along with a minimum fine of Rs 1 lakh or an amount equivalent to 3 times the value of the confiscated drugs, whichever is greater. Section 27</p>
<p>4. Abandon of a child</p> <p>Parent or guardian abandoning a child below the age of 12 is punishable with imprisonment up to 7 years, fine, or both.</p> <p>Cognizable, bailable. (<i>IPC Sec. 317; BNS Clause 91</i>)</p>	<p>Under the Juvenile Justice Act of 2015, the act of abandoning a child or facilitating the abandonment of a child is subject to a penalty of up to 3 years of imprisonment, a fine of up to Rs 1 lakh, or both. Parents who are forced to abandon their child due to uncontrollable circumstances are exempt. Section 75</p>
<p>5. Food or drink that has been tampered with or contaminated for the purpose of selling it.</p> <p>Imprisonment up to 6 months, fine up to Rs</p>	<p>For the manufacturing, storage, and sale of hazardous food, the Food Safety and Security Act of 2006 imposes severe penalties, including imprisonment for life and a fine of</p>

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5,000, or both. Non-Cognizable, bailable. (<i>IPC Sec. 272, 273; BNS Clause 272, 273</i>)	up to Rs 10 lakh. These penalties are intended to maintain public health and safety. An appropriate punishment that is proportional to the level of harm that was caused. The section 59
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6. Missing Offences

- *Section 375 and 377 of IPC*

Section 375 defines a woman as a rape victim. Section 377 criminalises engaging in "unnatural intercourse" with a man, woman, or animal. The Supreme Court construed this article in a manner that excludes its application to consensual sexual relations among adults. Engaging in non-consensual sexual activity with an adult male or having sexual intercourse with an animal are both considered criminal offences. As per the provisions of the POCSO Act of 2012, it is a punishable offence to engage in sexual assault on children, irrespective of their gender.

The BNS does not possess section 377. Based on this information, engaging in non-consensual sexual activity with an adult male is not classified as a criminal offence under any laws, and the same applies to engaging in sexual intercourse with an animal. The Standing Committee on Home Affairs (2022) has proposed reintroducing this clause into implementation.

7. Issue in drafting

- *Clause 23 and Clause 150*

The act of carrying out activities while under the influence of drugs or alcohol. Section 85 of the Indian Penal Code (IPC) provides a broad exemption for those who are intoxicated and unable to choose between what is right and wrong. This exemption is intended to protect those individuals from punishment. The only circumstance in which this exemption is applicable is when the individual gets intoxicated without their knowledge or against their

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will. The word "provided that" is replaced with "unless" in the BNS, which indicates that an individual who voluntarily becomes intoxicated would be exempt from accountability for their actions.

The term "sedition" is removed from the Indian Penal Code (IPC) as a result of this revision, which also causes Section 124A to be replaced. The assertion that "Explanation (possibly to say what would not constitute an offence) is an incomplete sentence" is not only grammatically faulty but also lacks clarity.

Comparing Bhartiya Nagarik Suraksha Sanhita with CrPC

1. Major Highlights of the Bill

- The 1973 Criminal Procedure Code (CrPC) is being contemplated to be replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). The arrest, prosecution, and bail procedures are all covered by the Criminal Procedure Code.
- Criminal offences carrying a seven-year jail sentence or more are required to be subject to a forensic investigation by the BNSS. To gather forensic evidence and document the procedure, forensic experts will travel to crime scenes.
- It is possible to conduct all trials, investigations, and proceedings electronically. For the purpose of an investigation, inquiry, or trial, electronic communication devices that are likely to contain digital evidence must be produced.
- A person who has been deemed criminal may proceed with the trial and be found guilty in absentia if they flee arrest in order to avoid being caught and there is no immediate chance to do so.
- It is possible to obtain specimens of handwriting or signatures, as well as voice and fingerprint impressions, for use in legal proceedings or investigations. Someone who hasn't been caught yet could be the target of sample collection.

2. Analyzing the key Issues

- The Bureau of National Security Service (BNSS) allows for a maximum of fifteen days of police custody, which can be given in increments throughout the first forty or sixty days of the sixty or ninety-day period of court detention. It is possible that bail

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will be rejected for the entire duration of the duration of the 15-day custody period if the police have not yet completed the period of custody.

- In the absence of the safeguards established in the Prevention of Money Laundering Act, these authorities have the right to take assets that have been obtained through illicit acts.
- An accused person may be released on bail under the provisions of the Code of Criminal Procedure (CrPC) if they have been detained in custody for a period of time equal to or greater than fifty percent of the maximum jail term that is applicable to the crime for which they are accused. The Bureau of National Security Services (BNSS) does not offer this service to individuals who are facing multiple offences. It is possible that the availability of bail will be limited because of the participation of charges made under a variety of sections.
- Handcuffs are permitted in a variety of situations, including those involving economic offences, despite the fact that they are in direct opposition to orders issued by the Supreme Court.
- The Bureau of National Security Service (BNSS) allows the retiring or transferred investigative officers' successors to present the evidence that they have gathered. This violates the rules of evidence that are generally accepted because it makes it more difficult to conduct a cross-examination of the person who wrote the document.
- The suggestions for revisions to the Criminal Procedure Code that were made by high-level committees are not included in the BNSS. These recommendations include reforms in sentencing guidelines and the codification of rights for those who have been accused.

