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# **BNSS AND THE BALANCE BETWEEN EASE OF DOING BUSINESS AND CORPORATE CRIMINAL ACCOUNTABILITY IN INDIA**

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## **ABSTRACT**

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) brings a significant change to India's criminal procedural framework by replacing the Code of Criminal Procedure, 1973 (CrPC). This reform has mostly been discussed in the context of general criminal justice. However, its effects on corporate criminal liability have not received much attention. Corporations and their officers face increasing prosecution for economic offences, regulatory breaches, and financial fraud. As a result, procedural law plays a vital role in balancing accountability with business stability. This article looks at how the BNSS impacts corporate criminal prosecutions, particularly in areas like arrest powers, investigation methods, summons processes, and changes to evidence rules. It argues that while the BNSS improves procedural efficiency and incorporates digital elements, some new discretionary powers could influence corporate governance and the ease of doing business if they are not used with appropriate safeguards. The article uses a doctrinal and policy-focused approach to examine statutory provisions, court rulings, and comparative frameworks. It also suggests ways to align effective enforcement with business certainty.

**Keywords:** Bharatiya Nagarik Suraksha Sanhita, corporate criminal liability, ease of doing business, procedural law, corporate accountability.

## I. Introduction

Criminal procedure acts as the foundation of substantive criminal law. Statutes like the Companies Act of 2013 and other economic laws outline corporate offenses. However, procedural law outlines how investigations start, arrests happen, evidence is gathered, and trials are held. The shift from the Code of Criminal Procedure of 1973 to the Bharatiya Nagarik Suraksha Sanhita of 2023 marks a major change in procedures in post-independence India.<sup>1</sup>

Corporate criminal liability has changed significantly over the last thirty years. Courts have ruled that companies, even as legal entities, can be prosecuted and punished for statutory and economic offenses.<sup>2</sup> At the same time, actions against white-collar crime have increased, with agencies like the Serious Fraud Investigation Office, Enforcement Directorate, and Central Bureau of Investigation taking on bigger roles.<sup>3</sup> In this setting, changes in procedure have direct effects on corporations, their directors, and compliance systems.

The BNSS aims to update criminal procedure through digitization, timely investigations, and reforms focused on victims. However, its impact on corporate governance needs careful consideration. The use of arrest powers against corporate officers, the handling of electronic evidence, and the delivery of summons to companies can greatly affect decisions made at the board level and confidence in investments.

This article looks at whether the BNSS effectively balances two competing goals: enhancing corporate responsibility and maintaining a smooth business environment. It argues that while the new framework offers better procedural clarity and efficiency, it must be applied carefully to prevent unintended overreach in regulation.

## II. Corporate Criminal Liability in India: Doctrinal Foundations

### Companies as Juristic Persons

Indian law clearly recognizes corporations as “persons” that can face criminal prosecution.<sup>4</sup> Although early common law questioned whether companies could have mens rea, modern courts now use the identification doctrine. This means they attribute the mental state of top management to the corporation itself.

In *Standard Chartered Bank v. Directorate of Enforcement*, the Supreme Court clarified that

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<sup>1</sup> Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, INDIA CODE (2023).

<sup>2</sup> *Standard Chartered Bank v. Directorate of Enforcement*, (2005) 4 S.C.C. 530 (India).

<sup>3</sup> Companies Act, No. 18 of 2013, § 212 (India).

<sup>4</sup> Id

corporations can be prosecuted and punished even when the statute requires mandatory imprisonment.<sup>5</sup> The Court decided that corporate criminal liability cannot be dismissed just because jail time is not possible; fines may be applied instead of imprisonment.

In *Iridium India Telecom Ltd. v. Motorola Inc.*, the Supreme Court reinforced that corporations can have the necessary mens rea through the actions of their directing officers.<sup>6</sup> This change solidified corporate criminal liability within India's legal system.

### **Vicarious Liability of Directors**

Corporate prosecution often goes beyond the company to include its officers. Under the Companies Act, 2013, officers "in default" can be held responsible for violations.<sup>7</sup> The Supreme Court, however, has warned against automatic prosecution of directors without clear allegations of their involvement.<sup>8</sup>

This judicial emphasis on specificity serves as an important protection. Criminal liability cannot be assigned simply based on a title; there must be proof of active participation or legal responsibility. As corporate boards become more professional, indiscriminate prosecution could discourage capable people from taking on director roles.

