

Police powers, judicial oversight and due process under the new criminal procedural law in India

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Abstract: The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which came into force on 1st July 2024, represents the most significant restructuring of India's general criminal procedural law since the Code of Criminal Procedure, 1973 (CrPC). While retaining much of the institutional architecture of the earlier Code, the BNSS introduces important changes concerning arrest, police custody, investigation, search and seizure, forensic examination, electronic procedure, attachment of property, bail, undertrial detention and trial processes. These reforms have revived a fundamental constitutional question: how should the coercive powers necessary for effective criminal investigation be reconciled with personal liberty, judicial supervision and procedural fairness? This article critically examines the relationship between police powers, judicial oversight and due process under the BNSS, 2023. Particular attention is given to Sections 35-38 concerning arrest and interrogation, Section 43(3) concerning handcuffing, Sections 47-48 protecting arrested persons, Section 58 limiting detention without Magistrate authorisation, Section 105 requiring audio-video recording of searches and seizures, Section 176 concerning investigation and forensic examination, Section 187 restructuring police-custody remand, and Sections 479-483 governing bail and judicial release. The article argues that the BNSS simultaneously contains liberty-enhancing provisions and provisions capable of increasing coercive investigative power. Section 35 continues the principle that arrest for offences punishable up to seven years must be justified by necessity rather than made automatically, an approach reinforced by the Supreme Court in its January 2026 directions declaring notice under Section 35(3) to be the rule and arrest the exception in such cases. Conversely, Section 187 permits the maximum fifteen days of police custody to be authorised in parts across the initial forty or sixty days of detention, generating concerns regarding prolonged exposure to custodial interrogation. Section 43(3) expressly permits handcuffing in specified categories of serious cases, raising questions concerning consistency with earlier constitutional jurisprudence against routine restraints. The article further analyses emerging Supreme Court jurisprudence requiring meaningful communication of grounds of arrest and strengthening the Magistrate's responsibility to examine legality at the remand stage. It concludes that the legitimacy of the new criminal procedure will depend not merely on statutory efficiency but upon independent judicial scrutiny, reasoned arrest decisions, effective legal representation, transparent technological safeguards, proportionality and faithful adherence to Articles 14, 20, 21 and 22 of the Constitution.

Keywords: Police Powers; Judicial Oversight; Due Process; Bharatiya Nagarik Suraksha Sanhita, 2023; Arrest; Police Custody; Remand; Bail; Personal Liberty; Judicial Magistrate; Handcuffing; Criminal Investigation; Fair Trial; Article 21; Article 22; Criminal Justice Reform.

INTRODUCTION

Criminal procedure operates at the point where the authority of the State encounters the liberty of the individual. Police officers require sufficient powers to investigate crime, prevent the destruction of evidence, apprehend offenders, protect witnesses and maintain public order. At

the same time, uncontrolled investigative power can produce arbitrary arrest, coercive interrogation, unlawful detention, custodial violence, invasion of privacy and irreversible damage to the dignity and reputation of persons who may ultimately be acquitted. Criminal procedure therefore performs a constitutional balancing function: it enables the State to investigate and prosecute offences while preventing coercive authority from becoming arbitrary.

India's constitutional structure places personal liberty at the centre of this balance. Article 21 provides that no person shall be deprived of life or personal liberty except according to procedure established by law. After *Maneka Gandhi v. Union of India* (1978), the expression “procedure established by law” ceased to mean the mere existence of a statutory procedure. The procedure must satisfy standards of fairness, reasonableness and non-arbitrariness. Articles 14 and 21 consequently operate together in controlling State action. Article 20 provides important protections in criminal proceedings, including safeguards against self-incrimination and retrospective penal liability, while Article 22 specifically regulates arrest and detention by requiring communication of the grounds of arrest, access to legal counsel and production before the nearest Magistrate within twenty-four hours.

The Bharatiya Nagarik Suraksha Sanhita, 2023 replaced the Code of Criminal Procedure, 1973 as India's principal general Law of Criminal Procedure with effect from 1st July 2024. Its structure substantially follows that of the CrPC, but it incorporates new provisions designed to respond to contemporary requirements including electronic communication, forensic investigation, digital processes, victim participation, defined timelines and technological documentation. India Code identifies the BNSS as Act No. 46 of 2023 and records its commencement on 1st July 2024.

The reform is significant because criminal procedure is not simply an administrative mechanism. The manner in which arrest is made, custody is authorised, searches are conducted, evidence is obtained and bail is determined directly affects fundamental rights. A procedural statute can therefore strengthen constitutional liberty even while expanding investigative capacity, provided coercive powers are circumscribed by clear safeguards and effective judicial review.