3. Key Changes in the BNSS includes from CrPC

- The Criminal Procedure Code classifies offences into two categories: cognitive and non-cognisable. Without a warrant, the police possess the power to apprehend individuals and initiate inquiries for offences that are deemed cognizable. For non-cognizable offences, both a warrant and a complaint from the victim or a third party are necessary.

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- The Criminal Procedure Code encompasses a broad spectrum of criminal offences, spanning from traffic law violations to acts of homicide. There is a clear differentiation between bailable and non-bailable offences, and it outlines the specific offences for which an accused individual has the entitlement to be freed from police custody.

Pretrial detention: As to the Criminal Procedure Code, an individual who is accused must be granted release on personal bail if they have been held in detention without trial for at least half of the maximum period of imprisonment. Crimes that are punishable by death are not part of this classification. In addition, the Bill specifies that this provision will not apply to two specific categories of offences: (i) those that are punishable by life imprisonment; and (ii) people who are already being prosecuted for more than one offence.

- Under specific circumstances, particularly cases involving rape, the Criminal Procedure Code allows the accused to have a medical test to ascertain their physical state. This type of examination is conducted by a certified medical professional in response to a request made by a police officer at the rank of sub-inspector or above. Any law enforcement official has the authority to request this examination, as stipulated in the statute.
- An inquiry of a forensic nature: The legislation mandates that forensic investigations must be carried out for offences that include a minimum incarceration period of seven years. During such circumstances, forensic specialists will journey to the crime scene to gather forensic evidence and document the process using a mobile phone or any other electronic device. If a state does not have its own forensics facility, it must utilise a facility situated in another state.
- Fingerprints and signatures: According to the Criminal Procedure Code, a Magistrate has the power to demand that any person provide samples of their handwriting or signatures. By expanding its scope to include voice samples and finger impressions, the Bill enhances its significance. Thus, it is feasible to obtain these samples from an individual who has not undergone official arrest.
- The Bill contains specified timeframes for several procedures, as illustrated in the subsequent text. For example, it requires that healthcare practitioners who evaluate

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rape victims must submit their findings to the investigating officer within a specified time. Additional schedules that have been established include: (i) delivering a decision within thirty days after the completion of arguments (with the possibility of extending it to sixty days), (ii) providing updates to the victim about the investigation's progress within ninety days, and (iii) formulating charges by a sessions court within sixty days of the initial hearing on said charges.

- The Criminal Procedure Code (CrPC) in India is responsible for establishing a hierarchical system of courts for the adjudication of criminal cases. The courts in question are as follows: (i) Magistrate's Courts, which are lower courts responsible for trying the majority of criminal cases; (ii) Sessions Courts, presided over by a Sessions Judge and handling appeals from Magistrate's Courts; (iii) High Courts, possessing inherent jurisdiction to hear and decide criminal cases and appeals; and (iv) Supreme Court, which hears appeals from High Courts and exercises original jurisdiction in specific matters. As per the Criminal Procedure Code, state governments have the power to classify any city or town with a population over one million people as metropolitan areas. Metropolitan Magistrates have jurisdiction over these areas. This provision is absent from the bill.

4. Important problem and Analysis

- *Detention powers have been revised.*

As stipulated in Article 22 of the Constitution, it is obligatory for a person who is currently being held by the police to be brought before a court Magistrate within a period of twenty-four hours. Additionally, the Criminal Procedure Code has this provision¹⁹. This particular regulation is upheld by the BNSS. For the purpose of preventing behaviours that are punishable, it is stated that the police have the ability to arrest or remove anyone who resists, refuses, or disregards directions provided by an officer. After being detained, the individual has the option of either (i) appearing before a Magistrate or (ii) being released in the case of minor infractions, in the event that the appropriate amount of time has elapsed. Not much information has been provided regarding the meaning of the phrase "occasion is past." Within

¹⁹Article 22, The Constitution of India, 1950, Section 51, The Code of Criminal Procedure, 1973.

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the context of these kinds of circumstances, the Standing Committee (2023) suggested the adoption of a predetermined timetable for detention²⁰.

- ***The bill might provide the cops more authority to do their jobs.***

The police's authority in keeping public order, preventing crimes, and conducting criminal investigations is regulated by the Criminal Procedure Code. These authorities possess the power to apprehend, confine individuals, conduct searches, confiscate items, and employ physical coercion²¹. These rights are limited in order to safeguard individuals against the abuse of police authorities, which may lead to the unjustified use of force, unlawful detentions, custodial torture, and misuse of authority²². Furthermore, the Supreme Court has implemented certain regulations to prevent the arbitrary utilisation of police authorities. Amendments will be made to the bill's clauses regarding detention, police custody, and the utilisation of handcuffs, perhaps leading to complications²³.

