
POWERS OF POLICE: A CONTEXT OF INDIA ACCORDING TO BHARATIYA NAGARIK SURAKSHA SANHITA

Pooja, CT University

ABSTRACT

The BNSS marks a major overhauling of the criminal justice system in India with regard to its charter. This article essentially examines the main provisions of the BNSS with regard to procedural reforms and changes in investigations, arrests, and protection of victims. BNSS reiterates and strengthens the scope for police authority and accountability; it enhances greater transparency for victim rights, making investigations and arrests more efficient. Notable within the BNSS provisions are new protections of vulnerable persons, such as exemption from arrest for seniors and invalids, timely information from the police on the status of investigations relative to victims, and a digitized record of police procedure. These provisions would be accorded critical attention in the study for the light they may shed on their implications toward law enforcement activities and how these measures can bring about a brighter and more just and transparent legal system. Though the BNSS provides several improvements, the challenge it poses towards its implementation is mainly infrastructural development and training for law enforcement personnel.

Keywords: BNSS, criminal justice reform, victim protection, police accountability, legal procedure.

1. INTRODUCTION

Generally speaking, the word 'police' is a term that defines the body responsible for maintaining public order and giving citizens safety from crime and those who may incite criminal elements. One of the three pillars of the criminal justice system, aside from the judiciary and prosecution, the police force holds an upper hand in the investigation process. Police forces often come into contact with witnesses, victims, and suspects for the first time. Their core function is to help identify suspects and support the prosecution in building a case that proves a person's guilt, with emphasis on the critical contribution of their role in investigation.¹

The police play a number of roles in a crime case, with one of the most important ones being that of ascertaining facts and carrying out investigations without bias. This paper will seek to demystify the role of the police in crime investigation by first defining the term 'investigation' and then the procedural framework laid down.²

Etymologically, 'investigation' is a process of systematic inquiry or examination conducted with a view to obtaining information to throw light upon the facts of any given phenomenon or situation. It is examining relevant details towards ascertaining whether a crime has been committed and who has committed it.

The purpose of an inquiry is to inquire into the allegations and evidence pertaining to suspected criminal activity that might cover other facts than the pleaded allegations regarding the misconduct or breach. After *State of U.P. v. Sant Prakash* where it has been held by the Allahabad High Court the intention of an inquiry is, therefore, essentially evidence-collecting and would be performed by a police officer or a person authorized to do so by a Magistrate.

Investigation consists of activities such as arrest and detention of persons, examining of witnesses, medical examination of arrested persons, collection of evidence, coordinated raids, etc. Of course, such investigations are more or less the exclusive preserve of the police, supervisions being done over most matters by a Magistrate, who may see the case diary if later warranted.

¹ Eklavya Vasudev, "Citizens and the State: Policing, Impunity, and the Rule of Law in India" The Hindu Centre, 2024 available at: <https://www.thehinducentre.com/incoming/citizens-and-the-state-policing-impunity-and-the-rule-of-law-in-india/article67887312.ece> (last visited November 09, 2024).

² Ibid.

The first stage of a criminal case is the investigation stage. If while investigating the case the police realize that no offense has actually been committed, they report their findings to the Magistrate, and it ends there. If on the other hand, evidence of criminal activity is unearthed, then the case proceeds to the inquiry and trial stages.³⁴

The powers relating to the maintenance of public order, prevention of crime, and investigation into crimes dealt with by the Criminal Procedure Code are policing powers. These include arrest and detention, search and seizure, and even use of force. However, such powers are coupled with checks that prevent the usual abuses, like gross overuse of force, unlawful detentions, custodial abuse, etc. By way of regulating police exercise of powers to avoid these risks, the Supreme Court has promulgated a number of directives.

Several of the CrPC amendments carry important implications for procedures connected with detention, police custody, and restraints; some of these raise certain concern. The Constitution and the CrPC both prohibit detention beyond 24 hours without the approval of a Magistrate, though under the CrPC a Magistrate is empowered to extend such detention for up to 15 days in case sufficient grounds exist for such extension or for further investigation. Judicial custody can be extended beyond such period with proper justification. But the total term of detention shall not overstep 60 or 90 days depending on crimes.

New amendments will introduce changes in the process of police detention. Such can be performed up to 15 days at any point within the initial 40 days or 60 days of detention time according to the offense. This will likely amount to denial from bails if the police assert that the need for re-arrest.

However, police custody under the Unlawful Activities (Prevention) Act, 1976 is capped at 30 days. The Supreme Court has driven home the point that generally police custody should be sought during the first 15 days of remand and beyond this period only exceptionally. Importantly, as proposed under the Bill, an investigating officer need not explain and justify the prayer for police custody for a person who is already in judicial custody. This was recommended by the Standing Committee in 2023 to be clarified into effect in order to have

³ “Stages of a Criminal Case & The Legal Process,” Justia, 2018 *available at*: <https://www.justia.com/criminal/docs/stages-of-a-criminal-case/> (last visited November 09, 2024).

⁴ “Stages of a Criminal Case & The Legal Process,” Justia, 2018 *available at*: <https://www.justia.com/criminal/docs/stages-of-a-criminal-case/> (last visited November 09, 2024).

proper interpretation.⁵

BNSS Section 173(1) of the BNSS grants a police officer to take information related to cognizable offences through electronic means. Electronic means must record such information within three days of receipt. The police report or chargesheet can be presented electronically before the Magistrate. Audio-video means can be used for the recording and examination of statements of witnesses. Furthermore, such technology may be allowed for fixing the presence of the accused in court.⁶

Section 64(2) of the BNSS authorizes service of summons bearing the seal of the court through electronic means by rules made by the State Government. To facilitate better record-keeping, Section 64 provides for maintaining a register at police stations as well as at courts, which shall include all particulars of address, email-id, and phone numbers of the person served with summonses.

