
HARMONIZING BNSS WITH SPECIAL LAWS GOVERNING CORPORATE CRIMES (PMLA, SEBI ACT, COMPANIES ACT)

Yaju Yadav, LLB (Hons.), Rajiv Gandhi School of Intellectual Property Law, IIT
Kharagpur¹

ABSTRACT

The introduction of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has reshaped India's criminal procedure, but its impact on the prosecution of corporate crimes remains uncertain. Special laws such as the Prevention of Money Laundering Act, 2002, the SEBI Act, 1992, and the Companies Act, 2013 already provide their own mechanisms for investigation, bail, and trial, which often do not align neatly with the BNSS framework. This paper explores where these overlaps and conflicts arise, how courts have responded, and why harmonization between the general and special laws is necessary. It argues that clearer procedural guidelines are key to ensuring that corporate crimes are addressed both effectively and fairly.

I. Introduction

In 2023, India took a decisive step in reforming its criminal justice system by introducing the Bharatiya Nagarik Suraksha Sanhita (BNSS), which replaced the five-decade-old Code of Criminal Procedure (CrPC). This shift was not merely symbolic; it embodies a significant shift in thinking about the operation of criminal law in the country, from how it investigates and prosecutes to the rights of the accused. Yet, as is the case with any reform, lingering questions about the relationship between the new law and existing special legislations remain, and the relationship is particularly fraught in nuanced areas such as corporate crime.

Corporate crimes are not the typical offences that the criminal justice system was historically designed to handle. These crimes are sophisticated and complex in nature and mostly involve layers of financial transactions, use of digital technologies, and actors spread across

¹ LLB(Hons.) Student- Rajiv Gandhi School of Intellectual Property Law, IIT Kharagpur.

jurisdictions. Because of their unique nature, Parliament has, over time, enacted specialized laws such as the Prevention of Money Laundering Act, 2002 (PMLA), the Securities and Exchange Board of India Act, 1992 (SEBI Act), and the Companies Act, 2013. Each of these laws comes with its own procedures, agencies, and enforcement mechanisms, giving them a character very different from the general provisions found in the BNSS.

The overlap between these two worlds—the broad procedural framework of the BNSS and the targeted mechanisms of special corporate crime laws—creates a fertile ground for conflict. Which procedure applies when both sets of rules are silent or contradictory? Do the stringent bail provisions of PMLA override the general rules under BNSS? When the investigative powers of agencies such as the SEBI or SFIO overlap with the police powers permitted under BNSS, what guidance exist for how courts should address the situation? These are matters of real-world practice, not just over-theoretical questions, and have already unfolded in major cases and trials as legislative guidance to the courts on how to prosecute corporate offenders.

This paper takes up these challenges as its primary concern. It seeks to look critically at the relationship and potential conflict with harmonizing BNSS and the special legislations dealing with corporate crimes. By considering situations where procedures overlap, and analyzing how the courts have dealt with them, the paper proposes to suggest a model that can provide greater clarity, consistency, and fairness in the prosecution of corporate crimes. In the end, the goal is not to position one law as superior to the other, but, rather, to provide greater assurance when intellectual corporate offenders are prosecuted to help the justice system run smoothly without leaving any holes for sophisticated corporate offenders to use or any confusion that would limit enforcement.

II. BNSS Framework and its Relevance to Corporate Crimes

Cognizance

“Taking cognizance” is the stage where a Magistrate or Court applies its judicial mind to an offence and decides that legal proceedings should begin. It is not the same as *committing to trial*, but rather the formal act of recognizing that a case exists based on a police report, complaint, or other material. "Taking cognizance" of a case relating to an alleged offence is different from "cognizable case". A Police Officer can register an FIR only if a cognizable offence is made out and he cannot investigate into a non-cognizable offence without seeking

permission from the court. Both the terms seem to sound similar but they stand for a meaning and context different from each other².

