

**PRODUCING PRISONERS BEFORE CRIMINAL COURTS UNDER
SECTION 302 OF THE BNSS, 2023: PROCEDURAL EFFICIENCY,
PRISON SECURITY AND CONSTITUTIONAL FAIRNESS**

by

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ABSTRACT

Section 302 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) empowers a criminal court, during an inquiry, trial or other proceeding under the Sanhita, to require the production of a person confined or detained in prison either to answer a criminal charge or participate in proceedings, or to give evidence where the ends of justice require it. The provision is important because a person's imprisonment in one matter must not make that person unavailable to another court, while production itself must remain lawful, necessary and secure. This paper analyses the statutory text of section 302, its relationship with the former section 267 of the Code of Criminal Procedure, 1973 (CrPC), and the constitutional values of personal liberty, fair procedure and speedy trial. It also considers the practical significance of prison logistics, overlapping proceedings, the use of video-conferencing, judicial reasons, and safeguards against using a production process as a substitute for lawful arrest or remand. Supreme Court decisions on prisoners' rights, speedy trial and video-conferencing are used as constitutional and procedural context; decisions interpreting the former CrPC provision are treated as persuasive where the statutory language remains materially similar, not as judgments directly interpreting section 302 BNSS. The paper argues for reasoned production orders, clear coordination between courts and prisons, careful scrutiny of the purpose for which a prisoner is required, and technology-supported attendance where lawful and fair. It concludes with practical recommendations for courts, prison authorities and rule-makers.

Keywords: BNSS; section 302; production of prisoners; CrPC section 267; Article 21; fair trial; video-conferencing; prison administration.

1. INTRODUCTION

Criminal procedure must make courts effective without treating a person in custody as an object to be moved between institutions. A prisoner may be required in another criminal case as an accused, for a procedural hearing, or as a witness whose evidence is material to a pending matter. If the person cannot be brought before the court, proceedings may be delayed, evidence may be lost, and the rights of the accused, victim and other parties may be affected. At the same time, physical production involves transport, escort, security, cost, risk of escape, risks to health, and disruption to prison management. The law therefore needs a structured power that is broad enough to serve justice but controlled enough to protect liberty and institutional safety.

Section 302 of the BNSS is headed 'Power to require attendance of prisoners'. It forms part of the procedural framework governing attendance of persons confined or detained in prisons. Under subsection (1), a criminal court may direct the officer in charge of a prison to produce a confined or detained person where, during an inquiry, trial or other proceeding under the Sanhita, the person should be brought before the court to answer a charge or for proceedings against that person, or where examining that person as a witness is necessary for the ends of justice. Subsections (2) and (3) place an additional control on orders made by a Magistrate of the second class: the order cannot be forwarded to or acted upon by the prison officer unless countersigned by the Chief Judicial Magistrate (CJM), and the submitting Magistrate must provide a statement of facts explaining why the order is necessary. The CJM may decline to countersign.

This paper focuses on the legal design and practical operation of section 302. It does not assume that every prisoner must be physically produced whenever a party requests it. The statutory language makes the court responsible for deciding whether the production is required for a permitted purpose and, in the witness context, whether it is necessary for the ends of justice. The question is how courts should exercise that power in a manner consistent with criminal procedure and constitutional guarantees.

2. RESEARCH PROBLEM, OBJECTIVES AND QUESTIONS

The central research problem is whether the statutory mechanism for requiring attendance of prisoners, read with constitutional safeguards and related procedural law, adequately balances

judicial access to a prisoner against security, administrative feasibility and individual rights. The issue is not merely whether a court can issue an order; it is how the order should be reasoned, executed and reviewed.

The objectives are: (i) to explain the elements of section 302 BNSS; (ii) to compare it with section 267 CrPC, its predecessor; (iii) to identify relevant constitutional principles and judicial decisions; (iv) to examine practical risks arising from repeated or cross-jurisdictional production; and (v) to recommend safeguards for consistent implementation.

The research asks: What conditions activate section 302? What is the significance of the countersignature safeguard? How should courts distinguish a genuine production requirement from an attempt to obtain investigative custody through an inappropriate procedural route? When may video-conferencing be an appropriate alternative? What minimum record should accompany an order so that the prison officer can comply safely and the parties can understand the judicial decision?

3. RESEARCH METHODOLOGY AND LIMITATIONS

This is a doctrinal legal study based on primary legislation, constitutional provisions and reported judicial decisions. The main primary source is the BNSS, 2023, Act 46 of 2023, with section 302 examined alongside the predecessor section 267 CrPC. Constitutional principles are drawn principally from Articles 14, 21 and 22 of the Constitution of India. Decisions concerning prisoners' rights, speedy trial, and video-conferencing provide the interpretive framework. Secondary material should be added after the author has consulted the relevant editions of criminal procedure textbooks and peer-reviewed articles.

