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## Unrestrained Expansion of Police Authority Under the BNSS and Its Effect on Accountability: A Critique

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**Abstract:** The Bharatiya Nagarik Suraksha Sanhita 2023 (hereinafter referred to as BNSS) introduced as part of the criminal law reforms in India, aims to modernize and consolidate laws governing public safety and police powers. While the intent behind such legislation is to address the changing dynamics of crime and security, concerns have been raised regarding the potential arbitrary expansion of police powers under this framework. The article wishes to critically examine the implications of such expansions, juxtaposing them against constitutional safeguards, human rights principles, and the democratic ethos of India. There are various provisions in the BNSS which challenge various constitutional safeguards, such as – right to dignity through handcuffing, right to speedy trial through preliminary inquiry, right to life and personal liberty through extension in police remand, presumption of innocence through the digital display of details of arrested persons, right to equality through cognizance of a complaint against a public servant, amongst others. The author aims to critically analyse the significant enhancement in the powers of the police officials. A balanced approach, emphasizing accountability, transparency, and adherence to human rights, is essential to ensure that the BNSS serves its intended purpose without compromising individual liberties. By addressing these concerns through robust legal and institutional frameworks, India can uphold its commitment to justice and the rule of law.

**Keywords:** BNSS, accountability, powers of police, arbitrary, constitutional safeguards, human rights

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### I. Introduction

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 replaces the long-standing Code of Criminal Procedure from 1973. The government introduced this new law to fix the prolonged delays in litigation, crackdown on red tapism, and make the justice system more conducive for ordinary citizens. While the law is well intended to create a faster and more efficient system, critics argue that it gives unchecked power to the police, thereby weakening existing protections like personal freedom and fair legal procedures.

In any democracy, we must secure a just balance between the preservation of rights of its citizens along with the rights given to the law enforcement agencies. It has been seen that generally the public is always at the receiving end of the high handedness and abuse of power by the authorities. Hence, adequate regulations should be in place to secure this balance between preservation of rights of individuals as well as enforcement of law by the police. A trend for police brutality and abuse have been observed in India with regard to weaker sections and vulnerable communities which is quite disturbing. A glaring example of this trend is the concept of “Bulldozer Justice.”

In this research paper, the authors have tried to analyse the changes brought about in the BNSS and delve into the issues of accountability and protection of civil liberties. Certain pertinent questions have been raised as to whether the expanded powers of the police lead to the erosion of core constitutional principles such as justice, fairness and reasonableness. The authors have highlighted how proper regulatory mechanisms in other jurisdictions are more



effective and suggested some reforms that maybe introduced in India to help cement this accountability under the BNSS 2023.

## II. Legislative Changes Introduced by BNSS 2023

The BNSS 2023 introduces several provisions that significantly enhance the discretionary powers of law enforcement agencies. Among these, the most notable are the expanded authority for search, seizure, and arrest without prior judicial approval. For instance, *Section 166 of the BNSS 2023* allows police officers to conduct searches without a warrant in cases where obtaining one would cause delay and potentially hinder the investigation. Similarly, *Section 173* enables preventive detention in certain cases where the police suspect that an individual may commit a cognizable offense.

These provisions mark a departure from the safeguards embedded in the Code of Criminal Procedure, 1973, which required stricter judicial oversight for such actions. The stated objective of these changes is to expedite criminal investigations and improve public safety. However, critics argue that these provisions dilute procedural safeguards and increase the risk of arbitrary state action.

However, the author wishes to highlight some important changes introduced in the BNSS which mark a departure from the established procedure in the Code of Criminal Procedure.

### A. Preliminary Enquiry Under BNSS 2023

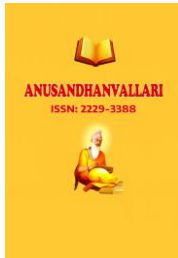
One of the key changes introduced by the BNSS 2023 is that it allows police officers to carry out a preliminary enquiry before registering a First Information Report (FIR) in certain categories of cases. This marks a departure from the earlier approach under the Code of Criminal Procedure (CrPC), where the Supreme Court in *Lalita Kumari v. Government of Uttar Pradesh* held that such enquiries were not required in every case and should be limited to exceptional situations—like family disputes or financial matters. The BNSS formalizes this practice and gives the police wider discretion to decide whether an enquiry is needed before registering a case.