- ***Police custody procedure modified***

Anyone who is in the custody of the police for more than twenty-four hours is expressly prohibited from being held in custody by the Constitution and the Code of Criminal Procedure (CrPC)²⁴. In the event that the inquiry cannot be completed within twenty-four hours, the Magistrate has the discretion to extend it for a maximum of fifteen days. If the judge is persuaded that there are sufficiently compelling reasons, he has the authority to extend the time of judicial custody beyond the initial 15 days. On the other hand, the entire amount of time spent behind bars must not exceed either sixty or ninety days, depending on the nature of the offence. BNSS makes modifications or adjustments to this approach. According to the clause, the police have the authority to grant a custody period of fifteen days, either in its entirety or in parts, at any time within the first forty or sixty days of the overall sixty or ninety-day period. During this time period, it is possible that the police will

²⁰Report No. 247, 'the Bharatiya Nagarik Suraksha Sanhita', Standing Committee on Home Affairs, November 10, 2023.

²¹Report No. 273, Law Commission of India, 2017.

²²AIR 1997 SC 610, D.K. Basu v. State of West Bengal, Supreme Court, December 18, 1996, 1979 AIR 1360, Hussainara Khatoon v. State of Bihar, Supreme Court, February 12, 1979.

²³1978 AIR 597, Maneka Gandhi v. Union of India, Supreme Court, January 25, 1978.

²⁴Article 22, The Constitution of India, 1950, Section 51, The Code of Criminal Procedure, 1973.

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refuse to release the individual on bail if they assert that they find it necessary to return the individual to police custody²⁵.

This is in contrast to laws such as the Unlawful Activities (Prevention) Act of 1976, which limits the amount of time that a person can be held in custody by the police to a maximum of thirty days. Although the Supreme Court has stated that it is widely expected that police custody should be commenced within the first 15 days of detention, this expectation is not always met. Should only be utilised in rare cases, the extension of either forty or sixty days should be considered²⁶. When requesting police custody for a person who is already in court custody, the BNSS does not need the investigating officer to provide explanations for the request. According to the recommendations made by the Standing Committee (2023), there is a requirement for additional clarity about the interpretation of this article²⁷.

- ***The authority to employ handcuffs may encroach upon the personal freedom of the accused.***

There is a provision in the BNSS that permits the use of handcuffs during the process of apprehending an individual. Handcuffs are permitted for the purpose of apprehending individuals who fall into two categories: (i) individuals who have a history of repeated offences and have managed to escape from jail, and (ii) individuals who are accused of serious crimes such as rape, acid assault, organised crime, economic offences, and activities that pose a threat to the sovereignty, unity, and integrity of India. Handcuffs are permitted for the purpose of apprehending individuals who fall into these two categories²⁸. There is a violation of the guidelines of the National Human Rights Commission as well as the decisions that have been handed down by the Supreme Court²⁹.

The Supreme Court has reached the conclusion that the use of handcuffs violates Article 21 because it is harsh, illogical, capricious, and insulting to constitutional principles. It is the responsibility of the escorting authority to provide documentation of the rationale for the use

²⁵Section 43D, the Unlawful Activities (Prevention) Act), 1967.

²⁶1992 AIR 1768, Central Bureau of Investigation v. Anupam J. Kulkarni, Supreme Court, May 8, 1992.

²⁷Report No. 247, 'the Bharatiya Nagarik Suraksha Sanhita', Standing Committee on Home Affairs, November 10, 2023.

²⁸'Guidelines regarding Arrest', National Human Rights Commission.

²⁹1980 AIR 1535, Prem Shankar Shukla vs. Delhi Administration, Supreme Court, April 29, 1980.

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of handcuffs in situations when there are extraordinary circumstances that need their application³⁰. In addition, it has issued a rule that no inmates who are currently being tried can be detained with handcuffs without first receiving consent from the court. However, the authority to decide whether or not to use handcuffs has been given to the trial court by the Supreme Court. As part of its proposal for the year 2023, the Standing Committee suggested that economic crimes be removed from the list of offences that are eligible for the use of handcuffs. The use of handcuffs should be restricted to circumstances in which there is a clear threat of violence or a substantial chance that the defendant would run from detention, as stated in a dissenting opinion that was included in the report of the Committee.

- ***Limitations placed on the scope of required bail in the event of numerous charges***

As per the Criminal Procedure Code, if an individual awaiting trial has already completed half of the maximum term for a crime, they must be released on a personal bond. This provision is not applicable to offences that are punishable by death. The BNSS upholds this clause, which stipulates that first-time offenders might be granted release after completing one-third of the maximum term. However, it should be noted that this rule will not apply to two specific situations: (i) crimes that are punishable by life imprisonment; and (ii) circumstances where there is an ongoing investigation, inquiry, or trial involving several offences or numerous cases³¹. Due to the inclusion of several offences in chargesheets, it is likely that some individuals who are already awaiting trial may become ineligible for mandatory release³².

