
POLICE POWERS UNDER THE BNSS, 2023: A CRITICAL ANALYSIS OF LEGISLATIVE CHANGES AND THEIR CONSTITUTIONAL VALIDITY

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ABSTRACT

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which replaced the Code of Criminal Procedure, 1973 with effect from 1 July 2024, represents the most consequential restructuring of India's criminal procedure law since independence. While the legislature has presented the BNSS as a citizen-centric, technology-enabled framework designed to secure expeditious justice, a close reading of its provisions relating to police powers reveals a marked expansion of executive authority in the domains of arrest, custody, search and seizure, and the collection of forensic and electronic evidence. This paper undertakes a doctrinal examination of the principal changes introduced by the BNSS in relation to police powers and evaluates them against the constitutional guarantees under Articles 14, 21 and 22 of the Constitution of India, as well as the body of judicial precedent that has historically constrained police conduct, including *D.K. Basu v. State of West Bengal*, *Joginder Kumar v. State of Uttar Pradesh*, and *Arnesh Kumar v. State of Bihar*. It is argued that while certain reforms- such as the mandatory involvement of forensic experts and the digitization of investigative processes- advance efficiency and evidentiary integrity, other provisions, notably the extension of police and judicial custody up to ninety days in serious offences and the statutory recognition of handcuffing in specified circumstances, raise substantial concerns of proportionality, procedural fairness and the risk of custodial excess. The paper closes with a set of recommendations intended to reconcile the efficiency objectives of the BNSS with the due process guarantees embedded in the Constitution.

Keywords: BNSS 2023; Police Powers; Criminal Procedure; Constitutional Validity; Article 21; Custodial Justice; Criminal Justice Reform.

Introduction

The administration of criminal justice in India has, since 1973, been governed principally by the Code of Criminal Procedure (CrPC), a statute that itself descended from the colonial Code of 1898. On 1 July 2024, this framework was formally replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023, enacted alongside the Bharatiya Nyaya Sanhita, 2023 (replacing the Indian Penal Code, 1860) and the Bharatiya Sakshya Adhinyam, 2023 (replacing the Indian Evidence Act, 1872). The Union Government has described this trilogy of statutes as a decisive break from a colonial legal inheritance, oriented instead towards the constitutional values of the Indian citizen - a claim reflected in the very title of the Sanhita, which substitutes the procedural neutrality of a “Code” with the more overtly protective language of “Nagarik Suraksha” (citizen security). Yet the substance of legislative change invites closer scrutiny than its nomenclature. Police powers- the authority to arrest, detain, search, seize and interrogate- sit at the most coercive end of the State’s relationship with the individual, and it is precisely in this domain that constitutional courts in India have, over seven decades, built a substantial jurisprudence of restraint. Any statutory recalibration of these powers, however administratively justified, must therefore be tested not merely for its stated policy objectives but for its conformity with Part III of the Constitution.

Objectives and Research Methodology:

The BNSS was enacted with limited parliamentary debate and was passed in December 2023 amid the suspension of a large number of opposition members from Parliament- a fact that has itself become a point of political and academic contention regarding the legitimacy of the deliberative process behind the statute. Beyond questions of procedure in enactment, the substantive changes to police powers have not been subjected to sustained doctrinal scrutiny at the time most practitioners and scholars first encountered the Sanhita. This paper seeks to fill that gap by examining whether the expansion of police powers under the BNSS can be reconciled with the constitutional guarantees of personal liberty and equality before law.

Objectives of the Study

1. To trace the legislative evolution of police powers from the Code of Criminal Procedure, 1973 to the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. To identify and analyze the specific provisions of the BNSS that alter the scope of police powers relating to arrest, custody, search, seizure and interrogation.
3. To assess the constitutional validity of these provisions with reference to Articles 14, 21 and 22 of the Constitution and the relevant body of judicial precedent.
4. To evaluate the adequacy of procedural safeguards accompanying the expanded powers.
5. To propose measures -legislative, administrative and judicial- for reconciling the efficiency objectives of the BNSS with constitutional due process.

