INVESTIGATION UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: A COMPARATIVE JURISPRUDENTIAL ANALYSIS OF INDIA, THE UNITED KINGDOM AND FRANCE

E. Pragadeeswar, LLM, SOEL, TNDALU[1]

ABSTRACT

Criminal investigation is a fundamental component of the criminal justice system, as its legality, fairness and effectiveness directly influence the administration of justice. In India, the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which came into force on 1 July 2024, replaced the Code of Criminal Procedure, 1973, introducing changes to the procedural framework governing criminal investigation. These changes raise important questions concerning police powers, forensic investigation, custodial interrogation, judicial supervision and the protection of individual liberty.

This research aims to undertake a comparative jurisprudential analysis of criminal investigation in India, the United Kingdom and France, focusing on the roles of investigating police officers, prosecutors and judicial authorities. It examines the legal frameworks governing the initiation of investigations, collection of evidence, custodial procedures, investigative accountability and safeguards against arbitrary or unlawful practices. The study also evaluates the United Kingdom's common-law approach and France's civil-law system, including their respective mechanisms of prosecutorial supervision and judicial investigation, to identify similarities, differences and potential lessons for India.

The research adopts a doctrinal and comparative methodology based on statutory provisions, judicial decisions, constitutional principles, international human rights standards and scholarly literature. It seeks to assess whether the investigative framework under the BNSS adequately balances effective law enforcement with personal liberty, procedural fairness and due process. The study ultimately aims to identify suitable comparative practices and recommend legal and institutional reforms to strengthen transparency, accountability and fairness in criminal investigation in India.

Keywords: BNSS, 2023; criminal investigation; comparative jurisprudence; police powers; prosecutorial supervision; judicial oversight; personal liberty; due process.

[1]E. Pragadeeswar, LLM, SOEL, TNDALU

CHAPTER 1: Introduction

1.1 Background

Criminal investigation is the process through which the State receives and verifies information about an alleged offence, identifies suspects and witnesses, collects evidence, conducts questioning and searches, and determines whether prosecution is justified. It is a critical stage of criminal procedure because investigative powers can affect liberty, privacy, property, and the fairness of a later trial.

India's Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) replaced the Code of Criminal Procedure, 1973, subject to its commencement and transitional provisions. The BNSS generally came into force on 1 July 2024.[2] It governs key aspects of criminal procedure, including the recording of information, investigation, arrest, custody, remand, and reports to the Magistrate. Its provisions must be read alongside the Constitution of India and judicial decisions on personal liberty, arrest, self-incrimination, and fair procedure.

This study compares selected aspects of investigation under the BNSS with the systems of England and Wales and France. For the United Kingdom, the principal comparator is England and Wales, where the Police and Criminal Evidence Act 1984 (PACE) and its Codes of Practice regulate important police powers and safeguards. Scotland and Northern Ireland have separate procedural systems and are outside the detailed scope of this comparison.[3]France's Code de procédure pénale provides a different institutional framework, with distinct procedures for preliminary investigations, flagrante delicto investigations, and judicial investigations.[4]

The comparison does not assume that a foreign system can be directly transplanted into India. Instead, it examines how each jurisdiction addresses common questions: who controls investigative powers, what safeguards apply during arrest and questioning, how evidence is recorded, and how investigative decisions can be reviewed. The central concern is whether effective investigation can be achieved while protecting individual rights and preserving the

[2] Bharatiya Nagarik Suraksha Sanhita, 2023, Act No. 46 of 2023; Ministry of Home Affairs, Notification S.O. 848(E), 23 February 2024. See India Code, BNSS 2023.
[3] Police and Criminal Evidence Act 1984, c. 60 (UK), and Codes of Practice. See legislation.gov.uk, PACE 1984
[4]Code de procédure pénale (France), including provisions on police judicial officers, preliminary investigation, flagrante delicto, and garde à vue. See Légifrance, Code de procédure pénale

reliability of evidence.

1.2 Statement of the Problem

The principal problem is whether the investigative framework under the BNSS adequately balances effective crime investigation with protection against arbitrary or unfair State action. The BNSS is recent, and its practical operation and judicial interpretation are still developing. Its provisions should therefore be studied not only as statutory rules but also in relation to constitutional principles, institutional oversight, and the safeguards available to people subject to investigation.

Formal rights do not always guarantee practical protection. Their effectiveness may depend on timely access to legal assistance, accurate record keeping, functioning forensic facilities, judicial review, and proper training. At the same time, safeguards can improve investigations by reducing coercion, error, and unreliable evidence. The study therefore examines how the three jurisdictions regulate investigative powers and whether their institutional arrangements support fair and accountable practice.

1.3 Research Questions

1. What are the main features of investigation under the BNSS?
2. How does the BNSS regulate investigative powers and protect persons under investigation?
3. How do selected safeguards in England and Wales and France compare with those in India?
4. What constitutional and jurisprudential principles guide investigation in these jurisdictions?
5. What lessons may assist the interpretation and implementation of the BNSS?

1.4 Objectives

This study aims to:

1. Analyse the BNSS framework governing criminal investigation.
2. Examine its allocation of investigative powers and safeguards.
3. Consider the relevant constitutional principles and judicial decisions in India.
4. Compare selected procedures in India, England and Wales, and France.
5. Identify possible lessons for the interpretation and implementation of the BNSS.

