

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 9 | Issue 3

2026

© 2026 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Between Statutory Screening and Inherent Jurisdiction: Reassessing the Relationship between Discharge Applications and Quash Petitions under the Bharatiya Nagarik Suraksha Sanhita, 2023

DR. KABIR AHMED*

ABSTRACT

The criminal justice system performs a dual constitutional function: it must ensure that offenders are investigated, prosecuted, and punished according to law, while simultaneously protecting individuals against arbitrary, malicious, or legally unsustainable prosecutions. Indian criminal procedure has historically recognised two principal mechanisms serving the latter objective, namely the statutory remedy of discharge exercised by trial courts and the inherent jurisdiction of the High Courts now preserved under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Although both remedies aim to prevent unjustified prosecutions, they differ fundamentally in source, scope, rationale, and institutional location. This article identifies and analyses the growing procedural overlap between discharge applications and quash petitions under the new statute. It argues that the progressive expansion of inherent jurisdiction has increasingly blurred the distinction between ordinary statutory screening and extraordinary judicial intervention, thereby generating doctrinal uncertainty and institutional tension. Examining these developments through constitutional, procedural, and comparative perspectives, the article proposes a framework founded upon procedural primacy, judicial restraint, and structured judicial oversight, and thereby seeks to contribute to contemporary debates concerning the future of pre-trial judicial screening in India.

Keywords: *Bharatiya Nagarik Suraksha Sanhita 2023, discharge applications, quash petitions, Section 528 BNSS, inherent jurisdiction, pre-trial judicial screening, abuse of process, criminal procedure.*

* Author is an Associate Professor at the University School of Law and Research (USLR), University of Science & Technology Meghalaya, India.

I. INTRODUCTION

The criminal justice system performs a dual function that lies at the heart of constitutional governance. On one hand, it seeks to ensure that offenders are investigated, prosecuted, and punished in accordance with law. On the other, it must protect individuals against arbitrary, malicious, or legally unsustainable prosecutions. A legal system that succeeds only in convicting offenders while failing to protect innocent persons from unwarranted criminal proceedings cannot be regarded as fully consistent with the principles of the rule of law.

Modern criminal jurisprudence increasingly recognises that the criminal process itself may operate as a form of punishment. Long before a determination of guilt or innocence is reached, an accused person may experience arrest, reputational injury, economic hardship, social stigma, and psychological distress. Herbert Packer famously observed that criminal procedure must constantly negotiate a balance between crime control and due process values.¹ The legitimacy of criminal adjudication therefore depends not only upon the accuracy of outcomes but also upon the fairness of the procedures employed.

Within this framework, pre-trial judicial screening assumes particular significance. Such mechanisms serve as institutional safeguards against the continuation of prosecutions that lack a sufficient legal or factual foundation. They are designed to ensure that the coercive machinery of criminal law is not deployed where the allegations fail to disclose an offence, where prosecution is legally barred, or where continuation of proceedings would amount to an abuse of process.

Indian criminal procedure has historically recognised two principal mechanisms serving this objective. The first is the statutory remedy of discharge, exercised by trial courts under specific provisions governing sessions and warrant cases. The second is the inherent jurisdiction of the High Courts, now preserved under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023. While both remedies aim to prevent unjustified prosecutions, they differ fundamentally in their source, scope, rationale, and institutional location.

Traditionally, discharge and quashment occupied distinct procedural domains. Discharge functioned as a legislative filtering mechanism intended to determine whether the prosecution had established a sufficient basis for proceeding to trial. Quashment, by contrast, was conceived as an exceptional remedy enabling High Courts to prevent abuse of process and secure the ends of justice in circumstances where ordinary procedural safeguards proved inadequate.

¹ Herbert L. Packer, *THE LIMITS OF THE CRIMINAL SANCTION* 149–173 (Stanford University Press 1968).

Recent judicial developments, however, have altered this landscape. Through decisions such as *R.P. Kapur v. State of Punjab*,² *State of Haryana v. Bhajan Lal*,³ *Amit Kapoor v. Ramesh Chander*,⁴ and *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*,⁵ the scope of inherent jurisdiction has expanded considerably. This expansion has undoubtedly strengthened judicial protection against arbitrary prosecution. Yet it has also raised important questions regarding procedural hierarchy, institutional competence, and the continuing role of statutory discharge mechanisms.

The contemporary criminal process increasingly witnesses litigants approaching High Courts directly under Section 528 BNSS in situations where discharge remedies remain available before trial courts. Such developments raise concerns regarding procedural bypass, forum selection, and the proper allocation of judicial functions. They also invite broader inquiry into the relationship between legislative design and judicial discretion within criminal procedure.

A. Research gap

Existing scholarship on Indian criminal procedure has generally examined discharge applications and quash petitions as separate procedural remedies. Judicial decisions similarly tend to analyse these mechanisms independently, focusing either upon the standards governing discharge or upon the circumstances justifying the exercise of inherent powers. Comparatively little attention has been devoted to the increasing overlap between these remedies and the institutional consequences arising from their concurrent use.

Most doctrinal discussions remain centred upon individual precedents without examining the broader structural implications of expanding quash jurisdiction. Consequently, the growing convergence between statutory screening and extraordinary judicial intervention remains underexplored. This gap is particularly significant in the context of the BNSS, which preserves both mechanisms while introducing a new procedural framework for criminal justice administration.

B. Statement of contribution

The principal contribution of this article lies in identifying and analysing the growing procedural overlap between discharge applications and quash petitions under the Bharatiya Nagarik Suraksha Sanhita, 2023. It argues that the expansion of inherent jurisdiction has increasingly blurred the distinction between ordinary statutory screening and extraordinary judicial

² *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866 (India).