The stated aim of this change is to improve efficiency by screening out false or baseless complaints and ensuring FIRs are filed only when there appears to be merit. While this may help reduce the burden on the criminal justice system, it also raises concerns about fairness and accountability. Even though the BNSS does provide a 14-day time limit for completing the preliminary enquiry, it still lacks detailed guidance on how the enquiry should be conducted, what actions are permissible during this period, and what safeguards exist to prevent delays or misuse. Without strong oversight, this added discretion could lead to delays in justice or arbitrary decision-making—affecting both victims and the accused.

### B. Handcuffing Provisions in BNSS 2023

The BNSS 2023 introduces specific guidelines for the use of handcuffs during arrests. *Section 55 of the BNSS* permits law enforcement officers to use handcuffs when they believe that the person being arrested poses a risk of escape, violence, or harm to others. While this provision attempts to codify the circumstances under which handcuffing is justified, it also grants significant discretionary power to the police to determine when such measures are necessary.

This codification marks a departure from the judicially developed standards under the Code of Criminal Procedure, 1973. In landmark cases such as *Prem Shankar Shukla v. Delhi Administration* and *Sunil Batra v. Delhi Administration*, the Supreme Court of India held that the use of handcuffs must be an exception rather than the norm, requiring prior judicial approval or justification. The BNSS 2023, by granting police officers unilateral authority to handcuff individuals under broad criteria, appears to dilute these safeguards.



### C. Remand Provision under BNSS 2023

The equivalent provision to *Section 167 of the CrPC, 1973*, in the Bharatiya Nagarik Suraksha Sanhita (BNSS), is *Section 187. Sub-section (2) of Section 187* allows an accused to be remanded to police custody for a maximum of 15 days, which can be divided into separate intervals but must cumulatively total no more than 15 days, at any point within the initial 40 or 60 days of the total pre-chargesheet detention period of 60 or 90 days. Furthermore, *sub-section (3)* states that "the Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so." Notably, this provision does not explicitly clarify whether the term 'custody' refers to police custody or judicial custody, leaving it open to broad judicial interpretation.

For several decades, it has been a well-established principle of law that an accused can be remanded to police custody only during the first fifteen days following their production before the Magistrate after arrest. In *State (Delhi Administration) v. Dharampal & Ors.*, the Supreme Court held that beyond this 15-day period, the accused can only be placed in judicial custody. Reinforcing this stance, the Supreme Court in *C.B.I. v. Anupam J. Kulkarni* observed, "Detention in police custody is generally disfavoured by law. The legal provisions specify that such detention may only be permitted in special circumstances and must be authorized by a magistrate for reasons that are judicially scrutinized and limited to the necessities of the case. The scheme of Section 167 is clear and aims to protect the accused from methods that may be employed by overzealous or unscrupulous police officers." This principle has been consistently upheld by courts across the country to ensure that the constitutional rights of the accused are preserved. It must be noted that, other than the *Unlawful Activities (Prevention) Act, 1967 (UAPA)*, wherein a maximum period of 30 days in police custody is permitted, no criminal statute in India permits an accused to be in police custody for more than the initial maximum limit of 15 days until the enactment of the BNSS.

The purpose of remand is not punitive but investigative. Police custody is intended to provide law enforcement with the opportunity to gather evidence through custodial interrogation. Judicial custody during the remaining statutory period of 60 or 90 days of investigation serves to prevent the accused from tampering with evidence, intimidating witnesses, or fleeing. This rationale also underpins the continuation of judicial custody after the chargesheet is filed and the trial begins.

### D. Registration of Zero FIR

The refusal to register complaints by the police on the ground of lack of jurisdiction was a common feature in the Indian system. The concept of Zero FIR was introduced through judicial innovation in order to bypass these jurisdictional issues with respect to filing of FIRs. Under this provision, a police officer has to mandatorily register an FIR when approached by a complainant and he must subsequently transfer it to the police station with the appropriate jurisdiction for investigation. The receiving police station with appropriate jurisdiction is then required to initiate the investigation and take over the case. This concept has been statutorily recognized in *Section 173* of the BNSS.

