EXPANSION OF POLICE POWERS UNDER NEW CRIMINAL LAWS: IS IT A BOON OR A BANE FOR DEMOCRATIC ACCOUNTABILITY?

Shubham Singh, LL.M. (2025-26), School of Law and Governance, CUSB, Gaya.[1]

ABSTRACT

India's new criminal laws came into force on July 1st, 2024, sparking intense debate over whether they strengthen state authority at the cost of individual freedoms. The Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023, and Bharatiya Sakshya Adhiniyam 2023 have replaced the Indian Penal Code 1860, Code of Criminal Procedure 1973, and Indian Evidence Act 1872. While critics warn that these changes could edge the country closer to a police state, the key question remains: what do these reforms actually introduce?

These include changes in arrest procedures, the allowance of preliminary inquiries without filing an FIR in cognizable cases, and the extension of the remand period to 40 or 60 days a practice previously confined to special legislations like UAPA, MCOCA and even PMLA into the penal statute is more serious. Additionally, the introduction of the Police Commissionerate system, which transfers several powers traditionally held by Magistrates to Commissioners, is intended to ensure faster responses to complex law-and-order issues. However, this shift partly undermines the principle of federalism, as District Magistrates function as officers of the Central Government.

These new provisions heighten the risk of excessive police power, raising issues related to the protection of citizens' rights and police accountability. For example, under the new laws, police may refuse bail even in cases where bail is otherwise mandatory. While the government justifies these reforms as necessary for ensuring public safety and security, critics warn echoing Lord Acton's maxim, "absolute power corrupts absolutely" that such measures may erode democratic safeguards and edge India closer to a police state.

[1] LL.M.(2025-26), School of Law and Governance, CUSB, Gaya.

Introduction

The three new criminal laws which were enacted in December 2023 specifically known as the Bharatiya Nyaya Sanhita[2], the Bharatiya Nagarik Suraksha Sanhita[3], and the Bharatiya Sakshya Adhiniyam[4] indicates a significant attempt to the deliberate use of legal mechanisms to turn non-criminal, democratic activities into crimes, thereby undermining core principles of criminal law such as the 'presumption of innocence' and the 'right to free and fair trial'[5] and to centralise powers of the police, providing immunity and ensuring impunity of police and state officials.[6] As a result, victims' access to justice is compromised, making the legal system more reminiscent of colonial times than of a constitutional democracy.[7] Although these laws claim to move away from colonial-era legislation, they, in practice, empower the state with broad new authorities that threaten to eclipse constitutional safeguards.[8] Rather than reforming the system for gender justice or addressing patriarchal prejudices, the laws barely acknowledge such issues and do not advance a criminal justice system grounded in constitutional values.[9]

These laws disregard the anti-colonial legacy and the sacrifices made for Indian freedom, standing in stark contrast to democratic values, the rule of law, and the protection of civil rights.[10] Drawing heavily on colonial models where state and police power dominated without constitutional oversight, these enactments could easily return India to a repressive legal order, where even dissent can be criminalized.[11] Instead of upholding the Constitution, these laws appear designed to increase state control at the expense of individual rights, undermining the constitutional promise to the people of India and attempting to shift the nation from a de facto police regime to an official police state.[12]

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[2] The Bharatiya Nyaya Sanhita (BNS), 2023, Act No. 45 of 2023.
[3] The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, Act No. 46 of 2023.
[4] The Bharatiya Sakshya Adhiniyam (BSA), 2023, Act No. 47 of 2023.
[5] K.N. Chandrasekharan Pillai, *Criminal Law: Principles and Critique* 45-47 (Eastern Book Company, 3rd edn., 2019).
[6] Prashant Bhushan, "The Expansion of Police Powers in Contemporary India," 62 *Journal of the Indian Law Institute* 112, 118 (2020).
[7] Upendra Baxi, *The Crisis of the Indian Legal System* 73-75 (Vikas Publishing 1982).
[8] A.G. Noorani, "New Criminal Laws and Constitutional Safeguards," 58 *Economic and Political Weekly* 10-12 (2023).
[9] Flavia Agnes, "Gender and the Limits of Penal Reform," 55 *JILI* 201, 209 (2013).
[10] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50-52 (Oxford University Press 1966).
[11] Ranajit Guha, "Colonial Criminal Law and the State," in *Subaltern Studies II* 45-48 (Oxford University Press 1983).
[12] Justice A.P. Shah, "Civil Liberties and the Expanding State," 49 *India International Centre Quarterly* 30-34 (2022).

