

Reimagining Criminal Investigation under the BNSS, 2023: A Pathway to Speedy Justice and Arrear Reduction

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Cite this article as:

Sahu S. Reimagining Criminal Investigation under the BNSS, 2023: A Pathway to Speedy Justice and Arrear Reduction. Global Journal of Innovation and Research. 2025;1(1):20-29.

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Article Info:

Received 28 June 2025

Reviewed 29 July 2025

Accepted 30 July 2025

Published 25 Aug. 2025

ABSTRACT

The enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, replacing the colonial-era Code of Criminal Procedure (CrPC), marks a watershed moment in India's criminal justice landscape. Among its most significant reforms are the changes in the process of investigation, aimed at ensuring efficiency, transparency, and timeliness in the delivery of justice. The investigation stage has historically been a major contributor to judicial delays and case backlogs, particularly in states like Odisha where infrastructural and administrative constraints exacerbate pendency. The BNSS introduces provisions for the use of electronic communication, forensic investigation, and mandatory timelines for certain stages of inquiry, and accountability of investigating officers. This paper critically examines these new investigative mechanisms and their potential to reduce judicial arrears and accelerate the pace of criminal trials. By comparing the colonial framework under the CrPC with the contemporary reforms under the BNSS, the paper explores whether these measures are adequate to address the systemic problems of delay, poor conviction rates, and lack of victim-centric justice. Further, through a contextual analysis of Western Odisha, it highlights the challenges of implementation in rural and semi-urban districts where resource constraints persist. The paper concludes by arguing that while the BNSS presents a transformative vision for reimagined investigation, its effectiveness will depend on capacity-building of police institutions, judicial oversight, and sustained infrastructural reforms.

KEYWORDS: BNSS 2023, Criminal Investigation, Speedy Justice, Arrear Reduction, Western Odisha, Criminal Procedure

INTRODUCTION

The criminal justice system in India has often been described as a system in crisis, plagued with delay and pendency. According to the National Judicial Data Grid (NJDG), more than

4.5 crore cases are pending across courts in India.¹ A key reason behind this pendency is delayed and defective investigations, which not only prolong trials but also contribute to low conviction rates.

Recognizing this challenge, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) replaced the Code of Criminal Procedure, 1973 (CrPC), seeking to reimagine investigation and make justice delivery more efficient. The Supreme Court in *Hussainara Khatoon v. State of Bihar* (1979)² emphasized that speedy trial is a fundamental right under Article 21. In this context, BNSS introduces time-bound investigations, digital tools, and forensic mandates to prevent undue delays.

This paper explores how investigative reforms under BNSS can address arrear reduction, while also highlighting challenges in implementation with special reference to Western Odisha.

Historical Context of Criminal Investigation in India

Criminal investigation in India has long been guided by colonial objectives of maintaining law and order, rather than delivering justice. The CrPC, 1898 and later the CrPC, 1973 vested wide discretion in the police. The Supreme Court in *State of Haryana v. Bhajan Lal* (1992)³ held that the police has unfettered discretion to investigate, but also recognized the need to curb abuse of this power.

Problems persisted:

No statutory timelines for serious offences.

One of the significant lacunae in the Indian criminal justice system is the absence of statutory timelines for investigation and trial of serious offences. While the Code of Criminal Procedure, 1973 (CrPC) prescribes certain time

limits for filing charge sheets in cases where the accused is in custody, no corresponding provisions ensure expeditious completion of investigation or trial in grave offences such as murder, rape, or corruption. This legislative silence often results in prolonged pre-trial detention, delay in evidence collection, and erosion of witness credibility, thereby undermining the very objective of speedy justice guaranteed under Article 21 of the Constitution of India. Despite repeated judicial pronouncements emphasizing the necessity of time-bound investigation and trial,⁴ Parliament has not enacted uniform statutory deadlines for such cases. The newly introduced Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), while bringing certain procedural reforms, also fails to mandate strict timelines for completion of investigation or trial in heinous offences.⁵ This legislative omission continues to perpetuate systemic delay, clogging the dockets of criminal courts and compromising the deterrent efficacy of criminal law.