However the law is vague when it comes to the procedure to be followed after registration of Zero FIR. There is no whisper of the word "transfer" the FIR to the police station having jurisdiction. BNSS being a penal statute and procedural law must clearly lay down the procedure and any ambiguity in this regard only leads to more confusion, thereby giving co-extensive powers to two police stations for the same offence. SOPs were released once this folly was realised; however, it is important to note that an SOP is only in the form of a "direction" and cannot replace the statute.

### E. Challenges of Virtual Hearings

The introduction of digital remand hearings, while aimed at reducing delays, raises concerns about access to justice. Technical challenges, such as poor connectivity and lack of infrastructure in rural areas, could hinder the



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effective participation of the accused and their legal counsel. Moreover, the absence of face-to-face interaction with the magistrate may reduce the effectiveness of judicial scrutiny, increasing the risk of arbitrary detention.

**F. Digital Display of Names of Accused Persons**

Section 37 of the BNSS 2023 introduces a new rule that every police station and district must have a designated officer for maintaining records of all the arrested people, their names, addresses, and the offenses they are accused of. The officer must also ensure this information is displayed clearly at police stations and through digital platforms at district offices. Even though this move aims to introduce transparency in the process of arrest, it is invasive to the privacy of an individual and also negates the basic principle of presumption of innocence until proven guilty.

Publicising the names and details of the individuals might create a public perception of their guilt, even though they may not be adjudged guilty until the conclusion of the trial. This can have devastating effects on a person's reputation, given the fact that in today's digital era, it only takes a 30 second reel to make a person go viral! This may lead to bias in the justice system, especially if the images of the accused are flashed on the internet.

The personal safety of the accused is also threatened as it makes them more susceptible to harassment, threats and being subjected to violence – either at the instance of the general public at large or from the victim's family. It may even lead to personal vendetta or mob lynching in certain cases. Therefore, it is safe to say that these provisions strike at the very core principles of fairness, protection of citizens and their dignity that the system is expected to protect.

**G. Ex-Parte Attachment, Seizure, and Distribution of Property Pending Trial**

The Bharatiya Nagarik Suraksha Sanhita (BNSS) makes way for a controversial provision that allows for the seizure, attachment, and even distribution of property belonging to an accused person before the trial has concluded and their guilt is established. *Section 107* provides that an investigating officer having the reason to believe that the accused has derived a property, either directly or indirectly, from criminal activity, must approach the concerned court having jurisdiction in the matter and request the attachment of such property.

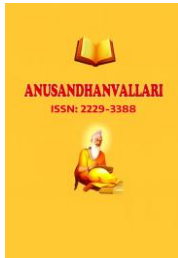
What is particularly concerning is *Section 107(5)*, which permits the court to pass an ex-parte order for interim attachment or seizure of the property if it believes that issuing prior notice to the accused would defeat the purpose of the attachment. Furthermore, under *Section 107(6)*, the court or magistrate is authorized to declare the seized or attached property as "proceeds of crime" and direct the District Magistrate to distribute the proceeds to victims of the crime—all of this within a period of 60 days.

This clause is extremely concerning because it gives the state and police the authority to take drastic measures based only on accusations without providing the accused with a fair chance to defend themselves or establish their innocence. It negates "Audi Alteram Partem." The BNSS violates the accused person's fundamental right to a fair trial which is protected by Article 21 of the Constitution, by permitting the attachment and distribution of property prior to the end of a trial. These broad authorities which circumvent the presumption of innocence constitute a grave executive overreach into citizens fundamental rights. The very foundation of justice is undermined by the notion that someone's property can be taken attached and distributed on the basis of an unsubstantiated accusation. It runs the risk of punishing people before their guilt has been proven undermining their right to due process and despising the idea of fairness in a criminal trial.

**III. Legal and Constitutional Implications**

**A. Impact on Fundamental Rights**

The BNSS 2023 raises significant concerns regarding its compatibility with the fundamental rights guaranteed under the Indian Constitution, particularly Article 21 (Right to Life and Personal Liberty) and Article 22



(Protection Against Arbitrary Arrest and Preventive Detention). The expanded powers of search, seizure, and arrest under Sections 166 and 173 of the BNSS 2023 are likely to infringe upon personal liberty, as they allow police officers to bypass judicial scrutiny in critical stages of criminal investigations.