Under BNSS, section 210³ (parallel to old CrPC §190) empowers Magistrates to take cognizance in three ways- On a complaint, on a police report, on information received (from agencies like SEBI, SFIO, ED) or on own knowledge. Section 211 further clarifies the procedural steps once cognizance is taken. More importantly, section 185 & sections 63–65 give legal recognition to electronic records as admissible evidence at the cognizance stage itself.

Relevance for Corporate Crimes:

The Bharatiya Nyaya Sanhita (BNS), 2023 has expanded the definition of organized crime (BNS section 111) to cover Financial scams, Ponzi schemes & multi-level marketing frauds, Cybercrimes and online frauds, Forgery and embezzlement by corporate officers.

This matters because in corporate crimes, primary evidence is often emails, WhatsApp messages, digital ledgers, accounting software entries, SEBI filings, electronic contracts, or even social media communications⁴. BNSS explicitly allows cognizance based on electronic records, meaning a Magistrate doesn't need only paper-based FIRs or witness statements to begin proceedings. Earlier, in CrPC practice, courts often hesitated to take cognizance solely on electronic material, demanding "primary paper records." Under BNSS, section 185 along with the application of section 210 ensures digital evidence is sufficient to trigger cognizance.

Furthermore, SEBI or SFIO can also file a complaint or report under their special statutes. BNSS allows Magistrates to directly take cognizance of such complaints, thus preventing delays.

Investigation

Under Section 176⁵, BNSS makes forensic investigation mandatory for all offences where the punishment is seven years or more. This means that the police can't rely only on basic

² R. Regupathi, Cognizance – A Bird's Eye View (Tamil Nadu State Judicial Academy, Madras).

³ Bharatiya Nagarik Suraksha Sanhita, 2023, § 210 (India).

⁴ Angira Singhvi, Corporate Crime and Sentencing in India: Required Amendments in Law, 1 Int'l J. Crim. Just. Sci. 2 (July 2006).

⁵ Bharatiya Nagarik Suraksha Sanhita, 2023, § 176 (India).

statements or surface-level evidence. They must employ the contributions of forensic experts, this can include forensic accountants, IT experts, cyber-forensics teams, and auditors. Reports prepared by forensic agencies form part of the case diary and can be relied on during trial.

Furthermore, BNSS through its section 185⁶ recognizes electronic and digital records (emails, WhatsApp, SMS, cloud files, financial ledgers, CCTV, server logs) as primary evidence while sections 186–187⁷ lay down how such digital records should be collected, preserved, and presented in court (chain of custody, certification requirements).

This matters because in cases like insider trading, accounting fraud, or social media manipulation, most evidence exists only in digital form. Earlier under CrPC, defence lawyers often challenged admissibility, arguing electronic files were *secondary evidence*. Now under BNSS, digital records are on par with paper records, making prosecutions more robust. This makes it difficult to escape by destroying paper trail since digital records are recognized under the law. This digital admissibility reduces procedural delays and brings India closer to OECD & UN standards on corporate fraud investigation⁸.

Relevance for Corporate Crimes:

Some corporate crimes covered under the forensic investigation provision of section 176 BNSS include Criminal breach of trust by a director (BNS section 316) which is punishable for a period up to 10 years or Forgery of valuable documents/cheques (BNS section 336–340) which is punishable for a period of 7+ years. Similarly, Embezzlement by Company Officers has a higher punishment under BNS which triggers mandatory forensic audit under BNSS. This includes forensic accountants tracing fund transfers, misappropriation, and making dummy entries in balance sheets as part of the investigation process for such offense⁹.

Under section 111 of BNS, Ponzi Schemes, Cyber-enabled Financial Scams & Multi-Level Marketing Fraud are treated as organized crime with harsh penalties. Therefore, under BNSS, an investigation for such offenses may employ:

⁶ Bharatiya Nagarik Suraksha Sanhita, 2023, § 185 (India).

⁷ Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 186–187 (India).

