

---

# EXPANSION OF POLICE POWERS UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: BALANCING EFFECTIVE LAW ENFORCEMENT WITH CONSTITUTIONAL SAFEGUARDS

---

Shivansh Dubey, B.A. LL.B. (Lucknow University), LL.M., UGC NET (Law)

## ABSTRACT

The adoption of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is a “radical change in the criminal procedure law in India as it replaces the Code of Criminal Procedure, 1973, which dates back to the colonial era. The new law aims at updating the criminal justice administration by making them more efficient, embracing the use of technology and a faster way of carrying out investigation and trial activities. It, however, also gives rise to a broadening of police authority, especially when it comes to arrest, detention, search and seizure, and online surveillance. This trend attracts serious constitutional issues about overreach and abuse. The article critically looks at the extent and size of such extended powers and analyses their conformity to the basic rights guaranteed by the Constitution of India, especially Articles 14, 19 and 21. It interacts with the judicial concepts that have been determined in the landmark cases like *D.K. Basu v. State of West Bengal* and *Maneka Gandhi v. Union of India* which stress on procedural fairness, and anti-arbitrary state action. As much as the BNSS is meant to enhance law enforcement and solve modern day issues there is a risk that it will strip away civil liberties without stringent safeguards and accountability controls. According to the argument in the paper, an effective balance should be maintained between effective policing and constitutional protections. It implies that increased judicial checks and balances, procedural transparency and institutional responsibility are necessary to guard against power abuse and legitimize the criminal justice system in a democratic society.

**Keywords:** Police Powers; BNSS 2023; Criminal Procedure Reform; Fundamental Rights; Due Process; Civil Liberties.

## INTRODUCTION: CHANGING LANDSCAPE OF CRIMINAL PROCEDURE IN INDIA

The criminal procedure system in India has changed tremendously by the introduction of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), to replace the old Code of Criminal Procedure, 1973 (CrPC). The CrPC was founded on colonial administrative reasoning and over several decades had controlled the procedural dimension of criminal justice, having frequently been accused of being inflexible, slow and lacking sufficient responsiveness to changing social-technical realities. The advent of BNSS will be the game changer to a more modernized, efficiency conscious and security based model of criminal procedure in India. <sup>1</sup>This change is not simply legislative but a more widespread reorientation of the way of crime control and maintenance of order in the State. The BNSS also aims to solve systemic inefficiencies and improve simplification of investigation operations, adoption of technology in evidence gathering and trial and coordination between law enforcement agencies. Meanwhile, it substantively re evaluates the balance between the State and the individual by broadening the police powers in those aspects as arrest, detention, search and seizure. This growth begs question as to how far procedural reforms can go under constitutional assurances.

This dynamic environment should be interpreted in terms of the constitutional provisions as defined by the Constitution of India, especially, provisions of equality, liberty and personal freedom provisions in Articles 14, 19 and 21. This has always been highlighted by the Indian judiciary which has insisted that procedural law cannot be separated out of substantive rights. In *Maneka Gandhi v. Union of India* <sup>2</sup>, the Supreme Court affirmed that any process that interferes with personal liberty should be fair, reasonable and just and thus due process has been incorporated in Article 21. Similarly, in *D.K. Basu v. State of West Bengal* <sup>3</sup> The Court provided directions to avoid custodial abuse and arbitrary arrest in and culture of accountability in the work of the police has to be taken into consideration.

The BNSS in this regard is a two sided development. On one hand, it seeks to modernize and empower the criminal justice system on the current frontiers of dealing with modern challenges including cybercrime, organized crime, and national security issues. Conversely, the increased

---

<sup>1</sup> MALIMATH COMM. ON REFORMS OF CRIMINAL JUSTICE SYS., *REPORT OF THE COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM* 1–15 (2003),

<https://cdnbbsr.s3waas.gov.in/s3ca46c1b9512a7a8315fa3c5a946e8265/uploads/2018/04/2018042083.pdf>.

<sup>2</sup> *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India), <https://indiankanoon.org/doc/1766147/>.

<sup>3</sup> *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416 (India), <https://indiankanoon.org/doc/501198/>.

police authority that the new regime brings forth, creates concerns of misuse, particularly when a new system exhibits institutional imbalance in terms of its implementation in this regard. The active criminal procedure environment is thus a manifestation of the current conflict between the needs of successful law enforcement and civil liberties.