1.5 Scope and Methodology

The study focuses on the investigation stage, including the receipt of information, police investigation, arrest and questioning, search and seizure, custody and remand, forensic or electronic processes, investigative records, and oversight.

The research uses doctrinal and comparative legal methods. It examines statutes, constitutional provisions, judicial decisions, and authoritative legal materials. The comparison is functional: it considers how each jurisdiction performs similar tasks, while recognizing that legal institutions and terminology differ. For India, decisions interpreting the CrPC may remain relevant where the BNSS preserves the same principle or wording, but their application must be assessed against the new text.

The study does not use interviews, surveys, or police data. It therefore evaluates the law and judicial reasoning rather than measuring how consistently safeguards operate in practice. England and Wales are used as the UK comparator; Scotland and Northern Ireland are not covered in detail. French procedures are considered according to their distinct investigative settings and the person's procedural status.

1.6 Conceptual Framework and Significance

The analysis is guided by four principles:

1. **Legality:** investigative powers must have a clear legal basis and remain within statutory limits.
2. **Fairness:** people subject to investigation should receive applicable procedural

protections, including safeguards against coercion and access to legal advice where provided by law.

3. **Proportionality:** the degree of interference with liberty, privacy, or property should be justified by the legitimate investigative purpose.

4. **Accountability:** investigative decisions should be documented and subject to appropriate prosecutorial, judicial, or other independent review.

These principles help assess whether investigative powers are sufficiently controlled and whether safeguards work alongside the need to investigate crime. The comparison is significant because it places the new Indian procedural code in a broader context and may identify questions requiring careful interpretation, training, or further empirical study.

1.7 Chapter Scheme

Chapter 1 introduces the research. Chapter 2 examines investigation under the BNSS and the relevant Indian constitutional and judicial framework. Chapter 3 analyses investigation in England and Wales under PACE and related rules. Chapter 4 considers the French Code de procédure pénale and the roles of police, prosecutors, and investigating judges. Chapter 5 compares the three systems. Chapter 6 presents the findings and conclusion.

Chapter 2

The Indian Framework for Criminal Investigation under the BNSS

2.1 Introduction

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is India's principal legislation governing criminal procedure. Its investigation provisions are mainly contained in Chapter XIII, sections 173–196. They regulate how information about offences is recorded, when police may investigate, how evidence is collected, how an arrested person is dealt with, and how the investigation is reported to a Magistrate.[5]

The BNSS must be read with the Constitution of India and with judicial decisions concerning

[5]Bharatiya Nagarik Suraksha Sanhita, 2023, Act No. 46 of 2023, ch. XIII, ss. 173–196. Official text, India Code

arrest, personal liberty, fair procedure, and self-incrimination. Although many provisions continue procedures familiar from the Code of Criminal Procedure, 1973 (CrPC), the BNSS also introduces changes concerning electronic communication, forensic evidence, audio-video recording, and specified timelines. The importance of these changes depends on both their legal interpretation and their implementation.

This chapter examines the BNSS investigation framework through four related questions: how an investigation begins, what powers investigators may use, what safeguards apply to persons under investigation, and how the process is supervised and reviewed.

2.2 Constitutional Foundations

Criminal investigation is constrained by constitutional protections. Article 21 of the Constitution provides that no person shall be deprived of life or personal liberty except according to procedure established by law. The Supreme Court has interpreted this requirement to demand fairness, justice, and reasonableness in procedures affecting liberty.[6]

Article 22 provides protections relating to arrest and detention, including the right to be informed of the grounds of arrest, the right to consult and be defended by a legal practitioner, and production before a Magistrate within twenty-four hours, subject to constitutional exceptions.[7]Article 20(3) protects an accused person from being compelled to be a witness against themselves. The Supreme Court has applied this protection to police questioning, while distinguishing compelled testimonial statements from certain forms of physical evidence.[8]

These constitutional guarantees do not prevent the State from investigating crime. They require investigative powers to be exercised under law and in a manner that respects personal liberty, procedural fairness, and the protection against compelled self-incrimination.

2.3 Recording Information and Beginning an Investigation

Section 173 BNSS governs information relating to cognizable offences. Information may be given orally or by electronic communication. If given electronically, it must be signed by the informant within three days to be taken on record. The provision permits information to be

[6]Constitution of India, art. 21; Maneka Gandhi v Union of India, (1978) 1 SCC 248
[7]Constitution of India, art. 22(1)–(2)
[8] Constitution of India, art. 20(3); Nandini Satpathy v P.L. Dani, (1978) 2 SCC 424; Selvi v State of Karnataka, (2010) 7 SCC 263

given irrespective of the area where the offence occurred, supporting the practice commonly known as a "Zero FIR."[9]

Section 173 also provides a limited preliminary-inquiry procedure for certain cognizable offences punishable with imprisonment of three years or more but less than seven years. With prior permission from an officer not below the rank of Deputy Superintendent of Police, the police may conduct a preliminary inquiry to determine whether a prima facie case exists. The inquiry must be completed within fourteen days. The provision therefore creates a defined route for preliminary inquiry in the specified category of cases; it should not be treated as a general power to delay registration of information in every cognizable case.[10]

If a police station officer refuses to record information, section 173(4) allows the aggrieved person to send the substance of the information in writing to the Superintendent of Police. If that route does not provide a remedy, the person may apply to the Magistrate under section 175(3), subject to the statutory requirements, including an application supported by an affidavit.[11]

The Supreme Court's decision in *Lalita Kumari v Government of Uttar Pradesh* held under the CrPC that registration of an FIR is mandatory where information discloses a cognizable offence, while recognizing limited circumstances in which a preliminary inquiry may be appropriate.[12] The BNSS now expressly provides for preliminary inquiry in the category set out in section 173(3). The continuing relevance of *Lalita Kumari* must therefore be considered alongside the new text rather than applied without regard to it.