³ *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 (India).

⁴ *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460 (India).

⁵ *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*, (2021) 6 SCC 751 (India).

intervention, thereby creating doctrinal uncertainty and institutional tension. By examining these developments through constitutional, procedural, and comparative perspectives, the article proposes a framework based upon procedural primacy, judicial restraint, and structured judicial oversight. In doing so, it seeks to contribute to contemporary debates concerning the future of pre-trial judicial screening in India.

C. Research questions

This study is guided by the following questions. What are the conceptual and jurisprudential foundations of pre-trial judicial screening within criminal procedure? How have discharge applications and quash petitions evolved within Indian criminal jurisprudence? To what extent has the expansion of inherent jurisdiction blurred the distinction between statutory discharge and extraordinary judicial intervention? Does the growing use of Section 528 BNSS undermine the procedural hierarchy established by the legislature? And what reforms are necessary to preserve doctrinal coherence while ensuring effective protection against abuse of criminal process?

D. Research methodology

This study adopts a doctrinal and analytical methodology. Primary sources include the Bharatiya Nagarik Suraksha Sanhita, 2023, the Code of Criminal Procedure, 1973, constitutional provisions, Law Commission Reports, and judicial decisions of the Supreme Court and High Courts. Secondary sources include scholarly books, journal articles, commentaries, and comparative literature on criminal procedure and judicial review.

The study also employs a limited comparative approach by examining pre-trial judicial screening mechanisms in the United Kingdom and the United States. The purpose of this comparison is not to advocate transplantation of foreign procedural models but to identify broader principles concerning abuse of process, judicial restraint, and institutional design that may inform Indian criminal procedure.

The analysis is primarily qualitative and doctrinal in nature. It seeks to evaluate the evolving relationship between discharge applications and quash petitions through the lenses of constitutionalism, procedural fairness, and institutional competence.

II. CONCEPTUAL FOUNDATIONS OF PRE-TRIAL JUDICIAL SCREENING

The existence of discharge applications and quash petitions cannot be fully understood merely by reference to statutory provisions or judicial precedents. Both remedies are manifestations of broader principles of criminal jurisprudence that seek to reconcile the competing demands of

individual liberty, public order, and effective law enforcement. Their significance therefore extends beyond procedural technicalities and must be examined within the larger theoretical framework of criminal justice administration.

At its core, criminal procedure represents an attempt to regulate the exercise of State power. Unlike civil litigation, where disputes ordinarily arise between private parties, criminal proceedings involve the coercive authority of the State acting against an individual. The criminal process authorises arrest, detention, search, seizure, prosecution, and punishment. Consequently, modern legal systems recognise that procedural safeguards are essential to prevent the misuse of such powers.

One of the most enduring principles underpinning these safeguards is the presumption of innocence. Although frequently associated with the trial process, the principle possesses important pre-trial implications. The presumption of innocence does not merely require that guilt be established beyond reasonable doubt; it also requires that individuals should not be subjected to the burdens of criminal prosecution without adequate justification.⁶ Andrew Ashworth observes that the practical significance of the presumption extends beyond evidentiary standards and includes protection against unnecessary criminal proceedings and unwarranted State coercion.⁷

This insight is particularly relevant in contemporary criminal justice systems. Criminal proceedings often impose substantial consequences long before any determination of guilt. An accused person may suffer reputational damage, loss of employment, financial hardship, social stigma, and psychological distress. In many cases, these consequences are experienced irrespective of the eventual outcome of the trial. Consequently, the process itself may assume a punitive character.⁸

The recognition that criminal procedure may itself operate as punishment has generated increasing scholarly attention. Herbert Packer's influential distinction between the Crime Control Model and the Due Process Model remains particularly instructive.⁹ The Crime Control Model prioritises efficiency, swift adjudication, and effective enforcement of criminal law. The Due Process Model, by contrast, emphasises procedural safeguards, judicial oversight, and protection against erroneous or arbitrary deprivation of liberty. Modern criminal justice systems inevitably seek to balance these competing values.

⁶ Andrew Ashworth, *Four Threats to the Presumption of Innocence*, 10 INT'L J. EVIDENCE & PROOF 241, 243–248 (2006).

⁷ Andrew Ashworth, *PRINCIPLES OF CRIMINAL LAW* 72–81 (9th ed., Oxford University Press 2021).

⁸ *Hussainara Khatoon (I) v. Home Secretary, State of Bihar*, (1980) 1 SCC 81, paras 5–6 (India).

⁹ Herbert L. Packer, *THE LIMITS OF THE CRIMINAL SANCTION* 149–173 (Stanford University Press 1968).

Discharge applications and quash petitions may be understood as institutional manifestations of the Due Process Model. They function as mechanisms through which courts examine whether the State has demonstrated sufficient justification for invoking the coercive machinery of criminal law. Their purpose is not to determine guilt or innocence but to prevent individuals from being subjected to unnecessary criminal trials where legal or factual foundations are absent.

Closely connected to the presumption of innocence is the constitutional commitment to personal liberty. The Indian Constitution does not explicitly recognise a presumption of innocence as a fundamental right. Nevertheless, judicial interpretation of Article 21 has progressively transformed criminal procedure into a constitutional enterprise governed by standards of fairness, reasonableness, and non-arbitrariness. Following *Maneka Gandhi v. Union of India*, procedural fairness became an indispensable component of lawful State action.¹⁰ The criminal process therefore must satisfy not only statutory requirements but also broader constitutional standards.

This constitutionalisation of criminal procedure has important implications for pre-trial judicial screening. If personal liberty may only be restricted through fair, just, and reasonable procedures, courts must possess mechanisms enabling them to intervene where criminal proceedings are legally unsustainable or fundamentally unfair. Discharge and quashment therefore perform a constitutional as well as procedural function.