The registration of First Information Reports, or FIRs, has also seen an important reform: "Zero FIR." Zero FIR is the name given to the system under which police stations have to register FIRs regarding cognizable offenses even if jurisdiction is unknown. This development began with recommendations of the Justice Verma Committee for 2012 in the wake of the Nirbhaya case. A Zero FIR can be filed at any police station. After registration, it will be transferred to the appropriate jurisdiction for further investigation.

In section 173(3) of the BNSS, the case of "preliminary enquiry" before registering an FIR is institutionalized. The purpose of this preliminary is to determine whether there is enough evidence regarding a cognizable offense, which can even attract imprisonment up to more than three years but less than seven years. A fixed time of 14 days is prescribed for completing such preliminary enquiries.

1.1. Objectives of the Study

1. To Analyze the Provisions of the BNSS.

⁵ "Police Custody," *Drishti Judiciary* available at: <https://www.drishtijudiciary.com/current-affairs/police-custody> (last visited November 09, 2024).

⁶ "The Bharatiya Nagarik Suraksha Sanhita, 2023," PRS Legislative Research available at: <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023> (last visited November 09, 2024).

2. To Assess the Impact on Victim Rights and Protections.
3. To Explore the Reforms in Police Accountability and Transparency.
4. To Identify Implementation Challenges and Gaps.

1.2. Research Methodology

The research methodology applied for the study is doctrinal, that is, a close analysis of statutory texts, cases, judicial decisions, and juristic writings. Doctrinal research thus pertains to the exposition and application of the settled legal principles, rules, and frameworks. Therefore, the primary sources for this study are the Bharatiya Nagarik Suraksha Sanhita, 2023, case law relevant to the subject under study, and secondary sources like law journals, books, and government reports. The approach is aimed at understanding the provisions of laws and the implications from them as well as the role that police powers play in the investigation of crimes, especially in the context of recent reforms. Through a critical review of these legal materials, it seeks to find out how much leeway is available to police regarding powers; analyze the constraints; and seek to investigate the safeguards over individual rights. The doctrinal methodology allows analyzing the legal texts and precedents in a structured manner. It also brings conclusions on the subject matter.

2. RELATED WORK

1. Negi Advocate, C. (2023). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4677357⁷

This paper critically reflected on reforms and changes introduced under the Bharatiya Nagarik Suraksha Sanhita and how that transforms police accountability in India. The article lays out new provisions in the BNSS that guarantee to offer more transparent and accountable policing mechanisms in the sense in which policing practices concerning investigations, arrests, and custodial procedures have undergone revisions. To this end, the author shows how the BNSS strengthens the mechanism of policing oversight but brings a new set of preventive measures against abuses of police power. This however did not blunt the scathing criticism of police

⁷ Negi Advocate, C. (2023). Legal Evolution in India: Transitioning from Colonial Legacies to New Frontiers- An In-depth Analysis of Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Bill in 2023. Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Bill in. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4677357

accountability that the author leveled against such reforms; hence, BNSS had established the legal statutes that guarantee police accountability in this respect, but practice told another story.

2. Bajpai, A., Gupta, A., & Indusekhar, A. (2024). <https://academic.oup.com/slr/article-pdf/doi/10.1093/slr/hmae043/59143985/hmae043.pdf>⁸

The article revolved around the provisions of the BNSS for the protection of victims in the Indian criminal justice system. To this end, the BNSS addresses victim needs through ensuring that they are made aware of rights and having access to legal assistance at all stages of judicial proceeding. The paper had discussed the provisions pertaining to the force of obligation of victims to participate in proceedings, provisions for time-to-time updates on investigations, and provisions for making documents available to victims. The author had posed an argument saying that these reforms signify a great stride toward providing a victim-centric justice system by placing emphases on various legal safeguards which are aimed to provide greater power in the justice system to the victims.

3. Hegde, P. R., Malik, Y., Kumar, C. N., & Math, S. B. (2024). <https://journals.sagepub.com/doi/abs/10.1177/02537176241281465>⁹

Author article discussed on forensic investigations under BNSS. Emphasis was drawn on how the new act brings criminal investigations into modern times with the adaptation of forensic science. Section 176(3) of the BNSS under the paper came with the imperative of using forensic experts in serious criminal cases. Author explained this provision as increasing the scientific quality of investigations and allowing more honest and trustworthy results in criminal trials. The article also touched upon problems with the implementation of the forensic provisions among which lack of infrastructure in certain territories and necessary training requirements for police officers.

4. Hanspal, M. S. (2023). <https://ijlsi.com/wp-content/uploads/Navigating-Legal->

⁸ Bajpai, A., Gupta, A., & Indusekhar, A. (2024). Revisiting Criminal Law Bills: An In-Depth Critical Analysis of Bharatiya Nyaya Sanhita Bill and Bharatiya Nagarik Suraksha Bill. *Statute Law Review*, 45(3), hmae043. <https://academic.oup.com/slr/article-pdf/doi/10.1093/slr/hmae043/59143985/hmae043.pdf>

⁹ Hegde, P. R., Malik, Y., Kumar, C. N., & Math, S. B. (2024). The Bharatiya Nyaya Sanhita Act (BNSA) 2023: Implications for Forensic Psychiatry in India. *Indian Journal of Psychological Medicine*, 02537176241281465. <https://journals.sagepub.com/doi/abs/10.1177/02537176241281465>

Changes-in-BNS-BNSS-and-BSA-2023.pdf¹⁰

The article by authors gives an outline comparison of the police role in criminal investigations under BNSS in comparison to the previous Criminal Procedure Code. Paper was ascertaining how BNSS brings more stringent provisions under which police are now in a position to give faster updates regarding the progress of their investigation and demand the delivery of documents both to accused persons and victims. He stressed that these provisions should be transparent, and undue delay in investigations should not be met. He also pointed out the need for proper training and equipment for police officers in order to cope with the new procedures in investigation.