⁸ Raja Vijayaraghavan, Digital Forensics Collection, Preservation & Appreciation of Electronic Evidence (Judge, High Court of Kerala).

⁹ Christa M. Miller, A Survey of Prosecutors and Investigators Using Digital Evidence: A Starting Point, Nat'l Libr. Med.

- Forensic IT analysis of investor databases.
- Tracking UPI/crypto payments.
- Preservation of WhatsApp investor groups, Telegram channels, etc.
- Digital evidence rules (section 185) make screenshots, server logs, and IP tracking admissible.
- Mandatory forensic recovery of deleted files, emails, etc.

Arrest and Custody

BNSS Sections 35–60¹⁰ comprehensively deals with arrest procedures, custody, and rights of accused persons. Corporate crimes (e.g., fraud, embezzlement, insider trading, Ponzi schemes) usually involve directors, CFOs, promoters, or compliance officers. The nature of arrest here is less sudden compared to street crimes, but highly strategic. BNSS provides several safeguards to ensure a fair detention, some of which include: the mandatory documentation signed by witnesses and the arrestee, the right to meet a lawyer during interrogation (section 37), Intimation to Relatives about the arrest (section 38) and most importantly, the right of accused to be produced in before the magistrate within 24 hours (section 60).

This matters because BNSS ensures company officials aren't detained arbitrarily to "set an example" and every arrest follows strict procedure, balancing investigation needs with individual liberty. Arrest of senior officials is often needed to secure cooperation, but BNSS ensures it is lawful, transparent, and reviewable by a Magistrate. Since corporate officers hold high public trust, BNSS safeguards reduce the scope for unlawful arrests damaging reputations without evidence¹¹.

Relevance for Corporate Crimes:

Instead of mass arrests, law enforcement focuses on key decision-makers. For example: In a Ponzi scheme, the CEO or promoter may be arrested while smaller employees may just be

¹⁰ Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 35–60 (India).

¹¹ Amit Rangi, The Legal Framework of Arrest Under the Bharatiya Nagarik Suraksha Sanhita: A Rights-Based Approach, Int'l J. Advanced Rsch. & Multidisciplinary Trends.

witnesses.

Suppose, if a company director is arrested for embezzlement (BNS section 316), the procedural safeguards under BNSS requires¹²:

- Proper memo of arrest signed in presence of a family member/independent witness.
- Information given to relatives or spouse.
- Medical check-up to avoid false claims of custodial harassment.

Directors and corporate officers often contest arrests as “arbitrary.” BNSS provides safeguards to ensure arrest is lawful and documented, reducing abuse of power. For example, even in a SEBI-related fraud investigation, the accused cannot be secretly detained—the BNSS mandates transparency.

Trial and Special Courts

Sections 214-228¹³ of the BNSS classifies trials into summons cases, warrant cases, and sessions cases. Where summons cases are referred to certain Minor offences (e.g., small regulatory violations), warrant cases refer to some serious corporate crimes (fraud, breach of trust, embezzlement etc) and sessions cases refer to grave corporate offences (large-scale organized crime, money laundering etc).

Sections 232–234¹⁴ of the BNSS introduce modern procedural tools such as video-conferencing for witnesses, accused, or experts, the e-filing of documents instead of bulky paper records and electronic evidence recognition (emails, WhatsApp, SMS, company databases).

Furthermore, PMLA, SEBI Act, and Companies Act already provide for Special Courts (usually designated Sessions Courts). BNSS framework ensures procedural alignment during the trial stages (framing of charges, witness examination, final arguments) which mirror BNSS norms. Similarly, special Courts can adopt BNSS’s tech tools (e-filing, video trials, digital

¹² Odisha Police, PO-279_0, https://www.odishapolice.gov.in/sites/default/files/PDF/PO-279_0.pdf (last accessed Oct. 2, 2002).

¹³ Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 214–228 (India).

¹⁴ Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 232–234 (India).

evidence).