The Role of Police in a Democracy

Police forces are the most apparent wing of the state. They are entrusted with enormous discretion: to investigate crimes, detain suspects, use force when necessary, and in some cases, even to take life under the doctrine of self-defence. Police actions must be governed by clear laws, with judicial oversight to prevent arbitrary use. Police must operate under the direction of elected governments but insulated from partisan misuse. Citizens must have access to remedies against police misconduct through complaints, human rights commissions, and civil society mechanisms. When criminal laws expand police powers without parallel safeguards, all three forms of accountability are undermined.[13]

Trends in the Expansion of Police Powers

1. Preventive Detention and Expanded Arrest Powers

New criminal laws frequently broaden the range of situations in which police are permitted to make warrantless arrest. Preventive detention where a person is arrested not for a crime already committed but for one they are merely suspected of planning has been legalized or extended in several jurisdictions. Critics argue that such powers invert the presumption of innocence and enable arbitrary arrests of political dissenters, activists, or marginalized groups.[14]

2. Extended Police Custody

Traditionally, democratic systems impose strict limits on police custody before a suspect is presented to a magistrate (for example, 24-48 hours). However, new reforms in some countries have expanded the permissible duration of custody. For instance, provisions in India's recently introduced criminal law reforms extend custody periods up to 90 days in certain cases, raising concerns of custodial torture and coerced confessions.[15]

3. Broad Surveillance Powers

Policing has changed in a new way because of the digital age. New criminal laws increasingly

[13] National Democratic Institute, *Democratic Oversight of Police Forces* (2008), available at: https://www.ndi.org/sites/default/files/1906govpolicing0801055.pdf (last visited on September 15, 2025).
[14] Krishan G.,*"*Preventive Detention in India: A Legal Perspective*"*,7 *Int. J. Rev. & Res. Social Sci.* 453 (2019).
[15] Kaveri Chavan, *"*Critical Analysis of Extension of Police Custody to 90 Days under new criminal law 187(3) of the BNSS - Constitutional & Human Rights Concern*"* (2025) available at: https://zenodo.org/records/15634733 (last visited on September 15, 2025).

authorize electronic surveillance, interception of communications, and collection of biometric and DNA data. While such measures are defended as necessary for tackling sophisticated crimes, the lack of robust data protection frameworks raises fears of mass surveillance and violation of privacy.[16]

4. Dilution of Judicial Oversight

Traditionally, judicial warrants and approvals have acted as checks on arbitrary police action. But new reforms often dilute these requirements by granting police officers unilateral authority to search, seize, and surveil. This bypass of judicial oversight shifts the balance of power dangerously towards the executive.[17]

5. Militarization of Policing

In the name of combating terrorism and organized crime, many new criminal laws allow the use of military-grade weapons, paramilitary units, and "special powers" for law enforcement. This blurs the line between civilian policing and military enforcement, undermining democratic policing principles.[18]

Implications for Democratic Accountability

1. Erosion of Civil Liberties

Expanded police powers often come at the direct expense of constitutionally guaranteed rights such as liberty, privacy, freedom of speech, and the right to assemble. Vague legal provisions such as those criminalizing "public disorder" or "threats to national security" are frequently weaponized against dissent. In the absence of strong accountability mechanisms, civil liberties become contingent on police discretion.[19]

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[16] Jaswanth Reddy et al., *"*Digital Privacy and State Surveillance: An Indian Legal and Technological Perspective*"* (June 03, 2025) SSRN Paper No. 5330133 available at: https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=5330133 (last visited on September 20, 2025).

[17] Clemens Arzt, "Police Reform and Preventive Powers of Police in India -7 Observations on an Unnoticed Problem", (2016) Verfassung in Recht und Übersee 49(1): 53-79, available at: https://www.researchgate.net/publication/303704013_Police_Reform_and_Preventive_Powers_of_Police_in_India (last visited on September 20, 2025).

[18] Lee, Alexander, Is the Indian Police Reformable?, *Democracy and Impunity: The Politics of Policing in Modern India* (New York 2025, online edn., Oxford Academic, 2025).

[19] United Nations Office on Drugs and Crime, *Crime Prevention & Criminal Justice Module 5: Key Issues - Policing in Democracies and the Need for Accountability, Integrity & Oversight* (n.d.), available at:

2. Increased Risk of Abuse and Corruption

History shows that unchecked police powers often translate into misuse. Arbitrary arrests, custodial deaths, extortion, and politically motivated prosecutions become more frequent when officers know that judicial scrutiny is weakened and oversight mechanisms are toothless. Expanded powers without reforms in police culture or ethics only magnify existing structural problems.[20]

3. Weakening of Judicial Safeguards

Democratic accountability rests on the principle of separation of powers.[21] When laws reduce the judiciary's role in authorizing arrests, searches, or surveillance, the police effectively become investigator, prosecutor, and judge concentrating powers that are dangerous in a democracy.[22]

4. Chilling Effect on Dissent and Free Speech

Expanded police powers disproportionately target activists, journalists, and opposition voices. Preventive detention, surveillance, and broad criminal provisions discourage citizens from exercising their democratic rights to assemble, criticize the government, or expose corruption. Fear replaces freedom.[23]

5. Marginalization of Vulnerable Communities

Minorities, migrants, and economically weaker groups are most vulnerable to police excesses. Expansive stop-and-search powers or vague anti-terror laws disproportionately affect these communities, reinforcing systemic discrimination. This not only undermines equality before the law but also erodes trust in democratic institutions.[24]

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https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-5/key-issues/1--policing-indemocracies-and-the-need-for-accountability--integrity--oversight.html (last visited on September 20, 2025).

[20] Michael Rowe, *Policing the Police: Challenges of Democracy and Accountability* (Northumbria University, 2025).

[21] Montesquieu, *The Spirit of the Laws*, tr. Thomas Nugent (Hafner Publishing Co., 1949), Bk. XI, Ch. 6.