5. Beniwal, H. (2024). <https://cgscopus.com/index.php/journals/article/view/74>¹¹

The article on policing custody is a legal protection given to police custody through BNSS. The paper looked into the change BNSS effects on certain provisions of police custody, for example, on the limitation of time stayed in custody and protection from abuse of power. The article analyzed the 15-day custody limit of the existence of related provisions with regard to the custody in grave offenses. In this respect, the BNSS combines the rights of the accused with the needs to operate of the police force. The author argued that with the positive effects of the reforms, monitoring should be done so that there is minimal violation of human rights.

6. Minhas, C. (2024). <https://pulr.puchd.ac.in/index.php/pulr/article/view/257>¹²

Article Author This paper explored the general impact of BNSS on the investigation process in police. It concentrated on the provisions of the law that actually dictates investigations, arrests, and handling of evidences. Discussion Author Of most importance, author discussed the BNSS expanded role of the magistrates in overseeing the investigation process and how BNSS tries to tackle some of the concerns about delay, misuse of power, and opacity in the investigative course. Further to these, the article assessed the implementation challenges of

¹⁰ Hanspal, M. S. (2023). Navigating Legal Changes in BNS, BNSS, and BSA, 2023: A New Era for Women's Safety in India. <https://ijlsi.com/>. <https://ijlsi.com/wp-content/uploads/Navigating-Legal-Changes-in-BNS-BNSS-and-BSA-2023.pdf>

¹¹ Beniwal, H. (2024). Abuse of criminal laws by police in Bharat: A critical study. *International Journal of Interdisciplinary Cultural Studies*, ISSN: 2327-008X/ISSN: 2327-2554, 19(2), 134-146. <https://cgscopus.com/index.php/journals/article/view/74>

¹² Minhas, C. (2024). Deception detection tests in criminal investigation with special emphasis on Narco analysis: examining the legal position in India. *Panjab University Law Review*, 63(1). <https://pulr.puchd.ac.in/index.php/pulr/article/view/257>

such reforms, particularly on the constructions, training, and inter-agency coordination. The author concludes by suggesting that even though the BNSS represents a significant shift in the criminal justice system, its success will depend on how effective the enforceable provisions are implemented at the grassroots levels

3. PROTECTION OF INTERESTS OF VICTIMS

Protection of the interest of victims in the criminal justice system has now become quite paramount through numerous legal provisions to make sure that their voice is heard in court and that their rights are protected. BNSS introduces a number of reforms concerning the protection of victims, more active participation, and greater access to criminal investigation and trial information by victims.

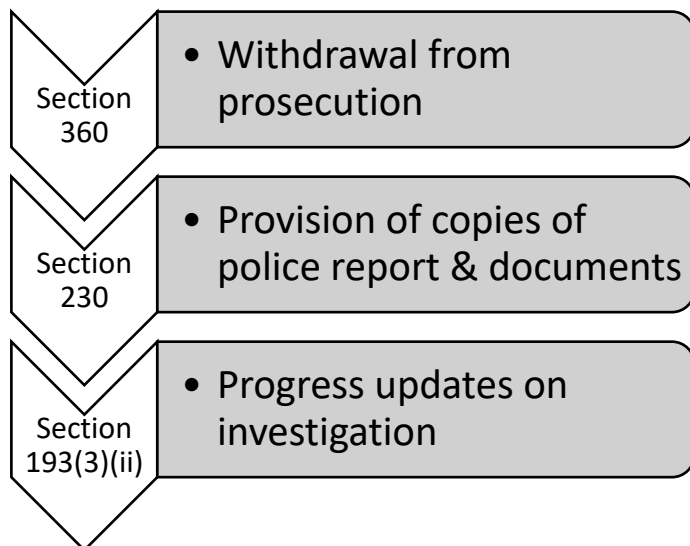
One very vital feature of the BNSS is that of withdrawal of prosecution. Withdrawal of prosecutions, under Section 360 of the BNSS, is no longer a unilateral decision of the state. Hitherto, under Section 321 of the Criminal Procedure Code, withdrawal of prosecution would proceed only if it were with the concurrence of the court after a judgment was pronounced. The BNSS however, provides for an opportunity to be given to the victim to state her point of view before any final decision regarding the withdrawal of the prosecution. Thus, no interests of the victim would be overlooked and she also makes an integral part of decisions that affect the disposal of the case. It recognizes the essential role that the opinions of the victims play in the criminal justice system. Their experiences and wishes must be reflected in the process of deciding whether criminal charges should be dropped or continued.¹³

Another important provision of the BNSS is the right of victims to be allowed to see documents and reports pertaining to their case. Section 230 of the BNSS has mandated a statutory requirement that copies of the police report, FIR, statements from witnesses, and other relevant documents should be provided both to the accused as well as the victim, if they have counsel representation. This provision introduces transparency in criminal proceedings and gives the right to the victim to take proper decisions regarding his case. Section 154(2) of the CrPC had only allowed the provision of a copy of information to the informant; however, the system has been extended to the victim as well as the informant in the BNSS. The provision further states

¹³ “Withdrawal of Prosecution Under BNSS,” *Drishti Judiciary available at:* <https://www.drishtijudiciary.com/current-affairs/withdrawal-of-prosecution-under-bnss> (last visited November 10, 2024).

that these documents should be tendered within a reasonable time before fourteen days of the appearance of the accused in court. The possibility of acquiring the said documents electronically boosts the efficiency of the above-proposed process, hence making the process much easier to accomplish for victims-especially in rural or remote regions. Documents can also be given in electronic form in cases of sessions triable offenses as well. This makes it easier and smooth for the process of facilitating all critical information that is supposed to be shared with the victim.¹⁴

The BNSS also covers the issue of frequent status update on the progress of the investigation. According to Section 193(3)(ii) of the BNSS, the investigating officer shall inform the informant or the victim about the progress of the investigation within ninety days. This puts the victim in a better position with regards to participation and knowledge regarding the status of his or her case. This is an improvement marked from the earlier provision under Section 173(2)(ii) CrPC, as it remained mum on when such information was to be provided. The BNSS brings about timeliness in the provision of information to the victims, and in the process, ensures that the process of investigation itself would be more transparent and not leave the victims with a case for too long without an update on the case. This is important, especially to ensure that the victim feels supported and engaged throughout the process.