### **Procedural Law as Enforcement Mechanism**

Corporate Substantive corporate liability is operationalised through procedural law. Under the Code of Criminal Procedure, 1973, corporate prosecutions followed general criminal processes relating to FIR registration, investigation, arrest, and trial.<sup>9</sup> However, procedural delays and ambiguities often undermined enforcement efficiency.

The BNSS replaces the CrPC while retaining much of its structural architecture.<sup>10</sup> Nevertheless, its emphasis on digitisation, timelines, and expanded police powers may reshape the corporate enforcement landscape.

### **Procedural Architecture under the BNSS: Implications for Corporate Prosecutions**

#### **Registration of Information and Investigation**

The BNSS still requires the recording of information about cognizable offenses but adds

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<sup>5</sup> Standard Chartered Bank, (2005) 4 S.C.C. at 530.

<sup>6</sup> *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 S.C.C. 74 (India).

<sup>7</sup> Companies Act, 2013, § 2(60).

<sup>8</sup> *Sunil Bharti Mittal v. CBI*, (2015) 4 S.C.C. 609 (India).

<sup>9</sup> Code of Criminal Procedure, No. 2 of 1974 (India).

<sup>10</sup> *Bharatiya Nagarik Suraksha Sanhita*, 2023.

technological integration methods.<sup>11</sup> Electronic filing of complaints and digital record keeping aim to simplify investigation processes. For businesses, this lowers administrative barriers and improves traceability and evidence transparency.

Deadlines for investigations may increase accountability in economic offenses, which often face long delays. However, complicated financial fraud cases usually need forensic audits and cross-border cooperation. Strict timelines, if taken literally, could pose challenges for both investigative agencies and the accused.

### **Arrest Powers and Safeguards**

One of the most debated aspects of procedural reform concerns arrest powers. The BNSS maintains the authority of police officers to arrest without a warrant in cognisable offences, but this is subject to certain conditions and requires recording of reasons.<sup>12</sup> Safeguards regarding notice of appearance in cases where arrest is not necessary still apply.<sup>13</sup>

For corporate officers, the use of arrest power has significant reputational and operational consequences. Judicial precedents under the CrPC stressed that arrest should not be routine and must meet necessity criteria.<sup>14</sup> The continuation of such safeguards under the BNSS is crucial to prevent misuse in economic offences, where custodial interrogation may not always be necessary.

A balanced application of arrest provisions is important to ensure that enforcement does not unintentionally create a chilling effect on legitimate business decision-making.

### **Summons and Corporate Representation**

Corporate entities, as artificial persons, appear in court through authorized representatives. The procedural continuity under the BNSS keeps mechanisms that allow representation without requiring all directors to be present.<sup>15</sup> This is especially important in large corporations with decentralized management structures.

Clear summons procedures improve predictability. However, improper service or procedural mistakes can still slow down proceedings. Courts will probably continue to depend on established principles from the CrPC to guide interpretation.

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<sup>11</sup> Id. § 173 (illustrative reference).

<sup>12</sup> Id. § 35.

<sup>13</sup> Id. § 41A (corresponding procedural safeguard).

<sup>14</sup> Arnesh Kumar v. State of Bihar, (2014) 8 S.C.C. 273 (India).

<sup>15</sup> Code of Criminal Procedure, 1973, § 305 (corporate representation principle).

## **Electronic Evidence and Digitisation**

Modern corporate operations are closely tied to digital infrastructure. The BNSS recognizes the growing importance of electronic evidence and digital processes in criminal cases.<sup>16</sup> This matches changes in the Indian Evidence Act (as amended) and the evolving legal standards for the admissibility of electronic records.

While integrating digital tools improves efficiency, companies must enhance their internal compliance systems to preserve and produce electronic data. Not doing so may lead to negative assumptions during prosecution.

## **Impact of BNSS on Corporate Governance and Ease of Doing Business**

Procedural law significantly shapes the regulatory environment where corporations operate. While substantive corporate law defines obligations and liabilities, criminal procedure decides how enforcement actions occur. As a result, procedural reforms like those introduced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) have important effects on corporate governance, compliance strategies, and the overall business climate.

## **Corporate Compliance and Procedural Certainty**

A stable legal environment is crucial for economic growth and investor confidence. Businesses need clarity about investigative processes, enforcement methods, and procedural protections when building their compliance systems. Under the former rules outlined in the Code of Criminal Procedure, 1973 (CrPC), companies often faced lengthy investigations and uncertainty in economic offence cases.<sup>17</sup>

The BNSS aims to tackle some of these issues by streamlining procedures and using technology. Digital filing of complaints, electronic summons, and modern record-keeping may help reduce delays caused by paper documentation.<sup>18</sup> These changes could lead to more transparency and better administration in criminal investigations involving companies.

