
JUDICIAL OVERSIGHT IN CRIMINAL INVESTIGATIONS UNDER THE BNSS, 2023: A CONSTITUTIONAL ANALYSIS

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ABSTRACT

The Indian criminal justice system is predicated on the concept that executive investigative power must be subjected to stringent judicial oversight. Judicial monitoring of criminal investigations serves as a fundamental constitutional protection against arbitrary detention, evidence falsification, and police misconduct. This paper rigorously analyses the multi-layered structure of judicial oversight in criminal investigations in India, highlighting its constitutional foundation in Articles 21 and 22, its statutory expression in the newly enacted Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and its progressive judicial interpretation through seminal rulings of the Supreme Court and High Courts. The study examines remand jurisprudence, the doctrine of court-monitored investigations, the supervisory function of magistrates, and the increasing importance of independent investigative agencies. It further examines critical difficulties such as institutional inertia, insufficient judicial oversight, and the conflicts arising from specialised penal legislation. It finishes by advocating for a strong, constitutionally-based framework of judicial scrutiny that is both efficient and respectful of civil freedoms.

Keywords: Investigation, Remand, BNSS, Article 21, Article 22.

INTRODUCTION

Criminal investigation constitutes a mechanism of coercion inherent to the State, enabling its agents to arrest, detain, search, and interrogate individual people, often based on suspicion rather than established guilt. The manner in which this power is utilised determines whether the criminal justice system genuinely upholds the constitutional guarantee of justice or rather serves as an instrument of State oppression. The Constitution, as the supreme law of India, imposes significant structural constraints on the investigative authority of the executive through a framework of fundamental rights, particularly under Article 21, which guarantees the right to life and personal liberty, and Article 22, which provides procedural protections against arrest and detention.¹

The judicial review of criminal investigations is fundamental to the separation of powers and the rule of law, which are the cornerstones of the Indian constitutional framework. Courts have not merely served as passive interpreters of criminal cases; rather, they have functioned as legislative inventors, enhancers, and implementers of investigative methods to prevent the executive from usurping its prerogatives. The Supreme Court, in *Maneka Gandhi v. Union of India*,² radically changed the meaning of Article 21, believing that any process that would deny an individual life or liberty should be just, fair and reasonable. This broad reading has been the foundation of a well-developed jurisprudence of judicial review of State action, even of police investigation.

The study assumes greater relevance in the context of transformative legislative reform. The *Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)*, which supersedes the century-old Code of Criminal Procedure, 1973 (CrPC), has instituted significant improvements in arrest, remand, and investigation processes. While the BNSS maintains the essential characteristics of magisterial oversight, several provisions, particularly the revised remand framework under Section 187, raise apprehensions over the adequacy of judicial supervision over prolonged detention. It is therefore imperative to systematically examine the constitutional and statutory framework of court supervision, analyse its judicial development, and assess its efficacy in the contemporary context. The paper proceeds as follows: it introduces the constitutional foundation of judicial checks and balances; subsequently, it examines statutory provisions as

¹The Constitution of India, art. 21 and 22.

²*Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

delineated under the BNSS; third, it analyses the jurisprudence of remand established by the court; and finally, it assesses the optimistic challenges and proposes a path forward.

CONSTITUTIONAL FRAMEWORK

The judicial checks and balances within India's criminal law are legally mandated. The founding fathers, informed by the colonial excesses, intentionally incorporated safeguards against arbitrary State power in the constitution. The fundamental framework of the Constitution, as established in *Kesavananda Bharati v. State of Kerala*, encompasses the rule of law and the separation of powers, with judicial oversight as the source of its normative authority.³

Article 21: Right to Life and Personal Liberty

Article 21 stipulates that no individual shall be deprived of life or personal liberty unless in accordance with the method established by law. The expansive interpretation of this Article established by the Supreme Court, beginning with *Maneka Gandhi*, has rendered it a comprehensive mechanism to guarantee due process. The existence of a legal procedure has been seen to necessitate that any investigative or custody process be substantively equitable rather than merely nominally lawful. Courts have consistently held that prolonged or arbitrary pre-trial detention contravenes Article 21. In *D.K. Basu v. State of West Bengal*,⁴ the Supreme Court went further and issued a comprehensive set of guidelines governing arrest and custodial treatment, emphasising that the coercive powers of police during investigation are circumscribed by constitutional norms of dignity, fairness, and necessity.