Another important theoretical justification for pre-trial intervention lies in the doctrine of abuse of process. Legal procedures are established for specific public purposes. When those procedures are employed for ulterior motives, they cease to serve their intended function and become instruments of injustice. Abuse of process occurs when criminal proceedings are initiated not to vindicate public justice but to achieve collateral objectives such as personal retaliation, commercial pressure, political harassment, or reputational injury.

The abuse-of-process doctrine occupies a prominent place within common law jurisdictions. English courts have long recognised their inherent authority to stay proceedings where continuation would offend the court's sense of justice and propriety.¹¹ Similar concerns have informed the development of Indian quash jurisprudence, particularly through decisions such as *R.P. Kapur* and *Bhajan Lal*. The doctrine reflects a broader recognition that legality alone is

¹⁰ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, paras 56–57 (India); *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158, paras 35–38 (India).

¹¹ *R v. Horseferry Road Magistrates' Court, ex p Bennett*, [1994] 1 AC 42 (HL).

not always sufficient; criminal proceedings must also be consistent with the purposes for which the criminal law exists.

A further justification for pre-trial screening may be found in considerations of institutional efficiency and judicial economy.¹² Criminal courts across many jurisdictions face significant case backlogs, resource constraints, and delays. The continuation of prosecutions that lack legal merit imposes costs not only upon the accused but also upon the justice system itself. Judicial resources devoted to unsustainable prosecutions are necessarily diverted from cases requiring substantive adjudication.

Mirjan Damaška's influential work on procedural systems highlights the relationship between institutional design and adjudicative efficiency. Legal systems must develop mechanisms capable of filtering cases at various stages in order to ensure that adjudicative resources are allocated effectively.¹³ Pre-trial judicial screening serves precisely this function. By terminating legally deficient proceedings at an early stage, courts promote both fairness and efficiency.

At the same time, excessive judicial intervention creates its own dangers. Criminal investigations frequently involve incomplete information, evolving evidentiary records, and disputed factual questions. Premature judicial interference may impede legitimate investigations, undermine prosecutorial discretion, and encourage courts to resolve factual controversies without the benefit of a full evidentiary process.

This concern has generated an enduring tension within criminal procedure. On one side lies the imperative of protecting individuals against wrongful prosecution; on the other lies the need to preserve the effectiveness of criminal law enforcement. Neither objective can be pursued in isolation. Excessive restraint may permit abuse of process to continue unchecked, whereas excessive intervention may compromise legitimate prosecutions.

The challenge, therefore, is not whether pre-trial judicial screening should exist but how it should be structured. Effective criminal justice systems must establish clear distinctions between ordinary procedural safeguards and extraordinary judicial remedies. Ordinary mechanisms should address routine questions concerning evidentiary sufficiency, while extraordinary remedies should remain available for exceptional circumstances involving abuse of process, jurisdictional defects, or manifest injustice.

Within the Indian context, this distinction is reflected in the relationship between discharge applications and quash petitions. Discharge operates as a statutory screening device embedded

¹² Law Commission of India, 154TH REPORT ON THE CODE OF CRIMINAL PROCEDURE ch. III (1996).

¹³ Mirjan R. Damaška, *THE FACES OF JUSTICE AND STATE AUTHORITY* 181–198 (Yale University Press 1986).

within the ordinary procedural framework. Quashment, by contrast, represents an extraordinary supervisory jurisdiction intended to address situations that cannot be adequately resolved through ordinary procedures. The effectiveness of both remedies depends upon preserving this distinction.

The contemporary difficulty, however, is that judicial expansion of inherent powers has increasingly blurred the boundaries between these mechanisms. Questions traditionally addressed through discharge applications are now frequently raised before High Courts through petitions invoking Section 528 BNSS. This development raises broader concerns regarding procedural hierarchy, institutional competence, and the allocation of judicial authority. Understanding these concerns requires a detailed examination of the two remedies themselves. The following section therefore analyses the doctrine of discharge under the BNSS and explores its role as the primary statutory mechanism for pre-trial judicial screening within Indian criminal procedure.

III. DISCHARGE UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: THEORY, PURPOSE, AND JUDICIAL STANDARDS

The remedy of discharge occupies a central position within the architecture of Indian criminal procedure. It represents the legislature's primary mechanism for preventing individuals from being subjected to unnecessary criminal trials where the prosecution has failed to establish a sufficient basis for proceeding. Although often treated as a technical procedural stage, discharge performs a broader constitutional and institutional function by protecting personal liberty, promoting judicial economy, and preserving the integrity of the criminal process.

The BNSS retains the essential structure of discharge previously contained in the Code of Criminal Procedure, 1973.¹⁴ The principal provisions governing discharge are Section 250 (sessions cases), Section 262 (warrant cases instituted on a police report), and Section 268 (warrant cases instituted otherwise than on a police report). Despite procedural differences, all three provisions are animated by a common objective: ensuring that criminal trials proceed only where the prosecution has crossed a minimum threshold of legal and evidentiary sufficiency.

From a jurisprudential perspective, discharge reflects the legislature's recognition that criminal prosecution is itself a serious intrusion upon individual liberty.¹⁵ Criminal trials require the accused to confront the coercive authority of the State, often involving substantial financial,

¹⁴ Law Commission of India, 41ST REPORT ON THE CODE OF CRIMINAL PROCEDURE paras 24.10–24.15 (1969).

¹⁵ *V.D. Jhingan v. State of Uttar Pradesh*, AIR 1966 SC 1762, para 6 (India).

social, and psychological burdens. Consequently, the law seeks to ensure that such burdens are imposed only where a prima facie foundation for prosecution exists.