(Figure 1: Key provisions introduced by the BNSS to protect the interests of victims)

¹⁴ Vanshika Kapoor, “FIR registration under Bharatiya Nagarik Suraksha Sahita” iPleaders, 2024 *available at*: <https://blog.iplayers.in/fir-registration-under-bharatiya-nagarik-suraksha-sahita/> (last visited November 10, 2024).

These reforms mark a significant step forward regarding the identification and protection of victim interests within the criminal justice system. This BNSS informs the victims better about the case, involves them in important decisions regarding it, and demands that the parties keep the victims updated on the progress made during the investigation process. These measures only increase the experience of justice of the victims but end up making a more transparent and accountable process in total.¹⁵

4. ANALYSIS OF THE PROVISIONS PERTAINING TO THE KEY STAGES IN A CRIMINAL INVESTIGATION

The BNSS introduces radical reforms into the process of criminal investigation and aims to enhance efficiency, accountability, and fairness in the treatment of both victims and accused persons. It touches at various stages of the process, from the initiation of an inquiry up to the handling of evidence and filing charges, all against a background of protection for public servants, the vulnerable, and rights for the accused. This analysis will provide a detailed study of some of the major provisions concerning the processes involved in the different stages of a criminal investigation as intended by the BNSS.¹⁶

Investigation Commencement

The commencement of an investigation is quite a critical stage in the criminal justice process, and the BNSS introduces quite a number of radical reforms to make it more effective and just. According to Section 175, quite radical amendments have been made; the most critical of these are related to investigations on serious crimes or public servants. In such cases, the Superintendent of Police has been granted the right to appoint a Deputy Superintendent of Police to conduct investigations. This adjustment ensures that investigations are overseen by senior officers, who can make them do a more comprehensive and credible inquiry.¹⁷

¹⁵ AK Legal & Associates, "Victim-centric Measures In The Light Of New Criminal Laws" A.K. Legal & Associates, 2024 *available at*: <https://aklegal.in/victim-centric-measures-in-the-light-of-new-criminal-laws/> (last visited November 10, 2024).

¹⁶ Editor_4, "BNSS that is to replace the CrPC explained with key highlight" SCC Times, 2024 *available at*: <https://www.scconline.com/blog/post/2024/05/05/bnss-that-is-to-replace-crpc-explained-with-key-highlights/> (last visited November 10, 2024).

¹⁷ Neeraj Chaudhari, "Enhancement of investigation procedure under Bharatiya Nagarik Suraksha Sanhita" Times of India, 30 April 2024.

Second, in cognizable offenses, the Magistrate ought to scrutinize the complaint application, the accompanying affidavit, and submissions made by the police officer before ordering an investigation. It adds an oversight function by the Magistrate, so that frivolous or malicious complaints do not become a cause for investigations and bring undue harassment to public servants. Section 175(4) Introduces a protection mechanism whereby before acting upon any complaint against a public servant, the Magistrate shall consider the version of the public servant and obtain a report from the superior officer for verifying the facts of the case. These provisions improve the credibility of the inquiry process and promote fairness.

Exemption from Police Summoning Powers

Historically, The CrPC Section 160 exempted a section of people-classes of persons. People above sixty years of age, women, and handicapped cannot be compelled to be present in the police station for interrogation. BNSS extends the same exemption to ailing persons suffering from acute diseases. Such persons should be made exempt from undue stress arising out of investigations. The provisions also provide them with the right to waive this immunity in case they would like to cooperate. This expanded immunity provides for protections sensitive to the requirements of those who would face extra challenges in the criminal justice process.¹⁸

Forensic Investigations

Implementation of mandatory forensic investigation under Section 176(3) BNSS has greatly enhanced the handling of serious criminal offenses. If a sentence, appeals involve over seven years' imprisonment; the police officer, involved, shall ensure forensic experts, visit the crime scene and take all the evidence material. Another advantage of writing down the procedure is that it enables recording of the process using mobile devices or any other electronic means. This measure ensures that transparency is enforced, and evidence will be documented in a better manner. This would improve the reliability of the forensic evidence in the investigation process and prevent omitting critical information.

In situations where the forensic facilities are not available in the state, section 176(3) provides for assistance from other states to ensure that the lack of local resources does not hinder the

¹⁸ "Police Reforms – SC directives, NPC, other committees reports - Civildaily," Civildaily available at: <https://www.civildaily.com/story/police-reforms-sc-directives-npc-other-committees-reports/> (last visited November 11, 2024).

investigation process. The inclusion of forensic experts in criminal investigations marks a modern approach in dealing with the issue of crime, using scientific methods to complement law enforcement.

Oversight of Police Searches

Major landmark reforms have been brought about in the search operations by the police under section 185 of the BNSS. Here, it is insisted that the police officers should note the reasons for the search in the 'case diary' and further make video and audio recordings in respect of the process. The rationale behind this provision is supposed to ensure a transparent and accountable process to ensure that police searches are being done for proper reasons, with no abuse of powers.¹⁹

Besides this, BNSS does provide for copies of records prepared during the search to be transmitted to the nearest Magistrate within 48 hours of search. The application in this regard is deficient under Section 165 of the CrPC. The time gap in this case ensures that proper scrutiny takes place and ensures that the Magistrate is informed of the proceedings of the police so as to ensure accountability besides rights to the person subjected to searching.

Filing of Chargesheets and Investigation Updates

Section 193 of the BNSS deals with very important provisions regarding chargesheets. Section 193(3) prescribes that all police officers are today compulsorily obliged to submit the chargesheet immediately to the Magistrate. It is now possible to present by way of electronic presentations. The procedure is now thus shortened, and the papers thus available for judicial review are promptly ready.