One of the principal areas of concern is arrest without warrant. Section 35 of the BNSS largely continues the necessity-based arrest framework developed under Section 41 of the CrPC. In relation to cognizable offences punishable with imprisonment up to seven years, the existence of a reasonable complaint or suspicion is not by itself sufficient: specified grounds showing why arrest is necessary must exist. This reflects the constitutional principle articulated in *Joginder Kumar v. State of Uttar Pradesh* (1994) and subsequently reinforced in *Arnesh Kumar v. State of Bihar* (2014), where the Supreme Court made clear that the legal power to arrest and the justification for exercising that power are distinct considerations.

The significance of the restraint principle has continued under the BNSS. In January 2026, while considering *Satender Kumar Antil v. Central Bureau of Investigation*, the Supreme Court held that notice under Section 35(3) for offences punishable up to seven years is the rule, whereas arrest is the exception. The Court emphasised that even non-compliance with a notice does not automatically justify arrest; the investigating agency must still objectively determine that custody is necessary. This interpretation strengthens due process by placing necessity rather than convenience at the centre of arrest.

At the same time, the BNSS introduces changes capable of increasing police coercive authority. Section 187 allows up to fifteen days of police custody to be granted in whole or in parts during the initial forty days of a sixty-day detention period or the initial sixty days of a ninety-day detention period. The total maximum police custody remains fifteen days, but unlike the traditional interpretation of Section 167 CrPC, it need not necessarily be exhausted during the first fifteen days after arrest. This modification raises questions concerning custodial pressure, legal strategy and the role of Magistrates in ensuring that staggered police custody is not granted mechanically.

Similarly, Section 43(3) expressly authorises police officers, having regard to the nature and gravity of the offence, to use handcuffs in specified situations involving habitual or repeat offenders, persons who have escaped custody and persons accused of offences including organised crime, terrorism, drug-related offences, illegal arms possession, murder, rape, acid attack, human trafficking, sexual offences against children and offences against the State. The provision differs from the earlier CrPC and must be considered against Supreme Court decisions such as *Prem Shankar Shukla v. Delhi Administration* (1980) and *Citizens for*

Democracy v. State of Assam (1995), which treated routine handcuffing as inconsistent with human dignity and Article 21.

The BNSS also contains several provisions strengthening accountability. Section 38 recognises the arrested person's right to meet an advocate of choice during interrogation, although not throughout the interrogation. Sections 47 and 48 require communication of the grounds of arrest and information regarding arrest to a relative or friend. Sections 57 and 58 preserve the requirement of prompt production before a Magistrate and prohibit police detention beyond twenty-four hours without appropriate Magistrate authorisation.

Judicial oversight consequently remains the central institutional mechanism through which the expanded powers of investigation are converted from executive discretion into constitutionally controlled authority. The Magistrate authorising custody cannot legitimately function as a passive endorser of police requests. Remand proceedings represent one of the earliest opportunities for an independent judicial authority to examine whether arrest was legal, whether procedural safeguards were observed, whether injuries or allegations of ill-treatment require investigation, whether custody is necessary and whether the accused has access to legal representation.

The present article critically studies these questions. It examines the historical evolution of judicial control over police powers, evaluates major provisions of the BNSS, considers emerging Supreme Court interpretations and compares the Indian framework with international standards. The central argument is that the effectiveness of a criminal justice system cannot be measured by arrests, chargesheets or conviction rates alone. A legitimate criminal justice system must investigate efficiently while ensuring that coercive powers remain necessary, proportionate, transparent and continuously subject to judicial supervision.

Historical Background

The history of Indian criminal procedure reflects a continuing tension between the administrative requirements of policing and the protection of individual liberty. During colonial rule, criminal procedure was structured primarily around the maintenance of public order and effective prosecution. The Codes of Criminal Procedure enacted in the nineteenth century consolidated police powers, Magistrate functions and criminal trials within a

hierarchical administrative system. Although procedural safeguards existed, colonial institutions were primarily designed to enable the State to govern and control a vast territory rather than to operationalise a constitutional conception of fundamental rights. Police investigation and magisterial authority were closely connected to executive administration, and the relationship between individual liberty and State power developed within an unequal colonial context.

The Constitution of India fundamentally changed the normative foundation of criminal procedure. Article 21 protected life and personal liberty, while Article 22 expressly imposed safeguards upon arrest and detention. An arrested person acquired a constitutional right to be informed of the grounds of arrest, consult a legal practitioner and be produced before the nearest Magistrate within twenty-four hours. These guarantees converted arrest from an exclusively executive matter into one subject to constitutional and judicial scrutiny. The judiciary gradually expanded the meaning of these protections. Early constitutional jurisprudence interpreted “procedure established by law” relatively narrowly, but the doctrinal transformation associated with *Maneka Gandhi v. Union of India* (1978) established that procedures affecting liberty must be just, fair and reasonable. This understanding reshaped criminal procedure because statutory compliance alone could no longer validate arbitrary deprivation of liberty.