Poor Forensic Infrastructure Leading to Reliance on Oral Testimony

A critical impediment to effective criminal justice delivery in India is the inadequate forensic infrastructure, which compels investigators and courts to rely heavily on oral testimony rather than scientific evidence. The limited number of fully equipped forensic laboratories, shortage of trained personnel, and prolonged delays in obtaining forensic reports significantly weaken the

evidentiary foundation of prosecutions⁶. Consequently, criminal trials often hinge on witness statements that are susceptible to memory lapses, intimidation, or hostility, thereby increasing the risk of wrongful acquittals or convictions⁷. The Malimath Committee Report (2003) and subsequent Law Commission of India reports have repeatedly emphasized the urgent need to strengthen forensic facilities and integrate scientific methods into investigation and trial processes.⁸ However, despite these recommendations, investment in forensic capacity-building remains grossly inadequate. The over-dependence on oral evidence, in the absence of robust forensic corroboration, continues to erode the accuracy, reliability, and credibility of criminal adjudication in serious offences.

High Acquittal Rates Due to Defective Investigation

The persistently high acquittal rates in serious criminal cases in India can be largely attributed to defective and unprofessional investigation. Investigative lapses such as poor evidence collection, procedural irregularities, non-adherence to forensic standards, and delayed submission of charge sheets frequently weaken the prosecution's case beyond repair.⁹ In numerous instances, crucial physical evidence is either lost, contaminated, or rendered inadmissible due to non-compliance with statutory procedures under the Code of Criminal Procedure, 1973(Now BNSS, 2023) and the Indian Evidence Act, 1872 (Now BSA, 2023).¹⁰ The judiciary has repeatedly expressed concern

over this systemic failure, noting that a flawed investigation not only allows the guilty to escape punishment but also erodes public faith in the criminal justice system.¹¹ Despite judicial observations and recommendations of various reform committees, including the Malimath Committee and the Second Administrative Reforms Commission, investigative professionalism remains largely compromised due to lack of training, inadequate supervision, and political or administrative interference.¹² Consequently, the combination of investigative inefficiency and prosecutorial weakness continues to perpetuate a cycle of acquittals that undermine both deterrence and justice delivery.

Key Innovations in Investigation under BNSS, 2023

Mandatory Timelines for Investigation

- BNSS requires that investigation in offences against women and children be completed within 60 days.¹³
- This provision strengthens the spirit of *Sheela Barse v. State of Maharashtra* (1983)¹⁴, where the Court stressed the need for expeditious handling of sensitive cases.

Electronic Communication and FIR Registration

- FIRs can now be lodged electronically.¹⁵
- This resonates with *Lalita Kumari v. Government of U.P.* (2014)¹⁶, where the Court held that registration of FIR is mandatory when a cognizable offence is

disclosed. BNSS, by allowing digital complaints, removes procedural bottlenecks.

Forensic Investigation

- BNSS mandates forensic collection in serious offences.¹⁷
- This aligns with *Selvi v. State of Karnataka* (2010)¹⁸, where the Court emphasized scientific methods in investigation while ensuring constitutional safeguards.

Audio-Visual Recording

- Statements, searches, and seizures can now be electronically recorded.¹⁹
- In *State of Maharashtra v. Dr. Praful B. Desai* (2003)²⁰, the Court held that electronic evidence and video conferencing are permissible in criminal trials. BNSS codifies this principle.

Police Accountability

- Investigating officers can face departmental action for delay.²¹
- This reflects judicial concerns in *Prakash Singh v. Union of India* (2006)²², where the Court directed reforms in police functioning to curb arbitrariness.

Victim-Centric Reforms

- Victims are entitled to updates on investigation.²³

- This provision advances the principle of victim participation recognized in *Re: Inhuman Conditions in 1382 Prisons* (2016)²⁴, where the Court stressed humane treatment and victims' rights.