Article 22: Procedural Safeguards on Arrest and Detention

Article 22 provides procedural safeguards for detained individuals, notably the right to be informed of the grounds for arrest, the right to legal counsel, and the right to be presented before a magistrate within twenty-four hours following detention. These rights function as constitutional minimum guarantees rather than simple commands. The core of judicial oversight during an investigation pertains to the presentation of a detained subject before a magistrate. It enables the magistrate to examine the legality of the arrest, ascertain if the

³*Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

⁴*D.K. Basu v. State of West Bengal*, AIR 1997 SC 610.

accused should be detained further, and impose conditions that safeguard the rights of the accused. Section 187 of the BNSS encompasses the legal provision that extends this protection.

The constitution's structure inherently suggests that police investigations, necessitating an element of authority, cannot self-regulate. The magistrate, as an impartial judicial authority, must intervene at the initial stage of liberty deprivation to prevent misuse. This is not merely a procedural technicality, but a reflection of constitutional morality.⁵

STATUTORY MECHANISMS: THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

The BNSS has replaced the CrPC with effect from July 1, 2024, and substantially reorganises the procedural law governing criminal investigations. Several provisions of the BNSS have direct bearing on judicial oversight.

Arrest and Compulsory Production: Sections 35 and 62

Section 35 of the BNSS⁶ regulates the force of arrest and proposes valuable protective provisions, such as the bar against the arrest of aged or infirm persons in offences the punishment of which involves not less than three years imprisonment without previous authority of the Deputy Superintendent of Police. Section 62⁷ mandates that arrests be made strictly in accordance with the Sanhita, reinforcing constitutional norms regarding the lawfulness of arrest. In “*Arnesh Kumar v. State of Bihar*”,⁸ the Supreme Court had already instructed magistrates to exercise their judgment in issuing remand, having cautioned that they must not be robotic in granting custody as requested by the police. This spirit is used in the revised arrest provisions by the BNSS but it is upon the vigilance level of the investigating officers and magistrates to enforce the provisions.

Remand Provisions: Section 187

The essential component of court oversight during investigations is section 187 of the BNSS. This indicates that an investigation cannot be completed within twenty-four hours and there is

⁵The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 187.

⁶The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 35.

⁷The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 62.

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

cause to believe the charge or information may be valid; thus, the investigating officer is obligated to submit a copy of the case diary to the nearest magistrate and present the accused before that judge. The magistrate possesses the authority to authorise the arrest of the accused in either police custody or judicial custody.

A significant departure from the old Section 167 of the CrPC⁹ resides under the reformed police detention framework. Under the BNSS, police custody of up to fifteen days may be given in full or in part at any point during the initial forty or sixty days of a total detention duration of sixty or thirty days for offences classified at two levels. This alteration has elicited academic critique as it allows for police custody to be obtained later in the investigative process, thereby undermining the right to bail and incentivising extended investigations. As per PRS Legislative Research, this arrangement may lead to a denial of bail for the whole duration of the maximum permissible period until the police relinquish the fifteen days of custody.¹⁰

The institutional safeguards requiring magistrates to provide justifications before granting detention extensions and mandating the submission of such orders to the Chief Judicial Magistrate when granted by magistrates, rather than the CJM, are beneficial in nature. Section 187(5) specifies that only a second-class Magistrate, specifically authorised by the High Court, may permit detention in police custody, ensuring that judicial oversight is conducted by appropriately qualified judicial personnel.

Timelines for Investigation: Section 193

Section 193 of the BNSS¹¹ raises a significant time-sensitive obligation regarding the investigation of sexual offences. The investigation process for the offences delineated in the Bharatiya Nyaya Sanhita, 2023, concerning rape and those under the Protection of Children from Sexual Offences Act, 2012, must be concluded within two months following the recording of information. This section recognises that delays in inquiry are detrimental to the legislature and asserts that judicial oversight must be complemented with accountability in completing investigations efficiently. The courts, in their supervisory capacity, may observe any violations of statutory timelines and strengthen the broader framework of oversight.