The plight of undertrial prisoners became an important constitutional issue during the late 1970s. In *Hussainara Khatoon v. Home Secretary, State of Bihar* (1979), the Supreme Court confronted prolonged incarceration of persons who had spent periods in detention disproportionate to the offences alleged against them. The Court connected speedy trial, legal assistance and liberty with Article 21. The case established that procedural delay could itself become a constitutional wrong. It also demonstrated that judicial responsibility extends beyond formal adjudication to ensuring that criminal procedure does not produce punishment before conviction.

Police restraint became another major area of judicial intervention. In *Prem Shankar Shukla v. Delhi Administration* (1980), the Supreme Court condemned routine handcuffing and emphasised human dignity, reasonableness and the need for specific justification. The Court rejected the assumption that a prisoner could automatically be subjected to degrading restraints

merely because he was in custody. This jurisprudence later influenced broader standards governing the treatment of arrested and detained persons.

In *Joginder Kumar v. State of Uttar Pradesh* (1994), the Supreme Court directly confronted arbitrary arrest. It distinguished between the existence of a power to arrest and justification for its exercise. The judgment recognised that arrest causes serious damage to reputation and personal liberty and should not follow automatically from an allegation. The Court also emphasised the importance of informing relatives or friends about the arrest. These safeguards anticipated reforms later incorporated into statutory criminal procedure.

The jurisprudential development reached a landmark stage in *D.K. Basu v. State of West Bengal* (1997). Responding to custodial violence and deaths, the Supreme Court formulated procedural requirements governing arrest and detention, including preparation of an arrest memo, identification of arresting officials, communication to relatives, medical examination and maintenance of custody records. The decision treated custodial safeguards not as administrative preferences but as constitutional obligations flowing from Articles 21 and 22. Several of these safeguards were subsequently incorporated into the CrPC through legislative amendment.

The Code of Criminal Procedure itself evolved through amendments intended to control unnecessary arrest. Sections 41 and 41A, particularly following the 2008 amendments, required police officers to consider specified grounds before arresting persons accused of offences punishable up to seven years and introduced notice of appearance as an alternative to arrest. Yet statutory restraint did not automatically transform police practice. In *Armesh Kumar v. State of Bihar* (2014), the Supreme Court expressed concern regarding routine arrests and required police officers to record reasons demonstrating necessity. Magistrates were similarly directed not to authorise detention mechanically. The Court's central message was that arrest cannot be treated as an automatic consequence of registration of an FIR. The later BNSS Section 35 substantially preserves this necessity-based structure.

Bail jurisprudence underwent a parallel transformation. Indian courts repeatedly emphasised that pre-trial detention should not become punitive. Nevertheless, prison populations continued to contain large numbers of undertrial prisoners. In *Siddharth v. State of Uttar Pradesh* (2021), the Supreme Court clarified that filing a chargesheet does not require the

arrest of an accused merely for the purpose of producing him before the court where he had cooperated with the investigation. *Satender Kumar Antil v. Central Bureau of Investigation* (2022) further sought to rationalise arrest and bail practices and reiterated that unnecessary custody burdens both individual liberty and the prison system.

Technological developments also influenced judicial oversight. CCTV surveillance at police stations, video conferencing, digital case records and audio-video recording of investigative steps created opportunities for greater transparency. The Supreme Court's directions concerning CCTV installation in police stations reflected increasing recognition that technology can strengthen accountability where conventional supervisory mechanisms fail.

The introduction of the BNSS in 2023 must be viewed against this constitutional and institutional history. Parliament sought to replace the CrPC while preserving many of its fundamental structures. The Parliamentary Standing Committee on Home Affairs examined the proposed legislation and raised concerns regarding, among other matters, police custody, preventive detention and handcuffing. PRS's analysis of the legislative process noted that the provision allowing fifteen days of police custody to be distributed across the first forty or sixty days raised the possibility of extended uncertainty regarding custodial interrogation; it also identified constitutional concerns arising from the handcuff provision.

The final BNSS nevertheless reflects both continuity and change. Traditional guarantees such as production before a Magistrate within twenty-four hours, communication of grounds of arrest and the right to legal assistance remain. New provisions introduce forensic investigation, electronic processes and audio-video documentation. The remand structure changes the timing within which police custody may be sought, while Section 479 provides beneficial undertrial-release provisions, including release on bond for qualifying first-time offenders after one-third of the maximum sentence period has been undergone in detention.