Research Questions

1. In what specific respects does the BNSS expand, restrict or merely restate the police powers that existed under the CrPC?
2. Do the provisions relating to extended custody, handcuffing and forensic collection satisfy the tests of reasonableness and proportionality developed under Article 21?
3. Are the procedural safeguards built into the BNSS - such as the requirement of audio-video recording of search and seizure - adequate substitutes for the judicial oversight that the expanded powers dilute?

Research Methodology

This study adopts a doctrinal, analytical method. It relies on primary legal sources- the text of the BNSS, 2023 and the CrPC, 1973- read comparatively on a section-by-section basis, together with the Constitution of India and reported judgments of the Supreme Court of India and High Courts bearing on police powers and custodial rights. Secondary sources include the Report of the Committee for Reforms in Criminal Laws (2020), parliamentary debates and Standing Committee reports where relevant, and academic commentary published in Indian law journals following the enactment of the BNSS. The paper does not undertake empirical or field research; its claims are confined to the internal consistency of the statutory text with constitutional norms as interpreted by courts. Readers should independently verify statutory citations and case references against the official gazette text and law reports before relying on them, as with any secondary academic commentary.

From the CrPC to the BNSS: Legislative Background:

The CrPC, 1973 was itself the product of a colonial procedural tradition, tracing its lineage to the Criminal Procedure Code of 1861 and 1898, enacted primarily to administer a subject population rather than to vindicate the rights of citizens. Post-independence amendments- most significantly the insertion of Section 41A (notice of appearance in lieu of arrest) by the Code of Criminal Procedure (Amendment) Act, 2008, following recommendations of the Malimath Committee (2003) and the Law Commission- sought incrementally to curb the arbitrary exercise of arrest power. The Supreme Court's decision in *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273 further operationalized these safeguards by mandating that police officers record reasons in writing before arresting a person for an offence punishable with imprisonment of less than seven years. The Union Home Ministry constituted the Committee for Reforms in Criminal Laws in 2020, chaired by Professor (Dr.) Ranbir Singh, to undertake a comprehensive review of the IPC, CrPC and Evidence Act. The Committee's stated objectives included aligning criminal law with contemporary technology, reducing pendency, and reorienting criminal justice towards victim-centric outcomes. The three Sanhitas introduced in Parliament in August 2023, subsequently withdrawn and reintroduced in modified form in December 2023, are presented as the legislative output of this exercise, although the full committee report has not been made public, which itself has attracted criticism regarding the transparency of the reform process. Structurally, the BNSS retains close to ninety per cent of the CrPC's provisions in substance, with renumbering, consolidation of some sections, and the insertion of new provisions addressing electronic communication, forensic evidence, and time-bound investigation and trial. It is within this latter category of new and modified provisions that the present paper's inquiry into police powers is situated.

Analysis of Key Changes to Police Powers under the BNSS

1. Arrest: Continuity with Incremental Expansion

Sections 35 to 62 of the BNSS deal with arrest, broadly corresponding to Sections 41 to 60A of the CrPC. Section 35 retains the *Arnesh Kumar* safeguard of recorded reasons for arrest in offences punishable with less than seven years' imprisonment, and Section 35(7) introduces a further requirement that no person shall be arrested without prior permission of an officer not below the rank of Deputy Superintendent of Police, in the case of offences committed by persons above the age of sixty, in specified circumstances- a provision without a direct CrPC counterpart, reflecting a degree of solicitude towards the elderly that merits acknowledgment.

Section 43(3) of the BNSS, however, introduces express statutory language permitting the use of handcuffs where a person is a “habitual or repeat offender,” has escaped from custody, or is accused of an offence such as organized crime, terrorism, or offences against the State, among other categories. This is a marked departure from the CrPC, which contained no express provision on handcuffing, leaving the matter to be governed entirely by the guidelines laid down by the Supreme Court in *Prem Shankar Shukla v. Delhi Administration* (1980) 3 SCC 526 and *Citizens for Democracy v. State of Assam* (1995) 3 SCC 743, both of which held that routine handcuffing violates the dignity guaranteed under Article 21 and permitted it only in the rarest circumstances, recorded in writing and subject to immediate production before a magistrate.

