

## THE BHARATIYA NAGARIK SURAKSHA SANHITA

### Objectives of the Course:

The criminal procedural code, 1973 a significant piece of legislation in India as it lays down the procedural laws that govern criminal proceedings in the country. It serves as the backbone of the criminal justice system in India and ensures that the legal process is fair, transparent, and consistent. *Bhartiya Nagarik Suraksha Sanhita, 2023 (BNS) is one of the three criminal law bills introduced by the Union Government to replace the Criminal Procedure Code, 1973 (CrPC). BNS was passed in Lok Sabha on 20th December 2023 and in Rajya Sabha on 21st December 2023. On 25th December 2023, the President gave her assent to the three new criminal code bills. The BNS aims to establish a justice system that has a greater contribution to tackle the ongoing challenges of complex procedures, case pendency, low conviction rates, lack of technology adoption, and delayed justice delivery. The sanhita has uphelded the same procedural and protective mechanisms entrusted in The criminal procedural code, 1973 in the rights of the accused, including the right to a fair trial and the presumption of innocence until proven guilty. It also lays down the procedures for the conduct of investigations, arrests, bail, and sentencing, the protection of witnesses during trials and lays down the procedures for the recording of their statements. It also allows for victims to participate in the proceedings and to seek compensation for the harm they have suffered. Above all, the greatest objective of the BNS is the suraksha (protection) of citizens from the unfair exploitation of the procedure possible through the existing loopholes in the current criminal procedure regime.*

### After undergoing the study the student will be able to understand the following:

- To provide an understanding of the basic principles and concepts of criminal procedure as laid down in *The Bharatiya Nagarik Suraksha Sanhita, 2023*
- To familiarize students with the various stages of criminal proceedings, starting from the filing of a complaint to the disposal of the case by the trial court.
- To enable students to analyze and interpret provisions of *The Bharatiya Nagarik Suraksha Sanhita, 2023* including the principles of natural justice, fair trial, and the rights of the accused.
- To equip students with the skills required to draft, file and defend criminal complaints, petitions, and applications under *The Bharatiya Nagarik Suraksha Sanhita, 2023*

### COURSE OUTLINE

#### Module I : General Principles

- Fundamental principles of criminal procedure
- Comparison of CrPC, 1973 and BNS
- Contributions of Law Commission of India in Criminal Law Development
- Types of courts (court of session, Judicial Magistrates of first class, Judicial Magistrates of Second Class and Executive Magistrate)
- Appointment of judges
- Presumption of innocence
- Right to a fair trial
- Burden of proof

#### Module II: Arrest, Bail, and Remand

- Summoning (including electronic communication) and Procedures for arrest of suspects (submission -handcuffing)
- Circumstances under which an arrest can be made
- Rights of the accused during arrest
- Examination and Identification of person arrested
- Provisions for bail and remand
- Factors that court must consider when granting or denying bail
- Procedures for applying for bail
- Types of bail (regular, anticipatory, interim)
- Conditions that may be imposed on bail
- Consequences of violation of bail conditions
- Procedures for remanding the accused in custody
- Types of remand (judicial, police, and administrative)

#### Module III: Investigation

- Procedures for investigation of crimes (traditional and electronic mode)
- Powers of the police during investigation
- Procedures for collection of evidence-forensic Expert
- Provisions for search and seizure.
- Circumstances under which a search can be conducted
- Types of objects that can be seized

#### Module IV: Charge

- Procedures for framing charges against the accused
- Types of charges
- Requirements for a valid charge
- Procedures for amendment of charges
- Procedures for discharge of the accused

#### Module V: Trial

- Procedures for conduct of criminal trials
- Types of evidence that can be presented
- Procedures for examination and cross-examination of witnesses
- Procedures for recording of evidence
- Role of judge and jury in the trial
- Witness protection scheme
- Types of judgments that can be pronounced

#### Module VI: Judgment and Appeal

- Procedures for pronouncement of judgments
- Types of judgments
- Procedures for award of punishment.
- Provisions for appeal
- Types of appeals
- Procedures for filing and hearing appeals
- Provision for revision of orders and judgments

## Module VII: Execution, Suspension, and Review

- a. Procedures for execution of sentences
- b. Types of punishments.
- c. Procedures for remission and commutation of sentences
- d. Provisions for suspension of sentences
- e. Procedures for review of judgments
- f. Provision for transfer of cases
- g. Provision for reference and revision by High Court.

