

## **EXTENT, INTENT, AND CONTENT OF THE CRIMINAL PROCEDURE REFORMS: THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023**

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### **ABSTRACT**

On August 11, 2023 the Union Home minister has tabled three bills to overhaul the Indian criminal justice system - Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Bill. These bills were then sent to the Department-related Parliamentary Standing Committee on Home Affairs which submitted its report on November 10, 2023. In view of the changes recommended by the Committee, the earlier bills were withdrawn and Bharatiya Nyaya (Second) Sanhita, Bharatiya Nagarik Suraksha (Second) Sanhita and Bharatiya Sakshya (Second) Bill were presented on the floor of the Parliament. All three bills were passed by Lok Sabha and Rajya Sabha and finally on December 25, 2023 they received Presidential assent. These new criminal laws will take place of the existing legal framework pertaining to dispensation of criminal justice on July 1, 2024. The introduction of new bills is change with continuity. The adversarial system continues to govern the criminal procedure. The cardinal legal principles of presumption of innocence, burden and standard of proof have remained unchanged. The judicial interpretation still holds good for the unchanged provisions. The futuristic changes like use of technology, forensic and introduction of timeline make some pathbreaking reforms. The Bharatiya Nagarik Suraksha Sanhita, 2023 is set to replace the Code of Criminal Procedure, 1973. It is going to be the sixth edition of the criminal procedure and second after the independence. This work examines the alteration of existing provisions and incorporation of new ones in the BNSS to revamp the administration of criminal justice.

*Keywords: BNSS, Arrest, Investigation, Bail, Trial*

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## **X. Way Forward**

### **I. Introduction**

IN A bid to shed the vestiges of the existing archaic criminal justice system, the Government of India proposes to rechristen the existing Code of Criminal Procedure, 1973 with the Bharatiya Nagarik Suraksha Sanhita 2023 (*hereinafter* referred as ‘Sanhita’). The enactment of the Code of Criminal Procedure, 1973 was driven by three major considerations- first, fair trial, second, speedy trial and third, fairer deal to poor section of the society.<sup>1</sup> However, the data on pendency of cases and prison population depicts that the objectives with which the Code of 1973 was enacted are still a distant reality.

The Statement of Objects and Reasons of the Sanhita lists out the concerns plaguing the criminal justice system such as large pendency of cases, over-crowded prisons, low conviction rate, lack of integration of technology and forensics in criminal proceedings, delayed investigation and procedural complexities. The Sanhita grapples with these concerns by the infusion of technology at every stage of the proceedings; incorporating forensic and scientific methods in investigation process; and introduction of time-bound completion of various proceedings. The Sanhita deleted 11 sections in the Code of 1973 and introduced 9 new sections, added 39 sub-sections, 49 *provisos* and explanations. The Sanhita is spread over in 39 chapters having 531 sections and 2 Schedules. The key reforms are discussed under the following heads.

### **II. Structural changes in the hierarchical system of the Court**

The Sanhita aims to restructure the court system by abolishing the distinction between Metropolitan Magistrates and Judicial Magistrates. The provisions pertaining to Metropolitan areas and Metropolitan Magistrates have been deleted. Historically, the Metropolitan Magistrates were introduced as a successor of Presidency Magistrates in the erstwhile Presidency towns of Bombay, Calcutta and Madras, and city of Ahmedabad. With the passage of time other cities like Delhi, Bengaluru etc. were also added in this list. Barring a few exceptions, by and large the Metropolitan Magistrates perform the same functions as the

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<sup>1</sup> Code of Criminal Procedure, 1973 ‘Statements of Objects and Reasons’.