2. Custody: The Extension from Fifteen to Ninety Days

The most consequential change to police powers lies in Section 187 of the BNSS, corresponding to Section 167 of the CrPC. Under the CrPC, police custody could be authorized by a magistrate for a maximum of fifteen days from the date of the accused’s first production, within an overall period of judicial custody of sixty or ninety days (depending on the severity of the offence) before the accused acquired an indefeasible right to default bail. Section 187(3) of the BNSS retains the outer ceiling of sixty or ninety days for the purpose of default bail but permits the fifteen-day period of police custody to be availed in parts, spread across the entire sixty- or ninety-day period, rather than being confined to the initial fifteen days following first production. In practical terms, this allows an investigating officer to seek the accused’s custody intermittently- for instance, seven days at first production, and a further eight days at a later stage of investigation- over a period extending to three months. This is arguably the single most significant enlargement of police power under the BNSS, since it converts what was under the CrPC (as authoritatively interpreted in *Central Bureau of Investigation v. Anupam J. Kulkarni* (1992) 3 SCC 141), a narrow and time-bound window for custodial interrogation into a standing power exercised throughout the investigation.

3. Search, Seizure and Forensic Evidence

Section 176(3) of the BNSS introduces a mandatory requirement that, for offences punishable with seven years’ imprisonment or more, the investigating officer shall cause the forensic science laboratory to visit the crime scene to collect forensic evidence, and, where such facility is not available, the State Government shall ensure its availability within a period of five years from commencement. This provision, entirely absent from the CrPC, reflects a

genuine and defensible reform objective, since reliance on forensic evidence over confessional or eyewitness testimony has long been advocated by criminal law reformers as a means of reducing wrongful convictions and coercive interrogation. Section 105 similarly mandates audio-video recording of the search and seizure process, with the recorded material to be forwarded to the magistrate “without delay” - a safeguard intended to create a contemporaneous, tamper-resistant record of an exercise that has historically been vulnerable to allegations of planting of evidence. At the same time, the effectiveness of these safeguards is contingent on institutional capacity that does not presently exist uniformly across India. The Committee for Reforms in Criminal Laws itself acknowledged a substantial shortfall in the number of functional forensic science laboratories and trained forensic personnel relative to the caseload the BNSS now presumes such infrastructure to absorb. A five-year transition period for the establishment of forensic facilities, set against an immediate statutory obligation to use them, produces an evident asymmetry between the letter of the law and the administrative reality within which it must operate.

4. Preliminary Inquiry and Registration of FIR

Section 173(3) of the BNSS permits, for offences punishable with three to seven years’ imprisonment, a preliminary inquiry of up to fourteen days before registration of an FIR, upon obtaining the permission of an officer not below the rank of Deputy Superintendent of Police, in order to ascertain whether a *prima facie* case exists.

This qualifies the rule laid down by the Constitution Bench in *Lalita Kumari v. Government of Uttar Pradesh* (2014) 2 SCC 1, which held that registration of an FIR is mandatory upon receipt of information disclosing a cognizable offence, subject only to a narrow category of exceptions (such as matrimonial and commercial disputes) where a preliminary inquiry was permissible before registration. By statutorily embedding a preliminary inquiry stage for an entire, wide band of offences defined purely by sentence length, the BNSS risks converting the narrow exception carved out in *Lalita Kumari* into a broader rule, with the attendant possibility of delayed registration being used to discourage or dilute complaints, particularly against persons of influence.

5. Technology-Enabled Processes

The BNSS introduces several provisions permitting or requiring the use of electronic

communication and video-conferencing, including in the recording of statements (Section 176), the conduct of trial proceedings (Section 530), and search and seizure (Section 105). Section 173(1) further permits the registration of “zero FIRs” and electronic filing of complaints through designated portals. These changes are, on the whole, procedurally neutral in their effect on the balance of power between police and citizen and are more properly understood as modernization measures than as changes to the substantive scope of police authority. They are noted here for completeness, since they interact with the forensic and custodial provisions discussed above- for instance, an accused statement recorded through audio-video means during an extended custodial period raises the composite question of whether the safeguard of contemporaneous recording adequately compensates for the extended period during which such recording may occur.