However, certainty in procedures does not rely solely on efficiency. It also hinges on the consistent interpretation and application of laws by investigative authorities and courts. If discretionary powers are applied inconsistently, the benefits of procedural reform might not be fully realized. For corporations, the success of BNSS reforms will largely depend on the

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<sup>16</sup> Bharatiya Nagarik Suraksha Sanhita, 2023.

<sup>17</sup> Code of Criminal Procedure, No. 2 of 1974 (India).

<sup>18</sup> Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, INDIA CODE (2023).

establishment of stable enforcement practices and judicial interpretation.

### **Compliance Costs and Corporate Governance**

Corporate governance frameworks require companies to create systems that ensure they follow legal and regulatory requirements. Changes in procedures can significantly affect the structure of these systems. For example, a greater focus on electronic evidence and digital investigation processes might lead companies to improve their internal data management protocols. This includes policies for data preservation and forensic readiness.<sup>19</sup>

These changes will inevitably increase compliance costs. While these costs may be reasonable in the effort for stronger enforcement and accountability, they can also add pressure on businesses, especially small and medium enterprises that often do not have advanced compliance systems.

At the board level, enforcement of these procedures can influence strategic decision-making. Directors need to think about potential criminal exposure when they evaluate corporate actions. The Supreme Court has emphasized that the criminal liability of directors must be based on specific allegations and clear legal responsibilities.<sup>20</sup> Upholding this principle under the BNSS will be important to avoid unnecessary increases in liability.

### **Investor Confidence and Regulatory Balance**

Investor confidence is closely linked to how fair and predictable a country's legal system is. International investors often look at procedural safeguards and how openly enforcement occurs before deciding to invest in a jurisdiction.<sup>21</sup>

A strong procedural framework that tackles corporate fraud and financial misconduct can boost investor confidence. It shows that the state is dedicated to upholding the law. In contrast, too much discretion in procedures or a sense of randomness in enforcement can create uncertainty that deters investment.

The BNSS holds a sensitive spot in India's economic policy landscape. It improves investigative efficiency and strengthens the state's ability to fight economic crimes. However, it also needs to function in a way that maintains the predictability and fairness crucial for a stable business environment.

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<sup>19</sup> Information Technology Act, No. 21 of 2000 (India).

<sup>20</sup> Sunil Bharti Mittal v. CBI, (2015) 4 S.C.C. 609 (India).

<sup>21</sup> World Bank, *Ease of Doing Business Report* (2020).

## **Balancing Corporate Accountability and the Risk of Over-Criminalisation**

### **The need for Strong Enforcement**

Financial misconduct and corporate fraud can have a significant impact on the economy. Historically, major financial scandals have damaged markets, eroded investor confidence, and resulted in large losses for stakeholders. Therefore, one of the main goals of policy is to strengthen enforcement mechanisms against economic offenses.

By increasing investigative effectiveness and permitting the use of contemporary technological tools in criminal proceedings, the BNSS's procedural reforms help achieve this goal. These steps could help law enforcement deal with complicated financial crimes that frequently involve cross-border transactions and sophisticated digital evidence.

Additionally, by encouraging compliance and moral behaviour within organizations, strong enforcement mechanisms support better corporate governance.

### **Risks of Expanding Criminalization**

Though it is important, over-reliance on criminal law can have negative side effects. Over-criminalisation is a term used when there are violations of regulations that are being pursued as criminal cases when civil or regulatory procedures would be more appropriate.

This might have negative effects on entrepreneurship in corporations. Directors and senior officers might be too careful in their roles because they might perceive criminal liability as disproportionate in relation to the offense. In the context of corporations, there is a need to be careful in criminal law. This is because directors might be too careful in their roles.

This might be because they might perceive criminal liability as disproportionate in relation to the offense. Judicial precedent in India has always highlighted the need for restraint in criminal cases involving officers in corporations. In *Sunil Bharti Mittal v. Central Bureau of Investigation*, the Supreme Court held that the mere fact that an officer is in a corporate role does not by itself create criminal liability.<sup>22</sup> It is important that the courts are satisfied that there are specific allegations that establish the involvement of the individual.