The study has limitations. Section 302 came into force as part of the new criminal procedure regime on 1 July 2024, so a mature body of appellate precedent directly interpreting it may not yet exist. Older decisions interpreting section 267 CrPC can be useful where the wording and purpose are materially similar, but they must be labelled as predecessor-provision authorities. This paper is doctrinal and does not claim to report empirical findings from prisons, courts or interviews. Before submission, the author should update the case-law search and check amendments, rules, notifications and local prison manuals applicable to the relevant State.

4. STATUTORY FRAMEWORK: SECTION 302 BNSS

4.1 Scope of subsection (1)

Section 302(1) operates during an inquiry, trial or other proceeding under the BNSS. It identifies two broad purposes. First, a person confined or detained in prison may need to be brought before the court to answer a charge or for proceedings against that person. Secondly, the court may require the person as a witness if such examination is necessary for the ends of justice. The provision places the decision with the criminal court and directs the order to the officer in charge of the prison.

The first limb concerns the prisoner's own case or a proceeding involving that prisoner. The second limb recognises that a prisoner may possess relevant evidence in another matter. A person does not lose the ability to be a witness merely because they are incarcerated. Equally, imprisonment alone does not make the person's evidence necessary: the court should consider relevance, materiality, the purpose of examination, and whether another lawful and fair method can meet the need.

The statutory threshold is judicial satisfaction, not a party's unilateral demand. A party seeking production should identify the proceeding, the role in which the prisoner is required, the issue to which attendance relates, and why attendance is needed. A reasoned judicial decision reduces unnecessary transport and provides a record for prison authorities.

4.2 Countersignature under subsections (2) and (3)

Where the order is made by a Magistrate of the second class, section 302(2) requires countersignature by the CJM to whom that Magistrate is subordinate before the order is forwarded to or acted upon by the prison officer. Under section 302(3), the order must be accompanied by a statement of facts explaining why it is necessary. The CJM may refuse to countersign after considering the statement.

This is a supervisory safeguard. It adds scrutiny to a production order made by a lower-level criminal court and helps prevent routine or insufficiently justified demands on prison resources. The statement of facts should be specific rather than formulaic. It should explain the purpose of production and the material reason for requiring the person. The countersignature mechanism should not be treated as an administrative formality; the statutory power to decline countersignature indicates that genuine consideration is required.

The subsection does not state that every order by every criminal court requires countersignature. The special requirement applies to orders made by a Magistrate of the second class. Courts and prison officers should follow the precise statutory wording rather than extending or ignoring the requirement by assumption.

4.3 Relationship with the surrounding statutory framework

Section 302 should not be read in isolation from the BNSS provisions dealing with restrictions on removal of prisoners, the circumstances in which a prison officer may be unable to comply, and the custody and return of a person produced. The author should verify the exact text and numbering of the immediately following provisions in the official BNSS before final submission and discuss them where relevant. The Prisoners (Attendance in Courts) Act, 1955 may also be relevant in its own field, especially where the question concerns attendance of a prisoner to give evidence or answer a charge, subject to the applicable statutory framework and local implementation.

Care is required in terminology. A direction to produce a person under the attendance provision is not, by itself, a finding of guilt, a fresh conviction, or an unrestricted authorisation to interrogate the person. If an investigating agency seeks to arrest or obtain police custody of a person already imprisoned in another case, it must comply with the legal provisions governing arrest, communication of grounds where required, production before the competent court and remand. A production mechanism should not be used to bypass those protections.

5. CONSTITUTIONAL FOUNDATIONS

5.1 Article 21: fair, just and reasonable procedure

Article 21 protects life and personal liberty except according to procedure established by law. The Supreme Court has interpreted this requirement to demand procedure that is fair, just and reasonable. Although a prisoner's liberty is lawfully restricted, imprisonment does not extinguish all fundamental rights. A production order must therefore be lawful, connected to a legitimate procedural purpose and implemented in a way that avoids unnecessary harm or arbitrary treatment.

In *Francis Coralie Mullin v Administrator, Union Territory of Delhi*, the Supreme Court explained that the right to life includes living with human dignity and that prison restrictions must satisfy constitutional standards. *Sunil Batra v Delhi Administration* likewise confirms that prison

walls do not place the person beyond constitutional protection. These cases do not directly construe section 302, but they support a rights-conscious approach to the manner in which the production power is exercised.