⁹The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 167.

¹⁰PRS Legislative Research, "The Bharatiya Nagarik Suraksha Sanhita, 2023," available at: <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023> (last visited on March 15, 2025).

¹¹The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 193.

Audio-Video Recording and Transparency: Section 105

Section 105 of the BNSS¹² provides a protocol for documenting audio-visual searches, intended for submission to the District Magistrate, Sub-Divisional Magistrate, or Judicial Magistrate of the First Class. This clause, which promotes transparency, significantly enhances judicial oversight during the investigative phase, rather than solely at the appearance of the accused. The BNSS mandates that documentation of the search methodology must be presented to a judicial authority to establish a contemporaneous record for evaluating any subsequent allegations of wrongdoing or falsification.

REMAND JURISPRUDENCE: COURTS AS GUARDIANS OF LIBERTY

The remand process is the principal institutional occasion for court control during an active investigation. The magistrate's function in granting, denying, or stipulating conditions for remand influences the effectiveness of court oversight in practice. Indian courts have established a comprehensive framework of doctrine regulating the exercise of this power.

The Supreme Court, in *Hussainara Khatoon v. State of Bihar*,¹³ asserted that the entitlement to a prompt trial constitutes one of the essential rights enshrined in Article 21. The prolonged pre-trial detention of individuals without a substantive court review was deemed a violation of liberty not sanctioned by constitutional authorities. The Court mandated that magistrates must not remain inactive during the recording of accused individuals but should actively enquire about the reasons for their detention and the status of ongoing investigations. This case established that the magistrate during the remand phase must serve as a constitutional guardian rather than merely a procedural entity.

In *Suresh Kumar Bhikamchand Jain v. State of Maharashtra*,¹⁴ the Court deduced that the ongoing custody under judicial authority necessitates the periodic appearance of the accused before the judge. The failure to present the accused at each remand stage renders further incarceration unconstitutional, regardless of the prior official remand order.

The case of *D.K. Basu v. State of West Bengal* remains the definitive authority on judicial oversight of custodial actions in India. The Supreme Court established a comprehensive code

¹²The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 105.

¹³*Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360.

¹⁴*Suresh Kumar Bhikamchand Jain v. State of Maharashtra*, (2013) 3 SCC 77.

comprising eleven rules governing arrest and detention, stipulating that every individual under arrest must undergo a medical examination, an entry must be recorded in an arrest memorandum, a relative or friend of the arrested person must be notified, and the arrest memorandum must be provided to the arrested individual. Initially published under the Court's writ jurisdiction, these guidelines were subsequently incorporated into the CrPC by the 2009 changes, impacting the present provisions of the BNSS. The ruling marked the inception of a new paradigm in the judicial understanding of custodial rights: the Court asserted that death at the hands of authorities and torture were not only legal violations but also transgressions against the dignity enshrined in the Constitution.

In what is widely regarded as one of the most significant judgments of 2025 on the constitutional architecture of arrest, a bench of the Supreme Court in *Mihir Rajesh Shah v. State of Maharashtra*¹⁵ It was determined that every individual detained in India must be notified of the reasons for their arrest in writing and in a comprehensible language. Expanding on Articles 21 and 22(1) of the Constitution, the Court determined that the obligation to inform the arrested individual of the grounds for arrest is not a simple formality but a compulsory and enforceable constitutional protection. The ruling surpassed previous judgements in *Pankaj Bansal v. Union of India* and *Prabir Purkayastha v. State (NCT of Delhi)*, which mandated documented justifications under specific legislation like the PMLA and UAPA, by extending this requirement to all arrests under general criminal law.

The Court imposed an obligation on magistrates to ensure compliance with this criterion before granting remand. Custody cannot be granted just on the basis of the police presenting an accused; it must be substantiated by formal evidence. This ruling recalibrates the institutional dynamics of police discretion and court oversight to a muted level, as it re-establishes the police magistrate as an agent of liberty rather than merely a signatory for remand forms.