[22] B F Smit & C J Botha, *Democracy and Policing: An Introduction to Paradox* (Office of Justice Programs / NCJRS, 1999) NCJ No. 128503.

[23] The Hindu Centre, "Citizens and the State: Policing, Impunity, and the Rule of Law in India", (2024) available at: https://www.thehinducentre.com/incoming/citizens-and-the-state-policing-impunity-and-the-ruleof-law-in-india/article67887312.ece (last visited on September 20, 2025).

[24] Human Rights Initiative, *Uganda Country Report 2006: Democratic Policing and Human Rights* (2006) p.25.

Weaponizing the Law by Criminalising Ordinary Democratic Acts Section 113 of the BNS: A Terrorist Act

One of the most disturbing, and in fact, dangerous, provisions in the new penal law of the country of the BNS is titled 'terrorist act' which has been included in Chapter VI, '*Of Offences Affecting the Human Body*'.[25] It is important to remember that section 113 of BNS is a freshly enacted law.

The definition of terrorist act in Section 113 (1) of BNS is identical, word for word, to section 15 of the Unlawful Activities (Prevention) Act[26]. The rest of the provisions, viz., section 113 (2) to (7) of the BNS is once again an identical reproduction of the provisions of section 16 to 21 of the UAPA.[27] The point that needs to be addressed is why the government added this new offence to India's general penal code when the UAPA already covers it. Aside from the allegation that the new offence in the BNS was introduced for political reasons, there is much more troubling concern regarding the implications of having such a provision in the country's general penal legislation. The apprehension of the vast potential for abuse against political dissenters and those raising questions of accountability against the government is very real given the experience of how UAPA has been used in the last ten years.[28]

It should be pointed out that many offences included in 'terrorist act' defined both in BNS and UAPA are so broad and imprecise, that thousands have been imprisoned for many years under UAPA charges for pursuing non-violent campaigns on local issues and democratic rights.[29] A study of the misuse of UAPA by the PUCL has revealed that the conviction rate in UAPA cases is less than 3%.[30] It also needs to be noted that during the period 2015-2020, about 8,371 persons were prosecuted under UAPA and languished in jails for periods between five to ten years.[31] The list of UAPA arrested people included human rights defenders, grass roots workers and social activists, academician, lawyers, students, Adivasis, and others questioning the

[25] Bharatiya Nyaya Sanhita, 2023, (Act 45 of 2023), s. 113.
[26] The Unlawful Activities (Prevention) Act (UAPA), 1967, Act No. 37 of 1967.
[27] A.G. Noorani, "New Criminal Codes and Expanding State Power," 59 *Economic & Political Weekly* 20-23 (2024).
[28] Amnesty International, *Weaponizing the Law: Misuse of UAPA in India* (2022), pp. 12-17.
[29] Unlawful Activities (Prevention) Act, 1967, s. 15; *Supra* note 25, s. 113; see also Gautam Bhatia, "Overbreadth and Vagueness in India's Anti-Terror Laws" 10 *Indian Constitutional Law Review* 45-48 (2021).
[30] People's Union for Civil Liberties (PUCL), *UAPA: Criminalising Dissent and Misuse of Anti-Terror Law in India* (2022), pp. 5-7.
[31] National Crime Records Bureau (NCRB), *Crime in India: 2020*, Vol. III, Table 14.3, p. 225.

government languish.[32] Trials have taken anywhere from three to eight years to conclude and invariably people's lives are shattered with thousands imprisoned in jail for many years as under trial prisoners before getting acquitted by trial courts.[33] Is there a hidden agenda for the addition of section 113 of the BNS? The term "terrorist act" is covered in Chapter VI, which deals with offences against the "human body", rather than Chapter VII, which deals with offences against the state.

When we look at section 217 of the BNSS, which mandates prior approval from the relevant government before any court can take cognizance of any offence under Chapter VII (Offences against the State), the answer to this question becomes evident. Therefore, the government has made sure that no prior approval from the relevant state or federal government is required for prosecution by adding section 113 of the BNS, the crime of "terrorist offence", to Chapter VI (Offences against the human body).[34]

Yet another aspect needs to be noticed about safeguards in UAPA which is missing in the introduction of section 113 in BNS.[35] In view of widespread complaints of misuse of UAPA prosecutions, two oversight mechanism were introduced in UAPA: section 45 of UAPA made it mandatory for the government to (a) constitute an 'independent authority' to independently review the evidence gathered in the investigation and to make a report to the government about the prosecution and (b) the government was required to study the Report before granting sanction to prosecute.[36] The safety mechanism present in the UAPA is absent in the provision addressing terrorist acts in section 113 of the BNS. Therefore, it is very evident that the purpose of putting Section 113, "Terrorist Act," in Chapter VI, "Offences against the human body," was to give the state harsh police powers without having to worry about monitoring bodies or accountability for initiating prosecutions under Section 113 of the BNS.

