CUSTODY UNDER CONSTRAINT: THE CONSTITUTIONALITY OF POLICE CUSTODY IN INDIA UNDER ARTICLES 20, 21 AND 22 AND THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

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ABSTRACT

Police custody is the point at which the coercive power of the State meets the individual with the least protection and the most to lose. This paper asks whether, and on what conditions, police custody is constitutional in India. It argues that custody is not an ordinary incident of investigation but a *conditional exception* to the personal liberty guaranteed by Article 21, tolerable only when it satisfies four cumulative limbs: legality, necessity, supervision and dignity. Measured against that test, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is facially defensible. It keeps the 24-hour production rule, the 15-day aggregate ceiling on police custody and the right to default bail, and it adds some genuine safeguards. Its vulnerability lies in application. Section 187(2) now allows the 15 days to be spread over the first 40 or 60 days of detention, which the Supreme Court confirmed in *State of Andhra Pradesh v Suda Suresh Veera Venkata Naga Raju* (27 July 2026). Section 38 gives the right to meet a lawyer 'though not throughout' interrogation, and section 43(3) authorises handcuffing for a long list of offences. Each of these is safe or unsafe depending on the quality of magisterial scrutiny, the reliability of recording, and the existence of real accountability for abuse. The paper analyses those three conditions, draws on comparative standards, and proposes a ten-point 'Custody Charter' for legislative and judicial adoption.

Keywords: police custody; Article 21; Article 22; self-incrimination; BNSS 2023; section 187; custodial violence; remand; right to counsel

1. Introduction

A person in police custody is, for a short and critical period, outside the daily gaze of the public, the family and often the courts. The Constitution answers this predicament with a set of rights that attach at the moment of arrest: to be told the grounds, to consult a lawyer, to be produced before a magistrate within 24 hours, and not to be compelled to incriminate oneself. The criminal procedure code then fills in the detail. The question this paper examines is whether the detail, as it now stands in the BNSS, honours the text and the case law that surround it.

The question is not abstract. A report on custodial deaths prepared from NCRB data and cited in press coverage puts the average at 92 deaths a year between 2000 and 2022 (*Free Press Journal*, 4 September 2025). In September 2025 a bench of Vikram Nath and Sandeep Mehta JJ. registered a suo motu case, *In Re: Lack of Functional CCTVs in Police Stations*, after a newspaper reported eleven deaths in police custody in Rajasthan within seven or eight months (*Bar & Bench*; *LiveLaw*, 4 September 2025). The Court recorded that non-functioning cameras and the failure to preserve footage breach the directions in *Paramvir Singh Saini v Baljit Singh* (2021) 1 SCC 184. Tamil Nadu has its own reminder in the June 2020 deaths of P. Jayaraj and J. Bennix after detention at the Sathankulam police station.

The most recent illustration is the judgment that gives this paper its present relevance. In *State of Andhra Pradesh v Suda Suresh Veera Venkata Naga Raju* (SLP (Crl) 12344 of 2026, decided 27 July 2026, reported as 2026 LiveLaw (SC) 722), the accused was a police inspector alleged to have caused the custodial death of a man apprehended on 6 May 2026 and, on the prosecution's case, never produced before a magistrate. The Court recorded that no CCTV footage was available for the crucial period (paras 5–7). The judgment is therefore at once a decision about how police custody may be conducted and a case study in how it can fail.

Thesis. Police custody is constitutionally permissible only as a regulated, reasoned and reviewable exception. The BNSS preserves the skeleton of that exception but widens the periods during which it may be invoked, so its constitutionality now depends less on the text of the statute than on the practices that surround it. Where those practices are weak, the provisions risk being unconstitutional *as applied*, even if they survive facially.

2. Research Questions, Method and Scope

The paper addresses five questions.

1. What constitutional limits govern the deprivation of liberty through police custody?
2. How does the BNSS give statutory form to those limits, and where does it depart from the Code of Criminal Procedure, 1973 (CrPC)?
3. How have the 15-day rule, the right to counsel and the recording of interrogation been reshaped by recent judgments?
4. Where are the gaps in accountability for custodial violence?
5. What reforms would close those gaps?