2.4 Police Authority and Procedure of Investigation

Section 175 BNSS authorizes police to investigate cognizable cases without a prior order from a Magistrate, subject to the statutory framework. Section 176 describes the procedure following information or other grounds for suspicion. The police officer must report the matter to the Magistrate and proceed to investigate, including visiting the place of occurrence where

[9]BNSS, s. 173(1)–(2)
[10]BNSS, s. 173(3). The provision applies to the specified class of offences and requires prior permission of an officer not below the rank of Deputy Superintendent of Police
[11]BNSS, ss. 173(4), 175(3)
[12]Lalita Kumari v Government of Uttar Pradesh, (2014) 2 SCC 1

appropriate and taking steps to discover and apprehend the offender.[13]

Section 176(3) introduces a forensic-investigation requirement for offences punishable with imprisonment of seven years or more. From the date notified by the State Government within the statutory period, a forensic expert is to visit the crime scene to collect forensic evidence, and the process is to be videographed using a mobile phone or other electronic device.[14]Because implementation depends on notification and the availability of forensic personnel and facilities, the provision's practical reach may differ across States. The statutory duty and its operational capacity should therefore be assessed separately.

Section 105 requires search and seizure processes, including the preparation of the seizure list, to be recorded through audio-video electronic means. The recording is to be forwarded without delay to the appropriate Magistrate or other competent authority.[15] Sections 185 and 186 govern police searches during investigation, including the recording of reasons and the communication of relevant records to the Magistrate. These provisions aim to make investigative actions more traceable, though their effectiveness depends on complete and reliable records.

2.5 Arrest, Questioning, and Custody

The BNSS regulates arrest through provisions including sections 35–62. Section 35 sets out circumstances in which police may arrest without warrant and requires attention to whether arrest is necessary. Where arrest is not required, the provision provides for a notice of appearance. Section 36 requires the arresting officer to prepare an arrest memorandum and inform the arrested person of specified rights. Section 38 recognizes an arrested person's entitlement to meet an advocate during interrogation, though not throughout the interrogation.[16]

These rules operate alongside constitutional protections and Supreme Court case law. In *Joginder Kumar v State of Uttar Pradesh*, the Court emphasized that the existence of a legal power to arrest does not mean that arrest should automatically be made in every case.[17]In *D.K. Basu v State of West Bengal*, the Court prescribed safeguards concerning arrest and detention,

[13]BNSS,ss. 175–176
[14] BNSS, s. 176(3). The provision contemplates State notification within five years; implementation should be checked against the relevant State notification
[15]BNSS, s. 105
[16]BNSS, ss. 35–38
[17]Joginder Kumar v State of Uttar Pradesh, (1994) 4 SCC 260

including documentation and communication requirements.[18] The BNSS's arrest provisions should be interpreted consistently with the constitutional purpose of preventing unnecessary or undocumented deprivation of liberty.

Section 187 BNSS governs detention when investigation cannot be completed within twenty-four hours. It permits a Magistrate to authorize detention and sets maximum periods relevant to the statutory right to default bail. The section allows police custody for up to fifteen days in whole or in parts during the initial period of detention specified by the provision. The overall period within which the investigation must be completed for default-bail purposes is generally sixty or ninety days, depending on the offence.[19]

The wording on police custody under section 187 has generated debate because it permits the fifteen days to be taken "in whole or in parts" during the initial forty or sixty days, depending on the applicable detention period. This differs from the CrPC's previous formulation and raises questions about the timing and judicial control of police custody. Any application must be determined by the Magistrate under the statute and constitutional standards; it is not an automatic entitlement of the investigating agency.

2.6 Completion of Investigation and Police Report

Section 193 BNSS governs the police report on completion of investigation. It requires the police to submit the prescribed report to the Magistrate and includes information concerning the parties, the nature of the information, witnesses, and the apparent offence. The provision also addresses communication of progress to the informant or victim and prescribes a period of ninety days for informing the victim or informant of the progress of investigation.[20]

Further investigation may continue after submission of the report, subject to the statutory framework. Where further investigation is conducted during trial, the BNSS requires the court's permission and specifies a period of ninety days, which may be extended with the court's permission.[21] The ability to conduct further investigation helps address evidence that emerges later, while judicial supervision can help prevent the process from being used unfairly

[18]D.K. Basu v State of West Bengal, (1997) 1 SCC 416
[19]BNSS, s. 187(2)–(3). For an illustration of recent Supreme Court consideration of the default-bail framework under section 187, see 2025 INSC 1155, Supreme Court of India, judgment dated 22 September 2025
[20]BNSS, s. 193(1)–(3)
[21]BNSS, s. 193(9)

or indefinitely.