The first years of BNSS jurisprudence demonstrate that constitutional principles developed under the CrPC continue to shape interpretation of the new Sanhita. In *Vihaan Kumar v. State of Haryana* (2025), the Supreme Court reaffirmed that communication of grounds of arrest is a mandatory constitutional requirement. In *Mihir Rajesh Shah v. State of Maharashtra* (2025), the Court developed this protection further by holding that grounds of arrest must be communicated in writing in a language understood by the arrested person; where immediate

written communication is impracticable, oral communication may initially suffice, but written grounds must be supplied within a reasonable period and at least two hours before production for remand. Failure renders the arrest and subsequent remand illegal. In January 2026, the Court's directions in *Satender Kumar Antil* reinforced the proposition that notice, rather than arrest, should ordinarily govern offences punishable up to seven years. The historical trajectory therefore demonstrates that the new procedural law does not operate on a blank constitutional slate. BNSS powers must be interpreted through decades of jurisprudence insisting that police efficiency remains subordinate to legality, necessity, human dignity and judicial accountability.

Police Powers of Arrest under the BNSS

Arrest is among the most intrusive powers exercised by the police. It immediately restricts liberty and can affect employment, reputation, family life and psychological well-being even before guilt is established. Section 35 BNSS therefore represents a crucial provision in the relationship between investigation and due process.

For offences punishable with imprisonment up to seven years, Section 35 requires more than a reasonable belief that an offence has been committed. The police officer must additionally be satisfied that arrest is necessary for purposes such as preventing further offences, enabling proper investigation, preventing destruction or tampering of evidence, preventing influence over witnesses or ensuring appearance before court. These requirements reflect the philosophy of *Arnesh Kumar*: arrest is justified by necessity rather than accusation alone.

Section 35(3) provides for notice directing appearance where arrest is not required. The significance of notice is that it permits investigation without automatically placing the person in custody. The Supreme Court's January 2026 interpretation strengthened this safeguard by holding that, for offences punishable up to seven years, issuing notice is the rule and arrest is the exception. Even where statutory grounds for arrest may theoretically exist, custody should not follow unless objectively necessary.

This development is important because procedural safeguards are meaningful only if they affect police decision-making before arrest. Judicial remedies after unlawful incarceration are necessary but cannot fully undo the loss of liberty already suffered. Section 35 should therefore

be implemented through written necessity assessments, supervisory review and meaningful consequences for non-compliance.

Rights at the Time of Arrest

The BNSS contains several provisions designed to operationalise constitutional protections. Section 36 deals with the procedure of arrest and duties of the arresting officer. Section 37 requires a designated police officer for maintaining information concerning arrests. Section 47 requires that the arrested person be informed of the grounds of arrest and, in bailable cases, the right to bail. Section 48 requires information about the arrest and place of detention to be communicated to a relative, friend or nominated person.

These provisions must be interpreted substantively. Merely telling an accused the sections of law alleged against him does not necessarily provide meaningful knowledge of the factual basis for arrest. The purpose of communicating grounds is to enable the person to understand why liberty has been taken away, obtain legal advice and oppose remand.

The Supreme Court's decision in *Mihir Rajesh Shah* is therefore highly significant. The Court held in November 2025 that the constitutional mandate applies to offences generally and that written grounds must be supplied in a language understood by the arrested person. Where exceptional circumstances make immediate written communication impracticable, oral communication may initially be made, but the written grounds must be supplied at least two hours before remand proceedings. Non-compliance renders arrest and subsequent remand illegal.

This requirement substantially strengthens judicial oversight because the Magistrate now has a tangible document against which legality and necessity can be tested. It also assists defence counsel in challenging arbitrary detention.

Right to Counsel and Interrogation

Section 38 BNSS provides that an arrested person who is interrogated by police is entitled to meet an advocate of choice during interrogation, although not throughout the interrogation. The provision reflects an attempt to balance investigative effectiveness with protection against coercive interrogation.

The distinction between a right to “meet” counsel and continuous presence has practical significance. In July 2026, the Supreme Court clarified in *State of Andhra Pradesh v. Suda Suresh Veera Venkata Naga Raju* that Section 38 does not confer an unqualified right to continuous physical presence of counsel throughout every moment of interrogation; rather, it guarantees the opportunity to meet the advocate during the process.

From a due-process perspective, however, legal access must be meaningful. An accused who is intimidated, medically vulnerable or unfamiliar with the legal system may require effective consultation before important investigative steps. The right should therefore not be implemented through token meetings that make legal assistance purely formal.

Handcuffing and Human Dignity

Section 43(3) is one of the most debated departures from the earlier procedural framework. It expressly allows the police, considering the nature and gravity of the offence, to use handcuffs when arresting or producing specified categories of persons before court, including habitual or repeat offenders, escapees and persons accused of certain grave offences.

The difficulty arises from earlier constitutional jurisprudence. In *Prem Shankar Shukla*, the Supreme Court held that routine handcuffing violates human dignity and that necessity must be individually demonstrated. The principle was subsequently reiterated in *Citizens for Democracy* and *D.K. Basu*.