It is important to point out that across India there exist many social and environmental movements challenging many industrial, infrastructure and developmental projects who can be

[32] Amnesty International, *Weaponising the Law: The Use and Misuse of UAPA in India* (2021), pp. 18-24.
[33] Vrinda Grover, "Process as Punishment: The Long Shadow of UAPA Trials" 57 *Economic & Political Weekly* 12-15 (2022).
[34] *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569
[35] Supra note 29, s. 45.
[36] Ibid; see also N. Ramachandran, "Sanction for Prosecution under Special Criminal Statutes: Need for Independent Review" 12 *Indian Law Review* 211-214 (2022).

accused of threatening economic security.[37] The fact that the ruling government chose to use the same definition of 'terrorist act' as used in section 15 of UAPA without introducing the safeguards, clearly exposes the diabolic intention to arm the state with untrammelled and uncontrolled powers without any pretence of accountability.

From Section 124A IPC to Section 152 BNS: Continuity or Reform?

It is noteworthy that in a series of petitions contesting the constitutionality of section 124A of the IPC, pertaining to sedition, the Supreme Court issued interim orders in May 2022 mandating that all ongoing trials, appeals, and proceedings in sedition cases be suspended, and that no new cases be initiated under section 124A throughout India.[38] Following extensive research on the application of sedition law from 2011 to 2021, Article 14 released a report entitled "A Decade of Darkness," which revealed that 13,000 individuals were implicated in more than 800 sedition cases involving public protests, social media commentary, criticism of governmental policies and programs.[39]

Even though being involved in the Supreme Court cases and being fully aware of the misuse of the sedition law, rather than abolishing the sedition law completely, a renewed version of it has been implemented.[40] All of this increases the chances of being misused against individuals seeking and demanding accountability.[41] The definition of the revised sedition clause in section 152 of the BNS contains broad, vague, and sweeping language.

The BNS has not defined or clarified what qualifies as 'subversive activities' or 'separatist activities', nor how to assess the encouragement of "feelings" of separatism or what actions threaten the sovereignty, unity, or integrity of India.[42] Amidst these vague, general, expansive, and unclear regulations, section 152 may also be susceptible to potential exploitation and abuse. In a large, varied nation like India, emphasizing the issues of various castes and communities may be seen as fostering sentiments of separatist tendencies or actions. The assertion by lawmakers that section 152 of the BNS is more clearly defined and specific than

[37] A. Ghosh, "Environmental Movements and State Response in Contemporary India" 9 *Indian Journal of Public Affairs* 144-150 (2021).
[38] *SG Vombatkere v. Union of India*, W.P. (Crl.) No. 682 of 2021, Interim Order dated 11 May 2022 (SC).
[39] Article 14, *A Decade of Darkness: How the Law of Sedition Was Weaponised in India*, 2022, pp. 4-12.
[40] *Supra* note 25, s. 151; see also *Supra* note 38.
[41] For concerns regarding overbreadth and potential misuse, see Article 14, *A Decade of Darkness: How the Law of Sedition Was Weaponised in India*, 2022.
[42] *Supra* note 25, s. 152 (containing no statutory definitions of "subversive activities," "separatist activities," or "feelings of separatist activities").

section 124A of the IPC, given that the former includes 'sovereignty, or unity or integrity of India' while the latter focused solely on the government, overlooks the reality that the reach of the new provision, section 152 of the BNS, is far broader and can encompass a wide range of actions that the state may label as promoting subversive or separatist feelings or threatening the sovereignty, unity, and integrity of India.[43] It is evident that in the future, demonstrations by southern individuals who believe they are discriminated against by the north regarding financial devolution or development funding, despite being the primary contributors to tax revenue in India, may be categorized and held accountable under section 152 of the BNS. A caste group expressing its concern about discrimination regarding reservation benefits, educational quotas, or development funding may face prosecution for encouraging separatist sentiments.[44]

Digital Naming and Shaming of the arrested person: A Threat to Privacy and Reputation

Section 37 of the BNSS stipulates that each police station and district must have a specific police officer tasked with overseeing the records of individuals arrested, including their names, addresses, and the offenses for which they are charged.[45] This clause significantly invades the privacy rights of the individual accused of a crime as well as their entitlement to the presumption of innocence until found guilty.[46] It must be remembered that the mere exhibition of personal information about arrested individuals, particularly in digital format, will be viewed by the general public as a sign of their culpability and participation in the offense.[47] It must be remembered that the mere presentation of personal information of arrested individuals, particularly in digital form, will be perceived by the general public as a sign of their culpability and participation in the offense.[48]

Several other significant consequences impact the rights of arrested individuals due to the

[43] Compare Indian Penal Code, 1860, s. 124A with Bharatiya Nyaya Sanhita, 2023, s. 152 (expanding the scope from disaffection against the Government to threats to sovereignty, unity and integrity).
[44] For concerns on overbreadth and potential application to democratic dissent, see Supra note 39.
[45] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 37 (requiring maintenance and public display of arrest-related information).
[46] Constitution of India, art. 21; see also *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (recognising privacy as a fundamental right); see also *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (due process embedded within Article 21).
[47] Supra note 45, s. 37 (requiring maintenance and public display of arrest-related information).
[48] Law Commission of India, *Report No. 277: Wrongful Prosecution (Miscarriage of Justice)*, 2018 (noting risks of stigma and prejudice arising from premature disclosure of identity of accused persons).