The method is doctrinal. It analyses constitutional text, statutory provisions and judicial decisions, supplemented by Law Commission reports and comparative materials. Press and commentary sources are used only for recent developments not yet in the law reports and are identified as such. Where a point is unsettled, the paper says so. The paper deals with arrest and custody in ordinary criminal investigation. Preventive detention under Article 22(3)–(7), and special statutes with their own custody regimes such as the PMLA and the UAPA, are noted only where they illuminate the general law.

3. Conceptual Foundations

Arrest, custody and remand - These are related but distinct. Arrest is the act of taking a person into the control of the State. Custody is the continuing condition of being so held. Remand is the judicial act of authorising continued detention. The Supreme Court has long insisted that the *power* to arrest must be separated from the *justification* for arrest: an arrest can cause lasting damage to reputation and self-respect, so a police officer must be able to point to a reason beyond bare legality (*Joginder Kumar v State of UP* (1994) 4 SCC 260).

Police custody and judicial custody - In judicial custody the accused is in the care of the prison system under the order of a magistrate. In police custody the accused is placed at the disposal of the investigating agency for questioning, discovery and recovery. The law keeps these apart because the second is the setting in which abuse is most likely and hardest to

prove. That mistrust is built into the law of evidence. A confession to a police officer cannot be proved against the accused, and only information that leads to a discovery is admissible, a rule now found in section 23 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), the successor to section 27 of the Evidence Act, as the Supreme Court itself noted in *Suda Suresh* (para 21).

Why custody is sought - Investigators legitimately need custody to trace absconding co-accused, to recover material evidence, to confront the accused with documents and to reconstruct events. The constitutional task is not to deny these needs but to ensure that custody is sought and used for them and for nothing else.

4. The Constitutional Framework

4.1 Article 21: procedure established by law

Article 21 forbids deprivation of life or personal liberty except by a procedure established by law. Since *Maneka Gandhi v Union of India* (1978) 1 SCC 248 that procedure must be fair, just and reasonable, not merely enacted. Two consequences follow for custody. First, a statutory power of detention is invalid to the extent that its procedure is arbitrary. Second, the content of Article 21 extends to conditions of detention. A person does not forfeit fundamental rights on entering custody (*Sunil Batra v Delhi Administration* (1978) 4 SCC 494), and torture and degrading treatment in custody violate Article 21 irrespective of the offence charged (*D.K. Basu v State of West Bengal* (1997) 1 SCC 416). The Court has also treated compensation as a public-law remedy for custodial death, independent of any criminal prosecution (*Rudul Sah v State of Bihar* (1983) 4 SCC 141; *Nilabati Behera v State of Orissa* (1993) 2 SCC 746).

The proportionality standard developed in *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1, and applied in *Modern Dental College v State of MP* (2016) 7 SCC 353 and *Anuradha Bhasin v Union of India* (2020) 3 SCC 637, supplies the test for any restriction on liberty: a legitimate aim, a rational connection to it, necessity in the sense of the least restrictive effective means, and a proper balance between the benefit and the intrusion.

4.2 Article 22(1) and (2): the arrestee's own rights

Article 22(1) gives every arrested person the right to be informed, as soon as may be, of the

grounds of arrest and the right to consult and be defended by a legal practitioner of choice. Article 22(2) requires production before the nearest magistrate within 24 hours of arrest, excluding the journey, and bars detention beyond that period without the magistrate's authority. Article 22(3) withdraws these protections from enemy aliens and preventive detainees, but not from persons arrested on suspicion of an offence. The 24-hour rule is the constitutional foundation of every remand provision: it places a judge between the police and the detainee at the earliest point.

The Court has read Article 22(1) with growing strictness. In *Pankaj Bansal v Union of India* (2024) 7 SCC 576 and *Prabir Purkayastha v State (NCT of Delhi)* (2024) 8 SCC 254 it required that grounds of arrest be communicated to the arrestee in writing, in the special-statute setting. In *Vihaan Kumar v State of Haryana* (2025) 5 SCC 799 (2025 INSC 162) it extended Article 22(1) to ordinary penal law and held that remand or a chargesheet cannot cure a failure to inform. Section 8 below discusses the ensuing debate.