A constitutionally compatible interpretation of Section 43(3) should therefore distinguish statutory eligibility from automatic handcuffing. The fact that an accused falls within a listed offence category should not itself establish necessity. Risk of escape, violence, rescue or danger should remain relevant. Reasons should be recorded, and the court before which the accused is produced should review the justification. Otherwise, the gravity of an accusation could effectively determine the treatment of a person who remains legally presumed innocent.

Police Custody and Remand under Section 187

Section 187 constitutes one of the most important changes relating to police custody. Where investigation cannot be completed within twenty-four hours, the arrested person must be

forwarded to the Magistrate with relevant case-diary information. The Magistrate may authorise detention.

Under the new structure, the maximum period of police custody remains fifteen days in total. However, these fifteen days may be authorised in whole or in parts at any time during the first forty days where the overall statutory investigation period is sixty days, or within the first sixty days where the overall period is ninety days.

Supporters argue that the change gives investigators flexibility where new evidence emerges after the initial remand. For example, forensic reports, digital devices or subsequently arrested co-accused may reveal information requiring additional custodial questioning.

The concern is that staggered police custody prolongs the period during which an accused remains vulnerable to being returned from judicial custody to police interrogation. The Parliamentary analysis noted that this could affect bail and create uncertainty where investigators claim that portions of the fifteen-day custody entitlement remain unused.

The Magistrate's function therefore becomes especially important. Police custody must never be granted merely because unused days remain statutorily available. Each request should establish a new and specific investigative necessity. The Magistrate should consider the progress of investigation, reasons for the request, previous interrogation, health of the accused and whether less restrictive methods would suffice.

Remand orders should contain reasons. Judicial oversight fails when pre-printed or formulaic language substitutes for independent satisfaction. Liberty cannot be transferred from police discretion to judicial custody without an adjudicative application of mind.

Search, Seizure and Technological Accountability

The BNSS attempts to enhance transparency by using technology. Section 105 requires search and seizure processes, including preparation and signing of seizure lists, to be recorded through audio-video electronic means, preferably by mobile phone, and the recording is to be forwarded to the Magistrate. This innovation can strengthen both investigation and defence rights because disputes concerning recovery, planting of evidence or procedural manipulation can be examined against contemporaneous recordings.

Technology, however, does not automatically produce accountability. The integrity of a recording depends on when recording begins, whether interruptions occur, how metadata are preserved, who controls storage and whether editing is technically possible. Courts should therefore require secure preservation, time stamps, access logs and appropriate chain-of-custody documentation.

Forensic crime-scene examination under Section 176 further strengthens evidence-based investigation, especially for offences punishable with imprisonment of seven years or more once the statutory State implementation mechanism applies. Scientific investigation may reduce reliance upon custodial confession and witness pressure, thereby indirectly improving due process.

Judicial Oversight as a Constitutional Safeguard

The Magistrate is the first independent judicial authority ordinarily encountered after arrest. Article 22(2) and Section 58 BNSS ensure that a person arrested without warrant cannot ordinarily remain in police custody beyond twenty-four hours without judicial authority.

Production before a Magistrate must be substantive rather than ceremonial. The Magistrate should examine whether the arrest complies with Section 35, whether grounds were properly communicated under Section 47, whether relatives were informed, whether legal assistance has been provided and whether any allegation of custodial ill-treatment requires medical or judicial intervention.

Mihir Rajesh Shah significantly reinforces this role by linking written grounds of arrest with remand. If mandatory communication has not occurred within the required timeframe, subsequent remand becomes illegal. Judicial remand cannot cure a constitutionally defective arrest simply because the police later place the accused before a court.

Judicial scrutiny must similarly govern search warrants, attachment of property, identification procedures, custody extension and bail conditions. The broader the investigative power, the greater the need for reasoned judicial supervision.

Bail, Undertrial Detention and Section 479

Bail represents one of the most important mechanisms for preserving the presumption of innocence. The BNSS retains provisions concerning bailable and non-bailable offences, anticipatory bail and the special bail powers of Sessions Courts and High Courts.

Section 479 introduces an important undertrial safeguard. Subject to statutory exceptions, a person who has undergone detention for one-half of the maximum imprisonment provided for an offence must ordinarily be released on bail. A first-time offender becomes eligible for release on bond after detention amounting to one-third of the maximum sentence. The jail superintendent is required to move the court when the relevant period is reached.

This is a significant liberty-enhancing reform, particularly in a system where trials can remain pending for prolonged periods. The Supreme Court has also directed that the beneficial provisions apply to eligible undertrials in pending cases irrespective of whether the case was registered before the commencement of the BNSS.