It is important that the BNSS maintains this in relation to criminal liability.

### **Comparative Perspective**

When we look at how other countries deal with crimes we can learn some things that might be

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<sup>22</sup> Sunil Bharti Mittal, (2015) 4 S.C.C. at 609.

helpful for India. In the United States they have a system where companies can be held liable and they also have a lot of civil laws that are enforced by government agencies like the Securities and Exchange Commission.<sup>23</sup> The people in charge of prosecuting these cases often have a lot of power to decide how to handle them. They sometimes make deals with companies to settle the cases without going to trial.

The United Kingdom is another country that has come up with ways to hold companies accountable like a law that says companies can be guilty of a crime if they fail to prevent bad things from happening. The United Kingdom has introduced corporate accountability mechanisms such as the “failure to prevent” offence under the UK Bribery Act.<sup>24</sup> In these countries the focus is often on getting companies to follow the rules and pay fines rather than putting company leaders in jail.

Indias rules under the BNSS might be improved by looking at what these other countries are doing. If India can find a balance between punishing companies that break the law and encouraging them to follow the rules then maybe companies will be more accountable without being too scared to do business. This way the BNSS can help make sure that companies are held accountable, for crimes.

## **Recommendations for a Balanced Procedural Framework**

### **Clear guidelines on arrest in economic offences**

The arrest of officers can have big effects on the company reputation and how it works. Arrest powers are a tool for investigators but they should only be used when it is really necessary to question someone in person.

There are rules from judges like the ones in the *Arnesh Kumar v. State of Bihar* case that say arrest should not happen all the time and must have reasons.<sup>25</sup> These same ideas should be used when looking into crime under the BNSS.

If we have rules, for arresting people in cases of economic crimes it can help stop unfair enforcement and still let investigators do their jobs well.

### **Strengthening Pre-Investigation Safeguards**

Economic offences are a deal and they usually involve money matters that are very

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<sup>23</sup> Securities Exchange Act of 1934, 15 U.S.C. §§ 78a–78qq (2018).

<sup>24</sup> Bribery Act 2010, c. 23 (U.K.).

<sup>25</sup> *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273 (India).

complicated. To figure out what is going on you need to look closely at the details.

Before you can say that someone from a company has done something and should be charged the people, in charge of investigating should take a closer look to make sure they have enough evidence. This can help stop cases that do not need to go to court. That can hurt companies that are doing nothing wrong.

Economic offences are serious and clear records of what investigators decide would make everything more open and honest.

### **Encouraging Corporate Compliance Frameworks**

An effective system to monitor companies should encourage firms to have internal rules. Regulators and investigative agencies can think about companies with strong compliance systems when deciding what action to take.

Many countries have seen that a focus on compliance can greatly improve how companies are run and reduce wrongdoing. If companies are encouraged to have compliance systems this would work well with the changes to procedures, under the BNSS.

### **Encouraging Judicial Oversight and Consistent Interpretation**

The success of these rules really depends on how judges understand them and make sure they are followed. The courts will be very important in making sure that the rules in the BNSS are applied in the way every time and are fair, to everyone.

If judges start making decisions that think about what's fair and what is reasonable and that protect businesses that are doing the right thing this will help keep things balanced between making sure the rules are followed and keeping the economy stable. The BNSS rules need to be applied in a way that's consistent and fair and the courts have a big role to play in this. The BNSS is important. The courts will help make sure it works well.

### **Conclusion**

The Bharatiya Nagarik Suraksha Sanhita, 2023 marks a significant change in India's criminal procedural system. By replacing the Code of Criminal Procedure, 1973, this new law aims to modernize investigative methods, increase the use of technology, and improve how criminal justice works.

These reforms carry important implications from a business standpoint. The BNSS strengthens the state's ability to investigate and prosecute economic crimes and introduces ways to speed

up criminal cases. Digital integration, timely processes, and better evidence rules could make it easier to enforce actions against corporate wrongdoing.

Yet, the procedural structure of the BNSS must work in a way that maintains the predictability and fairness needed for a stable business climate. Over-reliance on criminal prosecution or inconsistent use of procedural powers might cause regulatory uncertainty, which could shake investor confidence and corporate governance.

Finding the right balance between holding companies accountable and maintaining economic stability is crucial. By using careful enforcement, clear guidelines for investigative powers, and ongoing judicial oversight, the BNSS could strengthen India's legal system while promoting steady economic growth.