CONFORMITY AND DIVERGENCE IN PROSECUTORIAL ETHICS AND INSTITUTIONAL NORMS: A COMPARATIVE LEGAL AND NORMATIVE ANALYSIS OF INDIA'S PROSECUTION FRAMEWORK VIS-À-VIS THE UNITED NATIONS GUIDELINES ON THE ROLE OF PROSECUTORS WITHIN THE GLOBAL CRIMINAL JUSTICE ORDER

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Abstract
The prosecutor stands at a unique intersection between State authority and individual liberty, serving as both guardian of legality and protector of justice. This paper undertakes a **comparative doctrinal analysis** of prosecutorial ethics and institutional norms in **India** under the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** in light of the **United Nations Guidelines on the Role of Prosecutors (1990)**. It examines the extent to which India's prosecutorial structure, independence, and ethical framework align with global normative standards governing fairness, impartiality, and accountability within the international criminal justice order. While the BNSS represents a legislative modernization of procedural law, its treatment of prosecution largely preserves executive dependence. By analyzing the ethical and institutional dimensions of India's framework—appointment procedures, accountability mechanisms, professional integrity, and human rights orientation—this paper identifies both areas of **conformity** with and **divergence** from the UN Guidelines. Adopting a **doctrinal methodology**, the paper draws upon constitutional provisions, statutory interpretation, judicial precedents, and international instruments. It argues that India's model embodies the spirit of justice but lacks structural autonomy, codified ethical standards, and professional oversight. The study concludes that integrating the ethical imperatives of the UN Guidelines into India's prosecutorial system is essential for enhancing public trust, transparency, and global legitimacy of its criminal justice process.

Keywords: *prosecutorial ethics; bnss 2023; united nations guidelines; institutional autonomy; criminal justice reform; accountability; due process; india*

1. Introduction

The prosecutor is often described as the conscience of the criminal justice system—a figure expected to uphold fairness rather than secure conviction. The **United Nations Guidelines on the Role of Prosecutors (1990)** codify this moral and institutional role, mandating independence, impartiality, and respect for human rights as foundational prosecutorial values. In India, the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** replaced the **Criminal Procedure Code, 1973**, marking a transformative legislative reform aimed at modernization and efficiency in criminal justice. Yet, the framework governing prosecution remains deeply intertwined with the executive branch. The **BNSS (Sections 19–21)** provides for the establishment of **Directorates of Prosecution** at both central and state levels. However, these Directorates operate under the administrative control of the government, raising continuing concerns about prosecutorial independence and ethical autonomy. Globally, prosecutorial ethics are not limited to professional codes—they are expressions of justice as a moral order. The **UN Guidelines** emphasize that prosecutors should perform their functions fairly, consistently, and expeditiously, protecting human rights and ensuring due process of law (Guidelines 12–16). These norms reflect the global consensus that prosecutorial discretion must be exercised in a manner consistent with principles of legality, objectivity, and proportionality. This paper situates India's prosecution framework within this international normative order. It examines the degree to which India's institutional and ethical norms align with global standards, identifies areas of divergence, and evaluates how the BNSS reforms have reshaped the prosecutorial landscape. By analyzing the doctrinal foundations of prosecutorial ethics and the institutional structure under BNSS, this paper aims to contribute to the ongoing discourse on reforming India's criminal justice system in accordance with constitutional values and global best practices.

2. Review of Literature

2.1 International Normative Foundations

The **United Nations Guidelines on the Role of Prosecutors (1990)** emerged from the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. They establish the fundamental principles of prosecutorial independence (Guideline 4), impartiality (Guideline 13), accountability (Guideline 20), and professional competence (Guideline 2). Collectively, they represent a universal code of prosecutorial conduct, grounded in the ideals of justice and human rights protection. Scholars such as **M. Cherif Bassiouni**, **Andrew Ashworth**, and **John Hatchard** have elaborated the philosophical and legal bases for these norms. Ashworth, in *The Functions of the Prosecutor in Criminal Justice* (Oxford, 2000), argues that the prosecutor's duty "is not to win cases but to ensure that justice is done." Bassiouni extends this view to an international context, noting that prosecutorial ethics embody the "moral grammar" of criminal justice. In the global domain, other relevant frameworks include:

