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Comparison between Chapter 37 of CrPC (1973) and Chapter 39 of BNSS (2023)

MIDHU K. MOHAN¹

ABSTRACT

This article provides a detailed comparative analysis between Chapter 37 of the CrPC (1973) and Chapter 39 of BNSS (2023). Notably, BNSS (2023) introduces Section 530, allowing for trials and proceedings to be conducted electronically, reflecting a progressive shift towards modernizing legal practices. Additionally, the article discusses Section 530 under Chapter 39 of BNSS (2023) in detail. Furthermore, it examines relevant provisions in the CrPC (1973) Amendment Act of 2008, which permitted the use of audio-video electronic means in legal proceedings. Lastly, the article explores judicial perspectives on key sections under Chapter 37 of the CrPC (1973), offering insights into how courts have interpreted and applied its provisions.

Keywords: Audio-video electronic means, Electronic communication, BNSS, CRPC.

I. INTRODUCTION

The BNSS (Bharatiya Nagarik Suraksha Sanhita) (2023), which seeks to replace the Code of Criminal Procedure (1973), is a procedural law governing the administration of substantive law, the Bharatiya Nyaya Sanhita (BNS), 2023. It mostly retains several provisions in CrPC (1973). However, it aims to simplify the criminal procedure, shorten trial duration, enforce procedural timelines and adopt electronic communication in investigation, inquiry and trial. One of the commendable additions to this Act is **Section 530** under **Chapter 39**. It provides for trial and proceedings to be carried out in electronic mode.

II. A COMPARATIVE CHART OUTLINING THE DIFFERENCES BETWEEN CHAPTER 37 OF CRPC (1973) AND CHAPTER 39 OF BNSS (2023)

Sections under Chapter 37 of CrPC (1973)	Description	Sections under Chapter 39 of BNSS (2023)	Description
Section 474 - Trials	When an offence is	Section 520 - Trials	When an offence is

¹ Author is a student at Government Law College (Ernakulam), India.

<p>before High Courts</p>	<p>tried by the High Court otherwise than under section 407, it shall observe the same procedure as a Court of Sessions would observe if it were trying the case.</p>	<p>before High Courts</p>	<p>tried by the High Court otherwise than under section 447, it shall observe the same procedure as a Court of Sessions would observe if it were trying the case.</p>
<p>Section 475 - Delivery to commanding officers of persons liable to be tried by Court-martial</p>	<p>The Central Government is empowered to make rules consistent with this Code and the Army Act (1950), the Navy Act (1957), the Air Force Act (1950), and any other applicable laws concerning the Armed Forces of the Union. These rules pertain to situations where individuals subject to military, naval, or air force law, or other relevant laws, are to be tried either by a court covered by this Code or by a Court-martial. When an individual is brought before a Magistrate</p>	<p>Section 521 - Delivery to commanding officers of persons liable to be tried by Court-martial</p>	<p>Same as that in CrPC</p>

	<p>and charged with an offence that falls under the jurisdiction of either the court to which this code applies or a Court-martial, the Magistrate must hand over the accused individual, along with a description of the alleged offense, to the commanding officer of the unit to which he belongs to or to the commanding officer of the nearest military, naval, or airforce station for the purpose of trial by Court-martial.</p> <p>Each Magistrate must take utmost endeavor to apprehend and secure any person accused of an offense upon receiving a written request from the commanding officer of any unit or group of soldiers, sailors, or airmen stationed or working</p>		
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	<p>in that area.</p> <p>If it thinks fit, a High Court can order that a prisoner detained in any jail within the State be brought before a Court-martial for trial or for examination regarding any matter pending before the Court-martial.</p>		
Section 476 - Forms	<p>Subject to the power conferred by Article 277 of the Constitution of India, the forms provided under the II Schedule, with such variations as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.</p>	Section 522 - Forms	Same as that in CrPC
Section 477 - Power of High Court to make rules	<p>Every High Court may, with the previous approval of the State Government,</p>	Section 523 - Power of High Court to make rules	Same as that in CrPC