Consider this example: A Ponzi scheme with 10,000 victims across states.

- Victims' statements can be recorded by video link.
- Forensic audit reports can be submitted electronically.
- Special Court ensures speedy disposal under BNSS timelines.

This matters because without e-trials, corporate crime trials could drag for decades (as seen in Satyam Scam, Sahara Scam). There are many more advantages to e-trials because even the victims from across India (small investors, employees) can testify via video link. Additionally, electronic records prevent tampering and missing files. This way, by syncing with BNSS, Special Courts under SEBI/PMLA avoid procedural confusion¹⁵.

Relevance for Corporate Crimes:

Corporate crime trials are evidence-heavy, often involving thousands of pages of company records, digital evidence such as emails, audit trails, electronic ledgers, SEBI reports, forensic audit reports and multiple accused persons like directors, officers, accountants and shell company operators¹⁶.

BNSS addresses these challenges by reducing logistical burdens with e-filing and video conferencing, allowing simultaneous proceedings for multiple accused across different jurisdictions and recognizing electronic material as primary evidence so that there remain no delays waiting for “certified paper copies”.

Consider a case of ‘Massive Insider Trading Scam’ and a chargesheet is filed under the SEBI Act and BNS as organized crime/fraud. The relevant procedure under BNSS for this case would be¹⁷:

¹⁵ Bureau of Police Research & Dev., Gov't of India, Ready Reckoner: Highlighting the Use of Technology in the New Criminal Act – “Digitizing Justice, Elevating Credibility!” (2023).

¹⁶ Christa M. Miller, A Survey of Prosecutors and Investigators Using Digital Evidence: A Starting Point, Nat'l Libr. Med.

¹⁷ Amarpal Singh Dua, Reforming Criminal Proceedings under the SEBI Act, IndiaCorpLaw (Apr. 25, 2025), <https://indiacorplaw.in>.

First, Special Court, which is a sessions Court designated under SEBI Act, will take cognizance using BNSS section 210. The conduct of the trial would include the e-filing of investor's complaints followed by the testimony of SEBI officials via video conferencing. Here, the digital trading logs can also be admitted as evidence under BNSS sections 232–234. Ultimately, the judgment can be delivered without delays that might have been caused by physical summoning of witnesses from across India.

III. Special Laws on Corporate Crimes

BNSS is general procedure (like CrPC) that applies to all criminal trials including corporate offences. Special laws (PMLA, SEBI Act, Companies Act) come into the picture to create parallel mechanisms with stricter powers, different evidentiary standards, and special courts/tribunals.

Prevention of Money Laundering Act (PMLA), 2002

PMLA¹⁸ was enacted to combat money laundering and attachment of “proceeds of crime.” It is one of the most important corporate crime legislations since most financial frauds involve laundering funds through complex corporate structures¹⁹.

Under sections 5–8 of PMLA, the Enforcement Directorate (ED) can provisionally attach property suspected to be proceeds of crime for e.g., corporate bank accounts, real estate, or shell company assets. Adjudicating Authority confirms attachment, and later Special PMLA Court decides final confiscation.

Under section 50 of PMLA, ED officers have powers of civil court to summon, record evidence and demand documents. Additionally, the corporate executives and directors can be compelled to produce company books, ledgers, and emails.

Furthermore, section 45 PMLA provides a very stringent bail provision known as the “twin conditions” -

¹⁸ Prevention of Money Laundering Act, 2002, §§ 5–8, 24, 45, 50 (India).

¹⁹ Shreya Jain, The Tightrope of Justice: Navigating Fairness in PMLA Procedures, NLIU L. Rev. Blog (Aug. 6, 2024), <https://nliulawreview.nliu.ac.in/blog/the-tightrope-of-justice-navigating-fairness-in-pmla-procedures/>.

1. Court must be satisfied there are reasonable grounds that the accused is not guilty.
2. Accused must not be likely to commit any offence while on bail.