The Supreme Court of India has consistently emphasized the inviolability of personal liberty and due process. In *Maneka Gandhi v. Union of India*, the Court held that the procedure established by law must be “**just, fair, and reasonable**,” a standard that appears to be diluted under the BNSS 2023. Similarly, in *DK Basu v. State of West Bengal*, the Court laid down guidelines to prevent custodial torture and arbitrary arrests, underscoring the need for judicial oversight in the exercise of police powers. By granting law enforcement officers wide discretion, as well as extended periods of police remand, the BNSS 2023 risks undermining these constitutional safeguards.

Article 22 provides specific protections for individuals arrested and detained, including the right to be produced before a magistrate within 24 hours and the right to legal representation. While the BNSS 2023 retains these procedural safeguards, the provision for extended police custody without mandatory judicial review at shorter intervals dilutes the protective framework envisioned under Article 22. The reliance on virtual remand hearings further risks eroding the principle of open justice, as it may limit the accused’s ability to effectively communicate with their legal counsel.

### **B. Due Process Concerns**

A fundamental component of the Indian criminal justice system is the doctrine of due process which strikes a balance between procedural and substantive fairness. Nevertheless, the BNSS 2023 seems to put efficiency ahead of procedural safeguards which could lead to abuse. For example, police may detain people on the basis of a simple suspicion under Section 173 of the BNSS for preventive detention which could result in an arbitrary deprivation of liberty. The past preventive detention laws in India have frequently been abused to target political dissidents and marginalized communities. This risk is increased by the BNSS 2023 and by its omission of strong procedural safeguards like required judicial review or time-bound detention limits.

In *Prem Shankar Shukla*, the Court held that handcuffing is a prima facie inhumane and degrading practice that must be justified by exceptional circumstances. The BNSS 2023’s broad criteria for handcuffing violate this principle by normalizing the practice without adequate safeguards.

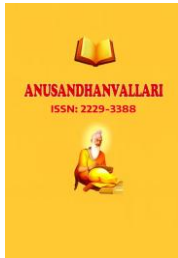
Handcuffs can have a stigmatizing effect harming a person’s mental health and compromising their dignity especially when used in public. This risk is increased by the BNSS 2023 and lack of a requirement for prior judicial approval which permits police officers to use their discretion without facing consequences. Law enforcement disproportionately targets marginalized communities such as Muslims, Dalits and tribal populations according to studies. Due to the expansive wordings of the provisions in the BNSS handcuffs may be applied arbitrarily and discriminatorily aggravating already-existing disparities in the criminal justice system.

### **C. Accountability Mechanisms**

The absence of adequate accountability mechanisms in the BNSS 2023 further compounds the risks of abuse. While the legislation emphasizes efficiency, it fails to introduce independent oversight bodies or strengthen existing mechanisms to monitor police conduct. This omission contrasts with international best practices, such as the establishment of civilian oversight boards in the United States and the Independent Office for Police Conduct in the United Kingdom.

India’s law enforcement agencies routinely abuse discretionary powers. Preliminary enquiries, conducted without judicial oversight, could become a tool for harassment or coercion, particularly against vulnerable groups. For instance, past instances of police bias in cases of custodial violence and wrongful arrests highlight the dangers of unchecked discretion.

One of the primary criticisms of preliminary enquiry is its potential to delay the delivery of justice. In cases such as gender-based violence, where timely intervention is critical, the requirement of a preliminary enquiry could



hinder immediate police action. This concern was highlighted in *Lalita Kumari*, where the Court noted that a mandatory preliminary enquiry in all cases would defeat the purpose of expeditious justice.

Unlike the judicially mandated safeguards under the CrPC, the BNSS 2023 does not require police officers to seek prior approval or provide post-facto justification for the use of handcuffs on the basis of gravity of offence. This lack of regulation creates a significant gap in accountability, allowing for unchecked high-handedness by the police officials in an existing system plagued by mistrust.

#### IV. Assessing International Human Rights Standards

The UDHR, adopted in 1948, and the ICCPR, ratified by India in 1979, are cornerstones of international human rights law. These instruments guarantee several fundamental rights that are directly relevant to law enforcement and criminal justice, including:

- The right to life and liberty (Article 3 of the UDHR and Article 9 of the ICCPR).
- Freedom from arbitrary arrest or detention (Article 9 of the ICCPR).
- The presumption of innocence until proven guilty (Article 11 of the UDHR and Article 14 of the ICCPR).
- The right to a fair trial and due process (Article 10 of the UDHR and Article 14 of the ICCPR).