Furthermore, Section 193(3)(ii) mandates that the police shall also inform the informant or victim about the progress of investigation within a period of 90 days from the date of complaint. This is quite different from the provisions of the CrPC where no stipulated timeline was provided for communicating the same. The setting of a fixed timeline has enhanced the

¹⁹ R.K. Vij, "What are new provisions for police officers?" *The Hindu*, 2024 available at: <https://www.thehindu.com/news/national/what-are-new-provisions-for-police-officers-explained/article68382550.ece> (last visited November 11, 2024).

transparency involved and brought a better response from the crime scene as it does not keep them in the dark about the status of the investigation.

Under Section 193(8), it is provided that the investigating police officer furnishes copies of the chargesheet and other connected documents to the Magistrate and accused within a reasonable time. The addition of electronic means in submitting reports has further made the process easier, faster, and more accessible. In addition, BNSS introduces a further provision under Section 193(9) that further investigation is required to be concluded within 90 days after filing the chargesheet. This provision serves to reduce delay in judicial processes and improve on the accountability of law enforcing agencies.²⁰

Arrest and Custody of the Accused

Section 190 of the BNSS specifically declares that arrest is not necessary even when a chargesheet is submitted. If the accused was not arrested during the course of the investigation, the police officer can merely take security for appearance before the Magistrate. This provision goes with the principle that as long as there is no proven case, he or she is to be presumed innocent. It ensures that meaningless arrests do not take place, thereby the inconvenience to the arrested, and by the judiciary as well. Section 187 BNSS introduces a maximum period of 15 days for seeking police custody. This provision allows that the police officers may seek detention in bits within the first 40 or 60 days in detention while providing flexibility at the same time; this will prevent long detentions without adequate judicial oversight. In ensuring the defense of rights to the accused, Section 480 provides the ground that a need for further police custody more than 15 days cannot form a legal basis to deny bail.²¹

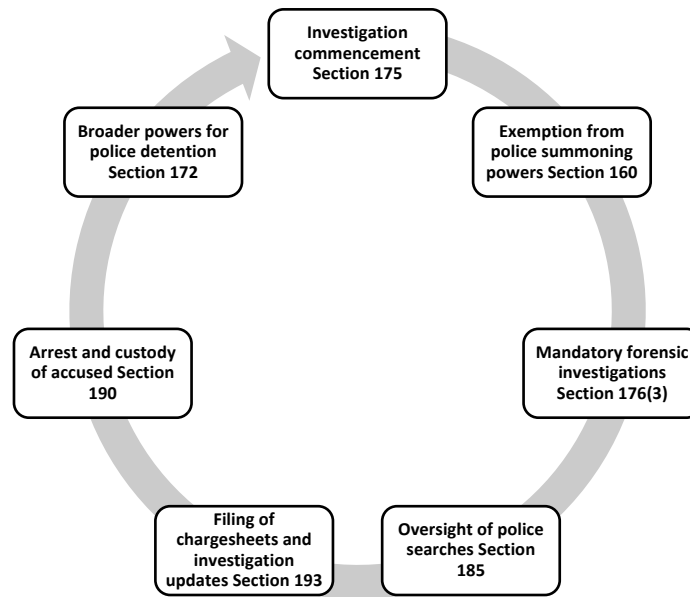
Broader Powers for Police Detention

Section 172 of the BNSS gives more powers to police men to detain or send away the recalcitrant element that defies or ignores police instructions. In minor cases, the person can be released after 24 hours, but the provision empowers the police in matters of maintaining and giving discipline in investigations. Granting police discretion to detain disturbing elements that

²⁰ "Section 193 of BNSS," *Drishti Judiciary* available at: <https://www.drishtijudiciary.com/current-affairs/section-193-of-bnss> (last visited November 11, 2024).

²¹ "RIGHT TO BAIL IN CASES WHERE ACCUSED IS NOT ARRESTED DURING INVESTIGATION (GUEST POST)," *The Blog of Bharat Chugh*, 2021 available at: <https://bharatchugh.in/2021/10/17/right-to-bail-in-cases-where-accused-is-not-arrested-during-investigation-guest-post/> (last visited November 11, 2024).

want to disrupt the investigative process puts law enforcement in a position to act promptly in securing public safety.



(Figure 2: Summary of Key Provisions)

BNSS provisos bring great changes into criminal investigation processes. With specific provisions in the discussion, these provisos guarantee increased transparency, accountability, and fairness wherein the specific provisions should ensure the rights of victims, public servants, and accused persons. In the modernization process, the goal is to safeguard that the authority carried out by investigative agencies does not have to sacrifice efficiency for the sake of protecting individual rights. This marks the BNSS advancing with this evolution of the criminal justice system in India, emphasizing justice, due process, and the use of modern technologies as an aid in the investigation process.²²

²² Editor, “Key Highlights of the three new criminal laws introduced in 2023” SCC Times, 2023 *available at:* <https://www.scconline.com/blog/post/2023/12/31/key-highlights-of-the-three-new-criminal-laws-introduced-in-2023/> (last visited November 11, 2024).

5. ARREST OF PERSONS

The BNSS leads to significant reforms on matters of arrest of persons in a manner that respects the procedure of arrest yet at the same time maintains law and order. These include all aspects related to arrest such as provisions regarding the warrantless arrest, how the vulnerable are treated, the time-scale in which information on arrests shall be given, and the issue of keeping such procedure transparent and accountable.²³

Warrantless Arrests and Safeguards for Vulnerable Individuals

Consolidation of Sections 41 and 41A of the CrPC with Section 35 of the BNSS: The most striking provisions of the BNSS in relation to arrests are their consolidation of Sections 41 and 41A of the CrPC under Section 35 of the BNSS. It continues to arm the police officers with powers of warrantless arrest in certain situations, but introduces safeguards against arbitrariness which could be a handicap for vulnerable sections of society. For example, under Section 35(7), it is stated that no aged person above sixty years, or an infirm person, shall be arrested for an offence punishable with imprisonment for less than three years without the previous permission of an officer not below the rank of Deputy Superintendent of Police. This protection, then, aims to prevent undue hardship by way of arrest on seniors or physically handicapped persons by ensuring that arrests of these persons occur only when it becomes absolutely necessary and with sufficient oversight.²⁴

This provision represents a modern police method, keeping in mind the physical and psychosomatic health of people subjected to the trauma of an arrest. Higher-level authorization for such arrests ensures that vulnerable individuals are treated with dignity and care in accordance with wider human rights principles.