2.7 Judicial Oversight and Remedies

Magistrates have an important role at several stages, including authorizing detention, receiving reports, and considering applications seeking investigation under section 175(3). Sections 178 and 179 also provide for specified Magistrate powers and police requirements concerning attendance during investigation.[22] Judicial oversight is significant because many investigative decisions affect liberty before a trial takes place.

At the same time, courts have recognized that investigation is primarily an executive function. Judicial review is generally directed toward ensuring that investigation is lawful, fair, and not arbitrary, rather than routinely taking over investigative choices. In *H.N. Rishbud v State of Delhi*, the Supreme Court discussed stages of investigation and the consequences of investigative irregularity.[23] Later cases have emphasized the importance of a fair investigation as part of the broader guarantee of a fair process.

Where police refuse to record information, statutory routes include approaching the Superintendent of Police and applying to the Magistrate under sections 173(4) and 175(3). Constitutional courts may also intervene in appropriate cases, particularly where there is a serious failure of investigation or a need to protect fundamental rights. The nature of any remedy depends on the facts, the statutory provision involved, and the stage of the proceedings.

2.8 Assessment of the Framework

The BNSS gives the police substantial investigative authority while providing for Magistrate oversight and constitutional safeguards. Its provisions on electronic information, forensic participation, videography, and progress communication aim to make investigations more documented and traceable. These measures may help improve the integrity of evidence and the accountability of investigative decisions.

Their effectiveness, however, depends on implementation. Electronic reporting requires accessible and secure systems; forensic mandates require trained experts and adequate facilities; and audio-video recording requires functioning equipment, preservation procedures,

[22]BNSS, ss. 175(3), 178–179
[23]H.N. Rishbud v State of Delhi, AIR 1955 SC 196

and reliable access for judicial review. Without these conditions, a formal requirement may not produce consistent practice.

The procedural framework also raises interpretive questions. The operation of section 173's preliminary inquiry must be reconciled with the duty to register information disclosing cognizable offences. The custody provisions in section 187 require careful judicial application. The distinction between statutory deadlines and practical investigative capacity also matters: deadlines can promote expedition, but they must be applied in a way that preserves the quality and fairness of investigation.

The BNSS organizes criminal investigation through a combination of police powers, statutory safeguards, and judicial supervision. Its provisions on recording information, preliminary inquiry, forensic evidence, arrest, custody, and police reports must be read in light of Articles 20, 21, and 22 of the Constitution and the Supreme Court's jurisprudence on fair procedure and liberty.The central question is not simply whether the BNSS confers investigative powers, but whether those powers are exercised transparently, proportionately, and under effective review. The comparative chapters that follow will examine how England and Wales and France address similar functions, providing a basis for evaluating the strengths and limits of the Indian framework.

CHAPTER 3

CRIMINAL INVESTIGATION IN ENGLAND AND WALES

3.1 Introduction

Criminal investigation in England and Wales is governed principally by the Police and Criminal Evidence Act 1984 (PACE), its Codes of Practice, and related legislation. PACE establishes statutory rules for police powers such as arrest, search, detention, questioning, and the collection of evidence. Its Codes of Practice provide operational requirements for exercising those powers. This chapter focuses on the ordinary criminal investigation framework in England and Wales. It does not examine Scotland or Northern Ireland, which have separate procedural systems. It considers how PACE regulates investigative powers, protects suspects in police custody, and provides for judicial review of evidence and police conduct.

3.2 Background and Structure of PACE

PACE was enacted to create a clearer statutory framework for police powers and to establish safeguards for people affected by those powers. Its operation depends on both the Act and the Codes of Practice made under it. The Codes address areas including stop and search, searches of premises, detention and questioning, identification procedures, and statutory arrest powers.[24]

For investigation and custody, Code C is particularly significant. It sets out requirements concerning the detention, treatment, and questioning of suspects in police custody. Code G addresses the statutory power of arrest. Code B concerns searches of premises and the seizure of property, while Code D governs identification procedures.[25]A breach of a Code does not automatically determine the outcome of a criminal case, but the relevant Code may be considered by a court where it bears on a question before it.[26]

3.3 Arrest and Its Necessity

Section 24 of PACE authorizes constables to arrest without warrant in specified circumstances. The power is subject to the requirement that arrest be necessary for one or more statutory reasons, such as establishing a person's name or address, preventing injury or damage, protecting a child or vulnerable person, or allowing the prompt and effective investigation of an offence.[27]

The necessity test is important because reasonable suspicion alone does not make arrest inevitable. Code G requires the arrest decision to be justified and directs officers to consider whether the objective can be achieved by a less intrusive means. Section 28 requires that a person arrested be informed, as soon as practicable, that they are under arrest and of the grounds for the arrest.[28]

The framework therefore recognizes arrest as a significant interference with liberty, rather than

[24]Police and Criminal Evidence Act 1984, c. 60 (UK), especially ss. 66–67. See PACE 1984, legislation.gov.uk
[25]Home Office, PACE Codes of Practice; Home Office, PACE Code C 2023; Home Office, PACE Code B 2023; Home Office, PACE Code D 2023
[26]PACE 1984, s. 67(11)
[27]PACE 1984, s. 24(5)–(6); Home Office, PACE Code G: Statutory Power of Arrest by Police Officers (2012)
[28]PACE 1984, s. 28; Home Office, PACE Code G, para. 3

a routine consequence of suspicion. The legality and necessity of arrest can be relevant to later proceedings and to the lawfulness of the person's detention.