display and sharing of information regarding those arrested and accused.[49] The most important is the right to a fair trial. In today's era of prevalent digital communication, any revelation concerning the personal information of an arrested or accused individual will impact the execution of 'Identification parades' and also sway the perceptions of potential witnesses and victims regarding an individual's involvement.[50] Such reactions can consistently be exploited by law enforcement to the disadvantage of those detained or charged, constituting a grave infringement of the essential rights of the individuals involved.[51] A similarly alarming concern that must be considered when examining the digital display of personal information about arrested individuals, including sharing personal data, is the danger it presents to their safety from victims, their families, and the wider community.[52] It may promote acts of vengeance and retaliatory violence.[53] Instances can be cited regarding revenge assaults happening in the context of honour killings. The right to life and liberty of individuals who are arrested or accused is highly concerning due to the requirement for widely showcasing personal information of those arrested via digital platforms.[54]

Erosion of Human Dignity through Mandatory Handcuffing under Section 43(3) of the BNSS

A particularly concerning and troublesome new clause in the BNSS is named, “Arrest how made”.[55] This is a new clause that was not present in the CrPC and states that the police officer may, considering the severity and nature of the crime, utilize handcuffs when arresting an individual or when presenting that individual in court.[56] While the remainder of the provision outlines the circumstances under which an officer may choose to apply handcuffs, the new clause overrides the previous law prior to the implementation of section 43(3) of the BNSS, which mandated that the officer secure explicit approval from the relevant criminal court

[49] *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632 (recognizing privacy as part of Article 21 and limiting State disclosure of personal information).
[50] *State of Maharashtra v. Suresh*, (2000) 1 SCC 471 (holding that prior exposure of the accused can vitiate identification parades).
[51] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (expanding Article 21 protections and requiring fairness at every state action stage)
[52] *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477 (noting risks of community-driven hostility and violence).
[53] *Shakti Vahini v. Union of India*, (2018) 7 SCC 192 (documenting retaliatory honour-based violence and the dangers posed by public exposure of identities).
[54] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (privacy and informational autonomy are integral to life and liberty under Article 21).
[55] *Supra* note 45, s. 43.
[56] *Supra* note 45, s. 43(3).

before handcuffing an individual, provided justification for the necessity of such action. In summary, the guideline stated that the accused should not be handcuffed unless the police officer demonstrates just cause, which the court agrees to and allows.[57] The jurisprudence regarding handcuffing was broadened in several significant Supreme Court decisions, notably DK Basu vs State of West Bengal[58], which stated that handcuffs or leg chains should be used minimally and strictly as per the law, as reiterated in the Supreme Court ruling of Prem Shankar Shukla vs Delhi Administration[59]. In the Prem Shankar Shukla case, the Supreme Court found that the use of handcuffs is contrary to human dignity and violates Article 21 of the Indian Constitution. In blatant disregard of these advisory regulations, which are essentially the law, the updated section 43(3) of the BNSS now grants police officers the authority to routinely use handcuffs without the safeguard of judicial review and rationale.

It is clear that the basic tenet of criminal law, namely the presumption of innocence for the accused, was interpreted by the Supreme Court as stemming from Article 21, the fundamental right to life, which encompasses the right to dignified treatment and protection against arbitrary police actions.[60]

Curtailing Fundamental Right to Free and Fair Trial

The basic right to free and fair trials is one of the most important tenets of India's criminal justice system, which stems from the right to presumption of innocence.[61] This basic right is intended to be restricted, if not completely abandoned, by a number of clauses in the BNSS. The ability to conduct trials via video conference is one important feature in this respect. Video conferencing has only been allowed under the CrPC for remand reasons thus far, with the primary need that the accused be brought to court so they may take part in the trial.[62] Nonetheless, section 251(2) of the BNSS has introduced a new provision allowing the framing of charges via Audio-Video electronic methods. Likewise, the former section 273 of the CrPC stating that evidence must be recorded in the presence of accused has been modified in section

[57] *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526.
[58] (1997) 1 SCC 416.
[59] *Supra* note 57.
[60] *Supra* note 51; see also *Noor Aga v. State of Punjab*, (2008) 16 SCC 417 (affirming that presumption of innocence is a human right protected under Art. 21).
[61] *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158 (free and fair trial held to be part of Art. 21 and essential to the rule of law).
[62] *State of Maharashtra v. Dr. Praful B. Desai*, (2003) 4 SCC 601 (video-conferencing permissible but does not replace rights essential to fair trial; physical presence remains the norm except in limited circumstances).

308 of the BNSS by incorporating an exception that allows the presence of accused in court via audio-video electronic means as well.[63]

It is evident that the creators of the BNSS have intentionally violated the right to a free and fair trial by permitting video conferencing during the investigation and trial stages. This significantly violates the accused individual's ability to present a proper and effective defense, as exercising this right will be deeply undermined by a process that permits electronic video conferencing methods.[64] It is important to highlight that for defendants who have not obtained bail, the obligation for mandatory attendance in court throughout trial proceedings allows the accused to consult with their attorneys and actively engage in formulating their defense against the allegations brought against them. At this time, they are also allowed to see their family members in court. All these important rights will be significantly undermined by the implementation of video conferencing and seriously breach Article 21, which guarantees the right to life and legal protection.[65]

