THE TEMPORAL TRAP OF SECTION 531: RECONCILING APPELLATE VESTED RIGHTS WITH STATUTORY DISCONTINUITY UNDER BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

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The author used AI-assisted tools to a limited extent for research assistance, organisation of research material, and language-related support. The legal research, analysis, interpretation of case law, arguments, and conclusions presented in this manuscript are the author's own work.

Abstract: The commencement of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) on 1 July 2024 has created a significant transitional question concerning criminal proceedings initiated under the Code of Criminal Procedure, 1973 (CrPC). Section 531(2)(a) BNSS preserves proceedings pending before the BNSS came into force. The language of the section has created confusion in the High Courts about the approach to be adopted. Some courts treat each stage of a proceeding as a separate action under the BNSS, while others focus on continuity with the earlier Code. This article examines the conflict in the light of the doctrine of vested appellate rights recognised in *Garikapati Veeraya v. N. Subbiah Choudhry*. It argues that neither procedural atomisation nor an unrestricted rule of continuity is satisfactory. It proposes a Doctrine of Proceeding Nexus, under which the procedural law applicable to a later act depends on its legal relationship with the proceeding from which it flows. After commencement, fresh and independent proceedings should be governed by the BNSS, while appeals and revisions arising from a trial conducted under the CrPC should continue under the earlier procedure, unless Parliament legislates otherwise. This approach aims to balance Section 531 with accrued appellate rights and avoid splitting an ongoing criminal proceeding.

Keywords: Section 531 BNSS, Bharatiya Nagarik Suraksha Sanhita, Transitional Criminal Procedure, Vested Right of Appeal, Procedural Continuity, Appellate Rights

I. THE TRANSITION PROBLEM

The change from one procedural code to another is typically expressed as a legislative commencement question. In criminal procedure, however, commencement is seldom a one-time occurrence. Proceedings take several years before various courts and pass through investigation and inquiry, trial and judgment, and appellate review. The repeal of the Code of Criminal Procedure, 1973 ("CrPC") by the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") therefore raises a question more fundamental than which statute governs from 1 July

2024. The real issue is whether a criminal proceeding initiated under the former procedure can be divided into time segments simply because one segment began after the new Code came into force.

The crux of this problem is Section 531(2)(a) BNSS. Section 531(1) repeals the CrPC, but clause (2)(a) provides that proceedings pending immediately before the commencement of the BNSS as an "appeal, application, trial, inquiry or investigation" shall be disposed of, continued, held or made under the CrPC as if the BNSS had not come into force.[1]

The resulting jurisprudence has led to a division across the High Courts. In *Abdul Khader v. State of Kerala*, the Kerala High Court adopted a stage-wise approach, following the approach taken earlier by the Punjab and Haryana High Court in *Abhishek Jain v. State of U.T. Chandigarh*. Under this approach, the relevant consideration is whether the specific proceeding was pending on 30 June 2024. A proceeding filed thereafter is subject to the BNSS even if it arises directly from a criminal case filed under the CrPC. The Rajasthan High Court, in *Krishan Joshi v. State of Rajasthan*, took a different approach and treated the pre-commencement initiation of criminal proceedings as a significant factor in determining the procedural regime for subsequent proceedings.[2]

This disagreement is not just a dispute over the wording of the statute. It reveals a more fundamental disagreement between two principles of Indian procedural jurisprudence. The first is that procedural legislation will normally apply to proceedings after it comes into force, and no litigant has a vested right to a particular procedure.[3] The second, expressed most strongly in the Constitution Bench decision in *Garikapati Veeraya v. N. Subbiah Choudhry*, is that an appeal is a substantive right which vests upon the institution of the original proceeding and forms part of the same judicial process.[4]

Garikapati is especially relevant where the criminal trial was ongoing under the CrPC pursuant to Section 531(2)(a), but the appeal against the final judgment is treated as a separate case under the BNSS. This creates an odd legal discontinuity. A prosecution can then be subject to two procedural codes at the same time: one during the investigation and trial, and another when

[1] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 531(1)–(2)(a), India Code (2023).
[2] *Abdul Khader v. State of Kerala,* 2024 SCC OnLine Ker 3919, ¶ 11 (India); *Krishan Joshi v. State of Rajasthan*, 2024 SCC OnLine Raj 2042, ¶ 6 (India).
[3] *Deepu v. State of U.P.*, 2024 SCC OnLine All 4289, ¶ 16 (India); *Hitendra Vishnu Thakur v. State of Maharashtra,* (1994) 4 SCC 602, 631 (India).
[4] *Garikapati Veeraya v. N. Subbiah Choudhry,* AIR 1957 SC 540, 543–44 (India).