3.4 Detention and Custody Review

Once a person is taken to a police station, PACE provides for a custody officer to decide whether there are grounds for detention. Under section 37, the custody officer must determine whether there is sufficient evidence to charge the arrested person or whether detention is necessary to secure or preserve evidence or obtain it by questioning. The custody officer has responsibilities distinct from the investigating officer, helping provide an internal check on continued detention.[29]

Section 40 requires periodic reviews of detention. Detention without charge is generally limited to twenty-four hours from the relevant time. For an indictable offence, an officer of at least superintendent rank may authorize an extension to thirty-six hours where the statutory conditions are met. Further detention, up to a maximum of ninety-six hours, requires a warrant of further detention from a Magistrates' Court.[30]

The limits do not mean that detention may continue automatically for the maximum period. The statutory conditions must be met, and continued detention must remain justified. Code C also regulates the treatment and welfare of detainees, including access to medical attention, rest, and appropriate safeguards during questioning.[31]

3.5 Legal Advice and Rights in Custody

Section 58 of PACE gives a detained person the right to consult a solicitor privately and at any time, subject to a limited statutory power to delay access in specified circumstances. Code C requires the police to inform detainees of their rights, including access to legal advice and the ability to have someone informed of their detention.[32]

Legal advice can help a detainee understand the process and exercise their rights during questioning. The availability of a solicitor also contributes to the fairness and reliability of the

[29]PACE 1984, ss. 37 and 39
[30]PACE 1984, ss. 40–44
[31]Home Office, PACE Code C 2023, especially provisions on detainee welfare, reviews, and interview safeguards
[32]PACE 1984, s. 58; Home Office, PACE Code C 2023

interview process. Any delay in access is subject to statutory requirements and must be properly authorized and recorded.

3.6 Police Questioning and Interviews

Code C sets requirements for interviews in police custody. Interviews must be conducted fairly, with appropriate breaks and safeguards for vulnerable suspects. The interviewer must caution the suspect before questioning, explaining that they do not have to answer questions but that their failure to mention something later relied upon in court may have consequences.[33]

Police interviews are generally audio-recorded in accordance with PACE and the relevant Code. Recording can help establish what was asked and answered and can assist courts in assessing whether a statement was obtained fairly. The recording requirement supports transparency but does not alone guarantee a reliable or voluntary statement.

PACE also regulates the admissibility of confessions. Under section 76, a confession may be excluded if it was obtained by oppression or in consequence of something said or done that was likely to render it unreliable. The prosecution bears the burden of proving beyond reasonable doubt that the confession was not obtained in such circumstances once the issue is raised.[34]

3.7 Search, Seizure, and Evidence Collection

PACE contains statutory powers governing searches of persons and premises, the seizure of evidence, and the retention of property. Section 1 provides a stop-and-search power in defined circumstances, while other provisions regulate searches following arrest and searches of premises under warrant or other statutory authority.[35]

Code B sets out procedures for searches of premises and seizure of property. It addresses matters such as the execution of warrants, recording what is seized, and providing information to the person affected. These requirements are intended to make searches and seizures accountable and to preserve a record that can later be examined.

[33]Home Office, PACE Code C 2023, provisions concerning cautioning, interviews, and recording
[34]PACE 1984, s. 76
[35]PACE 1984, ss. 1–7, 17–18, 32, and search and seizure provisions in Part II; Home Office, PACE Code B 2023

Identification procedures are addressed by Code D. The Code establishes procedures for identification evidence, including identification parades, video identification, and group identification. Such procedures aim to reduce the risks of mistaken identification and improper influence.[36]

3.8 Exclusion of Evidence and Judicial Control

PACE provides two important statutory controls on evidence obtained during investigation. Section 76 addresses the admissibility of confessions, while section 78 permits a court to refuse prosecution evidence if, considering all the circumstances, its admission would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.[37]

Section 78 gives courts discretion to consider the circumstances in which evidence was obtained and the effect of admitting it on trial fairness. It does not create automatic exclusion for every procedural breach. The court assesses the particular circumstances, including the seriousness and relevance of the breach and its impact on the fairness of the proceedings.

This judicial role complements the statutory Codes. The Codes guide police conduct, while evidentiary rules allow courts to address certain consequences of unlawful or unfair investigative practices.

3.9 Assessment of the Framework

The England and Wales framework combines statutory powers with detailed custody procedures, operational Codes, and judicial control over evidence. Its main strengths include the necessity test for arrest, independent custody oversight, time limits on detention, access to legal advice, and procedural rules for interviews and searches.

The framework also has limitations. A Code can set out clear requirements, but its practical effect depends on compliance, training, supervision, and accessible remedies. Similarly, judicial discretion under section 78 allows courts to respond to the circumstances of a case, but it does not guarantee exclusion whenever a procedural rule is breached.