Normalising Trial Waivers in Criminal Justice: Section 356 of the BNSS

Section 356 of the BNSS now includes a new clause that allows for "inquiry, trial or judgement in absentia of proclaimed offender." According to this new section, if someone is identified as a "proclaimed offender who has absconded to evade trial" and there is no immediate chance of apprehending him, the trial court may proceed with the trial as if the person were present and render a verdict.[66] It is important to note that this clause seriously violates a number of fundamental criminal trial concepts, such as the idea of "audi altarem partem," which states that no one may be found guilty without first being given a chance to defend themselves.[67] The availability of cross-examination of such witnesses, which is a crucial right of the accused and increases the probative value of the evidence all of which are components of the implied right to a fair trial in Article 21 is another fundamental element. Therefore, allowing the court to

[63] Code of Criminal Procedure, 1973, s. 273; see also Ibid. (presence requirement cannot be diluted in a manner that prejudices defence).
[64] *Mohd. Hussain v. State (Govt. of NCT of Delhi)*, (2012) 2 SCC 584 (effective legal representation is integral to fair trial under Art. 21).
[65] *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 81 (right to fair, speedy, and effective trial under Art. 21); *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416 (procedural fairness and dignity part of Art. 21).
[66] *State of Punjab v. Gurmit Singh*, (2014) 9 SCC 632 (courts must ensure presence of accused; trial in absentia permissible only with strict safeguards; absence cannot be presumed as voluntary waiver of rights unless clearly established).
[67] *Supra* note 51 (audi alteram partem is part of Art. 21); see also *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262 (principle of natural justice fundamental to fair procedure).

proceed with the trial as if the person was physically present under section 356 is a grave violation of Article 21.[68]

Compelled Self-Identification and the Right to Privacy under Section 349 of the BNSS

Section 349 of the BNSS, which replicates section 311-A of the Criminal Procedure Code with a very significant revision, is another example of how the whole goal of the BNSS is to concentrate powers in the police to the detriment of valuable rights of accused. According to Section 349 of the BNSS, the jurisdictional magistrate may order "any person" to provide specimen signatures, finger impressions, handwriting, or voice samples for the purposes of any investigation or proceeding if he is satisfied. However, this order is subject to the condition (proviso) that no order may be made unless the person has been arrested at some point in connection with such an investigation or proceeding.[69] A clause allowing the magistrate to "order any person to give such specimen or sample without him being arrested for reasons to be recorded in writing" has just been added by the BNSS.[70]

Therefore, by using a legislative "sleight of hand," a barrier to the police's authority during the pre-trial phase has been removed by simply adding a proviso to a proviso in the new statute, superseding the previous restriction.[71] This is yet another infringement on the important safeguards provided by the Criminal Procedure Code, which was amended in 2005 in response to Supreme Court rulings that balanced the need for an investigation with the rights of accused individuals as part of the right to a free and fair investigation arising from Article 21 of the Indian Constitution.

Expansion of Police Powers and Prolonged Remand: Section 187 of the BNSS

The clause extending the maximum duration of police detention from 15 days to 60 or 90 days is arguably one of the most contentious modifications to criminal law.[72] It is widely

[68] *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158 (free and fair trial is the foundation of Art. 21); see also *Supra* note 62 (trial without adequate opportunity to defend violates Art. 21).
[69] *State of U.P. v. Ram Babu Misra*, (1980) 2 SCC 343 (Court held that without statutory authority a Magistrate could not compel handwriting samples, leading to introduction of CrPC s. 311-A; safeguards are integral to preventing abuse).
[70] *Selvi v. State of Karnataka*, (2010) 7 SCC 263 (compelled extraction of bodily or testimonial samples implicates personal liberty and requires strict procedural safeguards; expansions of compulsory sampling powers must meet Art. 20(3) and Art. 21 standards).
[71] *Supra* note 73 (holding that a Magistrate lacked power to compel handwriting samples absent statutory authority, which became the foundation for the 2005 insertion of CrPC s. 311-A).
[72] *Supra* note 45, s.187(3).

acknowledged that the time when the accused is directly under police custody is when the police exert the greatest amount of pressure. This includes the fact that the police actually use extrajudicial tactics, such as physical torture and emotional coercion, to break the will of those who are arrested.[73] In accordance with this beneficial concept, the arrested individual may be detained by the police for a maximum of 15 days following the arrest; beyond that, they must be placed into court custody.[74] This implies that the accused must be placed in judicial custody in the central jail that is closest to them. Because the accused is officially under the judiciary's supervision even if they may be incarcerated, this guarantees a certain amount of protection from the police.[75] Another aspect of the law pertaining to the subject is that police remand under section 167 of the CrPC cannot be granted at the request of the police; instead, it is a judicial decision made by the jurisdictional magistrate, who must review the documents, including the FIR and the investigation's status, and issue a judicially reasoned order regarding whether or not the police's request for the accused's physical custody should be granted.[76] In any event, the maximum time frame was set at 15 days following the arrest.[77] The modifications made to the remand legislation have completely destroyed this crucial protection.[78] The following can be seen by closely examining section 187 of the BNSS:

(i) The magistrate may impose police custody for a period of 15 days at any point within the first 40–60 days of detention, since the maximum of 15 days of police custody during the first 15 days from the time of arrest is eliminated. This essentially implies that after the remanding magistrate granted judicial custody, the previous restriction on requesting police custody is removed. Therefore, even if an accused person has been given judicial custody, the magistrate may order that they be returned to police custody at any point after the first 15 days of their detention.