Unlike conviction, which requires proof beyond reasonable doubt, discharge is concerned with a more limited inquiry. The trial court is not required to determine whether the accused is guilty; rather, it must determine whether the prosecution's material discloses sufficient grounds for proceeding. This distinction is crucial because the discharge stage is intended to function as a filtering mechanism rather than a substitute for trial.

The Supreme Court's decision in *Union of India v. Prafulla Kumar Samal* remains the foundational authority on the nature and scope of discharge.¹⁶ The Court recognised that judges possess a limited power to sift and weigh the material produced by the prosecution for the purpose of determining whether a prima facie case exists. However, such scrutiny must not be transformed into a detailed evaluation of evidence or a premature adjudication of guilt.

Subsequent decisions refined this standard. In *State of Maharashtra v. Som Nath Thapa*, the Supreme Court introduced the concept of strong suspicion as the threshold for framing charges.¹⁷ The Court observed that where the available material gives rise to a strong suspicion regarding the involvement of the accused, the matter should ordinarily proceed to trial. This formulation reflects a deliberate policy choice: the criminal process seeks to avoid both wrongful prosecution and premature exoneration.

The development of discharge jurisprudence reveals a continuing judicial effort to strike an appropriate balance between individual rights and prosecutorial interests.¹⁸ Courts have repeatedly emphasised that the discharge stage lies between mere accusation and proof beyond reasonable doubt. The objective is not to ascertain whether conviction is likely but whether trial is justified.

An important controversy concerns the extent to which courts may consider defence material at the discharge stage. The issue reflects a deeper tension between procedural fairness and institutional restraint. On one view, requiring an accused person to undergo trial despite possessing conclusive exculpatory material may undermine the very purpose of discharge. On the opposing view, extensive consideration of defence evidence risks transforming the discharge stage into a mini-trial.

¹⁶ *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4, paras 8–10 (India).

¹⁷ *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659, paras 30–32 (India).

¹⁸ Shraddha Raj, *Discharge in Criminal Trials: Revisiting the Judicial Standards*, 8(2) NATIONAL LAW SCHOOL REVIEW 45, 51–58 (2021).

The Supreme Court's decision in *Satish Mehra v. Delhi Administration* suggested a relatively flexible approach,¹⁹ permitting consideration of material produced by the accused where such material clearly demonstrates the groundlessness of the prosecution. However, this position was subsequently narrowed by the larger Bench decision in *State of Orissa v. Debendra Nath Padhi*,²⁰ which held that defence material should ordinarily not be considered while determining whether charges should be framed.

The tension between these decisions reflects broader theoretical concerns regarding the proper scope of pre-trial judicial scrutiny. Excessive willingness to examine defence evidence may encourage premature adjudication of disputed factual issues. Excessive reluctance, however, may undermine the protective function that discharge is intended to serve.

Beyond doctrinal questions, discharge also performs important institutional functions. It contributes to judicial economy by filtering legally unsustainable prosecutions before trial. It reduces the burden upon courts already facing significant case backlogs. More importantly, it protects individuals against the punitive consequences of unnecessary criminal proceedings.

Despite its significance, the practical operation of discharge remains subject to criticism. Trial courts frequently adopt a cautious approach and prefer framing charges in doubtful cases. Several factors contribute to this tendency, including concerns regarding appellate scrutiny, institutional culture, and the perception that questions relating to evidentiary sufficiency should ordinarily be resolved at trial. The result is that discharge often functions less robustly than its theoretical justification would suggest.

The enactment of the BNSS has not fundamentally altered these underlying tensions. The central challenge remains ensuring that discharge operates as a meaningful judicial safeguard rather than a purely formal procedural stage. Its continued relevance depends upon courts recognising that discharge is not an exceptional remedy but an integral component of fair criminal process.

IV. QUASH JURISDICTION UNDER SECTION 528 BNSS: EVOLUTION, EXPANSION, AND LIMITS

If discharge represents the legislature's primary mechanism for pre-trial screening, quash jurisdiction represents the judiciary's extraordinary safeguard against abuse of criminal process. Preserved under Section 528 BNSS, the inherent powers of the High Court occupy a distinctive position within Indian criminal procedure. Unlike discharge, which is grounded in statutory text

¹⁹ *Satish Mehra v. Delhi Administration*, (1996) 9 SCC 766, paras 13–15 (India).

²⁰ *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568, paras 18–23 (India).

and exercised by trial courts, quashment derives from the High Court's inherent responsibility to secure the ends of justice and prevent misuse of legal process.

The theoretical foundation of inherent powers lies in the recognition that no procedural code can anticipate every circumstance in which judicial intervention may become necessary. Legal systems therefore preserve residual powers enabling superior courts to respond to exceptional situations where strict adherence to procedure would itself produce injustice. Such powers are not intended to replace ordinary remedies; rather, they exist to supplement them when ordinary remedies prove inadequate.

The modern law governing quashment originates in *R.P. Kapur v. State of Punjab*.²¹ In that decision, the Supreme Court identified broad categories of cases in which interference may be justified, including situations where prosecution is legally barred, where allegations fail to disclose an offence, and where the proceedings are manifestly untenable. The significance of *R.P. Kapur* extends beyond the categories it articulated. More fundamentally, it established the principle that criminal proceedings should not be permitted to continue merely because procedural formalities have been satisfied.

The doctrine underwent substantial development in *State of Haryana v. Bhajan Lal*.²² The Court identified seven illustrative categories warranting intervention and recognised that criminal proceedings may be challenged not only because of legal defects but also because they have been initiated for improper purposes. The decision significantly expanded the practical scope of inherent jurisdiction and remains the most influential authority governing quash petitions.