Communication of Arrest Information

Earlier, CrPC had required the arresting authority to let only the near and dear one of the arrestee know that he is being arrested. BNSS expands this scope. Section 35(5) says the person being arrested can name any person as a person to whom the news of arrest may be

²³ “The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023,” PRS Legislative Research *available at*: <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-second-sanhita-2023> (last visited November 11, 2024).

²⁴ Ram Kumar, “Live Law” Live Law, 24 September 2024.

communicated. This provision seeks to ensure greater flexibility and that people are notified when someone has been arrested, although not necessarily close family or friends at the time. The expansion of the notification system ensures that an arrest is not done in isolation because the rights of the arrested person are protected.²⁵

This change goes a long way to ensuring that the person shall have a supporting family or legal counsel notified about their detention, which is very fundamental in respect of protecting their rights and to help prevent arbitrary detentions.

Arrests Made Under a Warrant

Section 82(2), BNSS requires additional notice in case of an arrest made under a warrant. The arresting officer should send notice to the district-designated police officer where the arrested person is and also to another officer in the district where the arrested person has his or her residence. This provision increased transparency and accountability in cases of arrests made under warrants, so that the arresting authority would not act in a way that isolates the arrested person from the knowledge of relevant law enforcement personnel in their area.

In addition, Section 48 requires the arresting officer to provide corresponding information to the police officer designated in the district of residence of the person. This leads to more effective coordination and communication between agencies for jurisdictions. Authorities in a person's home area are kept informed even when an arrest is made outside of an individual's home district's jurisdiction.

Maintenance of Arrest Records

According to Section 37, BNSS, the record for arrested persons shall be maintained by the police stations and districts under this provision as well. Here, every police station and district is to select a police officer not below the rank of Assistant Sub-Inspector of Police to record the details of the arrested person and the charges against him. This information should be displayed in public areas at the district headquarters and police stations; alternatively, their electronic copies should be made available to the public and appropriate authorities.²⁶

²⁵ zahid maniyar, "Law on Arrest and Detention: Know your rights!" CJP, 5 August 2022.

²⁶ "NEW CRIMINAL LAWS-ACCOUNTABILITY OF POLICE," *available at*: <https://pib.gov.in/PressReleasePage.aspx?PRID=2042126> (last visited November 12, 2024).

This provision ensures the maintenance of well-accounted and accessible arrest records to prevent arbitrary detentions and processes accountability in law enforcement. Usage of digital platforms further helps in the tracking of details upon arrest and thereby offers better efficiency overall.

Bail Bonds and False Information

Section 39 of the BNSS introduces an important reform concerning arrests in cases where a person fails to give proper information about either his name or abode or gives some false information. In such cases persons can now secure their release by signing either a bond or a bail bond. This reform will grant higher flexibility in obtaining release to allow the speedy resolution of those who might be arrested by the technicalities of their identities and avoid having to stay behind bars.²⁷

This provision prevents the wrongful criminalization of individuals possibly arrested for giving wrong or incomplete information, which does not necessarily negate the possibility of any criminal intent. Moreover, it simplifies the process of discharge through the option of furnishing other information instead of detaining them immediately.

Timely Production before Magistrate

Section 40(1), BNSS alters the period when a private individual must hand over an arrestee to the police. When making an arrest, this section insists that such a person should present the arrested in front of the police officer or take them to the nearest police station within six hours. This amendment simply substituted the obfuscatory provision contained in Section 43(1) of the CrPC, which required that an arrested person be produced "without unnecessary delay." The BNSS ensures that persons arrested by a private person are not kept detained beyond reasonable time by some person other than a responsible officer of such person and are produced before an officer-in-charge of a police station as quickly as possible.²⁸

²⁷ <https://lawfoyer.in/author/manikbhai/#author>, "Arrest under CRPC and Bhartiya Nagarik Suraksha Sanhita(BNSS): Provisions, Precedents, and Procedures" LawFoyer | A daily doze for inquisitors, 2024 *available at*: <https://lawfoyer.in/arrest-under-crpc-and-bhartiya-nagarik-suraksha-sanhitabnss-provisions-precedents-and-procedures/> (last visited November 12, 2024).

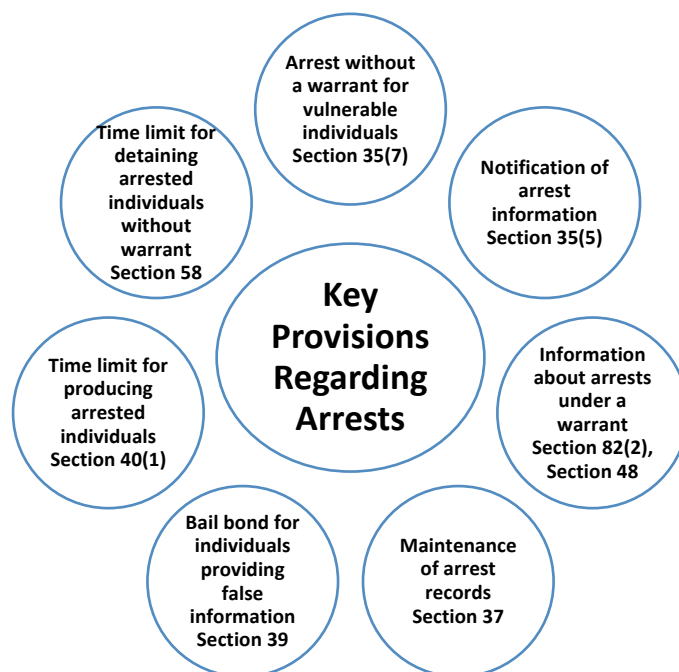
²⁸ TheBharatiyaNyayaSanhita.IN, "Section 40. Arrest by private person and procedure on such arrest." The Bharatiya Nyaya Sanhita, 2023, 2024 *available at*: <https://thebharatiyanayasanhita.in/section-40-arrest-by-private-person-and-procedure-on-such-arrest/> (last visited November 12, 2024).