COURT-MONITORED INVESTIGATIONS

Beyond the remand mechanism, Indian courts have developed a parallel doctrine of court-monitored or judicially-supervised investigations. This doctrine enables courts particularly the Supreme Court under Article 32 and High Courts under Article 226 to directly oversee the

¹⁵*Mihir Rajesh Shah v. State of Maharashtra*, (2025) SCC OnLine SC 3341.

conduct of an investigation, appoint independent investigating agencies, and issue directions to ensure fair and impartial inquiry.

The greatest embodiment of this doctrine is the jurisdiction of the courts to direct the state police into investigation by the Central Bureau of Investigation (CBI) or a Special Investigation Team (SIT) appointment by the court. This has been done on numerous occasions when the Supreme Court has concluded that the ordinary investigating agency may not handle the investigation fairly based on its role in the alleged vice, closeness to the allegedly wronged individual or the influence of politics.

In *Narmada Bai v. State of Gujarat*¹⁶, the Supreme Court referred the case involving the alleged fake encounter murder of Tulsiram Prajapati to the CBI after discovering that the role of the topmost Gujarat police officials in the incident had made a fair investigation by the state police impossible. It was held by the Court that that power to transfer investigation goes not only so far as pending investigations but may be applied even where a charge sheet has been filed and where the interests of justice so require. This decision reified the long-standing principle that the judiciary has a supervision role in any investigation; such supervision is not a luxury of the judiciary but a constitutional requirement.

In *State of West Bengal v. Committee for Protection of Democratic Rights*,¹⁷ a Constitution Bench of the Supreme Court authoritatively declared that, High Courts could direct the CBI to investigate suitable cases without the approval of the State government in case the investigation by state police agencies would be biased or insufficient, under Article 226. The Court based this power on the constitutional mandate to provide justice and on the concept that no man is to be a judge to himself.

In *Vineet Narain v. Union of India*,¹⁸ the Supreme Court did more than passively forward an investigation and overtly supervised the activities of a CBI inquiry into high-profile corruption the so-called Hawala scandal. The Court ordered CBI to report to it on regular basis and laid down guidelines to make sure that the CBI did not face any political interference in carrying out its investigations. This ruling formed the rule that in situations of deep societal concern and the incidence of possible institutional discrimination, the judiciary can play an ongoing

¹⁶*Narmada Bai v. State of Gujarat*, (2011) 5 SCC 79.

¹⁷*State of West Bengal v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571.

¹⁸*Vineet Narain v. Union of India*, AIR 1998 SC 889.

supervisory role with regard to the investigative department of the executive. The case has been a historic example of the revolutionary nature of judicial review within criminal investigations.

At the magistrate stage, the authority to guide research and inquiry in accordance with Section 156(3) of the CrPC now with sub-clause 175(3) of the BNSS, happens to be a vital instrument of judicial control. In case the police fail or refuse to record a First Information Report, or to make a proper investigation, the magistrate shall have the officer-in-charge of the police station investigate the complaint. The Supreme Court in *Sakiri Vasu v. State of U.P.*¹⁹ concluded that the authority in Section 156(3) should be interpreted liberally to allow the magistrate to order investigations in cases where there is reliable information of a cognisable crime. The given provision acts as a control instrument against the investigative inactivity or a conscious effort to suppress and therefore identifies that the judicial control does not stop at the supervision during investigation but the inception of it.¹⁹

In *Lalita Kumari v. Govt. of U.P.*,²⁰ the Supreme Court Bench, which is the Constitution Bench, ruled that any information which reveals a cognisable offence must be registered as an FIR and the police could not choose not to investigate the FIR, unless it fell within particular types of cases. This decision, which is now substantially reflected in the BNSS, guarantees a formal initiation of the investigation process in a manner which can be judicially reviewed as early as it can be.

CHALLENGES TO EFFECTIVE JUDICIAL OVERSIGHT

Although the above-discussed robust framework, criminal investigations are still subjected to structural and institutional barriers affecting its efficient practice even under judicial oversight.