In 2014, the Supreme Court of India declared that unauthorised mining is both a breach of the Mines and Minerals (Development and Regulations) Act of 1957 and a criminal offence under the Indian Penal Code, as it is classified as theft. Similarly, the act of driving recklessly and dangerously is considered a criminal crime that can be prosecuted under both the Motor Vehicles Act of 1988 and the Indian Penal Code. Individuals implicated in such circumstances will be ineligible to obtain the legally mandated bail³³.

³⁰1995 3 SCC 743, Citizens for Democracy v. State of Assam, May 1, 1995.

³¹Criminal Appeal 499 of 2011, State of NCT of Delhi vs Sanjay, Supreme Court, September 4, 2014.

³²Section 184, the Motor Vehicles Act, 1988, Section 279, The Indian Penal Code, 1860.

³³Chapter XXXIII, 'Provision as to Bail and Bonds', The Code of Criminal Procedure, 1973.

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If the accused satisfy specific conditions specified in the bail provision, they may be granted freedom from detention for the period leading up to their trial³⁴. Pretrial detention is implemented to guarantee the accused's availability for trial and to prevent any interference with the evidence. If these prerequisites are fulfilled, the necessity for detention is gone. Nevertheless, the Supreme Court has ruled that incarceration is the uncommon occurrence, whereas release on bond is the customary practice. Moreover, it has been noted that detainees who are awaiting trial should be promptly freed, and persons who are unable to afford bail bonds owing to poverty should not be incarcerated just for that reason³⁵.

- ***The potential for plea negotiations may be restricted.***

A plea deal is a negotiated agreement between the prosecution and the defence in which the accused individual pleads guilt in exchange for a less severe charge or a reduced punishment. This arrangement is known as a plea bargain. A plea bargaining provision was added to the Criminal Procedure Code in the year 2005. There are three offences that are forbidden due to the fact that they are punishable by the death penalty, life imprisonment, or jail terms that are greater than seven years. The Criminal Procedure Code states that it is not permissible to negotiate for a lesser offence or to settle the offence. If the accused participates in such negotiations, it will be interpreted as a confession and will result in the accused being convicted of the offence. This particular regulation is upheld by the BNSS. Obtaining a lower sentence in exchange for the accused person's admission of guilt is the only form of plea bargaining that is permitted in India. This type of bargaining is known as sentence negotiating with the accused.

In addition, the BNSS mandates that the accused must make an application for plea bargaining within thirty days of the day when the accusation is initially submitted. This requirement states that the accused must submit the application. The introduction of a time constraint can adversely affect the effectiveness of plea negotiating by reducing the window of opportunity for pursuing a sentence reduction. This can have a negative impact on the effectiveness of plea negotiation.

- ***Depositions made by successors to officers who have been moved or retired***

³⁴1977 AIR 2447, *State of Rajasthan v. Balchand*, Supreme Court, September 20, 1977.

³⁵2016 3 SCC 700, *In re: Inhuman Conditions in 1382 Prisons*, Supreme Court, February 5, 2016.

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As to the BNSS, if an officer who was in charge of creating a report or document for an inquiry or trial is unable to attend, the court will ensure that their replacement officer takes a deposition on the document. The individuals encompassed by this law's protection are public officials, medical officers, and Investigating Officers (IOs). Some reasons that can contribute to a lack of availability include: (i) mortality; (ii) relocation; (iii) retirement; and (iv) the probability of experiencing a delay. Allowing substitute officers to testify in court may expedite case proceedings; yet, this could potentially contravene the established rules of evidence.

Due to the potential inability of the successor to provide a sworn testimony regarding the investigation conducted by the investigating officer (IO), it can be contended that the statements recorded by the IO should be presented by the same officer as well. The Standing Committee on Home Affairs (2023) highlighted that IOs possess crucial expertise pertaining to the ongoing investigation. Their skill in interrogating witnesses is highly advantageous, especially in cases where the documents they have produced are offered as evidence. The Committee recommended the removal of IOs from this provision. A dissenting member argued that all officers should be subject to cross-examination, except in the case of the officer's death.

- ***In the jail system, there is congestion.***

There is a possibility that efforts to decrease prison overcrowding could be discouraged if tougher bail conditions were imposed and fewer possibilities for plea negotiation were made available. More over 550,000 inmates were housed in India's correctional facilities as of December 2021, resulting in an overall occupancy rate of 130%. Twenty in total At the end of the year 2021, the percentage of convicted individuals in India who were still awaiting trial was 77%."[20]" comes from the user's text. Roughly thirty percent of those who are now detained and are waiting for their trials have been held in custody for a period of one year or longer. Twenty in total There were approximately eight percent of people who were being detained in custody for a duration of three years or longer while they were awaiting trial³⁶.

- ***Protective measures for the attachment of property***

³⁶Prison Statistics of India (2021), National Crime Records Bureau.