This specific time limit also serves to reduce the opportunities for abuse of arrest authority by private persons vested with the power to make arrests, and yet, at the same time, allows for the swift vindication of the rights of the arrested individual to be placed in the custody of police officers.

Detention without Warrant

Section 58 of BNSS very significantly amends the time period within an individual who is arrested without warrant is being detained. It states that no police officer shall detain any such person for a period exceeding 24 hours (excluding, if any, the time necessary to take him to the Magistrate), as the case may be, even though the Magistrate may have jurisdiction. It is with this change that persons who are arrested are not detained for a long period without being brought before a Magistrate, thus their right to the prompt judicial review of detention is maintained.²⁹

This provision prevents police abuses and arbitrary detention of people since their rights is catered for through judicial oversight that is timely in the case of an arrest.



²⁹ “Bharatiya Nagarik Suraksha Sanhita, 2023,” 2023 *available at*: https://www.indiacode.nic.in/handle/123456789/20099?view_type=browse (last visited November 12, 2024).

(Figure 3: Key Provisions Regarding Arrests)

A comprehensive framework relating to arrest under the BNSS ensures the protection of an arrested person's rights while law enforcement officers are given more enabling authority for their ability to ensure public order. Therefore, by such provisions like its protection of vulnerable people, extended notification systems, keeping of arrest records and inclusion of flexible options of bailing, BNSS updates the criminal justice system. These aim at curbing arbitrary arrests, as well as promoting judicial review to be made as soon as possible to increase the accountability of law enforcers in general and therefore the integrity of the arrest process in India.³⁰

6. JUDICIAL INTERPRETATION

The landmark case of *D.K. Basu v. State of West Bengal*³¹ laid down several crucial guidelines to be followed in all cases of arrest or detention to prevent custodial violence. These include ensuring that the identification of the arresting officer is clearly visible and all arrest details are recorded in a register. A memorandum containing such details must be prepared and witnessed by either a family member or a respectable person from the locality. The arrested person must be informed of their right to have someone notified about their detention and should also be informed about the availability of legal aid within 8-12 hours of the arrest. Additionally, an entry must be made in the prescribed diary, and if the arrestee is injured, they must be medically examined within 48 hours. All details of the arrest must be submitted to the Magistrate in writing, and the arrestee should be allowed to meet with an attorney. Furthermore, a separate room must be provided for the officers involved in the case to communicate.

In *Neelabati Bahera v. State of Orissa*³², the Supreme Court reaffirmed that detainees' Fundamental Rights under Article 21 should not be violated and only lawful restrictions on these rights can be imposed. The Court set forth additional guidelines regarding arrests and detentions. These guidelines emphasized that violations of these rules would result in departmental actions or contempt proceedings. The arresting officers are required to wear visible identification tags, and the details of all officers involved in the interrogation must be

³⁰ "ANALYSIS OF THE NEW LAWS: BNSS, BNS, BSB - Pragya," *ijalr*, 2024 *available at*: <https://ijalr.in/volume-4-issue-4/analysis-of-the-new-laws-bnss-bns-bsb-pragya/> (last visited November 12, 2024).

³¹ *D.K. Basu v. State of West Bengal* (1997 (1) SCC 416)

³² *Neelabati Bahera v. State of Orissa* (AIR 1993 SC 1960)

recorded in a register. A memo of arrest must be prepared at the time of arrest, signed by the arrested person, a witness, and the arresting officer, and must clearly state the time and date of the arrest. The arrested individual must also have a friend, relative, or another person informed about their detention as soon as possible. If the arrested person is to be detained in a police station, the time and place of detention must be communicated to the person's next of kin, and the details must be sent via telegraph to the concerned police station and Legal Aid Organization within 8-12 hours of the arrest.

In *Arnesh Kumar v. State of Bihar*³³, the Supreme Court imposed additional checks on the power of the police to make arrests, particularly in cases under Section 498-A of the IPC, which deals with dowry harassment. The Court ruled that arrests should not be made merely because the offense is cognizable and non-bailable. Arrests should not be casual or based on mere allegations but should be preceded by a thorough investigation to assess the genuineness of the complaint. Police officers must present proper facts and reasons to the Magistrate within 24 hours of the arrest. The Magistrate must be satisfied that the conditions for arrest under Section 41 of the CrPC have been met before authorizing detention. Furthermore, police officers are required to use a checklist for arrests under Section 41 of the CrPC, and they must furnish the reasons and materials necessitating the arrest. The decision to arrest or not must be submitted to the Magistrate within two weeks of the case's institution. Failure to record proper reasons for arrest or detention could lead to departmental actions against the officers involved.

In *Prem Narayan v. Union of India*³⁴, the Allahabad High Court addressed the issue of preventive detention, emphasizing that it is an infringement upon an individual's personal freedom and should not be imposed casually. Despite this warning, courts have often condoned such infringements, offering no real remedy to those affected.

In *Khudiram v. State of West Bengal*³⁵, the Supreme Court clarified that under preventive detention laws like the Maintenance of Internal Security Act (MISA), the courts cannot question the adequacy of the grounds for detention or substitute their opinion for that of the detaining authority, which is deemed to be the most appropriate body to make such decisions.

³³ *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273

³⁴ *Prem Narayan v. Union of India* (Habeas Corpus No. 27130 of 2019)

³⁵ *Khudiram v. State of West Bengal* (1975 2 SCC 81)

In *ShibbanLal v. State of Uttar Pradesh*³⁶, the Court reinforced this position, stating that courts are not competent to examine the facts cited as grounds for preventive detention.