Constitutional Validity: Articles 14, 21 and 22:

A. Article 21 and the Test of Procedure Established by Law

Since *Maneka Gandhi v. Union of India* (1978) 1 SCC 248, the “procedure established by law” under Article 21 has been read to require that any procedure depriving a person of life or personal liberty be fair, just and reasonable, and not fanciful, oppressive or arbitrary. The extension of police custody under Section 187(3) of the BNSS must be tested against this standard. The rationale historically offered for the fifteen-day limit under the CrPC- as explained in *Anupam J. Kulkarni*- was that custodial interrogation, being inherently coercive, ought to be confined to the earliest and most investigative urgent phase of a case, after which the accused’s continued detention should be judicially supervised custody rather than police custody, precisely to guard against the risk of custodial violence and involuntary confession extracted over a protracted period. Permitting police custody to be availed intermittently across ninety days arguably reintroduces the very risk that the fifteen-day rule was designed to foreclose: an accused person may now be recalled to police custody at multiple points across three months, each recall representing a fresh occasion of vulnerability to interrogation-induced pressure, without any statutory requirement of an intervening threshold of “new material” or fresh justification beyond the ordinary requirement of magisterial authorization. Whether this expanded power will survive constitutional challenge is likely to depend on how courts read the phrase “in whole or in parts” and whether they choose to import a *Kulkarni*-style limiting construction requiring that fresh custody be granted only upon a showing of new investigative

necessity, rather than as a matter of prosecutorial convenience.

B. Article 22 and the Right against Arbitrary Arrest

Article 22(1) and (2) guarantee an arrested person the right to be informed of the grounds of arrest, the right to consult a legal practitioner of choice, and the right to be produced before a magistrate within twenty-four hours. The BNSS retains these safeguards in substance (Sections 47, 48 and 58). However, the statutory recognition of handcuffing under Section 43(3), even though confined to specified categories of offenders, sits uneasily with the *Prem Shankar Shukla* line of authority, which treated the presumption of innocence and the dignity of the person as requiring that handcuffing be an exception justified in each individual case by demonstrated flight risk or danger, recorded in writing and subject to immediate judicial scrutiny- not a category-based statutory authorization triggered by the nature of the accusation itself. Categorizing “habitual offenders” or persons accused of specified offences as handcuff-eligible as a class risk precisely the mechanical, non-individualized application of coercive restraint that the Supreme Court’s jurisprudence sought to prevent, since an accusation of an offence is not, at the pre-conviction stage, proof of the propensities the provision presumes.

C. Article 14 and the Problem of Classification

Several BNSS provisions distinguish police powers by reference to the sentence attached to the offence- the three-to-seven-year band for preliminary inquiry under Section 173(3), and the seven-year threshold for mandatory forensic examination under Section 176(3). Classification by sentence length is not, without more, unconstitutional; the Supreme Court has upheld sentence-based classifications for bail and cognizability in earlier CrPC jurisprudence, provided the classification bears a rational nexus to the object sought to be achieved. The relevant Article 14 inquiry is therefore not whether classification by sentence is permissible in the abstract, but whether the specific thresholds chosen produce arbitrary or under-inclusive results in practice- for instance, whether an offence falling just below the seven-year threshold, and therefore outside the mandatory forensic examination requirement, is treated inconsistently with a comparable offence just above that threshold, without a discernible rational basis connecting the sentence length itself to the evidentiary value of forensic examination in that class of case.