the accused appeals for review. The question is whether the date of filing an appeal can supersede the legal consequences of the proceeding from which the appeal arises.[5]

The challenge is heightened if the transition affects substantive liberty interests. Section 187 BNSS differs from Section 167 CrPC, as interpreted in *CBI v. Anupam J. Kulkarni*, which limited police custody to a specific period within the overall detention period.[6] As a result, the timing of the application of procedural rules may affect the degree of State control over an accused during the same investigation. While Article 20(1) does not in itself make every change in criminal procedure unconstitutional, Article 21 requires procedure affecting personal liberty to be fair and non-arbitrary.[7]

The crux of this article is narrower than a blanket argument that all criminal cases initiated before 1 July 2024 should remain under the CrPC. Section 531(2)(a) should be read so that the accrued right of appeal or revision arising from a preserved trial remains unaffected, unless Parliament has plainly expressed a desire to eliminate or modify that accrued appellate right. This approach will respect the saving clause without artificially dividing a single criminal action.

II. SECTION 531(2)(A): THE STATUTORY ARCHITECTURE OF TRANSITION

The temporal debate starts with the language of Section 531 BNSS. Section 531(1) repeals the CrPC, and Section 531(2)(a) provides a saving clause for an "appeal, application, trial, inquiry or investigation" pending immediately before the Sanhita came into force. Such proceedings shall be disposed of, continued, held or made as if the BNSS were not in force.[8] The provision, however, does more than decide how pending criminal cases are handled. It creates a framework in which two sets of procedures may operate during the same period.

The problem lies with the term "pending". A stage-wise interpretation views each of the categories outlined in Section 531(2)(a) as a distinct stage in the process. Under this interpretation, if an appeal is filed after 1 July 2024, it is not an 'appeal' pending immediately before commencement as a result of the trial conducted under the CrPC, and hence it is covered

[5] See *Garikapati Veeraya*, AIR 1957 SC at 543–44; *Akhtari Bi v. State of M.P.*, (2001) 4 SCC 355, 357 (India) (recognising that a criminal trial is treated as continuing during the pendency of a statutory appeal).
[6] *Central Bureau of Investigation v. Anupam J. Kulkarni*, (1992) 3 SCC 141, 144–45 (India).
[7] *Maneka Gandhi v. Union of India,* (1978) 1 SCC 248, 284 (India).
[8] Bharatiya Nagarik Suraksha Sanhita § 531(1)–(2)(a).

by the BNSS.[9] Similarly, the same rationale has been followed by various High Courts for applications registered after the commencement of the BNSS under the relevant provisions.

The second view sees criminal litigation as a series of interconnected legal acts rather than isolated ones. An appeal is not a thing in itself, but a step following judgment and trial. If the trial is to continue under the CrPC pursuant to Section 531(2)(a), the argument is that it should not be given a totally different procedural identity because the appeal was instituted after 1 July 2024.

This difference also brings Section 6 of the General Clauses Act, 1897 into the picture. Section 6 generally provides that rights, liabilities and legal proceedings shall not be affected by repeal.[10] Section 531 is a special saving provision and, in this context, proponents of atomisation can argue that Parliament specifically excluded the general provision in Section 6. The continuity approach can invoke the same reasoning. An accrued appellate entitlement should not be presumed to have been waived under Section 531 unless the legislature has clearly indicated that this is its intention.

III. FROM STAGE-WISE ATOMISATION TO PROCEDURAL CONTINUITY: THE HIGH COURT SCHISM

The judicial dispute illustrates why a time-based test alone is insufficient. In *Abdul Khader v. State of Kerala*, the Kerala High Court adopted the stage-wise approach, holding that an appeal filed on or after 1 July 2024 is governed by the BNSS. The Punjab and Haryana High Court in *Abhishek Jain v. State of U.T. Chandigarh* similarly held that a petition filed after 1 July 2024 was required to be brought under the BNSS rather than the CrPC.[11]

The Allahabad High Court has also adopted the beginning-of-the-particular-stage approach in *Deepu v. State of U.P*. A clear example of this rationale appears in the Gauhati High Court's decision in *In re XXX v. State of Arunachal Pradesh*. The Court held that even where the FIR was registered before the new Code came into force, anticipatory-bail, regular-bail and quashing petitions filed thereafter would be governed by the relevant BNSS provisions. The