5.2 Article 21 and speedy trial

In *Hussainara Khatoon v Home Secretary, State of Bihar*, the Supreme Court recognised speedy trial as an essential component of Article 21. A production order may promote that right by enabling a court to proceed without avoidable adjournment, hear a necessary witness or deal with an accused person's case. Conversely, poor coordination between courts and prisons can cause repeated non-production and delay. Section 302 should therefore be administered as part of a broader obligation to make criminal proceedings effective and reasonably expeditious.

Speed must not be treated as the only value. A rushed production that prevents confidential consultation with counsel, compromises medical needs or makes meaningful participation impossible may undermine fairness. The goal is effective attendance and participation, not merely the physical presence of a person in the courtroom.

5.3 Equality and non-arbitrariness

Article 14 is relevant where similar requests are treated inconsistently without a rational basis, or where a prisoner's production is refused arbitrarily. A court should apply the same legal criteria to comparable cases while accounting for legitimate differences such as distance, security classification, health, urgency and the materiality of evidence. Transparent reasons support consistency and make the decision reviewable.

6. JUDICIAL DECISIONS AND THEIR RELEVANCE

The cases below provide constitutional and procedural principles. Unless a judgment expressly interprets section 302 BNSS, it should not be described as a direct section 302 precedent. Decisions under section 267 CrPC are predecessor-provision authorities and should be used with care after checking whether the relevant wording remains materially the same.

6.1 State of Maharashtra v Dr Praful B Desai

The Supreme Court accepted that evidence may, in appropriate circumstances, be recorded through video-conferencing and that technology can serve the ends of justice when the legal requirements of testimony are satisfied. The case is significant for the broader proposition that

procedural fairness does not invariably require every participant to be physically present in the same courtroom. In the context of section 302, video-conferencing may reduce escort costs and security risks, particularly for a prisoner whose evidence is needed as a witness. It should not, however, be treated as an automatic substitute for physical production where identity, confrontation, effective cross-examination, consultation with counsel or the nature of the proceeding requires physical attendance. The precise holding and citation should be checked against the authorised report before submission.

6.2 Hussainara Khatoon v Home Secretary, State of Bihar

The Supreme Court held that speedy trial forms part of the guarantee under Article 21 and addressed the injustice of undertrial prisoners remaining in custody for excessive periods. The case supports efficient coordination in production proceedings: avoidable failure to produce an accused or material witness can prolong criminal litigation. Its principle also warns against treating the prisoner's attendance as a mere administrative detail when delay can affect liberty.

6.3 Sunil Batra v Delhi Administration

The Supreme Court emphasised that prisoners retain constitutional protection and that courts can intervene against unlawful treatment within prisons. Applied as a general principle, production arrangements should preserve humane treatment, medical care and safeguards against unnecessary restraint. The case does not decide the meaning of section 302 but informs how prison-related powers should be exercised.

6.4 Francis Coralie Mullin v Administrator, Union Territory of Delhi

The Court connected Article 21 with human dignity and held that restrictions affecting persons in detention must meet standards of fairness and reasonableness. Production arrangements should therefore take account of health, dignity and meaningful access to legal assistance. These considerations do not automatically defeat a lawful order; they inform the manner and conditions of compliance.

6.5 Lalit Shyam Tekchandani v State of Maharashtra

The Bombay High Court's decision of 13 December 2024 discusses production warrants under the former CrPC in the context of subsequent arrest and remand. It is useful for distinguishing a production process from the independent legal requirements governing arrest and remand. The paper should state the narrow proposition for which the judgment is relied upon and should not

suggest that every observation in a production-warrant dispute is a ruling on section 302 BNSS. The full judgment should be checked for the final disposition and exact paragraphs before using a pinpoint citation.

6.6 Decisions under section 267 CrPC

High Court decisions interpreting section 267 CrPC have treated the power as directed to the purposes identified in the provision and have distinguished production for court proceedings from investigative interrogation. Such decisions may assist in understanding section 302 where the language is materially similar. Before citing any High Court judgment, the researcher should verify the court, date, case number, final order and relevant paragraph from the complete judgment. Search-result snippets are not a substitute for reading the judgment. The author should also check whether the decision has been appealed, stayed or overruled.

7. PRACTICAL PROBLEMS IN IMPLEMENTING SECTION 302

7.1 Multiple cases and overlapping production orders

A prisoner may face proceedings in several courts, possibly in different districts or States. Separate orders may require attendance on the same date. Without a shared calendar, prison authorities may face conflicting directions, repeated journeys and avoidable security burdens. A centralised digital register recording the prisoner's identity, case numbers, dates, issuing courts, production purpose and status of compliance could reduce these problems. Courts should communicate promptly with the prison and other courts where a conflict appears.