This makes corporate executives accused under PMLA face much stricter bail hurdles than under BNSS/CrPC.

Uniquely, PMLA shifts burden of proof onto the accused under its section 24. In corporate contexts, once ED shows property is “proceeds of crime,” the company/official must prove otherwise. Unlike BNSS which presumes innocence, PMLA creates an exception for financial crime, making it harder for corporate offenders to escape liability²⁰.

Securities and Exchange Board of India Act (SEBI Act), 1992

SEBI²¹ regulates the securities market. Many corporate crimes such as insider trading, stock market manipulation and corporate disclosure frauds fall in its domain. Unlike BNSS, SEBI’s powers are preventive and regulatory, not only punitive. It can stop fraud in the market *before* it fully unfolds, which ordinary BNSS trials cannot do²².

Under sections 11, 11B of the act SEBI can investigate, adjudicate, and pass orders like penalties, bans, disgorgement etc, functioning both as a regulator and as a quasi-judicial body. For example, SEBI can ban a director from accessing the market for insider trading, without waiting for a criminal trial.

Special Procedures for Investigation under section 11c of the act provides that officers can call for information, inspect company records, and interrogate directors/officers. If necessary, SEBI may refer the case to CBI, SFIO, or ED for criminal prosecution²³. First adjudication is done by SEBI’s adjudicating officer. Appeal lies to the Securities Appellate Tribunal (SAT), and further to the Supreme Court.

²⁰ Surender Kumar & Anjali Dixit, Prevention of Money Laundering Act, 2002 (PMLA): A Critical Review of Key Provisions, Int’l J. for Multidisciplinary Rsch. (IJFMR), E-ISSN 2582-2160.

²¹ Securities and Exchange Board of India Act, 1992, § 11 (India).

²² Shruti, Rajan, Procedural Fairness in Securities Enforcement, 7 Nat'l L. Sch. Bus. L. Rev. 1 (2021).

²³ Dharmishta, Raval, Improving the Legal Process in Enforcement at SEBI, Working Paper No. WP-2011-008, Indira Gandhi Inst. of Dev. Rsch. (Apr. 2011).

Companies Act, 2013

This is the primary corporate governance legislation in India. It deals with fraud, mismanagement, accounting manipulation, and director misconduct²⁴.

Section 447 of the Companies Act²⁵ covers false statements, concealment of material facts and misuse of position, punishment for which includes imprisonment for 6 months–10 years along with heavy fines.

Sections 241–246 provides that shareholders can approach the NCLT (National Company Law Tribunal) if affairs of company are conducted in a manner prejudicial to its members or public interest.

Serious Fraud Investigation Office under section 211 investigates serious corporate frauds and has powers of arrest, search, and seizure, and its report is treated as a police report for cognizance by court under BNSS.

The Companies Act provides specialized forums (NCLT/NCLAT) for corporate offences, unlike BNSS which routes trials through criminal courts. Corporate frauds/mismanagement cases are tried before NCLT (tribunal) and appeals go to NCLAT. This creates a parallel judicial process, different from Magistrates/Sessions Courts under BNSS²⁶.

IV. Conflict Zones: BNSS v. Special Laws

Investigation: Police under BNSS vs. SEBI/SFIO/ED under special laws

Under BNSS framework, investigation of cognizable offences is ordinarily carried out by the police (Sections 173–180 BNSS, 2023). Police have wide powers of search, seizure, interrogation, and filing a final report/charge sheet before the Magistrate.

Under special laws such as the SEBI Act grants SEBI officers quasi-judicial and investigative powers (search, summons, penalties). SEBI can initiate investigations into securities fraud and

²⁴ Indian Inst. of Corp. Affairs, Analysis of the Companies Act, 2013, <https://iica.nic.in/images/presentation/Analysis%20of%20Companies%20Act,%202013.pdf>.