4.3 Article 20(3): protection against self-incrimination

Article 20(3) provides that no person accused of an offence shall be compelled to be a witness against himself. In *Nandini Satpathy v P.L. Dani* (1978) 2 SCC 424 the Court gave the protection a wide reading that reaches the police station: an accused cannot be forced to answer questions that may incriminate, and the right to silence operates during interrogation. The distinction drawn in *State of Bombay v Kathi Kalu Oghad* AIR 1961 SC 1808 between testimonial compulsion and the giving of physical material such as fingerprints still marks the boundary of what may be demanded. In *Selvi v State of Karnataka* (2010) 7 SCC 263 the Court held that narcoanalysis, polygraph examination and the brain-electrical activation profile test, when administered involuntarily, violate Article 20(3) and the guarantee of mental privacy and personal liberty under Article 21. Selvi matters here because it closes off the technological shortcut: custody may not be used to extract by science what cannot be extracted by force.

4.4 Article 14

The Court's approach to manifest arbitrariness (*Shayara Bano v Union of India* (2017) 9 SCC 1) means that a custody power exercised without reasons, or distributed on grounds unrelated to the purpose of investigation, is open to challenge under Article 14 as well.

4.5 A four-limb test of constitutional custody

Pulling these strands together, the paper proposes that any exercise of police custody should satisfy four cumulative limbs.

Legality - The first question is whether the custody has a statutory basis, whether that procedure was followed, and whether the Article 22 formalities were observed. The principal authorities are *Maneka Gandhi*, the text of Article 22(1) and (2), and *Vihaan Kumar*.

Necessity - The second question is whether custody, as distinct from arrest, is needed for a stated investigative purpose, and whether it is the least restrictive means of serving that purpose. The authorities are *Joginder Kumar*, *Arnesh Kumar v State of Bihar* (2014) 8 SCC 273 and *Puttaswamy*.

Supervision - The third question is whether an independent judicial officer has applied his mind and recorded reasons, both when custody is authorised and at each production. The authorities are Article 22(2), *Arnesh Kumar* and *Khatri (II) v State of Bihar* (1981) 1 SCC 627.

Dignity - The fourth question is whether the detainee is protected against coercion, inducement and degrading treatment, with records that can be verified. The authorities are Article 20(3), *Selvi*,

D.K. Basu and *Paramvir Singh Saini*.

The test is offered as an analytical frame, not as a doctrine the courts have named. Each limb is, however, drawn from holdings of the Supreme Court, and the BNSS provisions examined below are assessed against it.

5. The BNSS Architecture of Custody

The BNSS came into force on 1 July 2024 and replaced the CrPC. For custody, its structure follows the old Code closely, with a handful of important changes. The main provisions are set out below by stage of custody.

Arrest - Section 35(1) of the BNSS (section 41(1) CrPC) sets the conditions for arrest without warrant and, where the offence carries up to seven years, requires the officer to record reasons why arrest is necessary. Section 35(3) to (6) (section 41A) provides for a notice of appearance in place of arrest where arrest is not required, with arrest permitted if the person does not comply. Section 35(7) is new: for an offence punishable with less than three years, a person who is infirm or above sixty may be arrested only with the prior permission of an officer not below Deputy Superintendent rank.

Procedure on arrest - Section 36 (section 41B) requires visible identification of the arresting officers and a memo of arrest attested by a family member or a respectable person of the locality. Section 37 (section 41C) requires a designated officer in each district and police station to maintain and display particulars of arrested persons. Section 38 (section 41D) gives an entitlement to meet an advocate of choice during interrogation, 'though not throughout interrogation'. Section 43 (section 46) governs the mode of arrest, and its new sub-section (3) permits handcuffs in specified categories of offence and offender. Section 47 (section 50) requires the full particulars of the offence or other grounds to be communicated, and the arrestee to be told of the right to bail in a bailable case. Section 48 (section 50A) requires a nominated person to be informed and the entry recorded.