	<p>make rules:</p> <p>(a) as to the persons who may be permitted to act as petition-writers in the Criminal Courts subordinate to it;</p> <p>(b) regulating the issue of licences to such persons, the conduct of business by them, and the scale of fees to be charged by them.</p> <p>(c) providing a penalty for a contravention of any of the rules so made and determining the authority by which such contravention may be investigated and the penalties imposed;</p> <p>(d) any other matter which is required to be, may be, prescribed.</p>		
<p>Section 478 - Power to alter functions allocated to Executive</p>	<p>If the Legislative Assembly of a State by a resolution so</p>	<p>Section 524 - Power to alter functions allocated to Executive</p>	<p>If the Legislative Assembly of a State by a resolution so</p>

Magistrates in certain cases	permits, the State Government may, after consultation with the High Court, by notification, direct that references in sections 108, 109, 110, 145 and 147 to an Executive Magistrate shall be construed as references to a Judicial Magistrate of the first class.	Magistrates in certain cases	permits, the State Government may, after consultation with the High Court, by notification, direct that references in sections 127, 128, 129, 164 and 166 to an Executive Magistrate shall be construed as references to a Judicial Magistrate of the first class.
Section 479 - Cases in which Judge or Magistrate is personally interested	No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.	Section 525 - Cases in which Judge or Magistrate is personally interested	Same as that in CrPC
Section 480 -	No pleader who	Section 526 -	No advocate who

Practicing pleader not to sit as Magistrates in certain courts	practices in the Court of any Magistrate shall sit as a Magistrate in that Court or in any Court within the local jurisdiction of that Court.	Practicing advocate not to sit as Magistrates in certain courts	practices in the Court of any Magistrate shall sit as a Magistrate in that Court or in any Court within the local jurisdiction of that Court.
Section 481 - Public servant concerned in sale not to purchase or bid for property	A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.	Section 527 - Public servant concerned in sale not to purchase or bid for property	Same as that in CrPC
Section 482 - Saving of inherent power of High Court	Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.	Section 528 - Saving of inherent power of High Court	Same as that in CrPC
Section 483 - Duty of	Every High Court	Section 529 - Duty of	Same as that in CrPC

<p>High Court to exercise continuous superintendence over Courts of Judicial Magistrates</p>	<p>shall exercise its superintendence over the Courts of Judicial Magistrates subordinate to it in order to ensure that there is an expeditious and proper disposal of cases by such Magistrates.</p>	<p>High Court to exercise continuous superintendence over Courts of Judicial Magistrates</p>	
<p>NA</p>	<p>NA</p>	<p><u>Section 530 - Trial and Proceedings to be held in electronic mode</u></p>	<p>All trials, inquires and proceedings under this Code, including</p> <ul style="list-style-type: none"> (i) summons and warrant, issuance, service and execution thereof; (ii) holding of inquiry; (iii) examination of complainant and witnesses; (iv) trial before a Court of Session, trial in warrant cases, trial in summons-cases, summary trials and plea bargaining; (v) recording of evidence in inquiries and trials; (vi) trials before High Courts;

			<p>(vii) all appellate proceedings and such other proceedings, may be held in <u>electronic mode, by use of electronic communication or use of audio-video electronic means.</u></p>
<p>Section 484 - Repeal and Savings</p>	<p>(1) The Code of Criminal Procedure, 1898 (5 of 1898), is hereby repealed.</p> <p>(2) Notwithstanding such repeal,</p> <p>(a) if, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or</p>	<p>Section 531 - Repeal and Savings</p>	<p>(1) The Code of Criminal Procedure, 1973 is hereby repealed.</p> <p>(2) Notwithstanding such repeal,</p> <p>(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or</p>