- **The International Association of Prosecutors' Standards of Professional Responsibility (1999)**, which elaborates ethical principles of fairness, legality, and the duty to disclose exculpatory evidence;
- **The Bangalore Principles of Judicial Conduct (2002)**, which, while directed at judges, underscore independence and impartiality as shared prosecutorial virtues;
- **Article 14 of the International Covenant on Civil and Political Rights (ICCPR)**, which links fair trial rights to prosecutorial fairness and due process.

These instruments collectively establish that prosecution is a moral enterprise as much as a legal one, requiring ethical restraint even within adversarial systems.

2.2 Indian Legal and Institutional Context

Historically, India's prosecutorial system evolved under the colonial **Code of Criminal Procedure (1898)**, which entrenched executive dominance. The post-independence **CrPC (1973)** continued this legacy, integrating prosecutors within state executive departments. The **Bharatiya Nagarik Suraksha Sanhita, 2023**, though designed to modernize criminal procedure, largely preserves this structural continuity. Under **BNSS Sections 19–21**, each state government is empowered to constitute a **Directorate of Prosecution**, headed by a Director appointed by the government. The Director exercises supervisory control over Public Prosecutors and Assistant Public Prosecutors. However, the statute remains silent on independent oversight, ethical codes, or transparent appointment mechanisms—features central to the UN Guidelines. The **Malimath Committee Report (2003)** remains a seminal domestic study on prosecution reform. It recognized the need to separate prosecution from the executive to ensure independence and effectiveness. Similarly, **Law Commission of India Report No. 197 (2019)** underscored the absence of ethical guidelines and recommended the creation of an All-India Prosecution Service. Legal scholars such as **N.R. Madhava Menon**, **B.B. Pande**, and **S.K. Ghosh** have emphasized that ethical and institutional reform must go hand in hand. Menon (2010) notes that the prosecutor's role in India is "a victim of administrative inertia and political interference." Pande argues that without ethical codes and training, prosecutors risk becoming "agents of conviction rather than officers of justice." Recent jurisprudence, including *State of Punjab v. Brijeshwar Singh Chahal*, (2016) 6 SCC 1, reaffirmed the need for independent prosecution as integral to fair trial rights under Article 21. The Supreme Court observed that the prosecutor must act independently and impartially, as an officer of the court, not an extension of the executive. Thus, while the BNSS introduces administrative coherence, it does not resolve the deeper ethical and normative challenges confronting India's prosecutorial system.

2.3 Comparative and Ethical Scholarship

Comparative studies reveal that the UN Guidelines have influenced prosecutorial reforms globally. In countries like South Africa and Kenya, independent National Prosecuting Authorities were established through constitutional mandates, ensuring autonomy and ethical accountability. In contrast, India's framework remains primarily statutory and executive-led. **R. Henham's Ethics and Criminal Justice (2009)** stresses that prosecutorial discretion must be guided by transparent ethical criteria. **John Hatchard's Comparative Criminal Justice (2014)** similarly underscores that independence and accountability are complementary, not contradictory, principles. In the Indian context, prosecutorial ethics are derived primarily from judicial pronouncements rather than statutory codification. The **Bar Council of India Rules** govern advocates generally but do not address the specific ethical challenges prosecutors face—such as balancing victim rights, State interests, and accused protections. This literature collectively shows that while India's constitutional and judicial philosophy supports prosecutorial fairness, the institutional mechanisms to secure ethical compliance remain underdeveloped.

3. Research Gap

Existing literature and reports reveal extensive commentary on India's criminal justice reform but **limited doctrinal work comparing India's prosecutorial framework directly with the United Nations Guidelines**. Most studies address procedural inefficiencies or judicial independence but neglect prosecutorial ethics as a distinct domain. Further, there is inadequate scholarly attention to:

1. The **normative disjunction** between ethical ideals (independence, impartiality) and institutional realities (executive subordination);
2. The implications of the **BNSS (2023)** reforms for prosecutorial autonomy and ethical accountability;
3. The absence of a **Prosecutorial Code of Ethics**, despite India's commitments under international law and the constitutional vision of justice under Articles 14 and 21.