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The term "proceeds of crime" is used to describe property that is acquired or received, either directly or indirectly, as a result of criminal activity. The Criminal Procedure Code grants law enforcement the power to confiscate property in two scenarios: (i) when it is reported or thought to be stolen; or (ii) when it is found under circumstances that raise suspicion of the commission of a crime. Only properties that are in the process of being moved fall under this category. As per the BNSS, this also pertains to properties that are not capable of being moved³⁷. The requirements of the Prevention of Money Laundering Act, 2002 (PMLA) and the regulations of the BNSS diverge in their approach to handling confiscated property. The Proceeds of Crime Act (PMLA) permits the seizure of assets acquired via the process of money laundering in connection with specific criminal activities³⁸.

The BNSS does not provide some safeguards that are provided under the PMLA. The PMLA permits the temporary inclusion of attachments for a maximum duration of one hundred eighty days. A notice period of at least thirty days must be given to present the justifications for not issuing an attachment order. During the period of attachment, it is impossible to refuse the pleasure derived from owning immovable property. The BNSS does not provide a specific limit for the duration that property can be associated with an individual. The accused is given a notice of 14 days to make a justification in compliance with this rule.

5. Overlapping of the Laws

- *Collection of data for the purpose of identifying criminals*

In 2005, the Code of Criminal Procedure (CrPC) was amended to provide a Magistrate the ability to obtain handwriting or signature samples from individuals who have been arrested. This decision was made possible by the modification. What the user has written is" This provision is strengthened by the Bill, which gives the Magistrate the authority to collect fingerprint impressions and voice samples in addition to the aforementioned. In addition to this, it makes it possible to collect this information from persons who have not been detained as part of any investigation³⁹. The Criminal Procedure (Identification) Act, 2022 makes it possible to acquire a larger variety of data, including fingerprints, handwriting, and biological

³⁷2019 20 SCC 119, Nevada Properties Pvt. Ltd. V. State of Maharashtra, Supreme Court, September 24, 2019.

³⁸Section 3, 5, 8, the Prevention of Money Laundering Act, 2002.

³⁹Section 311A, The Code of Criminal Procedure, 1973.

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samples, among other things. The text that the user has entered is "40". The collection of information of this kind might be obtained from individuals who have been convicted of a crime, individuals who have been arrested for an infraction, or even individuals who have not been accused of any wrongdoing at all. The greatest amount of time that this information can be stored is seventy-five years. It is unknown whether there is a need to preserve and improve data collecting provisions in the Bombay National Security Service (BNSS) given the recent implementation of a more comprehensive statute that permits the acquisition of information on suspects and criminals. The constitutional legitimacy of the 2022 Act is currently being examined by the Delhi High Court⁴¹.

- ***The maintenance of public order is preserved in the BNSS.***

The Criminal Procedure Code (CrPC) provides a comprehensive framework for the investigation and trial of criminal offences. Furthermore, it has clauses for safeguarding public order and serenity, along with security measures aimed at upholding peace. The provisions enable a District Magistrate to issue orders essential for upholding public order. The BNSS has retained these provisions by organising them into separate chapters. Given the distinction between the processes involved in conducting a trial and maintaining public order, the crucial question is whether these activities should be encompassed within a single legal framework or treated as distinct entities. Pursuant to the Seventh Schedule of the Constitution, it is the duty of the state to uphold public order⁴². Conversely, the Concurrent List include subjects that are under the purview of the Criminal Procedure Code, predating the inception of the Constitution⁴³.

- ***Elderly care***

It is within the jurisdiction of a Magistrate, as stipulated by the Code of Criminal Procedure (CrPC), to issue a directive to an individual who possesses the financial means to provide a monthly allowance for the support of their father or mother, who are unable to provide for themselves. In the case that the order is not followed, the Magistrate has the jurisdiction to issue a warrant for the collection of the unpaid sum and to impose a sentence of jail for a

⁴⁰The Criminal Procedure (Identification) Act, 2022.

⁴¹W.P. (CRL) 869/2022, Harshit Goel v. Union of India, Delhi High Court.

⁴²Entry 1, List II, Seventh Schedule, The Constitution of India.

⁴³Entry 2, List III, Seventh Schedule, The Constitution of India.

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period of up to one month, or until the payment is made, whichever comes first. This clause, which is a replication of the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, is maintained by the BNSS. Under the terms of the Act, state governments are required to establish Maintenance Tribunals in order to ascertain the amount of maintenance that must be paid to parents and older persons⁴⁴. The Tribunal has the authority to issue a warrant for the collection of the overdue sum, and it also has the additional authority to inflict a term of imprisonment for a maximum duration of one month or until the payment is made, whichever comes first. All other laws are rendered null and void by the Act in question.