7.2 Transport, security and health

Physical production may require police escorts, vehicles, route planning and security arrangements. Long-distance movement can expose a prisoner and the public to risk and may interrupt medical treatment. A prison officer's operational concerns should be communicated promptly and in a documented form; they should not become an informal veto over a lawful judicial order. Courts should consider urgency, health records, security classification and feasible alternatives, while preserving the court's ultimate responsibility to decide the procedural issue.

7.3 Witness participation and effective examination

Where the prisoner is required as a witness, the court should assess the importance of the evidence and the need for effective examination. If video-conferencing is proposed, the arrangement should permit the witness to be identified, to hear and understand questions, to give

evidence without improper prompting, and to be cross-examined effectively. The court should address confidentiality where the witness needs to consult counsel and should record the reasons for choosing remote or physical attendance.

7.4 Risk of misuse in investigation

The statutory purpose matters. An order to bring a prisoner before a court to answer a charge or participate in a proceeding should not be casually repurposed as authority for police interrogation or transfer of custody. If a different investigating agency seeks custody in another case, it must use the appropriate legal route and satisfy the statutory and constitutional safeguards applicable to that step. Clear judicial records help prevent confusion between attendance, arrest, remand and transfer of custody.

7.5 Digital inequality and reliability

Video-conferencing can save time and reduce transport risks, but it can also create barriers where prison facilities, internet connections, interpretation services or private consultation facilities are inadequate. A failed connection may impair evidence or cause adjournment. Technology should be used only where the court can ensure effective participation, reliable recording and appropriate safeguards. A remote hearing that is nominally convenient but practically unintelligible is not an improvement in justice.

8. ILLUSTRATIONS

Illustration 1: Prisoner as an accused in another proceeding

A is detained in Prison X in connection with Case 1. A competent criminal court handling Case 2 needs A to answer a charge or participate in a proceeding. The court may consider an order under section 302(1)(a), provided the matter is a proceeding under the BNSS and the statutory requirements are met. The order should identify A, the case, the date, the purpose and the prison officer to whom it is directed. If the order is made by a Magistrate of the second class, the countersignature and statement-of-facts requirements in subsections (2) and (3) must be observed.

Illustration 2: Prisoner as a material witness

B is serving a sentence and is the only person who directly witnessed an incident relevant to a pending criminal trial. The prosecution or defence requests B's attendance. The court should decide whether B's evidence is necessary for the ends of justice, rather than automatically accepting the request. It may consider the expected evidence, its relevance, possible prejudice,

security arrangements and whether video-conferencing would permit fair examination. The decision and reasons should be recorded.

Illustration 3: Production request used for police questioning

C is in judicial custody in Case 1. Police investigating Case 2 ask that C be produced, not to participate in a court proceeding, but to question C and obtain police custody. The authorities must not treat section 302 as an independent shortcut to investigative custody. They must follow the applicable arrest and remand procedure, inform C of the relevant legal grounds as required, and obtain orders from the competent court. The distinction protects both the legality of investigation and the prisoner's rights.

9. CRITICAL ANALYSIS AND RECOMMENDATIONS

Section 302 offers a necessary procedural tool, but the quality of its implementation depends on disciplined judicial reasoning and reliable coordination. Its main strength is that it allows courts to secure the attendance of a person whose presence is needed for a proceeding or whose evidence is necessary for justice. The countersignature requirement for orders of a Magistrate of the second class provides an additional check. Yet the statutory power does not, by itself, solve problems of inter-court coordination, transport, remote testimony, medical needs or misuse of production processes.

First, courts should use a standard production-order template. The template should record the prisoner's verified identity, prison, case number, statutory purpose, date and time, whether the person is required as an accused or witness, escort and security needs, and the return or further-custody direction where legally applicable. It should also record whether remote attendance was considered and why it was accepted or rejected. A template would improve completeness without replacing judicial discretion.

Secondly, applications should identify why attendance is necessary. A bare request stating that a prisoner is "required for the ends of justice" risks turning a statutory test into a formula. Where the prisoner is a witness, the court should briefly identify the material issue to which the evidence relates. Where the prisoner is required as an accused, the order should identify the relevant proceeding and the purpose of attendance.

