

News



A Supreme Court plea contests BNSS provisions that permit judicial officers to lead the prosecution's directorate.

Sections 20(2)(a) and 20(2)(b) of the Bharatiya Nagarik Suraksha Sanhita, 2023, which permit judicial officers to be appointed as Director of Prosecution, Deputy Director of Prosecution, or Assistant Director of Prosecution, have been challenged as unconstitutional by a practicing lawyer in a writ petition filed in the Supreme Court.

According to the plea, the contested rules weaken prosecutorial authority and obfuscate the legally required division between the government and the judiciary.

"The clause undermines prosecutorial autonomy and resurrects an unlawful merger of powers by allowing active or retired judicial officers to hold prosecutorial leadership positions. The petition goes on to say that these characteristics harm prosecutorial independence, erode the integrity of the criminal justice system, and weaken institutional safeguards. A Directorate of Prosecution must be established in each State and be administered by the Home Department, according to Section 20 of the BNSS.

A person who has practiced advocacy for at least fifteen years or who is or has been a Sessions Judge is entitled to be nominated as Director of Prosecution or Deputy Director of

Prosecution under Section 20(2)(a).

A person who has practiced advocacy for at least seven years or who has served as a first-class magistrate is qualified to be named Assistant Director of Prosecution under Section 20(2)(b).

Advocate Subeesh PS filed the petition through Advocate-on-Record Suvidutt Sundaram, arguing that the contested provisions allow current or former judges, such as Sessions Judges and Magistrates, to be appointed to leadership positions in a Directorate that is administered by the State Home Department.

Section 20 states that the State's Home Department will oversee the Directorate of Prosecution administratively. It also gives the Director, Deputy Director, and Assistant Director of Prosecution the authority to monitor cases according to the seriousness of the offenses, review police reports, expedite proceedings, provide an opinion on the filing of appeals, and handle and be in charge of all BNSS proceedings.

The petition emphasizes how the Directorate is given authority over the whole prosecution apparatus, including public prosecutors, additional public prosecutors, and assistant public prosecutors.

According to the petitioner, this arrangement causes the judicial, prosecutorial, and executive branches to merge. It is argued that the contested clauses are in violation of Articles 50 and 235 of the Constitution, which require the judiciary to be kept apart from the executive branch and give the High Courts authority over the lower courts, respectively.

According to the petition, executive and judicial power were combined in the Criminal Procedure Codes of 1861, 1872, 1882, and 1898. It argues that the 1973 Code of Criminal Procedure and Articles 50 and 235 of the Constitution purposefully destroyed this colonial model after independence.

The plea claims that by statutory induction of judicial officers into an executive-controlled Directorate of Prosecution, "subclauses (2)(a) and (2)(b) of Section 20 of the BNSS, 2023 revive this repudiated colonial model, a course fundamentally incompatible with the constitutional guarantees of separation of powers, judicial independence, and fair trial."

The plea further claims that by compromising the right to equality before the law and a fair trial, the contested clauses infringe Articles 14 and 21.

Insofar as they permit the appointment of active or retired judicial officers to positions inside an executive-controlled Directorate of Prosecution, the petitioner has attempted to have the infringing portions of Sections 20(2)(a) and 20(2)(b) of the BNSS struck down.

Alternatively, the plea requests a ruling that the entire set of contested articles violates Articles 14, 21, 50, and 235 as well as the fundamental structure and is unconstitutional.

Diary No. 7857/2026 is the case number.

Title of the Case: Union of India v. Subeesh P. S.