Investigation and the Problem of Judicial Arrears

Investigation as a Source of Delay

Delayed investigation often leads to adjournments and defective chargesheets. In *P. Ramachandra Rao v. State of Karnataka* (2002)²⁵, the Supreme Court observed that procedural delay defeats the very purpose of justice.

BNSS and Arrear Reduction

By ensuring scientific evidence, electronic FIRs, and timelines, BNSS can reduce trial duration and prevent backlog. However, without infrastructure, these provisions risk remaining “symbolic.”

Challenges in Implementation: A Western Odisha Perspective

- **Infrastructural Deficiency:** Lack of forensic labs and poor digital facilities.²⁶
- **Capacity-Building:** Need for police training in digital evidence handling.
- **Awareness:** Rural victims may not benefit from electronic FIRs.

- **Judicial Monitoring:** Courts must actively monitor investigative compliance.

For instance, in Bargarh and Balangir districts, pendency remains high due to delayed charge sheets and absence of forensic evidence.²⁷

Comparative Perspective.

United Kingdom: Crown Prosecution Service Oversees Investigations, Ensuring Independence

In the United Kingdom, the Crown Prosecution Service (CPS) plays a pivotal role in maintaining the independence, integrity, and efficiency of criminal investigations and prosecutions. Established under the Prosecution of Offences Act, 1985, the CPS was designed to separate the investigative and prosecutorial functions, thereby eliminating the risk of bias or conflict of interest that may arise when the same agency both investigates and prosecutes offences.²⁸ The police are responsible for investigating offences, but they operate under the supervisory and advisory guidance of the CPS, which reviews the evidence collected and determines whether prosecution is warranted based on two key tests — the Evidential Test and the Public Interest Test.²⁹

The Evidential Test ensures that sufficient and admissible evidence exists to provide a realistic prospect of conviction, while the Public Interest Test assesses whether the prosecution serves the broader ends of justice.³⁰ This dual-layer scrutiny serves as a safeguard against frivolous, politically motivated, or weak prosecutions.

Moreover, the CPS provides pre-charge advice to the police, guiding them on the sufficiency and relevance of evidence, particularly in complex or serious offences such as terrorism, corruption, and organized crime. This collaborative yet independent model ensures both efficiency and accountability in the criminal process.

Importantly, the CPS operates under the oversight of the Director of Public Prosecutions (DPP), who acts independently of the executive government, reporting only to the Attorney General and, by extension, to Parliament.³¹ Such structural autonomy reinforces public confidence in prosecutorial impartiality and contributes significantly to the low acquittal rates and higher investigative credibility observed in the UK's criminal justice system. By ensuring that investigations are guided by prosecutorial oversight from the very inception, the UK model demonstrates how institutional independence and professional collaboration can together uphold fairness, efficiency, and justice — values that India, in its evolving framework under the BNSS, 2023, may well draw inspiration from.

United States: Federal and State Rules Prescribe Strict Timelines for Investigation

In the United States, the framework of criminal justice is characterized by well-defined procedural timelines at both Federal and State levels, ensuring that investigations and prosecutions proceed with efficiency, transparency, and constitutional compliance. Unlike many common law jurisdictions, the U.S.

system imposes statutory and constitutional time constraints on the investigation and prosecution of offences, thereby operationalizing the right to a speedy trial enshrined under the Sixth Amendment to the U.S. Constitution.³² These provisions reflect recognition that undue delay not only prejudices the accused but also undermines the integrity of justice delivery.

The Federal Rules of Criminal Procedure, particularly Rule 48(b), authorizes courts to dismiss indictments if there is unnecessary delay in presenting the charge or bringing the accused to trial.³³ Similarly, the Speedy Trial Act of 1974 mandates that an indictment must be filed within 30 days of arrest, and the trial must commence within 70 days of indictment or the defendant's first appearance, whichever is later.³⁴ State jurisdictions have parallel statutes prescribing specific timelines for investigation and trial, ensuring consistency across the federal structure. These statutory deadlines function as accountability mechanisms, compelling investigative agencies to collect and present evidence expeditiously while safeguarding the accused from arbitrary or prolonged prosecution.