After arrest - Sections 51 to 53 (sections 53 and 54 CrPC) provide for medical examination of an accused at the request of the police and of an arrested person on arrest. Section 58 (section 57) implements Article 22(2) by barring detention beyond 24 hours without a magistrate's authority.

Remand and police custody - Section 187(1) and (2) (section 167(1) and (2)) govern remand and police custody: the 15-day aggregate is retained, but it is now exercisable in parts within the first 40 or 60 days. Section 187(3) (the proviso to section 167(2)) fixes the 60 or 90 days after which default bail arises.

Statements and evidence - Section 180 (section 161) governs examination of witnesses by the police, and statements may be recorded by audio-video means. Section 23 of the BSA (section 27 of the Evidence Act) governs the admissibility of information leading to discovery.

Oversight - Section 196(2) (section 176(1A)) requires an inquiry by a Judicial or Metropolitan Magistrate, in addition to the police investigation, where a person dies or disappears in police custody. Section 218 (section 197) requires prior sanction for prosecuting a public servant for acts in official duty and prescribes a time limit for the decision.

Two features deserve emphasis before the detailed analysis.

First, the *constitutional* backbone is unchanged. Section 58 and section 187(1) re-state Article

22(2). Section 47 re-states Article 22(1) so far as the grounds are concerned. The 15-day cap on police custody survives.

Second, the changes alter *how and when* custody can be used, not whether it exists. The introduction of section 35(7) is protective. The introduction of section 43(3) and the broader timing of section 187(2) are not obviously so. The assessment that follows therefore concentrates on the places where the new text meets the four limbs.

6. The 15-Day Rule and the New 40/60-Day Window

6.1 The old rule and its erosion

Section 167(2) of the CrPC allowed a magistrate to authorise detention in police custody for a term not exceeding fifteen days 'in the whole'. In *CBI v Anupam J. Kulkarni* (1992) 3 SCC 141 the Supreme Court read this to mean that police custody could be granted only within the first fifteen days after arrest. The reasoning was protective. If police custody could be revived at any later point, an investigating agency could use repeated spells to wear down a detainee and circumvent the cap. A three-judge bench reaffirmed the position in *Budh Singh v State of Punjab* (2000) 9 SCC 266.

In 2023 the rule came under strain. In *CBI v Vikas Mishra @ Vikash Mishra* (2023) 6 SCC 49 (2023 INSC 345, decided 10 April 2023), where an accused had been hospitalised for most of a seven-day police remand, the Court opined that the view in *Anupam Kulkarni* required reconsideration and allowed the CBI four further days. In *V. Senthil Balaji v State* (2023 SCC OnLine SC 934) the Court again questioned the 1992 interpretation and

indicated that the bar on custody beyond fifteen days is attracted only by actual physical custody. The reported discussion at the time focused on practical failures: a person who feigns illness or is otherwise unavailable can exhaust the window without being questioned.

6.2 The legislative answer: section 187(2)

The BNSS resolved the doctrinal question by statute. Section 187(2) allows a magistrate to authorise police custody not exceeding fifteen days, 'in the whole or in parts', at any time during the initial forty days or sixty days of a total detention period of sixty or ninety days. Section 187(3) then fixes the outer limits of detention before default bail arises: ninety days where the investigation concerns an offence punishable with death, life imprisonment or imprisonment for a term of ten years or more, and sixty days for any other offence. The BNSS also retains the CrPC rule that police custody may be authorised only when the accused is produced before the magistrate in person, while later extensions of judicial custody may proceed through audio-video link.

The resulting calendar is simple to state. In a sixty-day case the police may take custody in one or more spells, totalling at most fifteen days, at any point in the first forty days. In a ninety-day case, the window is the first sixty days. The remaining days are judicial custody only.