[9] *Abdul Khader,* 2024 SCC OnLine Ker 3919, ¶ 11; *Deepu*, 2024 SCC OnLine All 4289, ¶ 16.
[10] General Clauses Act, No. 10 of 1897, § 6, India Code (1897); *State of Punjab v. Mohar Singh Pratap Singh,* AIR 1955 SC 84, 87–88 (India) (holding that Section 6 continues to operate on repeal unless the subsequent legislation manifests a contrary intention).
[11] *Abdul Khader,* 2024 SCC OnLine Ker 3919, ¶ 11; *Abhishek Jain v. State of U.T. Chandigarh,* 2024 SCC OnLine P&H 9874, ¶¶ 8.7, 9(II) (India).

Court emphasised the plain language of Section 531(2)(a), particularly whether the specific proceeding began before commencement.[12]

However, the case law remains inconsistent. In *Krishan Joshi v. State of Rajasthan*, the Rajasthan High Court took a more liberal, continuity-based approach which gave substantial importance to the pre-commencement FIR and the subsequent proceeding. The Bombay High Court has taken a more nuanced, hybrid stance. In *Chowgule & Co. (P) Ltd. v. State of Goa*, a pre-1 July FIR may continue under the CrPC, while a fresh application filed after commencement may be governed by the BNSS.[13]

The Supreme Court's decision in *Parvinder Singh v. Directorate of Enforcement*, 2026 INSC 519, adds an important consideration. The Court distinguished a judicial inquiry from preliminary administrative acts such as numbering a complaint or fixing a future date for consideration of cognizance. The decision concerned whether a complaint registered before 1 July 2024 amounted to a pending "inquiry"; cognizance was taken after the BNSS came into force. It therefore supports the distinction between a proceeding legally commenced under the CrPC and a genuinely new proceeding arising after the BNSS came into force.[14]

But the distinct question of the procedural regime governing an appeal arising from a trial preserved under the CrPC is not, by itself, resolved by Parvinder Singh. That distinction is important. A fresh bail or quashing application is a fresh proceeding, while an appeal against a judgment in a CrPC proceeding exists by virtue of that judgment.

Therefore, it is wrong to pit "old cases" against "new cases". The more precise question is whether the later step is legally independent or derives from a proceeding preserved under Section 531(2)(a). This distinction provides a basis for applying Garikapati Veeraya without neglecting the plain meaning of Section 531.[15]

IV. GARIKAPATI AND THE VESTED CHARACTER OF APPELLATE RIGHTS

[12] *Deepu*, 2024 SCC OnLine All 4289, ¶ 16; *In re XXX v. State of Arunachal Pradesh,* 2024:GAU-AS:10973-DB, ¶¶ 21–23 (Gauhati H.C. Nov. 11, 2024) (India).
[13] *Krishan Joshi,* 2024 SCC OnLine Raj 2042, ¶ 6; *Chowgule & Co. (P) Ltd. v. State of Goa,* 2024 SCC OnLine Bom 2501, ¶¶ 52–56 (India).
[14] *Parvinder Singh v. Directorate of Enforcement*, 2026 INSC 519, ¶¶ 28, 36 (India).
[15] *Garikapati Veeraya,* AIR 1957 SC at 543–44; Bharatiya Nagarik Suraksha Sanhita § 531(2)(a).

> "The right of appeal is not a mere matter of procedure but is a substantive right."[16]

The most serious problem with a stage-wise application of Section 531 arises at the final stage of the process: the appeal. The Constitution Bench in *Garikapati Veeraya v. N. Subbiah Choudhry* laid down five propositions on appellate rights. First, remedies such as the suit, appeal and second appeal are parts of the same judicial action. Secondly, the right of appeal is not merely procedural but substantive. Thirdly, this right usually attaches when the original action commences. Fourthly, an accrued right is not extinguished unless it is expressly repealed or taken away by necessary intendment. Lastly, changes to the basis or venue of appeal do not generally remove the vested right where the later statute contains no express provision giving those changes retrospective effect.[17]

This is where the atomisation approach needs closer examination. If a trial was pending immediately before 1 July 2024, the resulting appeal is not conceptually equivalent to a new bail application filed after that date. The appeal exists by virtue of the judgment in the preserved proceeding. Treating the appeal as a separate procedural event reduces continuity to a merely historical fact.