Judicial Magistrate of First Class.<sup>2</sup> Though the implications of such deletion cannot be measured as of now but it will surely pose a challenge to both administrative and judicial functioning of the courts. It may lead to confusion as the same set of Magistrates will fall under both the categories after the enforcement of the Sanhita due to trial of pending cases under CrPC and trial of new cases under the Sanhita. Another significant change proposed under the Sanhita pertains to the deletion of Assistant Sessions Judge Cadre. Such a change is proposed without revising the court's power to award a sentence, meaning thereby the cases earlier triable by the Assistant Sessions Judges will be dealt with by the Additional Sessions Judges and not by the Chief Judicial Magistrates. Further, the general superintendence of the High Court has been extended to the Court of Session as well which was earlier limited to the Courts of Judicial Magistrates only.<sup>3</sup>

### III. Measures Countering Delay and Speedy trial

The use of audio-video electronic means is recommended as a substantial tool to counter delay in the process of dispensation of justice. The Sanhita has provided for the use of audio-video electronic means in all inquiries, trials and proceedings including appellate proceedings.<sup>4</sup> The use of audio-video electronic means is suggested for recording of the evidence of witnesses including police officers and public servants in both Sessions cases and Magistrate triable cases.<sup>5</sup> Even the stage of reading and explaining the charges to the accused is allowed through audio-video electronic means.<sup>6</sup> The use of audio-video electronic means is further extended for the appearance of the accused (in custody) to hear the pronouncement of judgment.<sup>7</sup> As the use of electronic communication is proposed for issuance and service of summons, both the police officers and court officers are directed to maintain a record of personal details of the accused and witnesses for this purpose.<sup>8</sup>

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<sup>2</sup> Code of Criminal Procedure, 1973, ss. 281, 306, 355, 376, 395 and 404 conferred the Metropolitan Magistrate with the similar powers which were earlier exercised by the Presidency Magistrates. However, as a consequence of the deletion of the provisions pertaining to the court of Metropolitan Magistrate these provisions also stand deleted in the Sanhita.

<sup>3</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 529.

<sup>4</sup> *Id.*, s. 530.

<sup>5</sup> *Id.*, s. 254(1) and s. 252.

<sup>6</sup> *Id.*, s.251(2).

<sup>7</sup> *Id.*, s. 392(5).

<sup>8</sup> *Id.*, s. 64(1) *proviso*.

Fixed time period for some key processes has been introduced to minimise delay in carrying the case forward to the next stage. Some of the major processes which consume considerable time are fastened with the fixed time period and include the decision on sanction (one hundred twenty days)<sup>9</sup>, supply of copies of police file to the accused (not beyond fourteen days)<sup>10</sup>, committal (within ninety days and not beyond one hundred eighty days)<sup>11</sup>, filing of discharge application (within sixty days)<sup>12</sup>, framing of charge (within sixty days from the date of first hearing on charge)<sup>13</sup>, pronouncement of judgment (within forty-five days)<sup>14</sup>, notice to the complainant to be present in a complaint case (within thirty days)<sup>15</sup>, filing of plea bargaining application (within thirty days)<sup>16</sup>, mutually satisfactory disposition in plea bargaining (within sixty days)<sup>17</sup>, objection to genuineness of any document (within thirty days)<sup>18</sup>, uploading of judgment on court's portal (within seven days)<sup>19</sup> and filing and disposal of mercy petition (within thirty days and sixty days respectively)<sup>20</sup>.

The major changes in the trial procedure are seen in the domain of summary trial. First, the summary trial of offences mentioned in the provision is made mandatory as against them being optional earlier.<sup>21</sup> Further, the value of property is increased to twenty-five thousand rupees.<sup>22</sup> Additionally, the Magistrate is provided with the option to try summarily those offences which are punishable with up to three years of punishment.<sup>23</sup> For the first time, discharge proceeding is introduced in summon cases.<sup>24</sup> To achieve speedy disposal of complaint cases, the Sanhita provides for discharge of the accused person in the event of the absence of the complainant for more than thirty days from the date of the notice.<sup>25</sup> The option of recording of evidence of a witness (including police officer or public servant) by audio-video electronic means is extended to the cases triable by Sessions Court.<sup>26</sup> To ease the

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<sup>9</sup> *Id.*, s. 218.

<sup>10</sup> *Id.*, s. 230.