(ii) It is noteworthy at this point that section 187 has further reduced the maximum 15-day police detention duration (3). A comparison of section 167 (2) proviso (a) of the CrPC with section 187(3) of the BNSS reveals that, although section 187(3) retains the same language of

[73] *Supra* note 58 (recognising prevalence of custodial torture and laying down safeguards).
[74] *Supra* note 63, s.167(2) proviso.
[75] *Central Bureau of Investigation v. Anupam J. Kulkarni*, (1992) 3 SCC 141 (holding that police custody cannot exceed 15 days and thereafter only judicial custody is permissible).
[76] *Ibid*. (Magistrate must apply judicial mind to remand); see also *Khatri v. State of Bihar*, (1981) 1 SCC 627 (judicial oversight is essential to prevent custodial abuse).
[77] *Supra* note 63, s.167(2).
[78] *Supra* note 45, s.187 (extending permissible police custody to any time within the 60 or 90 day investigation period).

section 167(2) proviso (a) of the CrPC, a very important term has been removed: "The Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police ….". The initial 15-day police custody bar is essentially eliminated as a result of the aforementioned provisions being omitted. Therefore, for reasons to be documented, the magistrate may permit the accused individual to be detained (in police custody) for a total of 60 days (for minor offenses) or 90 days (for offences punished by death, life in prison, or ten years). The accused's rights are gravely violated by this extension of police detention, which puts them at risk for torture, intimidation, and other threats. **(iii)** It's critical to comprehend the new BNSS section 187's scope:

1. Depending on the offense, a maximum of 60 or 90 days of police detention may be imposed.

2. The maximum 15-day police detention period, which began on the day of the arrest, has been lifted.

3. The widely accepted rule that an accused individual cannot often be brought back into custody by the police after being remanded to court custody has been overturned.

4. In actuality, the accused may be transferred between judicial and police custody as if the types of custody were identical.

5. The final form of the section does not take into account the Parliamentary Standing Committee's wise warning that prolonging police detention might be abused and that this provision needs to be amended to offer more clarity.

Shielding the State? Section 175 of the BNSS and Accountability of Public Servants

A new subsection of the BNSS places restrictions on magistrates' ability to consider complaints against public servants that arise while they are performing their official duties.[79] Chapter XVI Complaints to Magistrates of the BNSS contains a similar prohibition that gives police impunity. A new clause that has been added to the BNSS on the "examination of

[79] *Supra* note 45, s.175(4).

complainant"[80] is crucial for citizens seeking redress against official abuse of authority.[81]

This new clause, section 223(2), imposes a requirement on a court considering a complaint against a public servant for any alleged offense committed while doing their official duties. According to the statement, no cognisance can be taken unless (a) the public servant accused of abusing their position is given a chance to explain the circumstances leading up to the alleged incident and (b) the officer in charge of that public servant provides a report on the incident's facts and circumstances.[82]

Across the nation, it is nearly hard to persuade any public worker to acknowledge their misconduct or for a higher-ranking official to provide an unbiased report of a subordinate abusing or misusing their authority.[83] By providing legal protection for a systemic administrative practice, section 223(2) has made it impossible for any person to file a lawsuit alleging that public workers have abused their authority.

Another thoughtful clause that eliminates police accountability is found in the 'procedure for investigation'.[84] This clause gives the police officer the authority to start an inquiry without the jurisdictional magistrate's previous consent after receiving information about the commission of a cognizable offense.[85] The same provision also states that the police officer who receives the complaint will not look into the situation if he believes it is not severe enough or that there is insufficient evidence to begin an inquiry.[86] To put it simply, the new clause in section 176 of the BNSS means that the police officer who receives the complaint is not required to notify the informant that their complaint will not be looked into. Other than to guarantee the police officer's impunity once more, there can be no other reason for this omission.[87]

Suggestions and Conclusion

The expansion of police powers under the new criminal laws in India raises crucial concerns

[80] *Id.* at s. 223.
[81] *Id.* at s.223(2).
[82] *Ibid.*
[83] On systemic reluctance of public authorities to admit wrongdoing, see common administrative practice discussed in: Bhatnagar, *Administrative Law in India* 241-243 (Eastern Book Co., 2019).
[84] *Supra* note 45, s.176.
[85] *Id*. at s.176(1).
[86] *Id*. at s.176(2).
[87] Singh, *Police Accountability and the Rule of Law in India*, (ILI Journal, 2021) for discussion on statutory mechanisms enabling impunity.

about the balance between effective law enforcement and democratic accountability. While proponents argue that enhanced powers are necessary to address modern forms of crime, the potential for arbitrariness and abuse requires rigorous constitutional safeguards and oversight.

1. Strengthening Oversight and Institutional Accountability

The Supreme Court in *Prakash Singh v. Union of India*[88] mandated reforms including the creation of State Security Commissions and Police Complaints Authorities to ensure independence and accountability in policing. However, compliance has been patchy, as highlighted by the *Justice Verma Committee Report (2013)*.[89] Given the widened scope of police powers under the new criminal laws, effective implementation of these directives is imperative. Parliamentary review committees should mandate annual performance audits of police functioning, with emphasis not merely on crime control but also on compliance with fundamental rights under Articles 14, 19 and 21 of the Constitution.