## **UNDERSTANDING THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: KEY CHANGES AND OBJECTIVES**

The adoption of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is a wholesale reform of the procedural criminal law in India, which replaces the Code of Criminal Procedure, 1973 (CrPC) with the following purpose; to establish a more efficient, victim-oriented, and technology-responsive system of justice.<sup>4</sup> The BNSS is a component of the larger legislative reformation project of decolonizing the Indian criminal law and bringing it into accordance with the modern societal requirements. Although the CrPC had been changed in a number of ways throughout the decades, the constitutional framework of the document was still held by the colonial administrative agenda. The BNSS is thus aimed to reform this structure by bringing structural, procedural, and technological change to this system to redefine the operations of the criminal justice system.<sup>5</sup>

There is the need to guarantee a fast and efficient delivery of justice and one of the key aspects of the BNSS is to deal with the chronic delays that have been a long-standing issue of the Indian criminal justice system. Introduction of time limited investigation and trial procedures and tightening of timelines in filing of charge sheets and delivery of verdicts are an effort to decrease pendency and to impose more accountability to the institutions as well as insisting on the role of forensic science and application of scientific methods to” crime investigation. This is a major change in the past dependence on oral test and confessions thus intended to enhance accuracy and reliability of the justice process.<sup>6</sup>

The second significant aspect of the BNSS is that the “program pays attention to the idea of

---

<sup>4</sup> Ministry of Home Affairs, Government of India, *The Bharatiya Nagarik Suraksha Sanhita, 2023: Statement of Objects and Reasons* (2023).

[https://www.mha.gov.in/sites/default/files/BNSS\\_2023\\_Statement\\_of\\_Objects\\_and\\_Reasons.pdf](https://www.mha.gov.in/sites/default/files/BNSS_2023_Statement_of_Objects_and_Reasons.pdf).

<sup>5</sup> Law Commission of India, Report No. 245, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower* (2014). <https://lawcommissionofindia.nic.in/reports/Report245.pdf>.

<sup>6</sup> MALIMATH COMM. ON REFORMS OF CRIMINAL JUSTICE SYS., *REPORT OF THE COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM* 31–45 (2003), <https://cdnbbsr.s3waas.gov.in/s3ca46c1b9512a7a8315fa3c5a946e8265/uploads/2018/04/2018042083.pdf>.

technological integration into the criminal justice system. The provisions that allow the electronic registration of First Information Reports (FIRs), digitalizing statements, and ecosystems that can be used in the courtroom is an indication that it is headed towards modernization and accessibility. Such actions are especially topical at the time when digital transactions and cybercrime are on the agenda, and the traditional process mechanisms are ineffective in many cases.<sup>7</sup> Nevertheless, the growing use of technology also creates the issue of data privacy, surveillance, and the risk of misusing digital instruments by law enforcement organizations. The BNSS is also aimed at being victim-centric, where victim rights and involvement in the criminal justice process are understood. Victim compensation, information entitlement and involvement provisions are indicative of developing conceptualizations of justice that transcends the State-versus-accused paradigm. Meanwhile, the legislation puts forward mechanisms that would enable the State to better pursue criminals and this would provide a two-layered focus on the rights of victims and the powers of the State.<sup>8</sup>

The big element of the BNSS is the extension and definition of the police authority especially concerning arrest, detention and investigation. The law gives a wider discretion to law enforcement agencies that encompasses an extended custody, preventive detention like provisions and more effective powers of search and seizure. Although the reasons behind initiating these changes are acceptable because of the need to enhance efficiency in investigations and deal with intricate crimes, it brings relevant issues of abuse of power and arbitrary use of authority. It is the equilibrium between making the police more empowered and the protection of individual rights that becomes the key point in the assessment of the BNSS.<sup>9</sup>

The goals of BNSS should also be interpreted within the context of constitutional provisions contained in the Constitution of India. The Supreme Court has been firm in believing that procedural laws should be able to comply with the aspect of fairness, reasonableness, and non-arbitrariness. In *Maneka Gandhi v. Union of India*<sup>10</sup> The Court, by the same reasoning, stated that such a procedure under Article 21 needs to be just, fair and reasonable, thus, placing

---

<sup>7</sup> Justice B.N. Srikrishna Comm., *Report of the Committee of Experts on Data Protection Framework for India* (2018), [https://www.meity.gov.in/writereaddata/files/Data\\_Protection\\_Committee\\_Report.pdf](https://www.meity.gov.in/writereaddata/files/Data_Protection_Committee_Report.pdf).