The expansion of quash jurisprudence reflected changing realities within Indian criminal litigation.²³ Courts increasingly encountered situations in which criminal proceedings were employed strategically in commercial disputes, matrimonial conflicts, property disagreements, and political rivalries.²⁴ The criminal process, originally intended as a mechanism for enforcing public justice, was sometimes utilised to exert pressure or secure private advantages. Judicial intervention through inherent powers emerged as an important safeguard against such misuse.

The constitutionalisation of criminal procedure further strengthened the normative foundation of quash jurisdiction. Following *Maneka Gandhi* and subsequent Article 21 jurisprudence,²⁵ courts increasingly viewed criminal procedure through the lens of fairness, reasonableness, and

²¹ *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866 (India).

²² *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, para 102 (India).

²³ Raj Kumar, *Abuse of Process of Law and the Expansive Use of Section 482 CrPC*, 62(3) JOURNAL OF THE INDIAN LAW INSTITUTE 367, 372–380 (2020).

²⁴ *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandojirao Angre*, (1988) 1 SCC 692, paras 7–8 (India).

²⁵ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, paras 56–57 (India).

protection against arbitrary State action. The High Court's inherent powers therefore assumed a constitutional dimension, functioning as instruments for safeguarding personal liberty against abusive prosecution.

Nevertheless, the expansion of inherent jurisdiction has generated significant concerns. One concern relates to institutional competence. High Courts exercising quash jurisdiction often confront incomplete evidentiary records and contested factual allegations. Excessive intervention at preliminary stages risks transforming constitutional courts into forums for resolving factual disputes more appropriately addressed by trial courts.

A second concern relates to procedural hierarchy. The criminal justice system is structured around differentiated institutional roles. Investigating agencies conduct investigations, trial courts assess evidence, and appellate courts review decisions. Expansive use of inherent powers may disrupt this allocation of responsibilities by encouraging litigants to bypass ordinary procedural mechanisms.

These concerns prompted a corrective response in *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*.²⁶ The Supreme Court emphasised that quashing remains an exceptional remedy and cautioned against premature interference with criminal investigations. The decision reaffirmed the importance of judicial restraint and sought to restore equilibrium between protection against abuse and respect for institutional processes.

The significance of *Neeharika* lies not in narrowing inherent powers but in clarifying their purpose. The decision recognises that judicial intervention remains essential in exceptional circumstances. At the same time, it emphasises that extraordinary powers derive their legitimacy from disciplined exercise. The effectiveness of quash jurisdiction therefore depends not merely upon its availability but upon the principled restraint with which it is exercised.

The contemporary challenge is that the boundaries between discharge and quashment have become increasingly uncertain. Questions traditionally addressed through discharge applications are now frequently raised through petitions invoking Section 528 BNSS. Understanding this development requires a closer examination of the growing procedural overlap between these remedies and the institutional tensions it has generated.

²⁶ *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*, (2021) 6 SCC 751, paras 57–80 (India).

V. PROCEDURAL OVERLAP AND INSTITUTIONAL TENSIONS: REASSESSING THE RELATIONSHIP BETWEEN DISCHARGE AND QUASHMENT

The relationship between discharge applications and quash petitions represents one of the most significant yet underexplored issues in contemporary Indian criminal procedure. Although both remedies seek to prevent unjustified prosecutions and protect individuals from unnecessary criminal trials, they originate from distinct legal foundations and were historically intended to perform different functions within the criminal justice system. The increasing convergence between them raises important questions concerning procedural hierarchy, institutional competence, and the future architecture of pre-trial judicial screening under the BNSS.

At a conceptual level, discharge and quashment are founded upon different assumptions regarding judicial intervention. Discharge is a legislative mechanism embedded within the ordinary procedural framework. It reflects Parliament's determination that criminal trials should proceed only where the prosecution has established a sufficient *prima facie* basis for further proceedings. Quashment, by contrast, is rooted in the judiciary's inherent responsibility to prevent abuse of process and secure the ends of justice in exceptional circumstances.

In theory, the distinction appears clear. Discharge addresses questions of evidentiary sufficiency, whereas quashment addresses questions of legality, abuse of process, jurisdictional defects, and manifest injustice. In practice, however, the distinction has become increasingly difficult to maintain.

One reason for this convergence is that both remedies ultimately pursue the same practical objective: termination of criminal proceedings before trial. Whether an accused succeeds through discharge before a trial court or through quashment before a High Court, the immediate consequence is often identical. This functional similarity has encouraged litigants to perceive the remedies as alternative procedural routes rather than distinct institutional mechanisms.

The problem becomes particularly apparent when examining the grounds frequently advanced in quash petitions. Arguments concerning absence of *prima facie* evidence, failure to establish essential ingredients of an offence, inherent improbability of allegations, and lack of criminal intent often overlap substantially with matters ordinarily considered during discharge proceedings. Consequently, questions originally intended for trial-level scrutiny increasingly reach constitutional courts through petitions invoking Section 528 BNSS.

The expansion of inherent jurisdiction has reinforced this trend. Decisions such as *Bhajan Lal*, *Pepsi Foods*, and *Amit Kapoor* significantly broadened the circumstances in which judicial

intervention may be justified.²⁷ These developments undoubtedly strengthened protections against arbitrary prosecution. However, they also contributed to a gradual shift in litigation strategy. Accused persons increasingly perceive High Courts as more effective forums for securing early termination of criminal proceedings than trial courts exercising discharge jurisdiction.

This phenomenon may be described as procedural bypass.²⁸ Procedural bypass occurs when litigants invoke extraordinary remedies despite the availability of ordinary statutory mechanisms capable of addressing the same grievance. Although such conduct is not necessarily improper, its increasing prevalence raises concerns regarding the institutional design of criminal procedure.