Two uncertainties remain. The first is the meaning of 'ten years or more'. High Courts have taken differing views on whether an offence whose maximum is exactly ten years, without a minimum of ten years, falls into the ninety-day or the sixty-day category. A commentary reports the Karnataka High Court holding in 2024 that both formulations carry the same meaning (*Kalandar Shafi*), and that Supreme Court clarity is still awaited. In January 2025 the Supreme Court declined to interfere with a Karnataka High Court judgment confining police custody to the first forty days in a case of a sixty-day offence (*LiveLaw*, 8 January 2025). A dismissal of a special leave petition in that form is not, by itself, a declaration of law under Article 141 (*Kunhayammed v State of Kerala* (2000) 6 SCC 359), so the question should be treated as open. The second uncertainty is the classification of offences for the purpose of the window, which determines how long the police can seek custody as well as when default bail is available. Because both consequences touch liberty, a construction that favours the shorter period is more consistent with Article 21.

6.3 *Suda Suresh* (2026): confirming the window

In *State of Andhra Pradesh v Suda Suresh Veera Venkata Naga Raju* (2026 LiveLaw (SC) 722, Vikram Nath and Sandeep Mehta JJ.), the Magistrate had granted eight days of police custody subject to a condition that it could not be extended beyond a fixed date (Condition 28.15). The High Court retained most conditions. The Supreme Court held that sections 187(2) and (3) of the BNSS, unlike section 167 of the CrPC, enlarge the window in which police custody (not exceeding fifteen days in the aggregate) may be sought, allowing it to be taken in parts during the first forty or sixty days (para 22). The legislative purpose, the Court said, was to meet situations in which fresh facts, discoveries or leads emerge later in the investigation. A Magistrate or High Court that imposes an absolute and non-extendable outer limit forecloses recourse to section 187(2) irrespective of what the investigation may yet reveal, and the condition could not stand. The Court then granted seven more days so that the aggregate would not exceed fifteen (para 27(i)).

6.4 Evaluation against the four limbs

Legality - The window is expressly authorised by statute. No constitutional challenge to the window was before the Court in *Suda Suresh*, which construed the section rather than tested it. The legality limb is satisfied.

Necessity - The traditional objection, voiced in *Anupam Kulkarni*, was that late custody invites abuse. The BNSS answers part of this by keeping the fifteen-day aggregate. The Court has said in terms that the BNSS does not raise the cap, only the period within which it may be used. Even so, a detainee who is returned to police hands in a second or third spell experiences a repeated loss of the protection that judicial custody provides. The proportionality principle therefore asks the State to show, at each application, why the earlier spell did not suffice. The Court itself tied the justification to ‘fresh facts, discoveries or leads’, which provides a ready standard.

Supervision - The window shifts the weight of protection onto the magistrate. A magistrate must now do more than count days. Each application should disclose the days already used, what the earlier custody achieved, and the new material that justifies another spell. The directions in *Arnesh Kumar* that detention must not be authorised mechanically, and that reasons must be recorded, apply with greater force.

Dignity - Each spell should begin and end with a medical examination and a recorded inquiry by the magistrate into the detainee's treatment, as discussed in section 7.

Assessment - Section 187(2) is facially constitutional. The 24-hour rule, the aggregate cap and the right to default bail are intact, and the cap is the main bulwark against abuse. Its constitutionality as applied, however, depends on magisterial practice. A magistrate who grants successive custody on a one-line order has effectively delegated the decision to the investigator, and that order would fail the supervision limb. The remedy is not to read down the section but to insist on a particular standard of reasoning.

The default bail right deserves a final word. The Court has held that the right to be released on bail when the chargesheet is not filed within the statutory period accrues automatically, and that the State cannot defeat it by filing a chargesheet or seeking extension after the period has run (*Uday Mohanlal Acharya v State of Maharashtra* (2001) 5 SCC 453). It has also described it as integral to the procedure established by law under Article 21 (*Bikramjit Singh v State of Punjab* (2020) 10 SCC 616). In a regime of longer custody windows, this right is the counterweight that must be protected with particular vigilance.