<sup>8</sup> Law Commission of India, Report No. 154, *The Code of Criminal Procedure, 1973* (1996), <https://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf>.

<sup>9</sup> NAT'L POLICE COMM'N, *EIGHTH REPORT OF THE NATIONAL POLICE COMMISSION* (1981), <https://www.mha.gov.in/sites/default/files/8thNPC.pdf>.

<sup>10</sup> *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India), <https://indiankanoon.org/doc/1766147/>.

substantive restrictions on the ability of the legislature and executive to act freely. *Hussainara Khatoon v. State of Bihar*, the Court declared the right to speedy trial as an indispensable part of Article 21 as a measure of strengthening the need to procedural reforms aimed to decrease the delays; nevertheless, the compatibility of the BNSS to the right-based jurisprudence depends on the quality of the guarantees, incorporated within the provisions. In addition, the mentioned purpose of decolonization should be discussed critically.<sup>11</sup> Although the BNSS changes the colonial terms and reorganizes some of the provisions, the scholars claim that the actual de-colonization process should involve a fundamental change in the philosophy behind the criminal justice-control-based model to a rights-based and participatory one, which is unlikely to happen as the expansion of police powers under the BNSS strengthens the executive and not the legislature.<sup>12</sup>

Essentially, the BNSS reflects a multifaceted range of targets: the improvement of the efficiency, the integration of technology, empowering the victims, and the empowerment of the law enforcement. These are however not always compatible goals. The difficulty is to make sure that the search of efficiency and security is provided without the communication of constitutional guarantees and civil liberties. To gain a subtle perception of the BNSS, then, does not merely demand a study of its textual statements but also a critical assessment of its overall effects on the rule of law and democratic government in India.

### **EXPANSION OF POLICE POWERS UNDER BNSS: SCOPE AND DIMENSIONS**

The *Bharatiya Nagarik Suraksha Sanhita*, released in 2023 (BNSS) gives police more power in the criminal justice system of India, as it shifts the focus away from procedural caution and more towards investigative and preventive capabilities. Though the Code of Criminal Procedure, 1973 (CrPC) has already granted law enforcement agencies with a lot of authority, the BNSS extends the limits and the flexibility of operational powers of the law enforcement bodies with a purported aim of meeting the demands of modern society like organized crime, terrorism and computer crimes. But there are some grave issues with this growth which relate to the possibility of arbitrariness, abuse and loss of civil liberties.

The power of arrest is one of the most significant fields of growth. The BNSS expands the conditions within which police officers are allowed to make arrests without a warrant, as well

---

<sup>11</sup> *Hussainara Khatoon v. State of Bihar*, (1980) 1 S.C.C. 81 (India), <https://indiankanoon.org/doc/1094366/>.

<sup>12</sup> UPENDRA BAXI, *THE CRISIS OF THE INDIAN LEGAL SYSTEM* 45–67 (1982).

as altering procedural standards of grounds of arrest and communication with the accused. Even though some restrictions, including the notification of relatives or friends about the arrested individual are preserved, the augmented freedom that is given to police officials poses a threat to fertilizing the value that arrest is an exception to the rule and not the rule. The *Joginder Kumar v. State of U.P.*,<sup>13</sup> Supreme Court highlighted that the necessity required to justify arrest should not be allowed to arise solely out of the legality of the act thus bringing a proportionality factor to the action that can be hard to stretch in the broadened statutory authority. This turn is further depicted by the growth of police custody and detention authority. The BNSS gives more freedom in the assigning of police custody to the permitted detention period so that the law enforcement agencies can seek custody at varying phases of the investigation and not necessarily during an allotted period. Although this could enable better interrogation and gathering of evidence, it also introduces the issue of extended exposure of the accused to custodial settings, which have always been linked to coercion and abuse. The guidelines of the Supreme Court in *D.K. Basu v. state of West Bengal* The mitigation of these risks included the provision of procedural safeguards against custodial violence but the mitigation of these procedures is more a matter of their regular implementation.<sup>14</sup>