Thirdly, courts and prison authorities should maintain secure, interoperable scheduling systems. A shared calendar would help detect conflicting dates and allow the court to coordinate with other

courts before issuing or enforcing orders. Access should be role-based and audited because prisoner movements and case information are sensitive. The system should not replace formal orders; it should support compliance with them.

Fourthly, video-conferencing should be governed by a functional fairness test rather than a blanket preference. Relevant factors include the purpose of attendance, whether the person is an accused or witness, the need for identification or confrontation, the possibility of effective cross-examination, the need for confidential legal consultation, the prisoner's health and security profile, and the reliability of the facility. The court should give reasons for the chosen mode. If the technology fails or prevents meaningful participation, the court should adjourn, repair the problem or order physical attendance as appropriate.

Fifthly, the law should preserve a clear distinction between production and custody transfer. Where police seek to question a prisoner in a different case, the relevant legal process must be followed. Production orders should not be used to obscure whether a person has been arrested, whether grounds have been communicated, or whether remand has been lawfully authorised. The court record should identify the legal basis for each step.

Sixthly, prison officers should have a clear channel to report genuine obstacles, including serious illness, security emergencies, transport failure or conflicting judicial orders. Such reporting should be prompt, written and supported by relevant details. The court should then issue appropriate directions. This approach respects prison expertise without allowing administrative inconvenience to defeat judicial authority.

Finally, implementation should be periodically reviewed. High Courts and State prison departments could collect anonymised data on production requests, compliance, non-production reasons, travel distance, adjournments, remote attendance and security incidents. This would permit evidence-based policy decisions while avoiding unnecessary disclosure of personal information. Such data could help determine whether technology reduces delay and cost without compromising fairness.

10. FINDINGS

The analysis produces five principal findings. First, section 302 is a judicial power directed to defined procedural purposes; it is not an automatic right of a party to secure a prisoner's physical attendance. Secondly, the requirement that a Magistrate of the second class obtain

countersignature from the CJM, supported by a statement of facts, is a substantive supervisory safeguard. Thirdly, Articles 14 and 21 require non-arbitrary, fair and humane implementation, while the speedy-trial principle supports effective coordination. Fourthly, video-conferencing may be a useful option, but its appropriateness depends on the nature of the proceeding and the ability to preserve effective participation. Fifthly, production must be kept distinct from arrest, interrogation and remand, each of which must rest on its own legal authority.

11. CONCLUSION

Section 302 of the BNSS, 2023, occupies an important position between the needs of criminal adjudication and the realities of imprisonment. It allows a criminal court to require a person confined or detained in prison to attend for proceedings or to give evidence where necessary for the ends of justice. Its effectiveness depends not only on the existence of statutory power but on the quality of the reasons given, the safeguards observed, and the coordination between courts and prison authorities.

Constitutional jurisprudence makes clear that incarceration does not remove the protection of fundamental rights. A production order should therefore be necessary, proportionate to the procedural purpose and implemented with due regard to dignity, health, security and fair participation. Technology can assist, but it should not displace the judicial assessment required in each case. The most defensible approach is a reasoned and transparent system: specific orders, compliance with the countersignature safeguard where applicable, accurate records, coordination across courts, and a clear separation between production and investigative custody. These measures would help section 302 advance procedural efficiency without weakening constitutional fairness.

FOOTNOTES (OSCOLA-STYLE WORKING CITATIONS)

1. Bharatiya Nagarik Suraksha Sanhita 2023, s 302.
2. Code of Criminal Procedure 1973, s 267 (repealed/replaced in the new criminal procedure framework, subject to applicable savings and transitional provisions).
3. Constitution of India 1950, arts 14 and 21.
4. State of Maharashtra v Dr Praful B Desai (2003) 4 SCC 601.
5. Hussainara Khatoon v Home Secretary, State of Bihar (1980) 1 SCC 81.
6. Sunil Batra v Delhi Administration (1978) 4 SCC 494.

7. Francis Coralie Mullin v Administrator, Union Territory of Delhi (1981) 1 SCC 608.
8. Lalit Shyam Tekchandani v State of Maharashtra, Criminal Writ Petition Nos 3601, 3608 and 3606 of 2024 (Bombay High Court, 13 December 2024) (verify final report and pinpoint paragraphs before submission).
9. Prisoners (Attendance in Courts) Act 1955, ss 3–4 (check applicability to the facts, jurisdiction and relevant State law before relying on it).
10. Bharatiya Nagarik Suraksha Sanhita 2023, provisions governing arrest, production and remand, read with Constitution of India 1950, arts 21 and 22 (cite the precise provision applicable to the particular proposition).

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2. Code of Criminal Procedure 1973.
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