2. Narrow Tailoring of Statutory Provisions

The Constitution requires that deprivations of liberty occur only through procedures that are "just, fair, and reasonable."[90] In *Maneka Gandhi v. Union of India*, the Supreme Court held that arbitrary procedures violate the right to life and liberty.[91] Similarly, the proportionality doctrine, affirmed in *K.S. Puttaswamy v. Union of India*[92], requires that restrictions on rights must be necessary, least restrictive, and justified by a legitimate aim. Provisions granting the police discretionary authority over preventive detention, surveillance, or seizure must therefore be narrowly drafted, subject to judicial warrants, and time-bound. Incorporating sunset clauses could further ensure periodic legislative scrutiny.

3. Judicial Vigilance and Effective Remedies

Judicial oversight remains the most effective check on executive power. The experience of *ADM Jabalpur v. Shivkant Shukla*[93], which infamously upheld suspension of habeas corpus during the Emergency, underscores the dangers of judicial abdication. Later jurisprudence,

[88] (2006) 8 SCC 1.
[89] Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013), Government of India.
[90] *Supra* note 46, art. 21.
[91] *Supra* note 51.
[92] (2017) 10 SCC 1.
[93] (1976) 2 SCC 521.

including *Rudul Sah v. State of Bihar*[94] (compensation for illegal detention) and *Arnesh Kumar v. State of Bihar*[95] (guidelines on arrests), demonstrates the judiciary's corrective role. Expeditious habeas corpus hearings, bail access, and enforceable compensation mechanisms must accompany expanded police powers to prevent abuse.

4. Embedding a Rights Oriented Policing Culture

The National Police Commission Reports observed that excessive political control and lack of accountability foster misconduct.[96] Reforms must therefore go beyond statutory controls to cultivate a policing culture rooted in constitutional morality. Regular training in human rights standards, community policing, and the UN Basic Principles on the Use of Force and Firearms (1990)[97] can ensure that officers internalize limits on coercive authority.

5. Civil Society and Media Oversight

The role of civil society and the press in exposing misconduct is constitutionally protected under Article 19(1)(a). In *Shreya Singhal v. Union of India*[98], the Court struck down vague restrictions on free speech, affirming the importance of dissent in a democracy. Expanded police powers must not become instruments for silencing critique but should instead be accompanied by transparency measures, including public access to arrest and detention data.

Conclusion

The expansion of police powers under the new criminal laws cannot be viewed solely through the prism of efficiency. In a constitutional democracy, the legitimacy of criminal justice depends equally on its fidelity to liberty and fairness. As Dr. B.R. Ambedkar warned in the

Constituent Assembly, "constitutional morality is not a natural sentiment. It has to be cultivated."[99] Unless these expanded powers are tempered by judicial vigilance, legislative precision, and active civil society oversight, they risk replicating the excesses of the Emergency era. The true test of India's democracy lies not in how much power it gives to the police, but

[94] (1983) 4 SCC 141.
[95] (2014) 8 SCC 273.
[96] National Police Commission, *Reports of the National Police Commission* (1979-1981).
[97] United Nations, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (1990).
[98] (2015) 5 SCC 1.
[99] *Constituent Assembly Debates*, Vol. XI, 4 November 1948, speech of Dr. B.R. Ambedkar.

in how effectively it restrains that power in the service of constitutional values.

The cumulative effect of the reforms introduced through the BNS, BNSS and BSA reveals not a neutral modernization of criminal law, but a structural recalibration of power in favour of the police and the executive. When arrest, custody, surveillance, seizure, and prosecution thresholds are simultaneously lowered while judicial and citizen-centric safeguards are diluted, the architecture of criminal justice tilts decisively away from liberty. A legal system grounded in the Constitution cannot treat accountability and rights as dispensable inconveniences. It must foreground them as essential checks on the coercive machinery of the State.

India's historical experience from colonial policing to the abuses of the Emergency demonstrates that unchecked executive power is rarely temporary and almost never benign. The new criminal laws risk entrenching precisely the kind of impunity that the Constitution sought to eradicate. The answer does not lie in rejecting reform, but in ensuring that reform is aligned with constitutional morality: due process, proportionality, transparency, and independent oversight.

To restore equilibrium, Parliament, the judiciary, civil society, and the legal community must collectively insist on mechanisms that prevent the police from becoming the sole arbiters of liberty. Independent complaints authorities, strict judicial scrutiny of custody and surveillance, mandatory reporting obligations, and robust protections for dissent are not optional, they are constitutional necessities. Ultimately, a criminal justice system earns public legitimacy not through the breadth of its coercive powers, but through the fairness with which those powers are exercised.

India now stands at a constitutional crossroads. The trajectory chosen will determine whether these new laws fortify democratic freedoms or erode them. The measure of our democracy, as Ambedkar reminded us, lies not in empowering the State but in restraining it. The task ahead is to ensure that the renewed criminal law framework does not become an instrument of fear, but a guarantor of justice, firm in enforcement, yet faithful to liberty.

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