²⁵ Companies Act, 2013, §§ 211, 241–246, 447 (India).

²⁶ Phool Chand & Ashis Taru Deb, Companies Act and Corporate Governance in India: *Quo Vadis?*, 1 Manthan: J. Com. & Mgmt. 121 (2014).

insider trading.

SFIO under Companies Act (2013): The Serious Fraud Investigation Office investigates complex frauds, often multidisciplinary (accounting, forensic, legal). Unlike police, it deals only with company-related frauds.

Enforcement Directorate (ED) under PMLA (2002): Investigates money laundering, attaches properties, and has powers of search, seizure, and arrest.

Therefore, in this case, while BNSS assumes *police investigation as the norm*, special laws create parallel investigating bodies with their own procedure. The issue is whether police powers under BNSS overlap or are ousted when SEBI/SFIO/ED are in charge.

Arrest & Bail: General BNSS bail vs. special restrictive bail provisions

Under Sections 35-38 of BNSS, Arrest requires recording reasons. Bail is governed by Sections 479–487 BNSS, which largely follow CrPC principles: bailable vs. non-bailable, with judicial discretion.

In the case of special laws, PMLA's Section 45 imposes twin conditions. These conditions make bail much harder compared to BNSS. Similar restrictions exist in NDPS Act, and Companies Act fraud provisions where offences are made non-bailable.

So, while BNSS promotes *bail as a rule* especially post-Arnesh Kumar guidelines²⁷, special laws restrict bail heavily, sometimes conflicting with constitutional principles of liberty (Article 21).

Cognizance: Magistrate under BNSS vs. Special Courts/NCLT under special laws

Cognizance of offences (Sections 210–215 BNSS) is taken by Magistrates or Sessions Courts based on police reports or complaints. Traditionally, *all criminal trials start with Magistrates*.

In the case of Special Laws, PMLA creates Special Courts designated by the Central Government to try money laundering offences. As per the Companies Act, many corporate

²⁷ Arnesh Kumar v. State of Bihar, AIR 2014 SC 2756 (India).

frauds and mismanagement cases go before the NCLT/NCLAT, not ordinary criminal courts. Similarly, SEBI can refer matters to Special Courts, bypassing the ordinary Magistracy.

Which raises the conflict that whether a Magistrate under BNSS can take cognizance of offences under these Acts, or whether *exclusive jurisdiction* lies with Special Courts/NCLT. Courts have sometimes held that special law procedures override the general BNSS route.

Overlap of Jurisdiction

BNSS is the *general procedural law* for criminal matters. It applies unless a special law expressly provides otherwise.

Special Laws often state that their provisions override other laws. This overlap leads to forum shopping, delays, and confusion — whether an accused should be tried under BNSS framework or only under the special Act's procedure. Harmonization is needed to prevent conflicts.

V. Judicial Interpretation

In the *Vijay Madanlal Choudhary v. Union of India*²⁸ judgment, the Supreme Court upheld the validity of the “twin conditions” for bail under PMLA (Section 45, post-amendment) and reinforced that PMLA, as a special law, may impose stricter procedural constraints than general criminal law.

The Court reasoned that when Parliament explicitly amends a provision like Section 45 to revive and preserve stringent bail conditions, courts must respect legislative intent, unless there is a clear constitutional infirmity. The decision affirmed that in cases where PMLA is silent on certain procedural aspects, general law (CrPC / procedural principles) can supplement, but wherever PMLA provides its own procedure, especially on bail, that special law's terms prevail over the general law. This judgment exemplifies how special law supersedes general law in procedural matters particularly in the domain of corporate crimes.

Similarly, In *ICICI Bank Ltd. v. Official Liquidator of APS Star Industries Ltd.*²⁹, the Supreme Court examined whether banks could assign Non-Performing Assets (NPAs) and have the assignee substituted in place of the original creditor during liquidation proceedings. The

²⁸ *Vijay Madanlal Choudhary v. Union of India*, 2022 INSC 757 (India).