A limitation, however, arises from Section 479(2), which excludes the specified release benefit where investigation, inquiry or trial in more than one offence or multiple cases is pending against the person. Since criminal prosecutions commonly involve several charged offences arising from the same factual transaction, courts must interpret this provision carefully to prevent prolonged detention from becoming disproportionate. The constitutional principle must remain that pre-trial incarceration serves procedural objectives rather than punishment. Bail conditions should similarly avoid discrimination against economically weaker accused persons who cannot produce substantial sureties.

Preventive Police Powers and Due Process

Criminal procedure includes not only investigation after offences but preventive police powers. Section 170 BNSS permits arrest without warrant to prevent commission of a cognizable offence where the police officer knows of a design to commit such offence and believes it cannot otherwise be prevented. Detention under this provision cannot ordinarily exceed twenty-four hours unless further detention is separately authorised by law.

Preventive powers are inherently susceptible to broad discretion because they are based on anticipated rather than completed conduct. Courts should therefore insist upon objective material connecting the individual with an imminent cognizable offence. General suspicion, political disagreement, peaceful protest or mere presence at a location cannot constitutionally substitute for the statutory standard. Judicial remedies such as habeas corpus and constitutional writ jurisdiction remain essential where preventive powers are misused.

Due Process under Articles 14, 20, 21 and 22

Although India does not reproduce the American constitutional phrase “due process of law” in Article 21, Indian constitutional jurisprudence has developed a substantive equivalent through the requirement of fairness, reasonableness and non-arbitrariness.

Article 14 restrains arbitrary classification and unequal State action. Article 20(3) protects an accused from being compelled to become a witness against himself. Article 21 protects dignity, privacy, legal aid, speedy trial and fair procedure. Article 22 provides concrete arrest safeguards.

Together, these provisions impose substantive limitations on police power. A statutory power may be formally valid yet its exercise in a particular case may be unconstitutional if unnecessary, discriminatory, disproportionate or procedurally unfair. Due process also requires recognition of the presumption of innocence. Arrest, handcuffing, public exposure and extended pre-trial custody should not function as informal punishment. Police and judicial institutions must differentiate between investigating an allegation and treating an allegation as established guilt.

Accountability for Custodial Abuse

Custodial violence represents the most serious failure of procedural safeguards because the State exercises near-total control over a detained person. *D.K. Basu* established a constitutional framework intended to prevent secret and unrecorded detention.

The BNSS provisions concerning medical examination, health and safety, arrest documentation, information to relatives and judicial production should be read consistently

with these constitutional obligations. Medical examinations must be independent and meaningful, particularly where injuries or allegations of mistreatment are reported.

Audio-video recording and police-station CCTV may strengthen accountability, but footage must be securely stored and genuinely accessible to courts investigating allegations of abuse. Magistrates should ask arrested persons about treatment in custody rather than relying exclusively upon police paperwork. Where injuries are visible or allegations credible, independent medical examination and preservation of surveillance footage should follow immediately.

International Perspectives

United Kingdom

The United Kingdom regulates police arrest, detention, interrogation, search and identification principally through the Police and Criminal Evidence Act 1984 (PACE) and detailed Codes of Practice. A key characteristic of the British framework is the attempt to regulate police discretion through custody records, statutory detention reviews, access to legal advice and specific requirements governing interviews.

PACE demonstrates the value of detailed procedural codes accompanying general statutory powers. In India, BNSS provisions could similarly be strengthened through uniform national standards prescribing how necessity for arrest, handcuffing, police custody and electronic recording should be documented.

The British system also demonstrates the importance of separating investigators from custody supervision. Independent custody officers provide an institutional check over detention. India may consider stronger internal separation between the officer investigating a case and the officer responsible for documenting and monitoring custody conditions.

United States

The United States constitutional framework controls policing primarily through the Fourth, Fifth, Sixth and Fourteenth Amendments. The Fourth Amendment protects against

unreasonable searches and seizures, while judicial warrant requirements operate as an important mechanism of prior supervision.

Miranda v. Arizona (1966) established procedural warnings concerning the right to silence and counsel during custodial interrogation. Although India's Article 20(3) framework differs, the American experience shows the importance of communicating rights in a clear and understandable manner before coercive interrogation. The principle of probable cause and judicial warrant oversight also demonstrates the value of requiring objective justification for coercive police action.

European Human Rights System

Article 5 of the European Convention on Human Rights protects liberty and security and requires detention to satisfy lawful purposes and judicial scrutiny. Article 6 protects fair-trial rights, while Article 8 protects privacy.

The European Court of Human Rights has consistently emphasised prompt judicial control over detention. Judicial review must be practical and effective rather than purely formal. This principle closely corresponds with the constitutional function of India's Magistrate during remand.