For the comparison with India, PACE illustrates a system in which powers and safeguards are

[36]Home Office, PACE Code D 2023
[37]PACE 1984, ss. 76 and 78. See section 78, legislation.gov.uk

distributed across an Act, statutory Codes, custody officers, and courts. The comparison should account for institutional context and should not assume that these mechanisms would operate identically if adopted under a different legal system.

PACE and its Codes provide a detailed framework for criminal investigation in England and Wales. They regulate arrest, detention, questioning, search, evidence collection, and identification procedures, while providing for legal advice and judicial control over certain evidence.

Chapter 4

Criminal Investigation in France

4.1 Introduction

Criminal investigation in France is governed principally by the *Code de procédure pénale* (Code of Criminal Procedure). The framework distinguishes between **flagrante delicto investigations** (*enquête de flagrance*), **preliminary investigations** (*enquête préliminaire*), and **judicial investigations** (*information judiciaire*). The rules and available powers depend on which procedure applies and on the procedural status of the person concerned.[38]

Police judicial officers (*officiers de police judiciaire*, or OPJ) conduct many investigative acts. The public prosecutor (*procureur de la République*) directs or supervises police investigations in the relevant procedures. In judicial investigations, an investigating judge (*juge d'instruction*) conducts the inquiry, supported where appropriate by police officers acting under judicial authorization.[39]This chapter outlines these principal procedures and the safeguards most relevant to investigation.

4.2 Flagrante Delicto Investigation

A flagrante delicto investigation applies where an offence is discovered in circumstances defined by the Code. It gives police judicial officers significant investigative powers because evidence may be at risk of being lost or altered. Article 54 requires the officer informed of a

[38]Code de procédure pénale (France), title II, arts. 53–78-7, and title III, arts. 79–230. See Légifrance, Code of Criminal Procedure

[39]Code de procédure pénale, arts. 12–19, 39–41, and 79–81

flagrante crime to notify the public prosecutor promptly, attend the scene without delay, and carry out the necessary observations.[40]

During this type of investigation, officers may take steps to identify the facts, preserve evidence, question people, and conduct searches in accordance with the Code. The prosecutor supervises the investigation. The Code generally permits the investigation to continue continuously for eight days; in specified serious cases where necessary investigations cannot be postponed, the prosecutor may authorize a further period of up to eight days.[41]

The stronger powers associated with flagrante investigation are tied to the statutory conditions for using that procedure. The classification matters because it can affect the extent of police authority, particularly in relation to searches and evidence gathering. Compliance with the prescribed formalities is therefore important to the lawfulness of investigative acts.

4.3 Preliminary Investigation

A preliminary investigation may be conducted where the conditions for flagrante delicto do not apply. Articles 75–78 provide its basic framework. Police judicial officers may investigate offences under the direction or supervision of the public prosecutor, who decides how the investigation should proceed and what course to take when it is complete.[42]

Preliminary investigation has historically provided a flexible route for inquiries that do not require the special urgency of flagrante delicto. The Code now imposes statutory time limits. In general, the investigation may not exceed two years from the first specified investigative act involving a person, subject to statutory extensions and exceptions for certain offences.[43] These limits are intended to address the potential impact of prolonged investigations on people who are suspected or otherwise affected.

The Code also provides for requests for information and evidence gathering, subject to legal conditions and protections. The use of investigative measures must be assessed in light of the applicable statutory authority, the level of interference involved, and any required prosecutorial or judicial authorization.

[40]Code de procédure pénale, arts. 53–54. See Légifrance, Article 54
[41]Code de procédure pénale, arts. 53 and 74
[42]Code de procédure pénale, arts. 75–78
[43]Code de procédure pénale, art. 75-3 and related provisions. See Légifrance, Preliminary Investigation

4.4 Judicial Investigation

A judicial investigation is conducted by an investigating judge. Under article 79, a preliminary judicial investigation is mandatory for crimes and generally optional for *délits*, subject to special rules.[44] The prosecutor may request the opening of an investigation, and the judge then investigates the matters within the scope of the referral.

The investigating judge may take investigative steps to establish the facts and may issue *commissions rogatoires* authorizing police judicial officers to carry out specified acts on the judge's behalf.[45]This procedure is institutionally distinct from a police investigation directed by the prosecutor. It introduces judicial control over investigative acts and is especially important in serious or complex cases.

French procedure also distinguishes between people formally placed under investigation (*mis en examen*) and those granted the status of an assisted witness (*témoin assisté*). The Code sets thresholds and procedural rights associated with these statuses. A person may challenge certain investigative decisions through the available procedural mechanisms, including applications concerning the regularity of proceedings.[46]

4.5 Custody and Questioning

The principal custodial measure during police investigation is *garde à vue*. Article 62-2 defines it as a coercive measure ordered by a police judicial officer under judicial authority, where there are plausible reasons to suspect that a person has committed or attempted to commit an offence punishable by imprisonment. The measure must serve one or more statutory investigative objectives and be proportionate to the seriousness of the suspected offence.[47]

For ordinary cases, *garde à vue* generally lasts up to twenty-four hours. It may be extended for up to a further twenty-four hours with written and reasoned authorization from the public prosecutor, provided the statutory conditions are met. Special rules allow longer periods for specified serious offences.[48]