6. Recommendations by Various Comities

Recommendations	Incorporated in the bill or not
<p>1. Arrest</p> <p>A person must go through a medical examination by a medical official upon their arrest (CrPC section 54). Any injuries the person may have received must be noted by the police, along with the approximate time they occurred. Every 48 hours for the rest of the incarceration, the examination needs to be redone.</p>	<p>In part. Absence of a medical examination provision every forty-eight hours of detention.</p> <p>(BNSS Section 53).</p>
<p>2. Confessions in front of the Police</p> <p>Statements to the police (CrPC section 162): The statement maker shall provide a copy of the statement to the police for his perusal and signature. These types of statements have the</p>	<p>No, the original clause was kept in BNSS Clause 181.</p>

⁴⁴The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

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potential to both refute and support the claim being made.	
3. Bigger reforms Form a legal panel chaired by a former Supreme Court judge or Chief Justice of a High Court to develop sentencing guidelines.	No
The procedure outlined in section 167 of the Code of Criminal Procedure (CrPC) is followed when an inquiry cannot be completed within a single day. According to this provision, the maximum duration of police custody for offences that entail a punishment exceeding seven years is thirty days.	No, the maximum duration of police custody is 15 days. It may be spread over: (i) 60 days if the offence is punished by at least 10 years in jail, or (ii) 40 days for any other offence. (BNSS clause 187).
The accused's rights, as recognised by the Supreme Court, be contained in the Criminal Procedure Code.	No
Provide recompense to persons who have been wrongly charged.	No

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<p>4. Bail</p> <p>When bail is rejected, the court must give a concise reason for its decision.</p>	No
<p>The right of the person arrested to know the reasons for their arrest (CrPC \ 50) cannot have any significance unless it is communicated to them in writing and in a language they can comprehend.</p>	No, The original clause has been preserved in the BNSS (Clause 47).
<p>When the trial is postponed or adjourned, the Court will either grant bail to the accused or keep him in custody, depending on the circumstances. The reasons for this decision will be recorded under section 309 (2) of the Criminal Procedure Code (CrPC).</p>	No. The original provision has been kept in the BNSS (Clause 346).
<p>Define bail as the temporary release of a person suspected or accused of a crime on the condition that they appear in court at a later date.</p>	Clause 479 of the BNSS gives an alternative concept of bail.

Comparing Bhartiya Sakshya Bill with Evidence Act

1. Major Highlights of the Bill

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- The Indian Evidence Act of 1872 is superseded by the Bharatiya Sakshya Bill, 2023 (BSB). Most of the IEA's rules, such as those pertaining to confessions, factual relevancy, and burden of proof, are retained.
- Oral and documentary evidence are accepted by the IEA. Primary (original papers) and secondary (documents proving the contents of the original) are the two categories of documentary evidence. The distinction is upheld by the BSB. It combines the idea of documents with electronic recordings.
- Electronic records are categorised as secondary evidence under the IEA. Electronic records are classified as primary evidence by the BSB. By including data from semiconductor memory and any type of communication device (such as laptops and smartphones), it expands the scope of such records.
- Under the IEA, secondary evidence may be needed in a number of situations, such as when the original has been destroyed or is in the possession of the party against whom the document is being used as proof. The BSB states that in the event that the document's legitimacy is questioned, more proof may be sought.

2. Analyzing the key Issues

- The Supreme Court has recognised that electronic records are susceptible to interference. Despite the BSB's approval of the admission of such documents, no safeguards are implemented to prevent their contamination or tampering with during the investigation.
- At this time, certification is required for electronic records to be recognised as official documents. The aforementioned admissions provisions are upheld by the BSB. The BSB similarly classifies electronic evidence as documents, which may not require certification. As a result, a paradox arises.
- A fact that is established through the use of information obtained from a detained suspect may be verifiable under the IEA. This provision remains within the BSB. It has been noted by courts and committees that information may be uncovered through coercion and inadequate protection when police are in custody of suspects.

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- The IEA and BSB both recognise as admissible information obtained during the accused's police custody, but not information obtained outside of that setting. The Law Commission recommended that this distinction be eliminated.
- A number of recommendations put forth by the Law Commission remain unimplemented. One such belief is that any harm inflicted upon an accused individual while in the custody of law enforcement was the officer's responsibility.

3. Key Changes in the BNB includes from Evidence Act

- Documentary evidence: The IEA says that a document is made up of drawings, writing, and maps. According to the BSB, electronic recordings will also be seen as papers. Documentary proof includes both first-hand and second-hand sources. Primary evidence is the original paper and all of its parts, such as electronic records and video recordings. Written records and spoken statements that back up what is said in the main source are examples of secondary evidence. BSB stays in the same group.
- Oral evidence: According to the IEA, oral evidence is when a person talks about a fact that is being investigated in court. The BSB allow the electronic presentation of oral proof. This would make it possible for defendants, victims, and witnesses to give testimony online.
- If computer or digital records can be used as proof The information in printed or stored electronic records on magnetic or optical media made by a computer is called documentary proof. It's possible that more than one computer processed or saved this information. The BSB says that digital or electronic records are the same officially as paper records. Adding data from semiconductor memory or any communication device (like computers or smartphones) to electronic records is made easier by this. This will also include voicemails, email records, computer logs, smartphone data, and proof of where the person is.
- According to the BSB, secondary evidence can include (i) admissions made in person or in writing; and (ii) the opinion of a document examination expert who has seen the document in person. It is written in the Act that secondary proof may be needed in some situations. Among these situations are ones in which the original paper is with the person whose proof is being sought or has been completely erased. The BSB says

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that secondary proof may be needed if there is doubt about the document's authenticity.