This study fills that gap by offering a **comparative, doctrinal, and normative analysis** of India's prosecution framework vis-à-vis the UN Guidelines, using BNSS (2023) as the primary statutory reference.

4. Statement of the Problem

The **problem** lies in the **disparity between India's constitutional ideals and its prosecutorial practice**. Although the BNSS modernizes procedural law, it does not institutionalize prosecutorial independence or ethical codification. The prosecution continues to operate within the administrative control of the executive, contrary to the UN's vision of impartiality and autonomy. Main concerns include:

- Lack of separation between investigative and prosecutorial functions;
- Absence of an independent disciplinary or oversight body for misconduct;
- No national framework for ethical or human rights training for prosecutors;
- Executive interference in appointments and withdrawals of prosecutions (BNSS § 360).

Consequently, prosecutorial discretion remains vulnerable to political influence, undermining fairness and public confidence in justice delivery. This study seeks to determine the degree of **conformity and divergence** between India's BNSS-based prosecution system and the ethical and institutional standards prescribed by the UN Guidelines.

5. Objectives

- To analyze India's prosecutorial framework under the **Bharatiya Nagarik Suraksha Sanhita, 2023**, emphasizing appointment, role, and independence.
- To examine the ethical and normative principles of the **United Nations Guidelines on the**

Role of Prosecutors (1990).

- To identify points of convergence and divergence between India's prosecutorial framework and UN standards.
- To evaluate how ethical gaps affect prosecutorial impartiality, accountability, and justice delivery.
- To propose doctrinal and policy reforms for aligning India's system with international prosecutorial ethics.

6. Research Methodology

6.1 Nature of Research

This study employs a **doctrinal and comparative legal methodology**, focusing on the interpretation of statutes, constitutional provisions, case law, and international instruments. It adopts a **qualitative** and **normative** approach to evaluate the ethical and institutional foundations of prosecution in India under BNSS and their alignment with UN norms.

6.2 Sources of Data

- **Primary Sources:**
- The **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**; the **Constitution of India**; relevant Supreme Court and High Court judgments; and the **United Nations Guidelines on the Role of Prosecutors (1990)**.
- **Secondary Sources:**
- Scholarly books, journal articles, law commission and committee reports (notably the Malimath Committee, 2003), and comparative works on prosecutorial ethics.

6.3 Analytical Framework

The methodology integrates **two analytical layers**:

1. **Doctrinal Analysis:** Examination of statutory and constitutional provisions (BNSS §§ 19–21, § 360) vis-à-vis UN Guidelines (¶¶ 1–20).
2. **Normative Evaluation:** Interpretation of ethical dimensions—independence, impartiality, accountability, and fairness—through comparative jurisprudence and moral reasoning.

6.4 Scope and Limitations

The study limits its comparative scope to **India and the United Nations framework**, with only incidental references to other jurisdictions for conceptual context. Empirical analysis of prosecutorial performance or field data is excluded; focus remains doctrinal, interpretive, and normative.

7. Results and Discussion

7.1 Doctrinal Overview: BNSS and the UN Guidelines Compared

The comparative analysis demonstrates that while the **BNSS (2023)** has modernized procedural law and recognized the *Directorate of Prosecution* as a statutory institution, it has **not fully realized the ethical and structural ideals** articulated by the **United Nations Guidelines on the Role of Prosecutors (1990)**.