[44]Code de procédure pénale, art. 79. See Légifrance, Judicial Investigation
[45]Code de procédure pénale, arts. 81, 151–152
[46]Code de procédure pénale, arts. 80-1, 113-1 et seq., and 170–174
[47] Code de procédure pénale, art. 62-2. See Légifrance, Article 62-2
[48]Code de procédure pénale, arts. 63 and 706-88–706-88-2

A person placed in *garde à vue* must be informed of the measure and of applicable rights. These include the right to have a person notified, to be examined by a doctor, and to receive assistance from a lawyer, subject to the Code's specific rules and exceptions. The person must also be informed of the nature and approximate date of the suspected offence and of the reasons for the measure.[49]

The prosecutor supervises *garde à vue*, including whether continued detention is necessary and proportionate. For certain extensions beyond forty-eight hours or for deferral of a lawyer's intervention, the Code assigns a role to the liberty and detention judge (*juge des libertés et de la détention*).[50] The framework thus places custody under legal supervision, while providing different levels of control depending on the duration and circumstances of the detention.

4.6 Safeguards and Accountability

The French framework provides safeguards through legal notification, access to counsel, medical examination, time limits, prosecutorial supervision, and judicial review in specified circumstances. The procedural status of the person and the type of investigation determine which protections apply.

Written records are central to the system. Investigative acts are documented in the case file, allowing prosecutors and courts to review the steps taken. Challenges to procedural regularity may result in the cancellation of an investigative act or other consequences where the legal requirements for such relief are satisfied. The existence of a remedy does not mean every irregularity automatically invalidates the entire investigation; the legal effect depends on the rule breached and the procedural circumstances.

As in the other jurisdictions examined in this research, formal safeguards depend on implementation. Their practical value is affected by the timeliness of access to a lawyer, the quality of records, the effectiveness of prosecutorial and judicial supervision, and the person's ability to exercise procedural rights.

4.7 Assessment and Conclusion

France's investigation framework is characterized by differentiated procedures and a defined

[49]Code de procédure pénale, arts. 63-1–63-4-3
[50]Code de procédure pénale, arts. 63 and 63-4-2

role for prosecutors and investigating judges. Flagrante delicto investigations allow stronger police action in urgent circumstances, while preliminary investigations provide a broader route for police inquiries under prosecutorial supervision. Judicial investigations place investigative acts under the authority of an investigating judge.

The *garde à vue* regime combines statutory purposes and time limits with rights to information, legal assistance, and review. These features make France a useful comparator for examining how investigative powers can be structured around procedural status and institutional supervision. The next chapter will compare the Indian, English and Welsh, and French frameworks by examining their approaches to investigative authority, safeguards, and accountability.

Chapter 5

Comparative Analysis of Criminal Investigation

5.1 Introduction

The previous chapters examined criminal investigation under India's Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the Police and Criminal Evidence Act 1984 (PACE) in England and Wales, and France's *Code de procédure pénale*. This chapter compares how these systems begin investigations, regulate arrest and custody, protect suspects, and review investigative conduct.

The comparison is functional. The three jurisdictions have different legal structures, so their procedures should not be treated as identical. The aim is to identify common principles and differences relevant to the BNSS.

5.2 Investigation and Institutional Oversight

In India, police investigate cognizable offences under the BNSS, while Magistrates authorize detention and may direct investigation in specified circumstances. Section 173 governs the recording of information, and section 175 provides for police investigation.[51]

In England and Wales, police powers are regulated by PACE and its Codes of Practice. A

[51]Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 173, 175, 187. India Code, BNSS

custody officer reviews the grounds for detention, while courts may review police conduct and decide whether evidence should be admitted.[52]

France distinguishes between flagrante delicto, preliminary, and judicial investigations. Police judicial officers conduct investigations under prosecutorial supervision, while an investigating judge leads a judicial investigation where one is opened.[53]

These systems place oversight at different points. India emphasizes Magistrate supervision of detention and court review. England and Wales use custody review, statutory Codes, and judicial control over evidence. France assigns a more direct supervisory role to prosecutors and, in judicial investigations, to an investigating judge.

5.3 Commencement of Investigation

The BNSS requires information relating to cognizable offences to be recorded under section 173. It also allows electronic communication and provides a limited preliminary-inquiry procedure for specified offences. This framework emphasizes formal recording of information as the starting point for police action.[54]

PACE does not use one equivalent to the Indian First Information Report. Police powers instead depend on the suspected offence and the statutory conditions for actions such as arrest or search. France selects the investigative procedure according to the circumstances: flagrante delicto, preliminary investigation, or judicial investigation.

The systems therefore differ in how they classify and begin an investigation. India focuses on recording information about cognizable offences; England and Wales regulate specific police powers; France uses distinct investigative procedures with different powers and supervision.