International Covenant on Civil and Political Rights

India is a party to the International Covenant on Civil and Political Rights. Article 9 protects against arbitrary arrest and detention, requires arrested persons to be informed of reasons, provides for prompt production before a judicial officer and recognises the right to challenge detention. Article 14 protects fair-trial guarantees. The international framework reinforces the proposition that legality alone does not prevent arbitrariness. Detention may technically follow domestic law yet remain disproportionate or unreasonable.

Comparative Lessons for India

International systems reveal several common safeguards: clear grounds for arrest, prompt access to lawyers, independent custody review, recording of interrogation, proportionality in restraint, judicial control over detention and effective remedies for illegality. India's BNSS

incorporates many comparable principles. Its principal challenge is therefore not the complete absence of safeguards but ensuring their consistent enforcement across a large and institutionally diverse criminal justice system.

Critical Assessment of the BNSS,2023

The BNSS contains several improvements from the standpoint of due process. The continued necessity test for arrest, notice mechanism, right to counsel, communication to relatives, twenty-four-hour rule, technological recording of searches, forensic investigation and improved undertrial-release provisions all have significant protective potential.

Recent judicial interpretation has further strengthened the statute. Written grounds of arrest and the requirement that notice ordinarily precede arrest for offences punishable up to seven years can meaningfully reduce arbitrary detention when properly implemented.

However, the expansion of staggered police custody under Section 187 deserves sustained scrutiny. While the total police-custody ceiling remains fifteen days, allowing this period to be distributed across forty or sixty days changes the psychological and procedural position of an undertrial prisoner. Judicial authorisation should therefore be exceptional and supported by specific reasons.

Section 43(3) similarly creates tension between statutory police discretion and earlier dignity-based handcuffing jurisprudence. The most constitutionally defensible approach is to treat the listed categories as conditions of eligibility, not automatic authorisation.

Another concern is institutional inequality. Safeguards may operate effectively in well-resourced urban jurisdictions while weaker implementation persists in rural areas. Access to lawyers, medical examination, video recording and forensic facilities must therefore become nationally consistent.

Finally, judicial oversight itself requires institutional capacity. Overburdened Magistrates handling large remand lists may struggle to conduct individualised inquiry. Reform must therefore include judicial training, adequate staffing and digital access to arrest records.

FUTURE SCOPE

Future research should empirically examine how Section 35 operates in actual police practice. Data should record the number of notices issued, arrests subsequently made, reasons recorded and judicial findings concerning illegal arrest. Without empirical monitoring, formal statutory compliance may conceal continued routine arrest.

The operation of Section 187 should be examined particularly carefully. Research should identify how frequently staggered police custody is requested, the stage at which it is sought, reasons advanced by investigators and the extent to which Magistrates refuse applications.

Handcuffing under Section 43(3) should similarly be subject to transparent data collection. Courts and governments should determine whether statutory authority has resulted in increased use and whether reasons are being documented.

Technology provides an important future mechanism of oversight. Arrest memos, grounds of arrest, notice under Section 35, medical records and remand applications could be digitally time-stamped and made available directly to Magistrates. This would reduce opportunities for retrospective documentation.

Police-station CCTV systems should use secure retention mechanisms. Where custodial violence is alleged, footage should be automatically preserved beyond normal retention periods.

Audio-video recording of interrogation may eventually provide a stronger safeguard than merely allowing intermittent meetings with counsel. Comprehensive recording can protect accused persons against coercion and officers against false accusations.

Artificial intelligence may also enter criminal investigation through facial recognition, predictive analysis and automated examination of digital material. Such tools create major future due-process questions concerning bias, transparency and explainability. No coercive decision concerning arrest or bail should be delegated to an opaque algorithm.

Judicial education must similarly evolve. Magistrates need continuing training on digital evidence, forensic science, constitutional arrest jurisprudence and custodial safeguards.

Legal-aid systems require strengthening so that representation at the first remand hearing becomes meaningful rather than formal. Counsel must receive sufficient access to the grounds of arrest and remand application to challenge custody intelligently.

Future legislative reform may consider requiring specific written reasons whenever handcuffs are used, whenever a person already in judicial custody is returned to police custody and whenever arrest follows compliance with a Section 35 notice.

An independent system for auditing compliance with arrest safeguards could significantly improve accountability. State legal services authorities, human-rights commissions and judicial inspection systems may contribute to such oversight.

The long-term objective should be development of an auditable criminal procedure in which every coercive step notice, arrest, search, interrogation, custody, medical examination and remand create a verifiable record capable of independent judicial examination.

CONCLUSION

The Bharatiya Nagarik Suraksha Sanhita, 2023 represents an important stage in the evolution of Indian criminal procedure. It retains the foundational structures of the CrPC while introducing technological, forensic and procedural changes intended to improve efficiency and modernise investigation.