The other important aspect of the increased police powers through the BNSS is the increased power of search and seizure, especially of digital and electronic evidence. The legislation acknowledges the increased significance of cybercrime and electronic communication by allowing increased access to online records, devices, and data when investigating. Although such powers are important in dealing with technologically complex crimes, they also present a major issue of privacy and surveying. In the case of *Justice K.S. Puttaswamy v Union of India* the right to privacy as one of the fundamental rights was acknowledged subjects intrusion into personal data and communications by state to constitutional constraints.<sup>15</sup> The scope of search under the BNSS therefore has to be scrutinised with care, to guarantee that it abides by the principles of necessity, proportionality and legality. The BNSS also reinforces the preventive and pre-emptive policing, which can allow law enforcement agencies to react to suspicions of possible assaults on civil order and security. Although these types of provisions are directed at crime prevention, the distinction between preventive and punitive action is unclear, which puts vulnerable or dissenting groups at risk of arbitrary arrest and abuse. Unless properly controlled,

---

<sup>13</sup> *Joginder Kumar v. State of U.P.*, (1994) 4 S.C.C. 260 (India), <https://indiankanoon.org/doc/1670945/>.

<sup>14</sup> *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416 (India), <https://indiankanoon.org/doc/501198/>.

<sup>15</sup> *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India), <https://indiankanoon.org/doc/91938676/>.

preventive policing may damage the assumption of innocence and place the criminal justice system in the pre-emptive form of governance.

The BNSS also encourages application of technology-based policing, such as electronic surveillance, electronic records and electronic procedures adherence. Although these innovations make the processes of efficiency and transparency more effective in some aspects, they enlarge the possibilities of surveillance of the State. Unless well-protected and monitored, the introduction of technology into policing can result in the acclimatization of invasive habits that violate personal autonomy and privacy.<sup>16</sup> The overall impact of these expanded authorities is an overall movement towards executive-based criminal procedure, to which the balance is being ever-more tipped toward the law enforcement agencies. This change should be measured in terms of the constitutional framework of the Constitution of India which stipulates that the exercise of state power should be done within the confines of fairness, reasonableness and non arbitrariness. It has always been emphasized in judicial precedents that procedural law is not a tool of control but rather a preventative measure to abuse of power. In *Arnesh Kumar v. State of Bihar*, the Supreme Court warned against the unnecessary arrests and stressed that the strict compliance with the procedural protection of the rights was necessary, citing the risks of uncontrolled discretion of the police.<sup>17</sup>

Precisely, the growth of police authority in the BNSS can be described as having a twin-fold dynamic, in the sense of augmenting the ability of the State to investigate and thwart crime, and, at the same time, augmenting the risk of breach of rights in the absence of certain security mechanisms. These powers are comprehensive and expansive and cover arrest, detention, search and seizure and surveillance which in totality reforms the contours of criminal procedure in India. The key issue here is to see that such extended powers are wielded in an accountable, transparent and constitutional manner such that the erosion of civil liberties in the name of law enforcement goals can be avoided.

## **CONSTITUTIONAL SAFEGUARDS AND FUNDAMENTAL RIGHTS: A DELICATE BALANCE**

The additional police powers in the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS) should

---

<sup>16</sup> Justice B.N. Srikrishna Comm., *Report of the Committee of Experts on Data Protection Framework for India* (2018), [https://www.meity.gov.in/writereaddata/files/Data\\_Protection\\_Committee\\_Report.pdf](https://www.meity.gov.in/writereaddata/files/Data_Protection_Committee_Report.pdf).

<sup>17</sup> *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273 (India), <https://indiankanoon.org/doc/1436244/>.

be well placed in the constitutional context of the Constitution of India that serves to check the unreasonable action of the State. Articles 14, 19 and 21 are the main components of this framework, and any limitation of individual liberty must be legally justified, reasonable and not arbitrary. *Maneka Gandhi v. Union of India*,<sup>18</sup> Supreme Court. In this, by deciding that the procedure that is set by law should be fair and reasonable, Article 21 turned into a storehouse of substantive due process that imposes a constitutional obligation” on procedural laws such as the BNSS to be fair and reasonable.