Furthermore, American courts have interpreted these timelines strictly. In *Barker v. Wingo*, the U.S. Supreme Court established a balancing test to assess speedy trial violations, weighing factors such as length of delay, reasons for delay, assertion of the right, and prejudice to the accused.³⁵ This jurisprudence underscores that procedural delay is not merely an

administrative flaw but a constitutional infirmity. Consequently, the U.S. model demonstrates how codified time-bound procedures can enhance judicial efficiency, protect due process, and uphold public confidence in the criminal justice system—an approach from which jurisdictions like India, under the BNSS, 2023, may derive valuable guidance in curbing investigative and trial delays.

BNSS Moves towards These Models but Lacks an Independent Supervisory Authority

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) marks a significant step in India's criminal procedural reform by attempting to modernize investigation, enhance accountability, and ensure time-bound justice. Through provisions relating to mandatory timelines for investigation, the use of forensic science in serious offences, and the digitalization of First Information Reports (FIRs), the BNSS signals a legislative intent to align India's criminal justice process with global best practices such as those observed in the United Kingdom and the United States.³⁶ However, while these reforms represent procedural advancements, the BNSS stops short of establishing an independent supervisory or prosecutorial authority akin to the Crown Prosecution Service (CPS) in the UK or the District Attorney system in the U.S.

Under the BNSS, the investigation continues to be police-driven and executive-controlled, with no statutory provision for an autonomous body to oversee, guide, or review

the quality and fairness of investigations.³⁷ this absence of independent supervision perpetuates the long-standing concerns of partisan investigations, political influence, and lack of prosecutorial independence, which have historically weakened India's criminal justice system. The prosecutors in India remain subordinate to the executive, and their involvement begins largely after the filing of the charge sheet, thereby excluding them from the crucial pre-trial investigative stage where impartial oversight is most essential.³⁸

In contrast, models such as the CPS in the UK, functioning under the Director of Public Prosecutions, ensure institutional separation between investigation and prosecution, thus fostering both accountability and fairness.³⁹ by not incorporating such an independent supervisory framework, the BNSS risks limiting the transformative potential of its procedural reforms. Therefore, while it moves toward modernization and digital integration, its lack of an autonomous investigative oversight mechanism remains a critical gap. For India to fully realize the vision of speedy, impartial, and scientific justice, future reforms must consider the creation of a statutorily independent prosecutorial and investigative oversight authority that can ensure both efficiency and integrity in the administration of criminal justice.

Conclusion

BNSS, 2023 reimagines criminal investigation with a vision of speedy justice and

arrear reduction. Through mandatory timelines, forensic reliance, digital FIRs, and victim rights, it addresses long-standing criticisms of the CrPC.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeks to reimagine the architecture of criminal investigation and procedure with a transformative vision aimed at ensuring speedy justice, transparency, and arrear reduction. By introducing mandatory timelines for investigation, promoting forensic and technological integration, and institutionalizing digital mechanisms such as e-FIRs and electronic service of summons, the BNSS aspires to correct the systemic deficiencies that had long plagued the administration of criminal justice under the erstwhile Code of Criminal Procedure, 1973. Its emphasis on scientific evidence, the recording of search, seizure, and confession through electronic means, and enhanced victim participation signifies a progressive shift from oral and manual processes to a data-driven, accountable, and victim-centric model of justice. However, the true efficacy of this legislative reform will depend upon its effective implementation, the capacity-building of law enforcement agencies, and adequate infrastructural and digital support across all levels of the criminal justice system. If operationalized with institutional sincerity and administrative will, the BNSS, 2023 could indeed emerge as a pivotal instrument in

transforming delay into delivery and restoring public faith in the rule of law.⁴⁰

However, the success of these reforms depends on implementation. Unless police capacity, forensic infrastructure, and judicial oversight improve, reforms may remain aspirational. For Western Odisha, targeted state investment and monitoring are essential.⁴¹ Thus, BNSS opens a pathway to speedy justice, but to walk this path requires political will, administrative reform, and judicial vigilance.⁴²

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