The first concern relates to legislative intent. The BNSS explicitly entrusts trial courts with the responsibility of assessing whether sufficient grounds exist for proceeding to trial. If litigants routinely bypass discharge mechanisms in favour of quash petitions, the statutory role assigned to trial courts risks becoming progressively marginalised. Such a development may undermine the procedural hierarchy carefully established by the legislature.

A second concern relates to institutional competence. Trial courts are structurally designed to engage with evidentiary materials, assess factual allegations, and evaluate the sufficiency of prosecution records. High Courts exercising inherent jurisdiction, by contrast, are primarily intended to address exceptional circumstances involving abuse of process or legal infirmities. The increasing transfer of evidentiary screening functions from trial courts to constitutional courts may distort this allocation of institutional responsibilities.

A third concern involves judicial workload and systemic efficiency. High Courts across India already face substantial backlogs. The growing volume of petitions invoking inherent jurisdiction consumes significant judicial resources that might otherwise be devoted to appellate, constitutional, and supervisory functions. From an institutional perspective, excessive reliance upon quashment may therefore generate inefficiencies that extend beyond individual cases.

At a deeper level, the overlap between discharge and quashment reflects a broader tension between legislative design and judicial discretion.²⁹ Modern constitutional democracies

²⁷ *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 (India); *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 (India); *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460 (India).

²⁸ Abhinav Sekhri, *Procedural Misuse in Criminal Law: The Expanding Scope of Section 482 Cr.P.C.*, 11(1) NUJS LAW REVIEW 101, 107–115 (2019).

²⁹ Mirjan R. Damaška, *THE FACES OF JUSTICE AND STATE AUTHORITY* 181–198 (Yale University Press 1986).

routinely confront situations in which legislatively prescribed procedures appear insufficient to prevent injustice in particular cases. Judicial discretion emerges as a corrective mechanism. Yet excessive reliance upon judicial discretion may weaken procedural predictability and undermine legislative choices.

This tension is not unique to India. Comparative scholarship has long recognised the challenge of balancing procedural regularity against judicial flexibility. Damaška's analysis of procedural systems suggests that effective legal institutions require clear allocation of authority between different adjudicative actors.³⁰ When the boundaries between ordinary and extraordinary remedies become uncertain, institutional coherence may suffer.

The solution does not lie in restricting judicial power or eliminating extraordinary remedies. Abuse of process, malicious prosecution, and jurisdictional errors remain genuine concerns requiring effective judicial responses. Rather, the challenge lies in preserving a principled distinction between ordinary procedural safeguards and extraordinary judicial intervention.

The BNSS framework is capable of achieving this balance. Discharge should remain the primary mechanism for routine assessment of evidentiary sufficiency.³¹ Quashment should remain available for exceptional cases involving abuse of process, legal impossibility, jurisdictional defects, or manifest injustice. Preserving this distinction would strengthen both remedies rather than weaken either of them.

The contemporary significance of this issue extends beyond procedural doctrine. It implicates broader questions concerning access to justice, judicial federalism, constitutional governance, and the institutional allocation of authority within the criminal justice system. The future development of Indian criminal procedure may therefore depend upon how effectively courts manage the relationship between statutory screening and inherent jurisdiction.

VI. COMPARATIVE PERSPECTIVES: LESSONS FROM THE UNITED KINGDOM AND THE UNITED STATES

Comparative analysis offers valuable insights into the manner in which different legal systems address the problem of unjustified criminal prosecution. Although procedural structures vary considerably across jurisdictions, most modern criminal justice systems recognise the need for mechanisms capable of terminating legally unsustainable proceedings before full trial.

³⁰ Mirjan R. Damaška, *THE FACES OF JUSTICE AND STATE AUTHORITY* 181–198 (Yale University Press 1986).

³¹ K.N. Chandrasekharan Pillai, R.V. KELKAR'S CRIMINAL PROCEDURE 612–620 (7th ed., Eastern Book Company 2021).

The United Kingdom approaches this issue primarily through the doctrine of abuse of process. English courts possess inherent authority to stay criminal proceedings where continuation would compromise the fairness of the trial or offend the court's sense of justice and propriety.³² Unlike the Indian discharge framework, which is largely statutory, the English approach relies substantially upon judicially developed principles.

English courts generally recognise two broad categories of abuse of process. The first concerns situations where a fair trial has become impossible due to delay, loss of evidence, or procedural irregularities. The second concerns situations where continuation of proceedings would undermine public confidence in the administration of justice, even if a technically fair trial remains possible. The doctrine therefore functions as an important safeguard against misuse of criminal process while preserving substantial judicial discretion.

The United States adopts a different model. American criminal procedure places considerable emphasis upon constitutional protections and pre-trial motions to dismiss.³³ Challenges to criminal proceedings frequently arise under the Due Process Clause, protections against unreasonable searches and seizures, the right to a speedy trial, and safeguards against double jeopardy.³⁴

Unlike Indian discharge jurisprudence, which focuses primarily upon evidentiary sufficiency, American courts often engage more directly with constitutional questions affecting the legitimacy of prosecution. Pre-trial judicial intervention therefore assumes a strongly constitutional character.

Despite these differences, several common themes emerge. First, all three jurisdictions recognise that criminal prosecution must remain subject to judicial scrutiny before trial. Secondly, all three systems acknowledge that criminal proceedings may be abused for purposes unrelated to the legitimate enforcement of public law. Thirdly, each jurisdiction attempts to balance protection against abuse with respect for prosecutorial and investigative functions.