A. Mechanical Magisterial Operating.

The biggest problem is not the lack of the legal provisions but the lack of their proper execution. It has been observed empirically and the Malimath Committee Report has indicated that magistrates often act as passive legitimisers to police applications to get a remand instead of active as a gatekeeper to the police.. Remand orders are issued quite freely without any significant examination of the reasons of arrest or of the state of investigation, and accused

¹⁹*Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409.

²⁰*Lalita Kumari v. Govt. of U.P.*, AIR 2014 SC 187.

persons appear before overworked magistrate courts in a few-minute remand hearings. This commitment to judicial review, embedded both in Article 22 and in the BNSS, to most of the accused is merely on paper.

B. Special “Penal Legislation and Reduced Judicial Scrutiny.

The unlawful instrument of judicial oversight is substantially watered down by a growing body of special penal legislation, such as the Unlawful Activities (Prevention) Act, 1967, and Prevention of Money Laundering Act, 2002. These laws increase the amount of time police are allowed to hold suspects in custody, establish bail presumptions, and demand procedural burdens on suspects. In the cases of Prabir Purkayastha and Pankaj Bansal, the Supreme Court has tried to project constitutional protection to these areas, and demanded written reasons of arrest even under a special law. Nevertheless, structural conflict between national security and the rights of individuals remains to present the usual model of judicial review with complex challenges.

C. Incompleteness of Forensic and Technological Resources.

The Malimath Committee Report on criminal justice reforms noted that police investigations in India are often compromised by lack of modern forensic equipment, insufficient training of the investigators and overreliance on confessions. These gaps complicate the effectiveness with which courts can determine the quality and reliability of the investigation conducted pursuant to which they are exercising jurisdiction. The level of judicial oversight an investigation with suspect confessions and eyewitness testament as its major sources of evidence is fundamentally incomparable to oversight of a scientifically sound, evidenced-based investigation. Mandatory reporting of searches on audio-video tapes and the encouragement to use electronic tools to facilitate an investigation is a move in the right direction, but an institutional priority to systematically reform investigative abilities is urgent.

D. Independence of the police and the Prakash Singh Directives.

Separation of law-enforcement activities and political influence is one of the structural prerequisites of the effective exercise of judicial review. In the Prakash Singh case v. Union of India, the Supreme Court gave detailed guidelines on the police reforms, such as; the formation of State Security Commissions, where the police are able to execute their duties free of

unreasoned political interference, formation of Police Complaints Authorities to investigate any claims of misconduct, and the separation of the investigative role and the law and order roles.. Over a decade and a half since this historic judgment, it is still yet to be fully implemented in the majority of Indian states. The continued nature of such political interference in the police investigation process is such that judicial oversight of police behavior on a meaningful basis is structurally challenging to realize because courts may regulate the overt aspects of such investigations, but have much greater difficulty in regulating the covert pressures on the priorities guiding such investigations.

CONCLUSION

Criminal investigation in India can and must remain subject to judicial review, as such supervision is a constitutional necessity flowing from the principles of liberty, dignity and the rule of law. Articles 21 and 22 of the Constitution, together with the procedural framework under the BNSS, create safeguards against arbitrary arrest, unlawful detention and excessive use of coercive investigative powers. This constitutional protection operates through multiple institutions, including the Magistrate at the stage of remand, the High Court in its supervisory jurisdiction and, in appropriate cases, court-monitored or court-directed investigation. Judicial decisions have played a crucial role in strengthening these safeguards. The principles laid down in *Maneka Gandhi*, *Hussainara Khatoon* and *D.K. Basu* constitutionalised fairness, speedy justice and custodial safeguards. More recent rulings, including *Mihir Rajesh Shah*, have further emphasised the need for written reasons of arrest and meaningful judicial scrutiny. However, challenges such as mechanical remand orders, incomplete police reforms and misuse of special penal laws show that judicial oversight remains an unfinished project. The BNSS introduces procedural reforms and technological transparency, but its remand provisions require careful interpretation to prevent prolonged custodial interrogation. Therefore, courts must continue to enforce constitutional standards vigorously so that judicial control over investigation becomes a practical guarantee of liberty for every citizen.