<sup>11</sup> *Id.*, s. 232.

<sup>12</sup> *Id.*, s. 250(1) and s. 262(1).

<sup>13</sup> *Id.*, s. 251(1)(b) and s. 263(1).

<sup>14</sup> *Id.*, s. 392(1).

<sup>15</sup> *Id.*, s. 272.

<sup>16</sup> *Id.*, s. 290(1).

<sup>17</sup> *Id.*, s. 290(4)(a).

<sup>18</sup> *Id.*, s. 330(1).

<sup>19</sup> *Id.*, s. 392(4) *proviso*.

<sup>20</sup> *Id.*, s. 473(1) and (2).

<sup>21</sup> *Id.*, s. 283(1).

<sup>22</sup> *Id.*, s. 283(1)(a)(i)-(iii).

<sup>23</sup> *Id.*, s. 283(2).

<sup>24</sup> *Id.*, s. 274 *proviso*.

<sup>25</sup> *Id.*, s. 272.

<sup>26</sup> *Id.*, s. 254.

process of admitting in evidence any document or report prepared by any public servant, expert, police officer, medical officer etc. the Sanhita allows the successor officer to depose before the court.<sup>27</sup> It will surely cut down the delay which takes place in securing the presence of such officer or expert. The adjournment culture has which has shaken the trust of the litigants on justice delivery system has been tackled by stipulating the number of adjournments to be fixed at two after recording of reasons and in circumstances which are beyond the control of the party.<sup>28</sup>

Further, in plea bargaining, the first-time offender has been given relaxed treatment in punishment. Under the scheme the threshold of the punishment in case of a first-time offender is fixed at one-fourth of the mandatory minimum and one-sixth of the maximum punishment prescribed.<sup>29</sup> Time period is prescribed for both filing of an application of plea bargaining and completion of mutually satisfactory disposition.<sup>30</sup> It is not certain whether these reforms are sufficient to provide a boost to the plea-bargaining system in India which has almost turned in to a dead letter of law.

The inherent limitation in the legal aid provision has been altered and is made available both during the trial and appeal stages. Further, the legal aid is extended to the trials before a Magistrate court which was merely optional in the earlier regime.<sup>31</sup> However, the concerns regarding quality and efficiency of legal aid are not addressed adequately in the Sanhita.

#### IV. Revamping Investigation Process

The emphasis on use of technology and forensics are the key changes proposed in the Sanhita to enhance efficiency, reliability and credibility of the investigation process. The Sanhita not only defines the terminology 'audio-video electronic means' but also introduces a new provision for mandatory recording of the process of search and seizure.<sup>32</sup> Such mandatory requirement has been extended to searches which are conducted without the authority of the Magistrate.<sup>33</sup> Further, the investigation in serious and heinous crimes is proposed to be

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<sup>27</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 336.

<sup>28</sup> *Id.*, s. 324.

<sup>29</sup> *Id.*, s. 293.

<sup>30</sup> *Id.*, s. 290.

<sup>31</sup> *Id.*, s. 341.

<sup>32</sup> *Id.*, s. 2(1)(a) and s. 105.

<sup>33</sup> *Id.*, s. 185.

conducted by a higher rank police officer.<sup>34</sup> Though ‘further investigation’ after the commencement of the trial is introduced in the Sanhita, however such investigation is to be made in time bound manner and requires the prior permission of the court.<sup>35</sup> It is pertinent to note that this extension of ‘further investigation’ during the trial stage is in direct conflict with the Supreme Court ruling in *Vinubhai Haribhai Malaviya v. State of Gujarat*<sup>36</sup> where the Court had limited the scope of ‘further investigation’ to the pre-trial stage. The requirement of forwarding the daily diary report to the jurisdictional Magistrate is made a mandatory requirement under the Sanhita which will surely enhance the magisterial vigil in the investigation process.<sup>37</sup>

Employing the forensic methods in investigation can ferret out the truth and render the investigation process foolproof. In this context, the Sanhita emphasises the use of forensic experts in the collection of evidence for the offences punishable with seven years or more. The provision also mandates video recording of the process of forensic evidence collection to infuse credibility in the entire process.<sup>38</sup>

As far as recording of the statement of witnesses is concerned, the Sanhita provides for the mandatory recording of statements of witnesses by the Magistrate in serious and heinous crimes.<sup>39</sup> However, unlike the previous provision, the recording of confession is restricted to the Judicial Magistrates of the district where the FIR is registered.<sup>40</sup> It will be interesting to see how this change will tackle the cases of inter-state arrest.