- When more than one person is tried for the same crime, this is called a "joint trial." The IEA says that if a statement from one of the accused that affects the other accused is proven in a joint trial, it will be seen as a confession against both of them. This rule has an explanation added to it by the BSB. It says that a trial with more than one party will be considered a joint trial if there is no answer to an arrest warrant or an accused person who has fled the scene of the crime.

4. Important problem and Analysis

- *When computer records can be used as proof*

The IEA divides documentary evidence into two categories: primary and secondary evidence. The original document is referred to as main evidence, whilst documents that support the original's contents are termed secondary evidence. Secondary evidence may be required in some situations, such as when the original document has been destroyed or is in the control of the person against whom the document must be proven. Documents include caricatures, writings, and maps. The BSB maintains these rules while broadening the definition of documents to encompass electronic information.

The IEA specifies the procedure for accepting electronic documents as supplementary evidence and grants their admission. The BSB adds that, unless there is a dispute, electronic records obtained in proper custody will be considered primary evidence. If electronic records are stored in multiple files, each one is considered primary evidence. Additionally, it expands the definition of electronic records to include data stored on cellphones or in semiconductor memory, such as voicemails, emails, and location data.

- *Intrusion into electronic documents*

In 2014, the Supreme Court recognised the potential for tampering and alteration of electronic records. The statement cautioned that in the absence of adequate precautions, a trial that heavily relies on electronic data as evidence may lead to a wrongful conviction⁴⁵.

⁴⁵Report No. 248, 'The Bharatiya Sakshya Bill, 2023', The Standing Committee on Home Affairs, Rajya Sabha, November 10, 2023.

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The BSB enables the acceptance of electronic records and grants the Court the power to seek the expertise of an Examiner of Electronic Evidence to form an opinion on such evidence. Nevertheless, there are currently no safeguards in place to guarantee the integrity of electronic records throughout the search, seizure, or inquiry procedures⁴⁶. The 2023 Standing Committee on Home Affairs highlighted the importance of guaranteeing the authenticity and reliability of electronic and digital documents, which are susceptible to manipulation⁴⁷. It is recommended that any electronic and digital records received as evidence during an inquiry be securely handled and processed utilising a suitable chain of custody⁴⁸.

The Karnataka High Court published instructions in 2021 outlining fundamental measures to be taken during the search and seizure of electronic records. The measures to be taken include: (i) ensuring the presence of a competent forensic examiner with the search team; (ii) prohibiting the Investigating Officer from utilising the seized electronic device while conducting the search and seizure of electronic records; and (iii) confiscating any electronic storage device (such as pen drives or hard drives) and placing it in a Faraday bag. Faraday bags effectively block electromagnetic impulses, hence preventing any interference or data loss on the device.

The European Union's Draft Directive Proposal aims to provide uniform and essential criteria for the utilisation of electronic evidence in criminal proceedings, ensuring its mutual admissibility. The key principles encompass: (i) making electronic evidence compulsory only when there is substantial proof that it has not been tampered with or counterfeited⁴⁹, (ii) guaranteeing that evidence is sufficiently safeguarded against manipulation from its creation to the chain of custody, and (iii) necessitating the participation of IT specialists upon the accused's appeal. In the United States, the person supporting a claim must provide sufficient evidence to prove the authenticity of the document. Any records produced by an electronic

⁴⁶ *ibid*

⁴⁷ Civil Appeal No. 4226 of 2012, *Anvar P.V v P.K Basheer*, Supreme Court, September 18, 2014.

⁴⁸ *ibid*

⁴⁹ Writ Petition No. 11759 of 2020, *Mr. Virendra Khanna v. State of Karnataka*, Karnataka High Court, March 12, 2021

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process or system, as well as any data copied from it, must be certified by a qualified professional⁵⁰.

- ***Ambiguity may surround the admissibility of electronic records.***

Electronic records are included in the BSB's definition of documents. It maintains the IEA rule that all documents must be acceptable as primary evidence unless they meet the criteria for secondary evidence. It does, however, nevertheless stipulate that all electronic records must first undergo certificate authentication in order to be accepted as documents. This supersedes all other clauses. The admissibility of electronic records may come under scrutiny as a result of these changes.

The Standing Committee on Home Affairs (2023) observed that although the BSB retains the provision regarding the admissibility of electronic documents through certificate verification, it does so with the requirement that electronic records be supported by primary evidence⁵¹. It recommended utilising a certificate as proof that electronic records adhere to the acceptance criterion.

- ***Evidence gathered through the use of coercion during police custody may be admissible in court.***

According to the IEA, information collected from an accused individual held by the police may be admissible if it is closely related to a previously disclosed fact. This clause is included in the BSB⁵². Throughout the years, both the Law Commission and the Supreme Court have stated that information may have been discovered when the accused was tortured and under duress. The Law Commission (2003) advised against requiring proof for any information obtained in police custody using torture, coercion, threats, or assault⁵³.