The comparative experience also offers an important lesson for India. Both the United Kingdom and the United States maintain a distinction between ordinary procedural mechanisms and extraordinary judicial intervention. While courts possess substantial powers to prevent injustice, such powers are generally exercised within clearly recognised institutional frameworks.

³² *Connelly v. Director of Public Prosecutions*, [1964] AC 1254 (HL).

³³ Wayne R. LaFare et al., *CRIMINAL PROCEDURE* vol. 4, 1–15 (6th ed., West Academic Publishing 2017).

³⁴ *Brady v. Maryland*, 373 U.S. 83 (1963).

India's mixed model, combining statutory discharge with inherent jurisdiction, possesses significant advantages. It allows routine evidentiary screening to occur before trial courts while preserving extraordinary supervisory powers for exceptional circumstances. The principal challenge lies not in the absence of safeguards but in ensuring that the relationship between those safeguards remains coherent.

The comparative analysis therefore reinforces the central argument of this article. The long-term effectiveness of the BNSS depends upon preserving discharge as the primary mechanism of ordinary pre-trial screening while reserving Section 528 BNSS for genuinely exceptional cases involving abuse of process, jurisdictional infirmities, or manifest injustice. Such an approach would better align Indian criminal procedure with broader comparative principles of institutional design and procedural fairness.

VII. MAJOR FINDINGS OF THE STUDY

The analysis undertaken in this article yields several significant findings concerning the evolving relationship between discharge applications and quash petitions under the Bharatiya Nagarik Suraksha Sanhita, 2023.

First, the study demonstrates that discharge and quashment originate from fundamentally different legal foundations. Discharge is a statutory mechanism designed by the legislature to enable trial courts to screen prosecutions before the commencement of trial. Quashment, by contrast, is an extraordinary judicial power intended to prevent abuse of process and secure the ends of justice in exceptional circumstances. Although both remedies seek to protect individuals from unwarranted criminal proceedings, their institutional purposes remain distinct.

Secondly, the study reveals that the expansion of inherent jurisdiction through judicial interpretation has significantly altered the practical relationship between these remedies. Beginning with *R.P. Kapur* and developing through *Bhajan Lal*, *Pepsi Foods*, *Amit Kapoor*, and *Neeharika Infrastructure*,³⁵ the Supreme Court has progressively refined and expanded the circumstances in which High Courts may intervene at pre-trial stages. While this development has strengthened safeguards against arbitrary prosecution, it has also increased the possibility of overlap with statutory discharge provisions.

Thirdly, the study identifies the emergence of procedural bypass as a recurring feature of contemporary criminal litigation. Litigants increasingly invoke Section 528 BNSS even where

³⁵ *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866 (India); *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 (India); *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 (India); *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460 (India); *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*, (2021) 6 SCC 751 (India).

statutory discharge remedies remain available. Although comprehensive empirical data remains limited, judicial decisions and legal commentary suggest that inherent jurisdiction is frequently perceived as a more effective avenue for obtaining early termination of criminal proceedings.

Fourthly, the study demonstrates that recent jurisprudence reflects a growing judicial awareness of these concerns. Decisions such as *Neeharika Infrastructure* indicate an effort to restore balance by emphasising judicial restraint, institutional competence, and respect for procedural hierarchy.³⁶

Finally, the study concludes that the principal challenge facing contemporary criminal procedure is not the existence of multiple safeguards but the absence of sufficiently clear principles governing their interaction. The future effectiveness of both remedies depends upon maintaining a coherent distinction between ordinary statutory screening and extraordinary judicial intervention.

VIII. REFORM PROPOSALS

The findings of this study suggest the need for reforms aimed not at restricting judicial power but at promoting greater procedural coherence. Such reforms should seek to preserve the complementary relationship between discharge and quashment while preventing unnecessary overlap.

A. Principle of procedural primacy

A central recommendation emerging from this study is the adoption of a principle of procedural primacy.³⁷ Under this approach, statutory discharge mechanisms should ordinarily constitute the primary avenue for challenging the sufficiency of prosecution material. High Courts should continue to exercise inherent powers in exceptional cases but should generally avoid substituting their jurisdiction for functions specifically assigned to trial courts.

The principle of procedural primacy would strengthen the institutional role of trial courts, preserve legislative intent, and reduce unnecessary burdens upon constitutional courts without diminishing judicial protection against abuse of process.

B. Structured judicial framework for Section 528 BNSS

To promote consistency and predictability, courts may consider adopting a structured framework when examining petitions under Section 528 BNSS. Before exercising inherent jurisdiction, the High Court should consider the following questions. Is a statutory discharge

³⁶ *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*, (2021) 6 SCC 751, paras 57–80 (India).

³⁷ *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460, paras 27–30 (India).

remedy available? Has the accused pursued or attempted to pursue that remedy? Are there exceptional circumstances rendering the statutory remedy ineffective or inadequate? Does the case disclose abuse of process, legal impossibility, jurisdictional defects, or manifest injustice? And would refusal to intervene result in irreparable prejudice that cannot be adequately remedied through ordinary procedure?

Where discharge remains available and exceptional circumstances are absent, judicial restraint may favour directing the litigant to pursue the statutory remedy before invoking extraordinary jurisdiction. Such a framework would not curtail inherent powers. Rather, it would promote principled exercise of those powers while reinforcing procedural discipline.

C. Strengthening trial court screening functions

The effectiveness of discharge depends largely upon the willingness of trial courts to engage in meaningful scrutiny of prosecution materials. Judicial training programmes and procedural guidance should emphasise that discharge is not an exceptional remedy but an integral component of fair criminal procedure. Trial courts should neither mechanically frame charges nor conduct premature evidentiary evaluations. Instead, they should undertake a principled assessment of whether the prosecution has established a legally sustainable basis for trial.