The delay occurring at the stage of furnishing copies of police file to the accused is addressed by incorporating a new provision which obligates the police officer to submit the copies required for the supply to the accused person in the case.<sup>41</sup> Further, furnishing the copies in electronic form is accepted as a sufficient compliance of such requirement.<sup>42</sup>

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<sup>34</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 175(1) *proviso*.

<sup>35</sup> *Id.*, s. 193(9) *proviso*.

<sup>36</sup> (2019) 17 SCC 1.

<sup>37</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 174(1).

<sup>38</sup> *Id.*, s. 176(3).

<sup>39</sup> *Id.*, s. 183(6) *proviso*.

<sup>40</sup> *Id.*, s. 183(1).

<sup>41</sup> *Id.*, s. 193(8) *proviso*.

<sup>42</sup> *Id.*, s. 232.

The attachment and forfeiture of any property being ‘proceeds of crime’ is introduced in the Sanhita which, till date, has been part of the Prevention of Money Laundering Act, 2002. However, the proposed provision does not allow police to exercise blanket powers and brings magisterial scrutiny to decide on the application so made by the investigating officer.<sup>43</sup>

The Supreme Court ruling in *Ritesh Sinha v. State of U.P.*<sup>44</sup> case is incorporated in the Sanhita and the magisterial aid is extended to collect the finger impressions and voice samples. This further expands the aiding role of the Magistrate in the investigation process.

## V. Reforms in Prosecutorial Agency

Prosecution agency is one of the foundational pillars of the criminal justice system. The independence and efficiency of the prosecution agency is *sine qua non* for searching the truth. In this direction, the measures envisaged in the Sanhita has largely focused on remodelling of the Directorate of Prosecution. In addition to the Directorate of Prosecution, District Directorate of Prosecution is to be established in every district.<sup>45</sup> The power and functions of Director, Deputy Director and Assistant Director of Prosecution includes *inter alia* expediting the proceedings, giving opinion on filing of appeals, scrutinising the police report and monitoring the progress of cases for ensuring expeditious disposal of cases.<sup>46</sup>

It appears that the Sanhita has partially incorporated the law laid down in *State of Gujarat v. Kishanbhai*<sup>47</sup> wherein the Supreme Court has directed the prosecution to scrutinise the police report and rectify the mistakes in the investigation before the submission of the police report to the Magistrate. In an interesting move, the Central Government has retained the exclusivity in the matter of appointing any Public Prosecutor for the purpose of conducting any prosecution etc. before the High Court in respect of any matter within the National Capital Territory of Delhi.<sup>48</sup>

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<sup>43</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 107.

<sup>44</sup> (2014) 5 SCC 108.

<sup>45</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 20.

<sup>46</sup> *Id.*, s. 20(7) and (8).

<sup>47</sup> *Supra* note 44.

<sup>48</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 18.