5.4 Arrest, Custody, and Suspect Safeguards

Under the BNSS, arrest without warrant is governed by statutory conditions, including necessity in applicable cases. Section 187 requires Magistrate authorization for detention beyond twenty-four hours and regulates police custody and the periods relevant to default

[52]Police and Criminal Evidence Act 1984, ss. 37, 40–44, 58, 76, 78; Home Office, PACE Codes of Practice, especially Codes C and G
[53]Code de procédure pénale (France), arts. 12–19, 53–78, 79–81. Légifrance, Code of Criminal Procedure
[54]BNSS, s. 173

bail.[55]

PACE requires arrest to satisfy statutory grounds and necessity criteria. A custody officer reviews continued detention, and time limits apply to detention without charge. Detainees have a right to consult a solicitor under section 58, subject to limited exceptions.[56]

In France, *garde à vue* must serve statutory investigative purposes and be proportionate. It generally lasts up to twenty-four hours, with a possible extension under specified conditions. The person must be informed of their rights, including access to a lawyer, and the prosecutor supervises the measure.[57]

All three systems recognize that arrest and custody interfere with liberty. They differ in the principal review mechanism: Magistrate authorization in India, custody-officer review in England and Wales, and prosecutorial supervision in France. In each jurisdiction, safeguards are effective only if the detained person is informed of their rights and the reviewing authority examines whether detention remains justified.

5.5 Evidence, Accountability, and Remedies

The BNSS introduces requirements concerning forensic visits and videography for specified serious offences, as well as audio-video recording of search and seizure processes. These measures can improve the traceability of evidence, though their effectiveness depends on implementation and available resources.[58]

PACE Codes regulate interviews, searches, and identification procedures. Sections 76 and 78 allow courts to exclude confessions or other evidence in specified circumstances where reliability or trial fairness is affected.[59]French procedure relies on written records of investigative acts and allows procedural challenges, including applications to annul acts where legal requirements are met.

The comparison shows that documentation and review are central to accountable investigation. Recording procedures can help establish what happened, while judicial remedies address some

[55]BNSS, ss. 35, 187
[56]PACE, ss. 24, 37, 40–44, 58
[57]Code de procédure pénale, arts. 62-2–64
[58]BNSS, ss. 105, 176(3)
[59]PACE, ss. 76, 78

consequences of illegality or unfairness. Neither mechanism works well without proper training, reliable records, and meaningful access to review.

India, England and Wales, and France all grant police investigative powers while imposing legal safeguards and forms of oversight. Their principal differences concern institutional design: India relies on police investigation with Magistrate and court supervision; PACE combines police powers with custody-officer review and judicial control of evidence; France uses prosecutorial supervision and, in some cases, investigation led by a judge.For India, the comparison highlights the importance of applying the BNSS's arrest and custody rules carefully, implementing forensic and recording requirements effectively, and ensuring that safeguards can be reviewed in practice. Foreign models may offer useful points of comparison, but any lesson must be adapted to India's constitutional and institutional context.

Chapter 6

Findings, Recommendations, and Conclusion

This study examined criminal investigation under India's Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and compared it with the frameworks of England and Wales and France. The comparison focused on how each system begins investigations, regulates arrest and custody, protects suspects during questioning, records evidence, and provides oversight.The analysis shows that all three jurisdictions recognize the need to give investigators adequate powers while limiting arbitrary interference with individual rights. Their main differences lie in how those limits are organized and enforced.

6.1Findings

First, the BNSS establishes a detailed statutory framework for investigation, including the recording of information, police powers, custody, forensic evidence, and reporting to Magistrates. Its provisions on electronic information, videography, and forensic participation aim to make investigations more transparent and evidence collection more reliable.

Second, the three jurisdictions assign oversight differently. India relies on Magistrate authorization for detention and judicial review in specified cases. England and Wales combine custody-officer review with statutory time limits and judicial control over evidence. France places police investigations under prosecutorial supervision and uses an investigating judge in

judicial investigations.

Third, safeguards matter most when they are practical and accessible. Rights to information, legal assistance, and review cannot protect a person effectively if they are delayed, poorly explained, or inadequately recorded.Fourth, investigation quality depends on more than statutory powers. Proper documentation, trained personnel, forensic capacity, and consistent judicial scrutiny affect both accountability and the reliability of evidence.

6.2 Recommendations

The following recommendations arise from the comparison:

1. **Clarify the application of BNSS provisions.** Authorities should issue clear guidance on preliminary inquiries under section 173, custody under section 187, and the recording requirements for searches and seizures.

2. **Strengthen safeguards during arrest and questioning.** People under investigation should receive clear information about their rights, and access to legal assistance should be timely and meaningful.

3. **Build forensic and recording capacity.** States should provide trained forensic personnel, reliable recording equipment, secure data storage, and procedures for preserving evidence.

4. **Improve review and accountability.** Magistrates and courts should receive complete records needed to assess detention and investigative steps. Investigative decisions should be documented with reasons where the law requires them.

5. **Evaluate implementation.** Further empirical research should examine whether statutory safeguards are applied consistently across regions and whether they improve the fairness and reliability of investigations.

6.3 Conclusion

The BNSS provides an important framework for criminal investigation in India, but its effectiveness will depend on how its provisions are interpreted and implemented. The comparison with England and Wales and France shows that no single institutional model

guarantees fairness. Effective safeguards require clear legal limits, timely access to rights, accurate records, trained investigators, and meaningful oversight.The comparative analysis does not support direct transplantation of foreign rules. It instead offers criteria for evaluating the Indian framework: whether investigative powers are necessary and proportionate, whether affected persons can exercise their rights, and whether investigative decisions can be reviewed. Continued judicial interpretation and careful implementation will be essential to ensuring that investigation under the BNSS serves both public safety and the rule of law.