	<p>made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), as in force immediately before such commencement (hereinafter referred to as the Old Code), as if this Code had not come into force:</p> <p>Provided that every inquiry under Chapter XVIII of the Old Code, which is pending at the commencement of this Code, shall be dealt with and disposed of in accordance with the provisions of this Code;</p> <p>(b) all notifications published, proclamations issued, powers conferred, forms prescribed, local jurisdictions</p>		<p>made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the old Code), as if this Sanhita had not come into force:</p> <p>Provided that every inquiry under Chapter XIV of the Old Code, which is pending at the commencement of this Sanhita, shall be dealt with and disposed of in accordance with the provisions of this Sanhita;</p> <p>(b) all notifications published, proclamations issued, powers conferred, forms provided by rules local</p>
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	<p>defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the Old Code and which are in force immediately before the commencement of this Code, shall be deemed, respectively to have been published, issued, conferred, prescribed defined, passed or made under the corresponding provisions of this Code.</p> <p>(c) any sanction accorded or consent given under the Old Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding</p>		<p>jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the Old Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;</p> <p>(c) any sanction accorded or consent given under the Old Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding</p>
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	<p>provisions of this Code and proceedings may be commenced under this Code in pursuance of such sanction or consent;</p> <p>(d) the provisions of the Old Code shall continue to apply in relation to every prosecution against a Ruler within the meaning of Article 363 of the Constitution</p> <p>(3) Where the period prescribed for an application or other proceeding under the Old Code had expired on or before the commencement of this Code, nothing in this Code shall be construed as enabling any such application to be made or proceeding to be commenced under</p>		<p>provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction of consent;</p> <p>(d) the provisions of the Old Code shall continue to apply in relation to every prosecution against a Ruler within the meaning of article 363 of the Constitution.</p> <p>(3) Where the period specified for an application or other proceeding under the Old Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason</p>
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	this Code by reason only of the fact that a longer period therefore is prescribed by this Code or provisions are made in this Code for the extension of time.		only of the fact that a longer period therefore is specified by this Sanhita or provisions are made in this Sanhita for the extension of time.
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III. AN OVERVIEW OF SECTION 530 UNDER CHAPTER 39 OF BNSS, 2023

The provisions under Chapter 37 of the CrPC (1973) are more or less retained in the BNSS (2023) under Chapter 39 of the BNSS (2023). However, the key change is with respect to the addition of **Section 530** under Chapter 39. It provides that all trials, inquiries and proceedings covered by this Code, including issuing summons and warrant, conducting of inquiry, examining complainants and witnesses, holding trials in various courts, recording evidence, all appellate proceedings in High Courts and such other proceedings, may be held in electronic mode, by use of electronic communication or use of audio-video electronic means. Thus, the BNSS seeks to incorporate electronic communication and video conferencing tools at different stages, including during inquiries, investigations, and trials. E.g. Section 105 provides for recording of search and seizure through audio video electronic means.

The BNSS has introduced the following two definitions to supplement the above mentioned provision:

Audio-video electronic means is defined under **Section 2(1) (a)** of BNSS (2023): It shall include use of any communication device for the purposes of video conferencing, recording of processes of identification, search and seizure or evidence, transmission of electronic communication and for such other purposes and by such other means as the State Government may, by rules provide.

Electronic communication is defined under **Section 2(1) (i)** of BNSS (2023): It means the communication of any written, verbal, pictorial information or video content transmitted (whether from one person to another, from one device to another or from a person to a device or from a device to a person) by means of an electronic device including but not limited to—a telephone, a mobile or cellular phone, or other wireless telecommunication device, or a computer, or audio-video players and cameras or any other electronic device or electronic form as may be specified by notification, by the Central Government.

Some of the specific changes made in the BNSS with respect to this provision are as follows:

1. **Proviso to Section 54 - Identification of a person arrested** - The identification can be recorded by any audio-electronic means.
2. **Section 63 (ii) - Form of Summons** - Summons issued by a Court can be in an encrypted or any other form of electronic communication and shall bear the image of the seal of the Court or digital signature.
3. **Section 251 (2) - Framing of Charge** - The charges framed by the judge in a sessions trial can be read and explained to the accused present either physically or through audio-electronic means.
4. **Section 105 - Recording of search and seizure through audio-electronic means** - Search and seizure can be recorded through any 'audio-video electronic' means, preferably by mobile phone.
5. **Section 173 (1) (ii) - Information in cognizable cases** - Information can be given and taken on record by a police officer by means of 'electronic communication'.
6. **Proviso to Section 180 (3) - Examination of witnesses by police** - Statements made by any person supposed to be acquainted with the facts and circumstances of a case can be recorded by 'audio-video electronic' means.
7. **Section 193 (3) (ii) - Report of police officer on completion of investigation** - The police officer is required to inform the victim or the informant about the progress of the investigation within 90 days by any means including through 'electronic communication'.
8. **Section 193 (8) - Report of police officer on completion of investigation** - Police report and other documents duly indexed to the Magistrate can be duly served to the accused through 'electronic communication'.
9. **Section 202 (1) - Offences committed by means of electronic communication, letters, etc.** - Offences committed by means of electronic communication, letters, etc. can be inquired into or tried by any Court within whose jurisdiction such 'electronic communication', messages or letters were sent or received.
10. **Section 256 - Evidence for prosecution** - Evidence of a witness may be recorded by audio-video electronic means. The deposition of evidence of any public servant may be also taken through audio-video electronic means.