## VI. Reforms in FIR and Complaint Modes of Crime Recording

Some progressive changes are made in the domain of crime recording. The concept of 'zero FIR' which was once proposed in the Justice Verma Committee report has been formally introduced in the Sanhita uniformly, being applicable to all crimes.<sup>49</sup> Even the 'telephonic information' will sufficiently qualify for the registration of FIR if the information is signed within three days by the person giving it.<sup>50</sup> The concept of preliminary enquiry which emerged from *Lalita Kumari v. Govt. of U.P.*<sup>51</sup> has been given statutory recognition under the Sanhita. However, the proposed preliminary enquiry is distinct from the *Lalita Kumari* mandate. The proposed provision is punishment centric and not in reference to cognizability of the offence. It allows the police officer to conduct preliminary enquiry in cases having punishment of not more than seven years. Such preliminary enquiry may be conducted only after the approval of a senior police officer and should be concluded within fourteen days.<sup>52</sup>

The legal principle pronounced in *Priyanka Srivastava v. State of U.P.*<sup>53</sup> has been adhered by the Sanhita as the magisterial order for registration of FIR is no more an alternate remedy and can be availed only after exhausting the procedure for the registration of the FIR.<sup>54</sup> The application seeking magisterial direction for FIR registration cannot be acted upon unless the concerned police officer is heard by the Magistrate.<sup>55</sup> Contrary to the FIR mode of recording, in complaint cases the Sanhita makes a provision for hearing the accused person before the cognizance is taken by the Magistrate.<sup>56</sup> Though the intention may be to protect individuals from facing false or frivolous cases, the change may delay the process of taking cognizance due to the mandatory requirement of hearing the accused person.

## VII. Arrest, Custody and Bail

The process of arrest, custody and bail have also witnessed some significant changes in the Sanhita. The modifications are mixed in nature and reflect the constant tussle between

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<sup>49</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 173(1).

<sup>50</sup> *Id.*, s. 173.

<sup>51</sup> (2014) 2 SCC 1.

<sup>52</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 173(3).

<sup>53</sup> (2015) 6 SCC 287.

<sup>54</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 173(4).

<sup>55</sup> *Id.*, s. 175(3).

<sup>56</sup> *Id.*, s. 223 proviso.



balancing the individual liberty and investigative powers of the police. Special provision has been prescribed requiring prior permission of the senior police officer for effecting arrest of a person who is infirm or more than sixty years of age in offences punishable with less than three years of imprisonment.<sup>57</sup> The Sanhita takes a step ahead from the existing provision on establishing control room for maintenance of the record of arrest and recommends assigning the duty to a police officer in every district and in every police station to maintain such record of arrest.<sup>58</sup> In case of arrest by a private person, the provision mandates that the arrested person be made over to a police officer within six hours from the arrest.<sup>59</sup> This change aims at preventing the situation of taking the law in their hands by public. Use of handcuffs while making arrest is introduced in the Sanhita.<sup>60</sup> It may be viewed as a direct contrast to the Supreme Court directives prohibiting use of handcuffs but the provision limits the use of handcuffs only for heinous offences and does not extend it to every crime.

The long pending demand for reconsidering the law laid down by the Supreme Court in *CBI v. Anupam J. Kulkarni*<sup>61</sup> has also been settled in the Sanhita. Under the modified provision on remand, the police custody is allowed up to forty or sixty days out of the total period of custody of sixty or ninety days respectively.<sup>62</sup> The remand Magistrate is required to ascertain the status of the accused *vis-à-vis* bail before considering to remand him to custody. Further, it seems the Sanhita went against the idea of ‘house arrest’ as propounded by the Supreme Court in *Gautam Navlakha v. NIA*<sup>63</sup> by categorically referring custody to mean either in police station or in prison which includes any other place so declared as prison by the Government.<sup>64</sup> The Sanhita brings clarity in the concept of ‘nearest Magistrate’ for the purpose of producing the accused person post arrest by introducing both ‘jurisdictional and non-jurisdictional Magistrates’ in the relevant provision. This will guide the police officer effecting the arrest in inter-state matters to take the arrested person before the nearest Magistrate from the place of arrest rather taking such person before the jurisdictional Magistrate.

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<sup>57</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 35(7).

<sup>58</sup> *Id.*, s. 37.

<sup>59</sup> *Id.*, s. 40.

<sup>60</sup> *Id.*, s. 43(3).