D. Clarification regarding defence material

The continuing tension between *Satish Mehra* and *Debendra Nath Padhi* has generated uncertainty concerning the role of defence material at the discharge stage.³⁸ Future judicial clarification would assist in developing a more predictable and coherent framework.

A balanced approach may permit consideration of unimpeachable and undisputed material while avoiding detailed evaluation of contested evidence. Such an approach would better reconcile procedural fairness with institutional restraint.

E. Time-bound disposal of discharge applications

The protective value of discharge diminishes significantly when applications remain pending for extended periods. Consideration may therefore be given to prescribing indicative timelines for disposal of discharge applications, particularly in cases involving prolonged investigations or substantial personal hardship.

Timely adjudication would enhance both fairness and efficiency while reinforcing the practical significance of statutory screening mechanisms.

³⁸ *Satish Mehra v. Delhi Administration*, (1996) 9 SCC 766 (India); *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568 (India).

IX. FUTURE DIRECTIONS

The future development of Indian criminal procedure is likely to be shaped by several interconnected factors.

First, the implementation of the BNSS will generate new interpretative questions concerning the continuity and adaptation of existing jurisprudence. Courts will be required to determine how precedents developed under the Code of Criminal Procedure should be applied within the new statutory framework.

Second, increasing criminalisation of commercial, financial, regulatory, and cyber disputes may expand the contexts in which allegations of abuse of process arise. These developments are likely to intensify debates regarding the appropriate scope of pre-trial judicial intervention.

Third, constitutional jurisprudence under Article 21 will continue to influence the development of criminal procedure.³⁹ The growing emphasis upon dignity, fairness, proportionality, and due process suggests that courts may increasingly evaluate procedural safeguards through a constitutional lens rather than a purely technical one.

These developments underscore the continuing importance of maintaining clear institutional boundaries while ensuring effective protection against arbitrary prosecution.

X. CONCLUSION

The Bharatiya Nagarik Suraksha Sanhita, 2023 preserves two important safeguards against unwarranted criminal prosecution: discharge applications and quash petitions. Although both remedies seek to protect individuals from unnecessary criminal trials, they arise from different legal foundations and perform distinct institutional functions. Discharge represents the legislature's primary mechanism for pre-trial screening, whereas quashment constitutes an extraordinary judicial power designed to prevent abuse of process and secure the ends of justice.

The central argument advanced in this article is that the expansion of inherent jurisdiction has increasingly blurred the distinction between these remedies, generating procedural overlap and institutional tension. While judicial intervention remains indispensable in exceptional cases, excessive reliance upon extraordinary remedies risks undermining the procedural architecture established by the legislature.

The future effectiveness of Indian criminal procedure therefore depends not upon choosing between discharge and quashment but upon preserving a principled relationship between them.

³⁹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India); *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158 (India).

Discharge should remain the primary mechanism for ordinary pre-trial screening, while Section 528 BNSS should continue to function as an exceptional safeguard against abuse of process and manifest injustice. Only through such a balance can the criminal justice system simultaneously protect individual liberty, preserve procedural discipline, and maintain public confidence in the administration of justice.

XI. BIBLIOGRAPHY

1. *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460 (India).
2. *Barker v. Wingo*, 407 U.S. 514 (1972).
3. *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 (India).
4. *Brady v. Maryland*, 373 U.S. 83 (1963).
5. *Connelly v. Director of Public Prosecutions*, [1964] AC 1254 (HL).
6. *Hussainara Khatoon (I) v. Home Secretary, State of Bihar*, (1980) 1 SCC 81 (India).
7. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).
8. *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*, (2021) 6 SCC 751 (India).
9. *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 (India).
10. *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866 (India).
11. *R v. Horseferry Road Magistrates' Court, ex p Bennett*, [1994] 1 AC 42 (HL).
12. *Satish Mehra v. Delhi Administration*, (1996) 9 SCC 766 (India).
13. *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659 (India).
14. *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568 (India).
15. *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 (India).
16. *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158 (India).
17. The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).
18. The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
19. INDIA CONST. 1950.
20. Law Commission of India, 41ST REPORT ON THE CODE OF CRIMINAL PROCEDURE (1969).
21. Law Commission of India, 154TH REPORT ON THE CODE OF CRIMINAL PROCEDURE (1996).

22. Andrew Ashworth, *PRINCIPLES OF CRIMINAL LAW* (9th ed., Oxford University Press 2021).
23. Herbert L. Packer, *THE LIMITS OF THE CRIMINAL SANCTION* (Stanford University Press 1968).
24. K.D. Gaur, *CRIMINAL LAW: CASES AND MATERIALS* (6th ed., LexisNexis 2020).
25. K.N. Chandrasekharan Pillai, R.V. KELKAR'S *CRIMINAL PROCEDURE* (7th ed., Eastern Book Company 2021).
26. Mirjan R. Damaška, *THE FACES OF JUSTICE AND STATE AUTHORITY* (Yale University Press 1986).
27. Wayne R. LaFave et al., *CRIMINAL PROCEDURE* (6th ed., West Academic Publishing 2017).
28. Abhinav Sekhri, *Procedural Misuse in Criminal Law: The Expanding Scope of Section 482 Cr.P.C.*, 11(1) NUJS LAW REVIEW 101 (2019).
29. Raj Kumar, *Abuse of Process of Law and the Expansive Use of Section 482 CrPC*, 62(3) JOURNAL OF THE INDIAN LAW INSTITUTE 367 (2020).
30. Shraddha Raj, *Discharge in Criminal Trials: Revisiting the Judicial Standards*, 8(2) NATIONAL LAW SCHOOL REVIEW 45 (2021).