The relationship between police powers and individual liberty, however, remains the central constitutional question. Effective investigation requires powers of arrest, interrogation, search, seizure and custody. Yet history demonstrates that uncontrolled coercive authority can produce arbitrary detention, custodial abuse and punishment before trial.

The BNSS, 2023 contains significant safeguards. Section 35 preserves the requirement that arrest for offences punishable up to seven years must be justified by necessity. Sections 47 and 48 protect informational rights of arrested persons. Section 38 recognises access to counsel during interrogation. Section 58 preserves the twenty-four-hour limit on police detention without judicial authorisation. Section 105 introduces technological transparency into searches and seizures, while Section 479 strengthens release mechanisms for prolonged undertrial detention.

The Supreme Court has already played a crucial role in defining the meaning of these safeguards. *Vihaan Kumar* reaffirmed the mandatory nature of communication of grounds of arrest. *Mihir Rajesh Shah* subsequently required written grounds in a language understood by the arrestee and linked non-compliance directly with illegality of arrest and remand. The January 2026 directions in *Satender Kumar Antil* further clarified that notice under Section 35(3) is ordinarily the rule for offences punishable up to seven years and arrest must remain an exception supported by objective necessity.

At the same time, Section 187's staggered police-custody framework requires heightened judicial vigilance. The statutory availability of unused police-custody days must never become an entitlement to custody. Each request must independently satisfy necessity and proportionality.

Section 43(3) requires an equally careful constitutional interpretation. Handcuffing should not automatically follow from the category of offence alleged. Human dignity, individual risk assessment and recorded reasons should continue to guide police and courts.

The role of the Magistrate is therefore indispensable. Judicial oversight cannot be reduced to signatures on remand papers. A Magistrate authorising detention exercises constitutional power over personal liberty and must independently verify legality, necessity, access to counsel and custodial safety.

Due process ultimately requires more than compliance with statutory forms. It requires a criminal justice culture in which liberty is treated as the norm and coercive custody as an exceptional measure demanding justification.

The effectiveness of India's new criminal procedural law should therefore be evaluated by a dual standard: whether it enables the investigation of crime efficiently and whether it protects citizens from arbitrary State power. These objectives are not contradictory. A professionally investigated case based on reliable evidence, lawful arrest and transparent procedure is more likely to produce sustainable justice than one dependent upon coercion.

The enduring constitutional principle is that police powers exist to enforce law, not to stand above it. Judicial oversight converts coercive authority into accountable authority, while due

process ensures that the pursuit of public safety remains consistent with the dignity and liberty of every person. The future legitimacy of the BNSS will depend upon maintaining this balance.

References

1. Constitution of India. (1950). *The Constitution of India*. Government of India.
2. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
3. *Hussainara Khatoon (I) v. Home Secretary, State of Bihar*, (1980) 1 SCC 81 (decision delivered in 1979).
4. *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526.
5. *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260.
6. *Citizens for Democracy v. State of Assam*, (1995) 3 SCC 743.
7. *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.
8. Law Commission of India. (2000). *One hundred and seventy-seventh report on law relating to arrest*. Government of India.
9. Committee on Reforms of Criminal Justice System. (2003). *Report of the Committee on Reforms of Criminal Justice System* (Malimath Committee Report). Ministry of Home Affairs, Government of India.
10. *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.
11. *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.
12. *Siddharth v. State of Uttar Pradesh*, (2022) 1 SCC 676.
13. *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.
14. Department-related Parliamentary Standing Committee on Home Affairs. (2023). *Two hundred and forty-seventh report on the Bharatiya Nagarik Suraksha Sanhita, 2023*. Parliament of India.
15. Government of India. (2023). *The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023)*. Ministry of Law and Justice.
16. PRS Legislative Research. (2023). *Legislative brief: The Bharatiya Nagarik Suraksha Sanhita, 2023*. PRS Legislative Research.
17. *Pankaj Bansal v. Union of India*, 2023 SCC OnLine SC 1244.
18. *Prabir Purkayastha v. State (NCT of Delhi)*, (2024) 8 SCC 254.

19. Supreme Court of India. (2024). *In Re: Inhuman Conditions in 1382 Prisons—Directions concerning Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023*. Supreme Court of India.
20. *Vihaan Kumar v. State of Haryana*, 2025 SCC OnLine SC 269.
21. *Mihir Rajesh Shah v. State of Maharashtra*, 2025 INSC 1288.
22. *Satender Kumar Antil v. Central Bureau of Investigation*, Order dated January 15, 2026, Supreme Court of India.
23. *State of Andhra Pradesh v. Suda Suresh Veera Venkata Naga Raju*, Criminal Appeal arising out of SLP (Crl.) No. 12344 of 2026, Supreme Court of India, decided July 27, 2026.