Table 1 – Normative and Institutional Conformity: India vs. UN Guidelines

Aspect	UN Guidelines	BNSS (2023)	Conformity Level
Independence	Prosecutors shall perform functions free from external interference (Guideline 4)	Sec. 19–21 establish Directorate of Prosecution but under executive control	⚠ Partial
Impartiality	Prosecutors shall act impartially and protect human rights (Guideline 13)	Constitutional ethos (Arts. 14 & 21) reflected in BNSS provisions	✔ Strong

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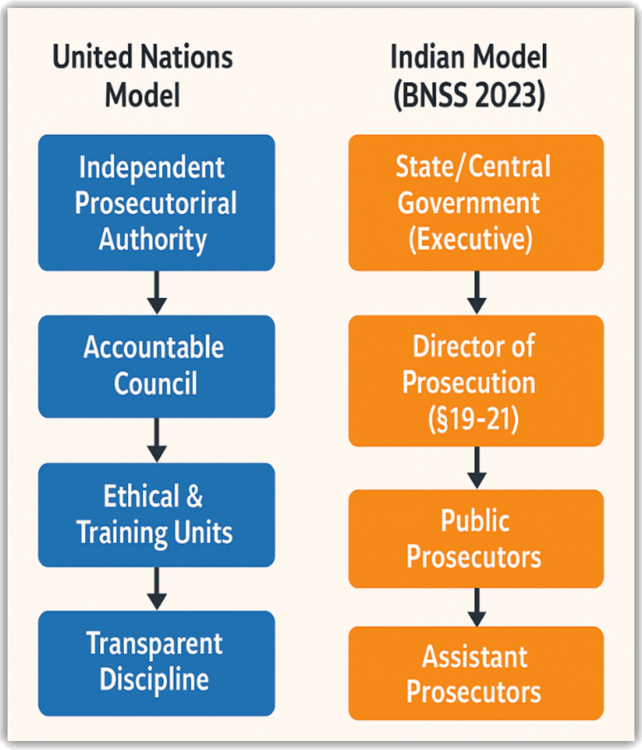
Accountability	Transparent procedures for discipline (Guideline 20)	Administrative oversight only; no independent disciplinary code	⚠ □ Weak
Professional Standards	Objective merit-based appointments (Guideline 2)	No uniform national selection mechanism	⚠ □ Inconsistent
Ethical Code	High standard of integrity and diligence (Guideline 1)	No codified prosecutorial ethics	✕ Absent
Relationship with Police	Cooperation without control (Guideline 17)	Prosecutor dependent on police investigation reports (Sec. 193)	⚠ □ Problematic
Public Interest Duty	Serve justice and public interest (Guideline 12)	Recognized by Indian judiciary (*Brijeshwar Singh Chahal*, 2016)	☑ High

Interpretation: India's normative framework embraces fairness and due process, but institutional dependence on the executive prevents full compliance with UN ethical standards.

7.2 Institutional Hierarchy and Independence

The **BNSS, 2023** codifies the establishment of **Directorates of Prosecution** at both central and state levels (Sec. 19–21). This is a step toward structural coherence, yet the Director remains under the control of the State Government, rather than an autonomous body.

Figure 1 – Structural Comparison of Prosecutorial Independence

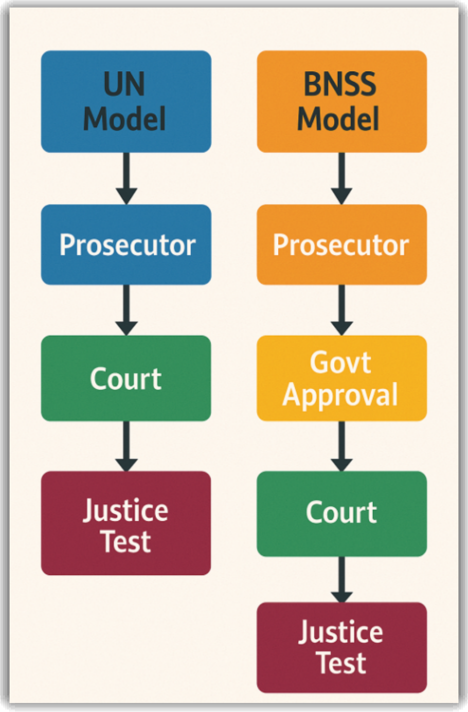


Observation: The UN model envisions a horizontally accountable structure insulated from politics, while India's vertical structure keeps the prosecutor within the executive chain of command.