Arbitrary arrest and detention is a “danger that safeguards against such an action in the sphere of criminal procedure. Cases like the *D.K. Basu v. State of West Bengal* <sup>19</sup>provided obligatory provisions to stop custodial violence, such as demands of arrest memos, access to legal advice, and notification to family members. The Court stated in *Arnesh Kumar vs State of Bihar* that the necessity and justification of arrest are not merely formal but constitute an essential element of police operation to ensure the principle of proportionality in the exercise of executive authority.<sup>20</sup>

The establishment of the right to privacy as a right in *Justice K.S. Puttaswamy v. Union of India* enhanced the constitutional provisions especially in the wake of increased surveillance and digital investigation authority under the BNSS. <sup>21</sup> The Court proposed a 3-pronged test, legality, necessity and proportionality, to evaluate the legitimacy of a State incursion into personal liberty. This gives grave consequences to the current policing system in which technological devices can facilitate large-scale surveillance and data gathering that will likely violate the personal sovereignty should it go unregulated. Simultaneously, the Constitution does not make power of the State in the process of preservation of law and order pointless. It allows just limitations of the freedom of people in the name of social peace, safety, and justice delivery. The issue, however, does not lie in the presence of police powers but in their controlled application in constitutional boundaries. The lack of procedural protection, judicial control and accountability mechanisms is necessary in making sure that the broader powers are not exercised without control.

Finally, the BNSS is a system of work in a constitutional ecosystem that requires a delicate

---

<sup>18</sup> *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India), <https://indiankanoon.org/doc/1766147/>.

<sup>19</sup> *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416 (India), <https://indiankanoon.org/doc/501198/>;

<sup>20</sup> *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273 (India), <https://indiankanoon.org/doc/1436244/>.

<sup>21</sup> *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India), <https://indiankanoon.org/doc/91938676/>.

balance to be maintained between the collective security and the personal freedom of individuals. The longevity of this balance can be attributed not only to the design of legislation but also to loyalty to laws and close judicial supervision. Any violation of these constitutional principles will threaten the rule of law and the lack of confidence of the population in the criminal justice system.

### **RISKS OF OVERREACH: CONCERNS OF MISUSE, ACCOUNTABILITY, AND CIVIL LIBERTIES**

Expansion of police authority in Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) on the one hand, to make police investigations more efficient, is fraught with potential abuse and institutional misuse of powers and, on the other hand, is questioned. The broadening of discretionary powers of law enforcement agencies in a criminal justice system where structural safeguards may not be applied equally would tend to normalize the practice of arbitrariness especially when it comes to arrest, detention and surveillance. The practice in the Code of Criminal Procedure, 1973 (CrPC) goes to show that very wide powers of statute, combined with limited accountability measures, may result in creating a system of abuse as opposed to law enforcement.<sup>22</sup>

Among the main possibilities of the risks is the misuse of arrest powers that can be caused not only by valid investigative interests but also by means of harassment, coercion, or preventive control. *Arnesh Kumar v. State of Bihar*, the Supreme Court. The issue of routine and unnecessary arrests was expressly recognised in this case, which warns that the use of such discretion should not be tolerated in the BNSS, as it contradicts the principle that arrest is exception as well as necessity and proportionality.<sup>23</sup> The issue of custodial abuse and coercion is also useful in the discussion of police overreach. Although there are court protections that have been established in *D.K. Basu v. State of West Bengal*, the cases of custodial violence and ill-treatment still find their way to the record books, and this shows that there is no effective balance between the law and the reality. This begs some basic questions concerning the safeguarding of human dignity and the right to not be tortured in the criminal process.<sup>24</sup> The other important aspect of overreach is associated with surveillance and privacy issues. The

---

<sup>22</sup> Law Commission of India, Report No. 154, *The Code of Criminal Procedure, 1973* (1996), <https://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf>.

<sup>23</sup> *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273 (India), <https://indiankanoon.org/doc/1436244/>.