These rights are not merely aspirational but form the foundation of a just and humane legal system. They recognize that the dignity of every individual must be preserved, even when they are accused of a crime.

While the BNSS incorporates certain procedural reforms, several of its provisions grant sweeping powers to law enforcement, which could undermine the principles enshrined in the UDHR and ICCPR. These include:

##### 1. Increased Discretion in Arrests

The BNSS allows police officers greater discretion in making arrests, particularly for non-cognizable offenses. While this provision may be well intended to streamline the investigative process, it increases the risk for arbitrary arrests. The ICCPR clearly prohibits arbitrary detention, thereby stating that arrests must be reasonable, necessary, and proportional. Therefore, in the absence of strict safeguards, the expanded powers under the BNSS could lead to abuses, disproportionately affecting marginalized communities.

##### 2. Ex-Parte Attachment and Distribution of Property

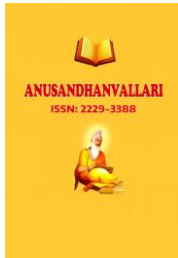
Under Section 107 of the BNSS, police officers can seek the attachment of an accused person's property if they believe it to be derived from criminal activity. Courts are empowered to pass ex-parte orders for interim attachment or seizure without notifying the accused, and, in some cases, the property can be distributed to victims even before the accused's guilt is established in a trial on the basis of merits.

This provision raises serious questions about the presumption of innocence, the cardinal principle of criminal jurisprudence. The ICCPR guarantees that every individual has the right to be presumed innocent until proven guilty in a court of law. By allowing the seizure and distribution of property based on mere accusations, the BNSS punishes individuals without undergoing due process and undermines their right to a fair trial.

##### 3. Trials in Absentia

The BNSS introduces the concept of trials in absentia under Section 356, allowing courts to proceed with trials and pronounce judgments against individuals declared as proclaimed offenders. While intended to address delays caused by absconding accused persons, this provision bypasses the fundamental principle of “audi alteram partem”—the right to be heard. The ICCPR explicitly states that everyone charged with a criminal offense has the right to be present at their trial and to defend themselves. Trials in absentia not only erode this right but also undermine the fact that a judgment should be pronounced in the presence of an accused person. It may be noted that a judgment may be pronounced with respect to a proclaimed offender, but since he is absconding, there will be substantial justice in terms of giving effect to the judgment of conviction.





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#### **4. Lack of Safeguards Against Custodial Abuse**

India has had long-standing problems associated with custodial torture or ill-treatment of prisoners, but the BNSS has no adequate provisions to banish such problems. The UN Convention Against Torture (UNCAT), to which India is a signatory, prohibits torture in all its forms, and without even minimal safeguards, such as video recording all interrogations, independent oversight mechanisms, and stringent penalties for custodial violence or torture, persons remain vulnerable to abuses and violations of the right to their dignity and freedom from arbitrary treatment, including cruel or inhuman treatment.

#### **V. Suggestions and Recommendations**

Reforming India's criminal justice system is undoubtedly necessary, but such reforms must not be at the cost of civil liberties and human rights. The BNSS should be amended to incorporate the following safeguards:

*Mandatory Oversight:* Introduce independent oversight mechanisms to monitor the exercise of police powers and ensure accountability.

*Protection Against Abuse:* Introduction of Mandatory video recording of interrogations and custodial proceedings to prevent torture and ill-treatment.

*Presumption of Innocence:* Ensure that provisions such as property attachment and trials in absentia are used only as a last resort and accompanied by strict judicial scrutiny.

*Alignment with International Standards:* Ratify the UNCAT and bring domestic laws in line with international human rights commitments.

#### **VI. Conclusion**

The BNSS shows a net improvement, primarily on the digitisation and procedural front – but it lacks the institutional checks that are necessary to enforce accountability from the police. Of course, while statutory reforms are absolutely critical, they cannot be a standalone answer. Real change in India will require reforming the system itself, including making complaints mechanisms independent, using legal aid, enhancing more human rights training for police forces and passing data protection laws to better regulate state surveillance.

If the BNSS is to fulfil its potential, India must promote a model based solely on customary practice, and must instead engage in rights-based policing, a model of enforcement that weaves constitutional principles such as freedom, dignity and procedure into everyday police work.

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