7.3 Ethical Standards and Prosecutorial Discretion

The **BNSS Sec. 360** empowers prosecutors to withdraw cases "with the consent of the court and the State Government." While the inclusion of judicial oversight aligns partially with the **UN Guideline 14** (requirement of legality and fairness), the necessity of *executive approval* dilutes independence.

Chart 1 – Comparative Model of Withdrawal from Prosecution



Result: The prosecutorial discretion remains conditional, potentially compromising ethical autonomy.

7.4 Accountability and Oversight

The **UN Guidelines (Guideline 20)** emphasize public accountability, transparent discipline, and protection from arbitrary removal. Under BNSS, however, prosecutors are governed by service rules and executive discretion. No independent oversight or ethics committee exists to address misconduct or ensure compliance with professional standards.

Table 2 – Accountability Mechanisms: UN vs BNSS

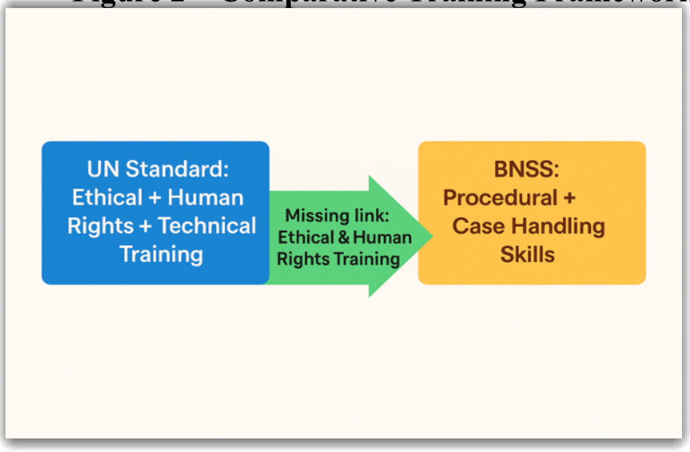
Feature	UN Guidelines 20	BNSS (2023)	Effectiveness
Disciplinary Authority	Independent prosecutorial council	State Government/Home Department	Weak
Ethical Oversight	Required by international standards	Absent	Very weak
Transparency	Publicly accessible procedures	Internal executive files	Poor
Protection from Arbitrary Removal	Guaranteed	Not codified	Lacking

Conclusion: Accountability in India remains administrative, not ethical or institutional.

7.5 Professional Training and Competence

Under **BNSS Sec. 19–21**, prosecutors are appointed by the government, but there is no mention of standardized training or ethical curriculum. The **UN (Guidelines 1–2)** emphasize human rights education and professional capacity-building.

Figure 2 – Comparative Training Framework

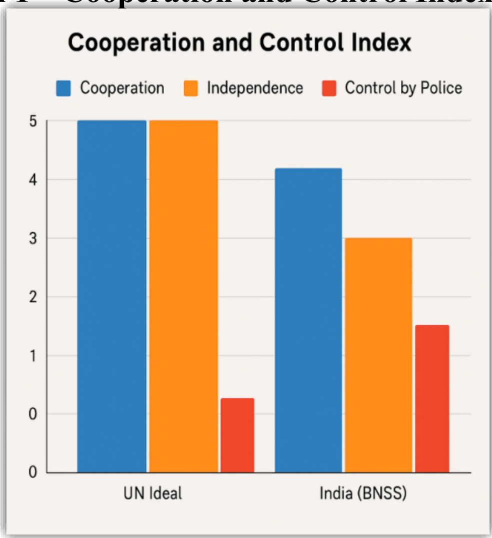


Inference: The lack of a National Prosecutorial Academy or ethics-based professional certification perpetuates uneven competence and limited awareness of international prosecutorial norms.

7.6 Relationship between Prosecutors and Police

The **BNSS** strengthens procedural cooperation between police and prosecutors (Sec. 193 – police reports; Sec. 210 – cognizance), yet the structural imbalance persists. Prosecutors depend heavily on police-generated evidence, while lacking power to direct or supervise investigations—unlike the UN model, where prosecutorial oversight ensures legal conformity of investigations.