D. The Institutional Question: Judicial Oversight versus Procedural Safeguards

A recurring theme across the provisions examined above is a legislative preference for procedural safeguards internal to the executive- audio-video recording, requirement of DSP-rank sanction, mandatory forensic visits- over the kind of judicial oversight (fifteen-day custody ceilings, mandatory FIR registration) that characterized the CrPC as interpreted by the Supreme Court. This is not, in itself, constitutionally objectionable; the Constitution does not mandate any particular institutional design for safeguarding Article 21 rights. But it does shift the burden of vindicating those rights: whereas under the *Lalita Kumari* and *Kulkarni* regime, the citizen's rights were largely self-executing (mandatory FIR registration; automatic default bail at the fifteen-day mark), under the BNSS regime, the citizen must increasingly rely on the internal fidelity of police officers to statutory recording and sanction requirements, with judicial correction available only after the fact, typically through a habeas corpus petition or an application under Section 528 of the BNSS (corresponding to Section 482 of the CrPC). Whether this shift is constitutionally sustainable is likely to be tested squarely before the higher judiciary in the years following the BNSS's implementation.

Critical Assessment and Recommendations:

The BNSS's changes to police powers cannot be evaluated as a monolithic whole; they range from genuinely progressive reforms to provisions that warrant serious constitutional caution. The mandatory involvement of forensic science laboratories and the audio-video recording of search and seizure represent a considered legislative response to long-standing criticism of confession-driven, low-forensic-capacity policing in India, and merit implementation support rather than resistance- provided the corresponding infrastructure is built out ahead of, rather than behind, the statutory deadline. Conversely, the fragmentation of the police custody period across ninety days, and the categorical statutory recognition of handcuffing, sit in tension with settled constitutional doctrine and are likely to require either a restrictive judicial reading or legislative amendment to survive sustained challenge.

Accordingly, the following measures are recommended:

- 1. Judicial limiting construction of Section 187(3):** Courts should read into the "in whole or in parts" formulation a requirement that any grant of further police custody beyond an initial tranche be supported by specific, recorded reasons demonstrating

fresh investigative necessity, in order to prevent the provision from operating as an open-ended license for repeated custodial interrogation.

2. **Guidelines on handcuffing under Section 43(3):** The categorical language of the provision should be read subject to the individualized, case-specific justification standard laid down in *Prem Shankar Shukla* and *Citizens for Democracy*, with mandatory recording of reasons and immediate magisterial notification in every instance of handcuffing, regardless of the category of offence alleged.
3. **Time-bound infrastructure roll-out for Section 176(3):** State Governments should be required to publish, and periodically report against, a district-wise timeline for establishing forensic facilities well within the statutory five-year window, with interim protocols (such as mobile forensic units) for districts lacking permanent facilities.
4. **Narrow reading of the preliminary inquiry power under Section 173(3):** Consistent with *Lalita Kumari*, courts should confine the availability of preliminary inquiry to cases genuinely analogous to the narrow categories recognized in that judgment, rather than treating the three-to-seven-year sentence band as a freestanding, independent ground for deferring FIR registration.
5. **Periodic legislative review:** Given the scale and novelty of the BNSS reforms, Parliament would be well served by a statutory requirement of periodic review- for instance, a report to be laid before both Houses every three years- assessing the empirical impact of the extended custody and preliminary inquiry provisions on rates of custodial complaints, wrongful detention, and conviction accuracy.

Conclusion

The Bharatiya Nagarik Suraksha Sanhita, 2023 occupies an ambivalent position in the constitutional history of Indian criminal procedure. It is, in significant part, a modernizing and evidence-oriented statute, particularly in its integration of forensic science and digital processes into ordinary investigation. Yet in its treatment of custody, handcuffing and pre-FIR inquiry, it recalibrates the balance between police power and individual liberty in a direction that departs from the protective jurisprudence built up under the CrPC by the Supreme Court over five decades. The constitutional validity of these provisions will not be settled by the text of the

Sanhita alone but by the manner in which constitutional courts choose to read down, or read safeguards into, its more expansive grants of power. In this sense, the BNSS marks not the end but the beginning of a fresh chapter of constitutional adjudication on the permissible limits of police authority in India- one in which the doctrinal architecture developed under the old Code, from *Maneka Gandhi* to *Arnesh Kumar*, is likely to remain the primary resource against which the new Sanhita's provisions are measured and, where necessary, restrained.

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