### Recommended Reading:

#### Books:

1. Taxmann's Handbook on New Criminal Laws – Detailed, in-depth analysis on BNSS, including comprehensive guides, comparative studies, subject index, 2023, Taxmann Publications Private Limited.
2. Adv. Saurabh Kansal, Prof. (Dr) Vageshwari Deswal, and Dr. Shruti Goyal., Bharatiya Nagarik Suraksha Sanhita 2023 | Law & Practice, The Cornerstone Publication, Taxmann's Law and Practice Series, 2024
3. Naman Saxena, Concise commentary on The Bharatiya Nagarik Suraksha Sanhita, 2023, Lexis Nexis Publication, 2023.
4. Dr. B. Ramaswamy, Professional's New Criminal Laws/ Criminal Manual Containing Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS), Professional Book Publishers; First Edition (8 January 2024)
5. Ratanlal and Dhirajlal. The Code of Criminal Procedure. LexisNexis, 2021.
6. K.N. Chandrasekharan Pillai. The Code of Criminal Procedure. Eastern Book Company, 2021.
7. C.K. Thakker and M.C. Thakker. Code of Criminal Procedure, 1973. Bharat Law House, 2021. 262
8. M.P. Jain. Code of Criminal Procedure. Wadhwa Nagpur, 2020.
9. P.S.A. Pillai. Criminal Procedure. LexisNexis, 2021.

#### Journals/ Articles

1. S. Chandra. "Bail under Indian Criminal Procedure Code." Indian Bar Review, vol. 48, no. 1, 2021, pp. 101-120.
2. P. Singh. "Legal Representation under the Indian Criminal Procedure Code." Indian Journal of Law and Technology, vol. 17, no. 2, 2020, pp. 121-144.
3. Khanna. "The Right to Silence under the Indian Criminal Procedure Code." The Indian Journal of Criminology and Criminalistics, vol. 40, no. 2, 2021, pp. 59-74.
4. D. Rana. "Trial by Media and the Indian Criminal Procedure Code." Journal of Indian Law and Society, vol. 11, no. 2, 2020, pp. 67-86.
5. M.K. Garg. "Police Powers under the Indian Criminal Procedure Code." Indian Journal of Criminal Law and Justice, vol. 9, no. 1, 2021, pp. 32-48.
6. Pandey, P.K., Zero First Information Report: Indian Laws and Practices (March 1, 2020). Published in Studies in Indian Place Names (UGC Care Journal) ISSN: 2394-3114 Vol-40-Issue-60-March -2020

#### Further Reading

#### Books

1. V. Kelkar. Lectures on Criminal Procedure. Eastern Book Company, 2020.

2. S.N. Mishra. Code of Criminal Procedure, 1973. Central Law Agency, 2021.
3. A.N. Saha. Code of Criminal Procedure with State Amendments. Universal Law Publishing, 2021.
4. R.V. Kelkar. The Law of Criminal Procedure. Eastern Book Company, 2020.
5. R.V. Kelkar. The Code of Criminal Procedure. LexisNexis, 2021.
6. M.K. Garg. Code of Criminal Procedure with Amendments. Central Law Publications, 2021.
7. K.N. Chandrasekharan Pillai. Criminal Procedure Code. Eastern Book Company, 2021.
8. V. Kelkar. Code of Criminal Procedure. Eastern Book Company, 2021.
9. M.P. Jain. Indian Criminal Law and Procedure. Wadhwa Nagpur, 2020.
10. A.S. Qureshi. Commentary on the Code of Criminal Procedure. Universal Law Publishing, 2021.