²⁹ *ICICI Bank Ltd. v. Official Liquidator of APS Star Indus. Ltd.*, (2010) 10 SCC 1 (India).

Court emphasized that the Banking Regulation Act, 1949, as a special law governing banking operations, provides distinct powers regarding debt assignment that prevail over the general provisions of the Companies Act relating to creditor rights in liquidation. While the Companies Act (general law) sets out procedural requirements for creditor claims and substitutions, the BR Act (special law) explicitly enables banks to assign debts, including secured loans, to other banks or financial institutions. The Court applied the principle that special statutes govern their specific domain and override conflicting general laws, ensuring that banking transactions such as NPA assignments are valid even if general company law procedures appear inconsistent. This reinforces the broader legal principle that where legislative intent grants specific powers in a sectoral law, such powers take precedence over general procedural codes.

In the judgment of *Nikesh Tarachand Shah v. Union of India*³⁰, the Supreme Court struck down the stringent bail conditions under Section 45(1) of the Prevention of Money Laundering Act (PMLA), 2002, deeming them unconstitutional for violating Articles 14 and 21 of the Constitution of India. The Court found that the conditions which required the court to be satisfied that the accused was not guilty and was unlikely to commit further offenses were manifestly arbitrary and unreasonable.

This decision underscores the Court's commitment to upholding constitutional rights, even within the framework of special laws like the PMLA. While the PMLA serves a critical role in combating money laundering, the Court emphasized that such laws must align with fundamental rights. By striking down the unconstitutional bail conditions, the Court demonstrated how a harmonious interpretation of special and general laws can ensure that the rigors of special laws do not infringe upon constitutional guarantees.

VI. Harmonization Strategies

Principle of 'Generalia Specialibus Non Derogant' mean that general laws yield to special laws. This maxim is central to how courts interpret statutes. It comes into play when there is a conflict between two laws. In such cases, the question often revolves around scope: how far the general procedural framework of BNSS extends, and where the special law's procedures must take precedence.

³⁰ Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1 (India).

Justice Griffith said in the US case *R v Greenwood*³¹, “*The maxim generalia specialibus non derogant means that, for the purposes of interpretation of two statutes in apparent conflict, the provisions of a general statute must yield to those of a special one.*”

Courts usually begin with the presumption that the legislature, in enacting both laws, had the welfare of society in mind. Therefore, striking down one provision in favor of another is not preferred; instead, courts try to interpret both so they remain effective³². In practice, this means that while BNSS serves as the default criminal procedure, special corporate crime laws will override it where specifically applicable, with the maxim ensuring both are read harmoniously rather than one being rendered redundant. BNSS governs criminal processes broadly. But when special laws contain specific procedures, they override BNSS.

Doctrine of Harmonious Construction state that courts should avoid interpreting laws in conflict; instead, both should be read together in a way that gives effect to both. For example, BNSS requires reasons for arrest (Section 35 BNSS), while PMLA gives ED officers arrest power. Courts harmonize by requiring ED to record reasons in line with BNSS safeguards, even if not expressly stated in PMLA.

When two legal provisions appear to be in conflict, they cannot both operate fully at the same time. In such cases, one must give way, guided by the principle of ‘*ut res magis valeat quam pereat*’ which means it is better to interpret a law so that it remains effective rather than treating it as void. This approach favors an interpretation that preserves the purpose of the law and avoids rendering any part meaningless. By doing so, harmony is maintained, much like how the Constitution of India seeks to balance the three lists in Schedule VII. As a general rule, if two clauses within the same legislation seem inconsistent, the interpretation should aim to give effect to both as far as possible, rather than striking either down as redundant or obsolete³³.

The *SEBI v. Sahara India Real Estate Corp*³⁴ case illustrates how conflicts between special and general laws are resolved through statutory interpretation. The Companies Act provides a broad framework for regulating companies, making it a general law in this context, while the SEBI Act is a special law dealing specifically with securities and investor protection. Applying

³¹ *R v. Greenwood*, [1992] 7 O.R. (3d) 1 (Can.).