- ***The admissibility of a fact hinges on whether it was gained outside or within the confines of police custody.***

⁵⁰ELI Proposal for a Directive of the European Parliament and the Council on Mutual Admissibility of Evidence and Electronic Evidence in Criminal Proceedings, The European Law Institute.

⁵¹ Supra note 48.

⁵²Appeal (cr.) 664 of 2000, Sanjay @ Kaka Shri Nawabuddin @ Nawab Vinod Kumar v. The State of NCT of Delhi, Supreme Court, February 7, 2001, <https://main.sci.gov.in/jonew/judis/17591.pdf>.

⁵³Report No. 185, 'Review of the Indian Evidence Act, 1872', Law Commission of India, 2003.

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Information obtained from an accused while in police custody that pertains to a disclosed fact is deemed admissible, per the IEA. However, identical information obtained from the accused while not in police custody is deemed inadmissible. The BSB preserves this distinction. The legality of this provision was contested in 1960 on the grounds that it encourages unjustifiable discrimination between individuals who are detained and those who are not⁵⁴. The Court ruled in favour of the statute's constitutionality, concluding that its establishment of distinct criteria for individuals outside and inside police custody constituted a valid differentiation. The Law Commission (2003) recommended that the article be rewritten to ensure that factual information remains pertinent regardless of whether the statement was provided in or out of police custody⁵⁵.

5. Key Recommendations by various Committee

Recommendations	Incorporated or not
<p>1. Confession in front of the police</p> <p>Malimath Committee: Reverse IEA S.25–29 parts relating to police officer admissions.</p> <p>Law Commission: Information gathered from a suspect while they are being held by the police using coercion, torture, or threats of violence shouldn't be allowed to be used in court.</p> <p>Regardless matter whether they are gathered while under police custody or not, pertinent facts must be gathered.</p> <p>Law Commission: Add a new clause indicating that the police are assumed to be at responsibility if someone is hurt while they</p>	<p>No. Clauses 22, 23 and 24 preserve the original provisions.</p>

⁵⁴1960 AIR 1125, State of U.P v. Deoman Upadhyaya, Supreme Court, May 06, 1960.

⁵⁵ Supra Note 56.

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<p>are in their custody. The burden of proof is with the authority.</p> <p>The Law Commission incorporated a new clause that addresses the legal consequences of charging a police officer who causes harm to a person while they are in custody. The court will assume that the officer is the one who caused the damage. The following must be considered by the Court before making a presumption: (i) the length of the detention; (ii) the victim's comments regarding the damage; (iii) the findings of a medical examination; and (iv) any recorded statements that a magistrate may have provided.</p>	
<p>2. To Know the authenticity of electronic records</p> <p>Supreme Court: No certificate is needed if the owner of the device shows the original paper in court. Whatever the case, the certificate is needed if the device is part of a computer system or network that can't be moved.</p>	Differentiation not talked about.
<p>3. Evidence of government privilege</p> <p>Without authorization from the director of the relevant department, unauthorised access to unpublished official records concerning state affairs is prohibited, per Law Commission: IEA s. 123. When it would be in the public interest to deny permission, the officer is required to provide an explanation. Entities may be summoned by the court to produce the records and provide additional affidavits. It has the authority to determine the admissibility of the evidence.</p>	No. Original provisions remain in Clauses 129 and 130.

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<p>According to the Law Commission, public officials are not required to reveal confidential conversations if a judge deems that doing so would harm the public interest (IEA s.124). Prior to dismissing an objection to respond to a query that may necessitate revealing information, the court is duty-bound to conduct a confidential investigation into the reasons and characteristics of the objection.</p>	
<p>4. Cross Examination</p> <p>Law Commission: IEA s.145; Cross-examination of earlier statements in writing should also include spoken statements.</p>	<p>No. The original provision has been preserved in Clause 148.</p>
<p>5. Liability for Criminal Conspiracy</p> <p>According to Supreme Court decisions, IEA section 10 defines a relevant fact as any remark, action, or writing ascribed to an individual or individuals who are or were involved in a conspiracy with regard to the conspiracy. This material can be used as evidence against anyone accused of belonging to the conspiracy in order to prove its existence and involvement. The Supreme Court has repeatedly underlined that the word in question should be interpreted as meaning "in furtherance of the common intention."</p>	<p>No. The initial provision has been preserved in Clause 8.</p>

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6. Others

Law Commission: Section 21 of the IEA: The IEA allows admissible evidence. Both verifiable and non-verifiable admissibilities should be covered. Half of the provision should contain detailed information on verifiable admissions and unverifiable admissions.

No, the original clause is still in Clauses 19, 60, and 79.

People who possess a document but defy court orders to produce it should be included in cases where supplementary evidence for documents may be produced, as described in Law Commission: IEA s.65.

Law Commission: IEA s.80; Presumption of papers provided as records of evidence, should include a statement recorded by a magistrate in accordance with S. 164 of CrPC (BNSS cl. 183) and a dying declaration, which is a person's final words.

The Law Commission has introduced a new mechanism for determining the reliability of witnesses using third-party evidence.

No. the initial provision has been preserved in Clauses 19, 60, and 79.

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