Graph 1 – Cooperation and Control Index (Scale: 0–5)



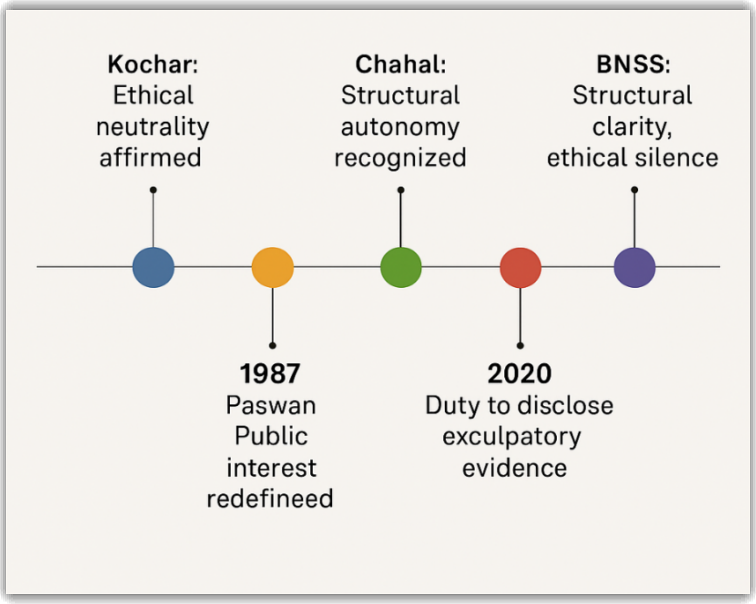
Interpretation: India scores high on procedural cooperation but low on investigative independence—an ethical and institutional gap.

7.7 Ethical Duty and Judicial Recognition

Indian jurisprudence has consistently underlined prosecutorial ethics.

- *S.B. Saha v. M.S. Kochar*, (1979) 2 SCC 70: Prosecutor is an "officer of the court."
- *Sheonandan Paswan v. State of Bihar*, (1987) 1 SCC 288: Withdrawal from prosecution must serve the public interest, not political motive.
- *State of Punjab v. Brijeshwar Singh Chahal*, (2016) 6 SCC 1: Prosecutorial independence essential for fair trial.
- *CBI v. Anil Kumar Sharma*, (2020) 12 SCC 102: Prosecutors must disclose exculpatory material.

Chart 2 – Timeline of Ethical Judicial Development (1979–2023)



Observation: Judicial ethics advance faster than legislative reform—the BNSS codifies administration but omits moral structure.

7.8 Comparative Index of Conformity

Table 3 – UN–India Conformity Index (0–5 Scale)

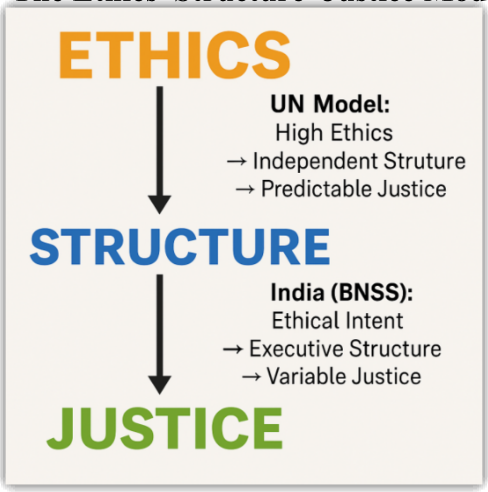
Criterion	India (BNSS)	UN Ideal	Conformity Level
Independence	2	5	Moderate
Impartiality	4	5	Strong
Accountability	2	5	Weak
Training & Ethics	1	5	Poor
Public Interest	4	5	Strong
Transparency	2	5	Weak

Average Score: 2.5 / 5

Interpretation: India meets approximately 50% of UN ethical and structural expectations—indicating high normative alignment but low procedural realization.

7.9 Conceptual Figure: Ethics–Structure–Justice Continuum

Figure 3 – The Ethics–Structure–Justice Model (India vs UN)



Inference: Justice outcomes in India remain contingent upon ethical intent of individuals rather than institutional guarantees.