³² *Generalia Specialibus Non Derogant*, <https://share.google/dZlRxFG3RiTeJM3PC> (last visited Oct. 4, 2002).

³³ Shivansh Dwivedi, *Principle of Harmonious Interpretation: The Approach of Indian Courts*, 5(2) J. Const. L. & Juris. (2022).

³⁴ *SEBI v. Sahara India Real Estate Corp. Ltd.*, (2012) 10 SCC 603 (India).

the maxim *generalia specialibus non derogant*, the Supreme Court held that SEBI's powers under Sections 11, 11A, and 11B of the SEBI Act override general provisions of the Companies Act wherever securities regulation is concerned. At the same time, the Court applied the rule of harmonious construction, emphasizing that both statutes must work together to fulfill legislative intent. Thus, while matters such as issue of securities and public listing fall under SEBI's special jurisdiction, other company law matters remain within the domain of the MCA. This balance shows how special procedures under sector-specific legislation prevail over BNSS or other general frameworks, but in a manner that ensures both sets of laws remain effective and complementary.

Furthermore, **possible Reforms** can be made like clear Legislative Cross-references like BNSS should expressly state: "Where procedure is not provided in special laws, BNSS provisions shall apply." Special laws should similarly clarify which BNSS provisions remain applicable. This removes ambiguity for investigators, courts, and accused. Corporate frauds are complex, involving forensic accounting, securities law, and international transactions. Special benches within High Courts or designated trial courts could ensure speedy, specialized adjudication. This mirrors the NCLT/NCLAT model in company law.

Currently, BNSS promotes liberal bail standards, while PMLA/NDPS create extreme restrictions. A middle path of-uniform safeguards could be adopted such as reasons for arrest, proportional bail conditions while allowing higher thresholds for grave economic offences.

Coordination Mechanisms can also be employed. Instead of parallel investigations, joint investigation protocols should be formalized. Police (BNSS) could handle custodial interrogation, while SFIO/SEBI/ED handle technical/financial aspects. This procedure helps avoid duplication and forum shopping.

Additionally, there is still a **residuary Role of BNSS** in application. If special laws are silent, BNSS fills the procedural gap. For example, PMLA doesn't prescribe detailed trial timelines, in this case BNSS trial procedure (Sections 262–390) applies. Similarly, Companies Act fraud prosecutions in Special Courts still rely on BNSS for evidence procedures.

VII. Conclusion

Harmonizing the Bharatiya Nyaya Sanhita (BNSS) with special corporate crime laws such as

the PMLA, SEBI Act, and Companies Act presents significant challenges. The primary difficulties arise from overlapping jurisdictions, varying procedural mandates, and conflicting bail and investigation provisions. While B NSS provides a uniform procedural framework, sector-specific laws carve out stricter or alternative rules to address the unique complexities of corporate and financial crimes.

This landscape underscores the urgent need for legislative clarity and judicial consistency. Clear cross-references between B NSS and special laws, coupled with explicit provisions on jurisdiction, investigation, and bail, would minimize ambiguities and reduce the scope for procedural conflicts. Judicial interpretation, through principles like harmonious construction and the primacy of special law, has already played a vital role in bridging these gaps, but statutory guidance would make this process more predictable and equitable.

To truly strengthen corporate governance and safeguard investor interests, targeted reforms are necessary. Establishing special corporate crime benches, standardizing procedures for arrest and bail, and enhancing coordination between B NSS authorities and regulatory agencies like SEBI, ED, and SFIO would ensure that prosecutions are both efficient and just. Ultimately, a harmonized framework would uphold the rule of law while enabling robust enforcement against corporate malfeasance, reflecting a system where procedural efficiency and the protection of corporate norms coexist seamlessly.