It is then a question of continuity of the derivative proceeding. The subsequent appeal should be considered in light of the proceeding on which it is based. The argument for retaining the CrPC becomes even stronger where it was preserved under Section 531(2)(a). On the other hand, if an application is brought on its own after commencement and not simply in continuation of a pending stage, the case for applying the BNSS is much stronger.[18]

The implications of either approach concern more than nomenclature or filing provisions, or the replacement of Section 482 CrPC with Section 528 BNSS. The change can materially affect personal liberty.[19]

Section 167 CrPC was interpreted by the Supreme Court in *CBI v. Anupam J. Kulkarni* to restrict police custody to the first 15 days of the maximum remand period. Section 187 BNSS

[16] *Garikapati Veeraya,* AIR 1957 SC at 543–44.
[17] *Garikapati Veeraya*, AIR 1957 SC at 543–44.
[18] *Garikapati Veeraya,* AIR 1957 SC at 543–44; *Hiralal Nansa Bhavsar v. State of Gujarat,* 1974 SCC OnLine Guj 65 (India).
[19] Code of Criminal Procedure, No. 2 of 1974, § 482, India Code (1974); Bharatiya Nagarik Suraksha Sanhita § 528.

takes a different approach. Its text allows police custody in parts during certain periods in the first 40 or 60 days, depending on the 60- or 90-day detention period. The change therefore widens the period within which police custody may be sought.[20]

Consider an investigation based on an FIR that was filed on 25 June 2024. While the investigation continues in accordance with the CrPC pursuant to Section 531(2)(a), the remand regime may be interpreted to allow the State to avail itself of the regime under the BNSS during the same investigation, thereby giving the accused a materially different remand regime. The transition date would then define not only the form of application but also the limits of the coercive power of the State during its investigation.[21]

This does not mean that Section 187 BNSS automatically violates Article 20(1). Article 20(1) primarily speaks to the conviction and punishment for an offence and cannot be read as a constitutional ban on any retrospective change in procedure. The more robust constitutional concern is based on Article 21 and the requirement for a ‘fair, just and non-arbitrary procedure' in cases of procedural changes involving personal liberty. Article 14 may also apply where the treatment of accused persons in similar situations results in different material consequences over time, without a defensible basis in the statute.[22]

In *V. Senthil Balaji v. State,* the Supreme Court disagreed with the first-15-days rule laid down in *Central Bureau of Investigation v. Anupam J. Kulkarni* and referred the question to a larger Bench. The decision concerned Section 167 CrPC; it does not by itself determine the interpretation of Section 187 BNSS. The more focused question is whether Section 187 can apply to an investigation whose identity has otherwise been preserved under Section 531.[23]

V. THE CASE FOR A DIFFERENTIATED TRANSITIONAL RULE

Two opposing principles must be balanced. The first is the settled position that procedural legislation can normally apply to future procedural steps. Secondly, repeal does not generally create a new right or transform a continuing proceeding into an unrelated proceeding.[24]

[20] *Anupam J. Kulkarni,* (1992) 3 SCC at 144–45; Bharatiya Nagarik Suraksha Sanhita § 187(2).
[21] Bharatiya Nagarik Suraksha Sanhita §§ 187, 531(2)(a).
[22] INDIA CONST. arts. 14, 20(1), 21; *Maneka Gandhi,* (1978) 1 SCC at 283–84.
[23] *V. Senthil Balaji v. State,* 2023 SCC OnLine SC 934, ¶ 79 (India); *Anupam J. Kulkarni,* (1992) 3 SCC at 144–45; Bharatiya Nagarik Suraksha Sanhita § 187.
[24] *Garikapati Veeraya*, AIR 1957 SC at 543–44; *Mohar Singh,* AIR 1955 SC at 87–88.

The textual objection to continuity is still worth considering. “Pending” usually means a proceeding which has been instituted and remains pending determination. The courts cannot rewrite Section 531 merely because another interpretation is more convenient. This is one reason the decisions supporting atomisation are persuasive, particularly for fresh bail and quashing petitions. The same text-based argument is weaker when applied to an appeal arising from a trial expressly preserved by the saving clause.