<sup>24</sup> *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416 (India), <https://indiankanoon.org/doc/501198/>.

digital investigation and electronic evidence that the BNSS focuses on enhances the power of the State to retrieve personal information and communications. Although these powers are necessary in the fight against cybercrime and other complicated crimes, they give rise to the chances of intrusive surveillance practices. Privacy as a basic right is established in Justice K.S. Puttaswamy v. Union of India highlights that such intrusion should meet the standards of legality, necessity and proportionality since in the absence of concrete safeguards and means of protecting data, extended surveillance rights can threaten the individual autonomy and even deter the exercise of basic freedoms.<sup>25</sup>

The question of accountability also makes the situation more difficult. The institutional tools of accountability, including internal disciplinary mechanisms, the judicial supervision, and independent complaints bodies, have been ineffective or have been historically poorly enforced. The National Police Commission emphasized the necessity of separating the police operation with arbitrary executive interference and be accountable to the rule of law. Without effective control, more powers under the BNSS can enhance executive authority instead of fostering law-abiding and transparent policing. Additionally, the consequences of this overreach commonly are skewed toward marginalized and vulnerable groups, which have a greater likelihood of being the targets of the coercive state action. This is a matter of concern in the light of the Article 14 of the constitution of India that ensures equality before the law and safeguarding against discrimination. The discriminatory or abusive application of the police authority may, therefore, intensify the social imbalance that has already existed and undermine the trust that people have regarding the judicial system. Essentially, the BNSS is aimed at enhancing the law enforcement, but it also increases the dangers of uncontrolled discretionary authority. The difficulty is to make sure that the increase of police power does not become the overreach of the system and is supplemented by proper safeguards, accountability systems, and the right-oriented approach to criminal justice.<sup>26</sup>

### **STRIKING THE BALANCE: WAY FORWARD FOR EFFECTIVE AND RIGHTS-BASED POLICING**

The broadening of the police in the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) requires

---

<sup>25</sup> Justice K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India), <https://indiankanoon.org/doc/91938676/>.

<sup>26</sup> NAT'L POLICE COMM'N, EIGHTH REPORT OF THE NATIONAL POLICE COMMISSION (1981), <https://www.mha.gov.in/sites/default/files/8thNPC.pdf>.

the creation of a sound framework that balances the law enforcement with respect of the constitutional rights. It is not that police power must be limited, but rather that such power must be limited in the framework of some accountability, transparency, and legality, which is in line with the Constitution of India. To balance this, a multi-dimensional strategy, which involves legislative protection, judicial monitoring, institutional changes, and regulation of technology is needed.

One of the most important steps towards this direction is the enhancement of procedural protections of the arrest, detention, and investigation. Although the BNSS has some protection measures, their success relies on the adherence and implementation. The principles established in *D.K. Basu v. State of West Bengal*<sup>27</sup> ought to be strictly followed which consists of absolutely enforced documentations of arrests, right to access legal counsel and immediate production before a magistrate. *Arnesh Kumar v. State of Bihar*, where the necessity and proportionality of arrest is emphasized, must be established as binding protocols and constant monitoring.<sup>28</sup> Courts are at the center of ensuring that there exist a balance between power and liberty. Magistrates should also act as an independent check on the police power especially on remand and custody. The interpretative aspect of judiciary as set in *Maneka Gandhi v. Union of India*, which procedural laws meet the criteria of fairness, reasonableness, and due process. Ensuring that the judicial review of cases is intensive during the pre-trial phase can be a successful measure to prevent arbitrary detainment and excessiveness.<sup>29</sup>

The other vital dimension is police reform and institutional accountability. The National Police Commission recommendation and recommendations made by the judiciary in *Prakash Singh v. Union of India*<sup>30</sup> emphasize that structural change is necessary to ensure that the statutory powers that are in existence under the BNSS are used to strengthen the institutional flaws instead of enhancing the quality of policing. The growing use of technology in the police according to the BNSS also requires the establishment of robust data protection and surveillance regulatory framework. Privacy is a right that was identified in *Justice K.S. Puttaswamy v. Union of India* demands that any technological penetration of personal liberty must meet the legality test, necessity test and proportionality test in order to avoid misuse and

---

<sup>27</sup> *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416 (India), <https://indiankanoon.org/doc/501198/>.