In *Shri Pawan Kharetilal Arora v. Shri Ramrao Wagh & Others*³⁷, the Bombay High Court dealt with a case where an individual was detained for nine months based on 24 false cases. Despite the serious errors in the grounds of detention, the Court accepted the apology of the detaining authority, concluding that the authority acted in good faith and granted protection under the relevant legal provisions. In *A.K. Gopalan v. The State of Madras*³⁸, the Court upheld the constitutionality of the Preventive Detention Act, 1950, despite it being viewed as potentially unjust. Justice Das remarked that while the law may offend the Court's sense of fairness, the protection against legislative tyranny lies in public opinion rather than judicial intervention. Similarly, in *Nand Lal Bajaj v. The State of Punjab*³⁹, the Court concluded that preventive detention laws and the lack of legal representation conflict with the principles of a parliamentary democracy. However, it deemed the issue primarily a political matter, urging judges to maintain judicial restraint and avoid encroaching on the legislative and executive domains.

7. CONCLUSION

The BNSS promises a critical change in the Indian landscape of criminal law, especially the approach to individual rights protection during the entire process of criminal justice. BNSS primarily aims at making the functioning of enforcement and judicial systems just, transparent, and accountable. It strengthens various procedural aspects of criminal investigations, arrests, and prosecution through comprehensive reforms- towards better protection of the rights of the accused as well as of the victims.

One of the significant features of the BNSS is giving importance to the protection of vulnerable people, especially during the arrest and investigation process. The BNSS is recognizing a need to treat humanely those who are likely to be disproportionately effected by the toughness of criminal justice by ensuring that arresting persons above 60 years old or with infirmities requires authorization from higher-ranked police officers for minor offenses. This provision,

³⁶ *ShibbanLal v. State of Uttar Pradesh* (1954 AIR 179)

³⁷ *Shri Pawan Kharetilal Arora v. Shri Ramrao Wagh & Others* (Criminal Writ Petition No. 545 of 2009)

³⁸ *A.K. Gopalan v. The State of Madras* (AIR 1950 SC 27)

³⁹ *Nand Lal Bajaj v. The State of Punjab* (1981 AIR 2041)

coupled with other reforms, ensures that law enforcement practices shall become much more responsive to the physical and mental states of people within criminal cases, thereby contributing to a more just and equitable system.

There are also a number of mechanisms-in this case, introduced with the BNSS-that address transparency and accountability, especially in the context of arrest. The obligation to inform a particular person of an arrest, public records of arrested persons, and stricter guidelines on the treatment of arrested persons demonstrate a trend toward increasing police activity supervision. This system has been designed to prevent abuses of power by providing that no arrest takes place in isolation, and all actions taken by the police are documented and monitored. The provisions for ensuring that arrested persons are brought forth before a Magistrate promptly and that rights are observed throughout the detention process further go on to show that the criminal justice system is very much concerned with safeguarding civil liberties.

The BNSS also targets the role technology plays in streamlining and becoming more transparent for the criminal justice process. How the BNSS uses digital means for record-keeping and the dispersal of arrest information is a clear sign that the BNSS law is a modernizing effort that makes the criminal justice process run more streamlined, thereby reducing papers and administrative delay. The criminal justice system becomes more responsive and accessible to parties while submitting reports electronically, providing real-time updates on investigations, and the provision for arrest.

One of the most forward steps of BNSS can be said in the introduction of provisions that privilege the interests of victims. The requirement to inform victims about the progress of investigations and the decision taken to allow them to present their perspective before a decision to withdraw prosecution is made, reflects an important shift toward recognizing victims as active participants in the criminal justice process. This ensures that the victims are not left voiceless and not marginalized in pursuit of justice. Consideration both at the investigation and prosecution stages is given.

Further, the BNSS addresses another long-standing grievance of the Indian justice system-chronic delay in criminal procedures. The statute ensures timely movement of criminal proceedings by prescribing definite timelines for different stages, including 90 days to update the victims about the progress of investigation and curtailing the length of investigation and

custodial detention. This also reduces chances of elongated undue detentions and that matters do not drag as a result of administrative inefficiency in case processes.

Thus, the BNSS does represent an important step in upgrading the criminal justice system of India. Its endeavors in further solidifying and protecting citizen rights through provisions of transparency and redressals can help shape the accountable, just, and responsive system. Although much remains to be improved and, in particular, in the fields of enforcement and implementation, BNSS should nevertheless offer a much-needed framework toward significantly taking criminal justice in India toward greater fairness and effectiveness. Applying BNSS principles of law enforcement fairness, equity, and respect for human rights may change the way India conceives and delivers criminal justice.

8. SUGGESTIONS/LIMITATIONS

Now, while the BNSS brings in sweeping changes to the criminal justice system, some areas would bring further improvements to strengthen it. For instance, the implementation mechanisms could be tightened further to improve the working of the scheme by making its provisions, particularly those regarding the protection of victims and transparency into the arrest process, foolproof across jurisdictions. The police officers must be trained more to ensure that they are equipped and knowledgeable in managing the new safeguards, particularly with regard to the treatment of vulnerable groups and proper communication of arrest information.

Another area that may have room for improvement is the aspect of integrating technology. Although the BNSS encourages digital recordkeeping and communication, many police stations throughout the country lack proper infrastructure and resources. Increasing the number of equipment available and making sure that more officers are adequately trained in the use of the systems will also contribute much to the efficiency of the process as well as reduce administrative delays.

Beyond that, the BNSS sets specific time bounds for certain steps, such as police custody and investigations reports. This is of course easier said than done in practice because the only way to ensure that these timelines are adhered to within proper limits of accountability is through bolstering oversight by independent bodies or courts. Despite all this, the BNSS is a step in the right direction toward increasing accountability and openness within India's criminal justice system.

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