7. Interrogation Safeguards: Counsel, Recording and Restraint

7.1 The right to a lawyer during interrogation

Article 22(1) guarantees the right to consult a legal practitioner of choice. The question in custody is the extent to which that right operates *during* questioning. The Supreme Court in *Nandini Satpathy* indicated that a lawyer may be permitted to be within sight but not hearing during interrogation. In *D.K. Basu* the Court directed that the arrestee may be permitted to meet a lawyer during interrogation, though not throughout. Section 38 of the BNSS gives statutory form to that formula: when a person is arrested and interrogated by the police, he is entitled to meet an advocate of his choice during interrogation, 'though not throughout'.

In *Suda Suresh* the Court considered a Magistrate's order that two advocates be allowed, one at a time, to watch the interrogation at ten feet or behind glass, without hearing or interfering. The Court held that section 38 guarantees the right to *meet* an advocate during interrogation but does not contemplate the continuous physical presence of an advocate for

the whole of each session. It accepted that courts may regulate the manner and distance of presence, and in its operative directions it retained the lawyer's presence at the site of interrogation where he could see the accused, without any power to intervene (paras 23–24 and 27(vi)).

The decision is best read in two layers. As a matter of statutory construction it is faithful to the text of section 38, which expressly disclaims a right to presence throughout. As a matter of outcome, the Court retained sight-line presence on the facts before it, which tracks *Nandini Satpathy*. The constitutional question is left open: whether Article 22(1) and Article 21 may, in some cases, require more than the statute provides. There are good reasons to think they may. Statutory text sets a floor and not a ceiling for a constitutional right, and the *Selvi* principle that interrogation must be free from compulsion implies that the accused must be able to obtain advice about whether and how to answer. The ECtHR reached a comparable view in *Salduz v Turkey* (App no 36391/02, Grand Chamber, 27 November 2008), holding that access to a lawyer should be provided from the first police interrogation unless compelling reasons justify restriction. The proposal in Part 12 is therefore to treat sight-line presence as the default in serious cases and to guarantee consultation at every break, with the fact of consultation recorded.

7.2 Recording interrogation and discovery

The BNSS contains an enabling provision, section 180(3), which allows a statement to a police officer to be recorded by audio-video means. It does not impose a general duty to record custodial interrogation. That duty comes from the Supreme Court. *Paramvir Singh Saini v Baljit Singh* (2021) 1 SCC 184 directed all States and Union Territories to install CCTV cameras, with audio and night vision, in every police station and in the offices of central investigating agencies where interrogation takes place, and to preserve the data for a stated period. The Court has since monitored compliance in its suo motu case. Reports of the proceedings record the Court noting that non-functioning cameras and non-preservation of recordings breach the directions and that manual switching-off of cameras is a recurring problem.

In *Suda Suresh* the Court considered how far the recording obligation extends. It agreed that audio-video recording is a salutary safeguard that protects both the accused (against coercion) and the investigators (against unfounded allegation) (para 25). It held, however,

that an inflexible mandate to videograph every minute of a three-hour road journey of 160 kilometres is unworkable, given signal loss, battery limits and security considerations. The requirement is satisfied by continuous recording of the actual interrogation sessions and of any proceedings of discovery or recovery. The recordings, with a certificate under section 63 of the BSA (the successor of section 65B of the Evidence Act), must be produced to the Magistrate on completion (para 27(iv) and (vii)).

The distinction is defensible but leaves a risk. Transit and the period around discovery are historically the setting of many disputed incidents, whether alleged escape attempts or alleged injuries on the way. The Court was careful to say that interruptions in transit should not by themselves lead to an inference of impropriety. Two measures could close the gap without imposing an impossible duty: a mandatory movement log, signed by the escorting officers and countersigned by the jail authority on departure and return, and the use of vehicle location tracking, with the record produced alongside the recordings. A gap in the recording of an *interrogation session* is a different matter and should attract an adverse inference unless explained, since the Court itself treats continuous recording of sessions as the core of the safeguard.