<sup>61</sup> (1992) 3 SCC 141. Recently in more than one case the Supreme Court opined relook at *Anupam J. Kulkarni* ruling - *CBI v. Vikas Mishra @ Vikash Mishra* (Cri. A. 957/2023 decided on April 10, 2023); *V. Senthil Balaji v. State represented by Deputy Director* (Cri. A. 2284/2023 decided on August 7, 2023).

<sup>62</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 187.

<sup>63</sup> 2021 SCC OnLine SC 382.

<sup>64</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 187.

The law laid down by the Supreme Court in *Siddharth v. State of U.P.*<sup>65</sup> also finds place in the Sanhita wherein the police officer is directed not to arrest the accused person only for the purpose of filing the police report before the Magistrate. The Magistrate is also directed not to refuse to accept the report on the ground that the accused is not produced before him with the report.<sup>66</sup> Similarly, the compulsory requirement of arrest for taking specimen signature or handwriting has been relaxed under the Sanhita.<sup>67</sup>

The definition of 'bail' is introduced in the Sanhita which clearly distinguishes between release on 'bond and 'bail bond'.<sup>68</sup> It crystallises the ambit by eliminating the anomaly occurring in the provisions pertaining to bail due to the use of varied expressions. The provision on release of under-trials demonstrates both progressive as well as regressive changes. It limits the scope of the provision by excluding those under-trials who are in custody for offences punishable with life imprisonment.<sup>69</sup> Earlier the restriction was only with respect to the death penalty. On the contrary, it was expected that the reform will address the discrepancy pertaining to the issue of computing 'half of the life term'.

Further, the under-trials who are in custody for multiple cases are also omitted from availing the benefit of the provision.<sup>70</sup> The provision clearly bars the release of any offender who has though completed half of the punishment in one crime but is required to be in custody for some other crime. The progressive change pertains to the release of first-time under-trials, who are considered for release after serving one-third of the maximum punishment and not half of such punishment.<sup>71</sup> The onus of timely release of under-trials is placed on the Jail Superintendent where the under-trial is locked up, who shall make an application to the Court for the release of eligible under-trials.<sup>72</sup> Another significant change is seen in the provision of 'bail after acquittal' wherein the nature of bail is broadened by including option of release on personal bond as well.<sup>73</sup> The law on anticipatory bail witnessed some drastic changes such as

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<sup>65</sup> (2022) 1 SCC 676.

<sup>66</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 190(1) *proviso*.

<sup>67</sup> *Id.*, s. 349.

<sup>68</sup> *Id.*, s. 2(b), (d) and (e).

<sup>69</sup> *Id.*, s. 479.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Id.*, s. 481.

omission of interim bail, deletion of notice to public prosecutor and the Superintendent of police and non-requirement of physical presence of the applicant.<sup>74</sup>

### **VIII. Tightening the Law on Absconders and Proclaimed Offenders**

To address the issue of criminal proceedings being paused due to the reason of accused persons being absconded, the Sanhita has enlarged the ambit of offences in which such absconders may be declared as ‘proclaimed offender’. Under the provision a uniform standard of ‘severity of punishment’ is prescribed to declare any absconder as ‘proclaimed offender’. In contrast to the earlier provision which covers only 19 offences, the new provision is extended to all the offences punishable with imprisonment for a term of ten years or more which will eventually cover more than 100 offences.<sup>75</sup> Further, a new provision has been incorporated for identification, attachment and forfeiture of the property belonging to any proclaimed offender in any other country.<sup>76</sup>

The newly inserted provision may be seen as extending the objectives of the Fugitive Economic Offenders Act, 2018 which also provides for attachment of property of the fugitive offenders. For the first time the idea of in-absentia trial is introduced in the Indian criminal justice system.<sup>77</sup> The newly introduced provision is a fine example of balancing the fair trial guarantees and speedy trial considerations. The safeguards like issuance of warrants, publication in daily newspaper, sharing information with friend or relative, legal representation and opportunity to re-examine the witnesses are sufficient check on preventing the misuse of the process.