IV. PROVISIONS IN CRPC (1973) THAT ALLOW THE USE OF AUDIO-VIDEO ELECTRONIC MEANS (CRPC AMENDMENT ACT (2008))

1. **Proviso to Section 275 (1) - Record in warrant cases:** Provided that evidence of a witness under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence. So, evidence of a witness could be taken by audio-video means as well.
2. **Proviso to Section 161 (1) (3) - Examination of witnesses by police -** Provided that statement made under this sub-section may also be recorded by audio-video electronic means.
3. **Proviso to Section 164 (1) - Recording of confessions and statements -** Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence.
4. **Proviso to Section 167 (2) - Procedure when investigation cannot be completed in twenty four hours -** Provided that no Magistrate shall authorize detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.

V. KEY PROVISIONS UNDER CHAPTER 37 OF CRPC (1973) & RELATED JUDICIAL VIEWS

Section 477 - Power of High Court to make rules

The High Court, in accordance with its authority granted by Article 227 of the Constitution of India and Section 477 of the Code of Criminal Procedure, issues regulations and directives to guide the criminal Courts within a state. This was affirmed in the case of *K. Umaphathy v. Superintendent of Jail*².

Section 482 - Saving of Inherent Powers of High Court

In *Divine Retreat Centre v. State Of Kerala*³, the court stated: “There are three circumstances

² 1997 2 Crimes 609 (AP).

³ AIR 2008 SC 1614; 2008 AIR SCW 1793.

under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

In *Popular Muthiah v. State*⁴, the Supreme Court summarized the law as to when the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. The law was stated in the following manner:

- (1) Power can be exercised suo moto in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.
- (2) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefore.
- (3) However, the power under Section 482 of Cr.P.C. is not unlimited. It can inter alia be exercised where the Code is silent, where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists.

VI. OBSERVATIONS

The provision allowing electronic trials and proceedings in BNSS (2023) is a positive step forward. However, caution is required to ensure its effectiveness and reliability.

- One potential challenge is the susceptibility of electronic records to tampering, which is likely to affect the reliability of evidence showcased in court. Steps need to be implemented to shield against unauthorized alterations and maintain the authenticity of digital evidence. E.g. Implementing digital signatures ensures that documents cannot be altered without detection.
- In electronic trials, there's a risk that sensitive personal information could be accessed or misused without proper authorization, which could violate individuals' privacy. To address this concern, it's crucial to establish safeguards—such as robust security measures and strict access controls—that protect sensitive information from unauthorized access or misuse during electronic proceedings.
- Effective implementation of electronic trials requires comprehensive training for legal professionals and court personnel. They need to be equipped with the necessary skills

⁴ AIR ONLINE 2006 SC 342.

and knowledge to navigate electronic systems and ensure that justice is delivered efficiently and fairly.

VII. CONCLUSION

The Bharatiya Nagarik Suraksha Sanhita (BNSS) of 2023 represents a significant reform in the criminal procedural law landscape of India, aiming to replace the longstanding Code of Criminal Procedure (CrPC) of 1973. While BNSS retains several provisions from its predecessor, its primary objective is to streamline criminal procedures, expedite trials, and integrate modern technologies such as electronic communication into the legal process. A notable addition to BNSS is Section 530 under Chapter 39, which allows for trials and proceedings to be conducted electronically. This provision marks a commendable step towards embracing digitalization in the administration of justice, promising increased efficiency and accessibility in legal proceedings.

VIII. REFERENCES

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