The correct solution is therefore neither continuity in every case nor atomisation in every case. Section 531 should be applied between stages of a proceeding rather than only at the end. A truly new proceeding that begins on or after 1 July 2024 should normally be subject to the BNSS. A proceeding pending before commencement should remain under the CrPC. Most importantly, an appeal or revision arising from a trial preserved by Parliament under the CrPC should be treated as a continuation of that trial unless Parliament expressly provides otherwise.

VI. THE DOCTRINE OF PROCEEDING NEXUS: A RECONCILIATORY FRAMEWORK

There is no need to opt for absolute continuity or complete atomisation in the present dispute. Both methods address an aspect of the statutory issue. The stage-wise model rightly acknowledges that the BNSS will regulate proceedings that actually started after 1 July 2024. The continuity model, however, correctly recognises that some procedural phases are based on an earlier procedure and cannot be considered independent merely because they occur later.

The Doctrine of Proceeding Nexus is therefore a workable solution. The central question is whether there is a clear legal connection between the procedural step and an existing proceeding preserved under Section 531(2)(a).

A. THE THREE-TIER TEST

First, proceedings that commenced before 1 July 2024 should continue under the CrPC. This includes an investigation, inquiry, trial, appeal or application pending immediately before commencement. The emphasis should be on legal commencement, not administrative or ministerial processes of numbering, listing or processing. This is consistent with *Parvinder*

Singh v. Directorate of Enforcement, which held that the relevant question was whether a judicial inquiry had actually commenced.[25]

Secondly, proceedings that are truly independent and initiated on or after 1 July 2024 should generally be subject to the BNSS. If the FIR was lodged before the BNSS came into force, a fresh anticipatory-bail, regular-bail or quashing application does not become a CrPC application. This preserves the force of decisions adopting the stage-wise approach, including *Abdul Khader, Abhishek Jain, Deepu and In re XXX.*[26]

Thirdly and most importantly, an appeal or revision directly arising out of a trial under the CrPC should normally follow the same process as the trial itself, unless Parliament has explicitly stated otherwise. This is where *Garikapati Veeraya* comes into play. An appeal is not just another application after judgment. It is a continuation of the adjudicatory proceeding, and includes an accrued appellate right.[27]

This framework does not advance the far-reaching proposition that all proceedings relating to a pre-1 July FIR should remain under the CrPC. An FIR should not serve as a perpetual reference point. The legal connection must be established by the actual proceedings and the remedy sought.

B. LEGISLATIVE CLARIFICATION AND INSTITUTIONAL CONSEQUENCES

Legislative clarification would also reduce difficulties concerning limitation, condonation, electronic procedure and digital evidence, and ease the transition from Section 482 CrPC to Section 528 BNSS. Without a clear rule, accused persons in similar situations may be required to follow different procedures before different High Courts. This does not by itself establish a violation of Article 14, but it shows the systemic costs of an unsettled transitional regime.

VII. CONCLUSION: FROM STATUTORY DISCONTINUITY TO PROCEDURAL CONTINUITY

The divergence among the High Courts suggests that neither absolute atomisation nor an FIR-based rule of continuity is satisfactory. The former may make a derivative appeal seem like a

[25] *Parvinder Singh*, 2026 INSC 519, ¶ 36; *Garikapati Veeraya*, AIR 1957 SC at 543–44.
[26] *Abdul Khader*, 2024 SCC OnLine Ker 3919; *Abhishek Jain*, 2024 SCC OnLine P&H 9874; *Deepu*, 2024 SCC OnLine All 4289; In re XXX, 2024:GAU-AS:10973-DB.
[27] *Garikapati Veeraya*, AIR 1957 SC at 543–44.

separate case, while the latter may unduly restrict the BNSS's application to genuinely new proceedings. A more limited reconciliation is provided by the Doctrine of Proceeding Nexus.

It rests on a straightforward but legally significant rule: the starting of a procedural stage is important, but so is its relationship with the proceeding from which it originated. Continuity should follow where a proceeding already exists and has been saved under Section 531. The BNSS should apply to proceedings initiated after commencement. Garikapati cautions against 'procedurally severing' the appellate remedy from its source in a trial preserved under the CrPC.[28]

The statutory commencement date should therefore remain a temporal boundary; it should not become a device to extinguish rights by the mere passage of time. The procedural code can be modified. A proceeding does not cease to be the proceeding it was simply because the calendar changes.

[28] *Garikapati Veeraya*, AIR 1957 SC at 543–44; Bharatiya Nagarik Suraksha Sanhita § 531(2)(a).