7.3 Handcuffs and restraint: section 43(3)

The BNSS introduces an express power to handcuff. Section 43(3) allows a police officer, having regard to the nature and gravity of the offence, to use handcuffs when making an arrest or producing the person in court, in respect of a habitual or repeat offender, a person who has escaped from custody, and a person who has committed certain listed offences, including organised crime, terrorist acts, drug offences, possession of illegal arms, murder, rape, acid attack, counterfeiting, human trafficking, sexual offences against children and offences against the State.

The constitutional baseline is *Prem Shankar Shukla v Delhi Administration* (1980) 3 SCC 526. There the Court held that handcuffing is prima facie inhuman, unreasonable and arbitrary, and violates Article 21 unless justified by a clear and present danger of escape that the officer can substantiate with recorded reasons. The principle was reaffirmed in *Citizens for Democracy v State of Assam* (1995) 3 SCC 743. Section 43(3) is a categorical authorisation by reference to offence type, whereas *Prem Shankar Shukla* requires an individualised assessment by reference to the risk the particular person poses. The offence

listed is a proxy for dangerousness, but the two are not the same: a person arrested for a listed offence may present no risk of flight or violence.

The better view is that section 43(3) is *enabling and not mandatory* and must be read subject to Article 21. A decision to handcuff should therefore be supported by a contemporaneous written record of the individual risk assessed, and a magistrate should ask on production whether restraints were used and why. Read this way, the provision is saved. Read as an automatic licence for listed offences, it would conflict with a binding precedent that rests on the Constitution.

7.4 Medical examination and the magistrate's inquiry

Sections 51 to 53 of the BNSS continue the CrPC regime of medical examination of an accused at the request of the police and of an arrested person on arrest. The Supreme Court in *D.K. Basu* directed that an arrestee be examined by a doctor every forty-eight hours during detention, using a panel of approved doctors, and that an arrest memo and the inspection memo be signed and forwarded to the magistrate. In *Sheela Barse v State of Maharashtra* (1983) 2 SCC 96 the Court emphasised that magistrates must inquire of an arrested person whether he has been ill-treated. These duties matter more as custody becomes divisible. At the start and end of every spell, a medical report from a doctor not attached to the investigating agency should be placed before the magistrate, and the magistrate should record the detainee's own account.

The broader point is that the medical record is the main evidence that distinguishes a safe custody from a coerced one. Without it, an allegation of torture becomes one person's word against an officer's, a contest the detainee rarely wins.

8. Grounds of Arrest and the Necessity of Arrest

Section 47 of the BNSS (successor to section 50 CrPC) requires an officer who arrests without a warrant to communicate the full particulars of the offence or other grounds, and, in a bailable case, to tell the person of the right to bail. Article 22(1) states the constitutional right. Between 2023 and 2025 the Supreme Court changed the practical content of the right.

Pankaj Bansal (2024) and *Prabir Purkayastha* (2024) required written grounds under the PMLA and the UAPA respectively. *Vihaan Kumar* (Feb 2025) extended Article 22(1) to

ordinary penal law and held that an arrest in breach is vitiated and that a later remand order or chargesheet cannot cure it. It treated written communication as the ideal means while allowing that minor delays in reducing the grounds to writing need not automatically void an arrest. In *Mihir Rajesh Shah v State of Maharashtra* (2025 INSC 1288, 6 November 2025, B.R. Gavai CJI and A.G. Masih J.), as reported, the Court held that grounds must be furnished in writing, in a language the arrestee understands, across offences and statutes, and that where this is impracticable at the moment of arrest it must be done within a reasonable time and at least two hours before the person is produced for remand.

The two 2025 decisions are not perfectly aligned on whether writing is mandatory in every case, and commentary reports that the question may be referred to a larger bench. Readers relying on the point should check the current status. The direction of travel is nevertheless clear. A written, intelligible statement of grounds serves each of the four limbs: it supports legality, forces the officer to articulate necessity, gives the magistrate a document to scrutinise at remand, and gives counsel the means to challenge the arrest.