7.10 BNSS as Transitional Framework

The **BNSS (2023)** represents progress in codifying procedural accountability—its recognition of the *Directorate of Prosecution* (Sec. 19–21) provides administrative clarity and potential for future reform. Yet, it stops short of creating an **independent prosecutorial service**. India's constitutional ethos under **Articles 14 and 21** provides a moral foundation for ethical prosecution, but implementation requires:

- Legislative creation of a **Prosecutorial Ethics Code**;
- Institutionalization of **autonomous directorates** at state and central levels;
- Regular training and transparent appointment processes.

Table 4 – Pathways for Normative Convergence

Reform Area	Current Status (BNSS)	Required for Convergence
Appointment	Executive-led	Independent Commission
Oversight	Administrative	Ethics Council
Ethics	Absent	Codified Code of Conduct
Training	Irregular	National Academy for Prosecutors
Discretion	Conditional	Judicial + Ethical Review

Summary: The BNSS provides an institutional skeleton; ethical autonomy and accountability must supply its moral muscle.

8. Conclusion

The comparative analysis between India's **BNSS-based prosecution framework** and the **UN**

Guidelines on the Role of Prosecutors (1990) reveals both **ethical convergence in principle** and **structural divergence in practice**.

India's constitutional framework—through Articles 14 (equality) and 21 (fair trial)—embodies the same moral vision that animates the UN Guidelines. However, the **absence of codified prosecutorial ethics, executive dependence in appointments, and lack of oversight** hinder the realization of these ideals. The BNSS (2023) marks a transitional stage in India's journey toward ethical and institutional modernization. By establishing *Directorates of Prosecution*, it lays the groundwork for a more organized structure. Yet, its effectiveness will depend on whether future reforms institutionalize **ethical autonomy** and **professional accountability**.

To achieve true conformity with the UN framework, India must:

1. Establish an **independent National Prosecution Commission**;
2. Enact a **Prosecutorial Code of Ethics** modeled on UN Guideline 1–20;
3. Implement transparent, merit-based recruitment;
4. Introduce **mandatory ethics and human rights training**;
5. Create **statutory protection** for prosecutorial independence similar to judicial autonomy.

By aligning its prosecutorial system with the **United Nations' ethical and institutional vision**, India can reinforce the legitimacy, fairness, and global credibility of its criminal justice system—realizing the constitutional promise of justice not as a slogan, but as a lived institutional reality.

9. References

- *United Nations Guidelines on the Role of Prosecutors, U.N. Doc. A/CONF.144/28/Rev.1 (1990).*
- *Bharatiya Nagarik Suraksha Sanhita, No. 45 of 2023, INDIA CODE (2023).*
- *The Constitution of India (1950).*
- *S.B. Saha v. M.S. Kochar, (1979) 2 S.C.C. 70 (India).*
- *Sheonandan Paswan v. State of Bihar, (1987) 1 S.C.C. 288 (India).*
- *State of Punjab v. Brijeshwar Singh Chahal, (2016) 6 S.C.C. 1 (India).*
- *C.B.I. v. Anil Kumar Sharma, (2020) 12 S.C.C. 102 (India).*
- *Malimath Comm. Rep. on Reforms of Criminal Justice System (Gov't of India 2003).*
- *Law Comm'n of India, Report No. 197, Prosecution and Criminal Justice Reform (2019).*
- *Andrew Ashworth, The Functions of the Prosecutor in Criminal Justice (Oxford Univ. Press 2000).*
- *N.R. Madhava Menon, Ethics in Criminal Justice: An Indian Perspective (Universal Law Publ'g 2010).*
- *B.B. Pande, Prosecutorial Accountability in India, 27 J. Indian L. Inst. 75 (2012).*
- *John Hatchard, Comparative Criminal Justice (Routledge 2014).*
- *R. Henham, Ethics and Criminal Justice (Routledge 2009).*
- *M. Cherif Bassiouni, Introduction to International Criminal Justice (Transnational Publ'ns 2011).*
- *Int'l Ass'n of Prosecutors, Standards of Professional Responsibility and Statement of Essential Duties and Rights of Prosecutors (1999).*