<sup>28</sup> *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273 (India), <https://indiankanoon.org/doc/1436244/>.

<sup>29</sup> *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India), <https://indiankanoon.org/doc/1766147/>.

<sup>30</sup> *Prakash Singh v. Union of India*, (2006) 8 S.C.C. 1 (India), <https://indiankanoon.org/doc/1090326/>.

hold answerability in the investigations that are technologically driven.<sup>31</sup>

In addition, the culture of rights-based policing should be promoted as the long-term reform. This includes educating the law enforcement officers to values of the Constitution, human rights and practicing ethics in policing. Institutional mindset can be changed by sensitization programs and capacity-building initiatives which should focus on shaping the institutional mind to a service-based institutional approach rather than a control-based institutional approach with prioritization to service, fairness and respect to individual dignity.<sup>32</sup>

Lastly, the legislative transparency and a regular check of the provisions of the BNSS should be performed to consider the ambiguities and changing challenges. The balance between efficiency and rights can be reviewed and fine-tuned by parliamentary oversight coupled with empirical analysis of the law enforcement. To sum up, the process of striking the balance between good policing and the constitutional protection is a process and not a single-time legislative success. Whether or not the BNSS will be successful will be determined by the way that its provisions are implemented in a framework that balances basic rights with allowing the State to uphold law and order. The right-oriented, accountable and transparent policing system is essential to maintain the rule of law in the democratic” society.

---

<sup>31</sup> *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India), <https://indiankanoon.org/doc/91938676/>.

<sup>32</sup> NAT'L POLICE COMM'N, *EIGHTH REPORT OF THE NATIONAL POLICE COMMISSION* (1981), <https://www.mha.gov.in/sites/default/files/8thNPC.pdf>.

## **REFERENCES:**

### **A. LEGISLATIONS**

1. The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, INDIA CODE (2023).
2. The Code of Criminal Procedure, No. 2 of 1974, INDIA CODE (1974).
3. INDIA CONST. arts. 14, 19, 21.

### **B. CASE LAWS**

4. *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).
5. *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416 (India).
6. *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273 (India).
7. *Joginder Kumar v. State of U.P.*, (1994) 4 S.C.C. 260 (India).
8. *Hussainara Khatoon v. State of Bihar*, (1980) 1 S.C.C. 81 (India).
9. *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India).
10. *Prakash Singh v. Union of India*, (2006) 8 S.C.C. 1 (India).

### **C. BOOKS**

11. UPENDRA BAXI, *THE CRISIS OF THE INDIAN LEGAL SYSTEM* (1982).
12. K.D. GAUR, *CRIMINAL LAW: CASES AND MATERIALS* (6th ed. 2016).
13. R.V. KELKAR, *CRIMINAL PROCEDURE* (6th ed. 2017).
14. C.K. TAKWANI, *CRIMINAL PROCEDURE* (8th ed. 2020).

### **D. LAW COMMISSION & COMMITTEE REPORTS**

15. MALIMATH COMM. ON REFORMS OF CRIMINAL JUSTICE SYS., *REPORT OF*

*THE COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM* (2003).

16. Law Commission of India, Report No. 154, *The Code of Criminal Procedure, 1973* (1996).
17. Law Commission of India, Report No. 245, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower* (2014).
18. Law Commission of India, Report No. 277, *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies* (2018).
19. NAT'L POLICE COMM'N, *EIGHTH REPORT OF THE NATIONAL POLICE COMMISSION* (1981).

#### **E. GOVERNMENT & COMMITTEE DOCUMENTS**

20. Ministry of Home Affairs, Government of India, *The Bharatiya Nagarik Suraksha Sanhita, 2023: Statement of Objects and Reasons* (2023).
21. Justice B.N. Srikrishna Comm., *Report of the Committee of Experts on Data Protection Framework for India* (2018).

#### **F. ARTICLES & SCHOLARLY WORKS (OPTIONAL ADD-ON)**

22. Upendra Baxi, Human Rights in a Posthuman World, 7 NAT'L L. SCH. INDIA REV. 1 (1995).
23. Vikramaditya S. Khanna, Reforming the Criminal Justice System in India, 10 J. NAT'L L. U. DELHI 45 (2018).