### **IX. Victim Justice and Witness Protection**

The victim’s right to participatory and informational justice finds partial recognition in the Sanhita. For the first time, a positive duty has been cast on the investigating officer to inform the victim with the progress of the investigation.<sup>78</sup> Supply of copy of FIR and police file to victim is a significant step conferring on the victim ‘party’ status in a case and not merely

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<sup>74</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 482.

<sup>75</sup> *Id.*, s. 84(4).

<sup>76</sup> *Id.*, s. 85.

<sup>77</sup> *Id.*, s. 356.

<sup>78</sup> *Id.*, s. 193(3)(ii).

being seen as a prosecution witness.<sup>79</sup> Victim's right to file 'protest petition' is also recognised in the Sanhita<sup>80</sup> providing statutory framework to the Supreme Court ruling which is considered to be the source of such right of the victim.<sup>81</sup> A major addition in the Sanhita from the victim's perspective is in the domain of withdrawal of prosecution. Now, the provision dealing with prosecutor's autonomy in withdrawal of prosecution, the addition is made to the effect that the case cannot be withdrawn by the State unless the victim is heard by the Court.<sup>82</sup>

Witness protection is one such issue which was expected to be addressed at some length in the Sanhita. However, the Sanhita only mandates the State Government to formulate a witness protection scheme without detailing out the nature and extent of the protection.<sup>83</sup> Interestingly, the Government has already prepared a witness protection scheme which was duly approved by the Supreme Court in *Mahender Chawla v. Union of India*<sup>84</sup>. It is expected that the State Government will promptly respond to the concerns of witness protection and formulate a comprehensive scheme.

## X. Way Forward

The Sanhita banks on technology, forensics and dedicated timeline to improve the efficiency of justice delivery system. The Union Home Minister's projection of maximum three years' time for dispensation of justice is chiefly founded on these measures. It is not doubted that COVID-19 has provided the opportunity to integrate technological advancements in the court proceedings. By and large, the courts are equipped with the information technology facilities. In this backdrop the emphasis on use of technology appears a viable solution to tackle delay. Fixing alone the timeline for various processes and proceedings could appear less realistic but when synchronised with technology it would surely achieve the desired goals.

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<sup>79</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 173(2) and s. 230.

<sup>80</sup> *Id.*, s. 232 proviso.

<sup>81</sup> *Bhagwant Singh v. Commissioner of Police, Delhi* (1983) 3 SCC 344.

<sup>82</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 360.

<sup>83</sup> *Id.*, s. 398. State like Delhi has already formulated the Witness Protection Scheme in 2015 whereas the State of Maharashtra has enacted the Maharashtra Witness Protection and Security Act, 2017. Goa has adopted the scheme prepared by Central Government *vide* notification 2/42/2017-HD(G)/418 published on February 20, 2020. Similarly, State of Haryana has enacted the 'Haryana Witness Protection Scheme, 2020'.

<sup>84</sup> (2019) 14 SCC 615.

However, the situation of forensic labs in the country is in abysmal stage. Some states even lack a proper forensic lab. The delay in processing the samples and the reliability of the results being questioned in Courts are some concerns which need to be addressed while designing the framework for the use of forensic in investigation process. Hence, the move to introduce the forensics in investigation process is a welcome step but only after having established sufficient number of labs across the country with a large number of experts as there are more than 100 offences wherein punishment is seven years or more and thereby forensic is made mandatory.

On the same lines, the framework or standard operating procedure is required to deal with electronic devices during the course of investigation as the electronic devices also have the personal data of the person which may not be relevant for the purpose of the investigation but otherwise sensitive from the point of view of the person concerned. Such framework or standard operating procedure should take care of handling these information or data and also provide an early return of the electronic device to the person concerned. The idea of timeline in completing various processes and proceedings is not new. Both the 2013 and 2018 amendments have prescribed the fixed timeline for investigation, trial and disposal of appeals in specific crimes. However, the experience suggests that such timelines are often breached than complied by the agencies. Unless the Sanhita makes provision for its strict compliance, the timeline may not serve the purpose.