#### Journals/ Articles

1. S. Jha. "Plea Bargaining under the Indian Criminal Procedure Code." Indian Journal of Criminal Law and Justice, vol. 9, no. 2, 2021, pp. 101-115.
2. P. Sharma. "Investigation under the Indian Criminal Procedure Code." Indian Journal of Law and Technology, vol. 16, no. 1, 2020, pp. 74-93.
3. K. Thakur. "Search and Seizure under the Indian Criminal Procedure Code." Indian Bar Review, vol. 47, no. 2, 2020, pp. 92-106.
4. R. N. P. Singh, "Presumption of Innocence: A Fundamental Concept in Criminal Law," (2015) 1 International Journal of Law and Legal Jurisprudence Studies 20.
5. David Alan Sklansky, "The Fourth Amendment and Common Law," (2015) 129 Harvard Law Review 2009.
6. Stephen J. Schulhofer, "Fourth Amendment Pragmatism," (2013) 51 American Criminal Law Review 377.
7. Sandra G. Mayson, "The Cost of Conviction: The Effect of Criminal Process on the Brain," (2017) 70 Vanderbilt Law Review 1239
8. Wesley M. Oliver, "The Criminal Procedure Implications of Johnson v. United States," (2017) 8 Harvard Law & Policy Review 227.
9. Kevin Jon Heller, "The Collateral Consequences of Acquittal," (2016) 117 Columbia Law Review 691.
10. Nancy J. King and Susan R. Klein, "The Decline of the Exclusionary Rule and the Fourth Amendment," (2018) 48 Seton Hall Law Review 1255.

#### Cases for Guidance

1. State of Maharashtra v. Dawood Ibrahim Kaskar, 2013 CriLJ 1857 (SC)
2. Zahira Habibullah Sheikh and Another v. State of Gujarat and Others, (2004) 4 SCC 158
3. State of Punjab v. Joginder Singh, (1999) 4 SCC 260
4. Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81
5. ADM Jabalpur v. Shivakant Shukla, (1976) 2 SCC 521
6. State of Rajasthan v. Balchand, (1977) 4 SCC 308
7. D.K. Basu v. State of West Bengal, (1997) 1 SCC 416
8. Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556
9. State of Haryana v. Bhajan Lal, (1992) Supp (1) SCC 335
10. Nilabati Behera v. State of Orissa, (1993) 2 SCC 746
11. Maneka Gandhi v. Union of India, (1978) 1 SCC 248
12. Kartar Singh v. State of Punjab, (1994) 3 SCC 569
13. State of Gujarat v. Kishanbhai, (2014) 5 SCC 108
14. P.N. Eswara Iyer v. Registrar, Supreme Court of India, (1980) 4 SCC 680
15. Zahira Habibullah Sheikh v. State of Gujarat, (2006) 3 SCC 374
16. Lalita Kumari v. Government of Uttar Pradesh, (2014) 2 SCC 1

17. People's Union for Civil Liberties v. Union of India, (2004) 2 SCC 476
18. State of Maharashtra v. Abdul Sattar, (1985) 1 SCC 479
19. Zahira Habibullah Sheikh and Another v. State of Gujarat, (2004) 4 SCC 158
20. Selvi & Ors. v. State of Karnataka, (2010) 7 SCC 263

**Learning outcomes**

1. *Develop a comprehensive understanding of the legal procedures and requirements that must be followed during the investigation, trial, and judgment of criminal cases.*
2. *Help learners understand the extent and limitations of these rights of the accused at every stage of the criminal proceedings.*
3. *Develop the ability to critically analyze and interpret legal judgments and assess their impact on the criminal justice system.*
4. *Provides a framework for the application of legal principles in criminal cases.*
5. *Students can develop the ability to apply legal principles and rules in practical scenarios and make informed decisions*