The necessity of arrest is the first gate to custody. *Joginder Kumar* said that arrest should not be routine. *Arnesh Kumar* turned that into a checklist: in offences punishable with up to seven years, the officer must satisfy himself that arrest is necessary on one of the statutory grounds and record reasons, and the magistrate must examine those reasons before authorising detention. *Satender Kumar Antil v CBI* (2022) 10 SCC 51 repeated the demand for compliance with the notice-of-appearance procedure. The BNSS carries these forward in section 35, adding section 35(7) for the infirm and the elderly. If arrests pass this gate casually, the later stages of remand and custody inherit the defect. The magistrate's first production order is therefore the most important document in the custody chain.

9. *Suda Suresh* as a Stress Test

The Andhra Pradesh case offers an unusually complete view of the custody system under strain, and its lessons extend beyond its facts.

First, safeguards bind regardless of the order. The Court said that the burden is on the investigating team to ensure that the accused is not subjected to threat, inducement, coercion, physical assault or third-degree methods, whatever the content of the orders, because these protections are inherent in Article 21 (para 20). This is a significant

statement. It means that the constitutional floor does not depend on the conditions a magistrate happens to impose. A magistrate who omits a safeguard does not thereby authorise its absence.

Second, accountability is personal. The Court retained the direction that the investigating officer, the Additional Superintendent of Police, the members of the investigation team and the jail superintendent are jointly and severally responsible for the safety, life and physical well-being of the accused throughout police custody (para 27(viii)). Naming responsible officers addresses the difficulty, seen in many custodial death cases, of attributing responsibility among many hands.

Third, the Court preferred effectiveness in a case of discovery. It set aside the confinement of interrogation to the prison, observing that discovery depends on taking the accused to the place of discovery and not merely questioning him from 160 kilometres away (para 21). The decision shows the Court weighing the legitimate needs of investigation against the safeguards, and it demonstrates that the safeguards can be adapted to the purpose of custody. The qualifications it imposed (recording of the actual interrogation and discovery, a lawyer able to see the accused, personal responsibility of officers) are the form that proportionality takes in practice.

Fourth, the accused was himself a police officer. The Court addressed his fear for his safety in a facility containing persons he had arrested, by directing interrogation at a designated secure centre under police or investigation-team control, with joint responsibility retained (para 26). The point of principle is that the safeguards belong to the office of the accused as a person, not as a member of any class. It would be perverse to treat the protections as available to a police officer but not to an ordinary detainee.

Limits of the decision. The Court described its task as concerned solely with the narrow question of the legality and workability of the conditions (para 20), and it directed that the investigation proceed uninfluenced by any observation in the judgment (para 27(ix)). Its readings of sections 187(2) and 38 were necessary to the outcome and therefore carry precedential weight, but they were reached on a custodial death prosecution of a police officer, with a body not yet traced. Later courts should be careful about assuming that the narrow reading of section 38 forecloses, in other contexts, a more protective interpretation grounded in the Constitution itself.

10. The Accountability Gap

The four-limb test ends with dignity, and dignity in custody is only as real as the consequences of violating it. The weakest part of the Indian framework is not the statement of rights but the machinery of enforcement.

Detection - The BNSS requires a magistrate's inquiry, in addition to the police investigation, when a person dies or disappears in police custody or when rape is alleged in custody (section 196(2), successor to section 176(1A) CrPC). The National Human Rights Commission has issued directions requiring custodial deaths to be reported to it within twenty-four hours. The *Suda Suresh* record shows how these safeguards can be defeated. On the prosecution's case the deceased was never produced before a magistrate, the mother filed a habeas corpus petition about four weeks after the arrest, the police inspector in charge suppressed the fact of custody in those proceedings, and the first information report was registered only after the mother's complaint of 19 June 2026, some six weeks after the death (paras 5–6). Detection depended on a private citizen, not on the system.

Prosecution - The offences exist. The FIR in *Suda Suresh* invoked sections 127(4) and 127(6) (wrongful confinement), 103(1) (murder) and 238 (causing disappearance of evidence) of the Bharatiya Nyaya Sanhita, 2023 (para 6), and sections 120(1) and (2) of the BNS (hurt and grievous hurt to extort confession) are the successors of sections 330 and 331 of the Indian Penal Code. What is missing is a dedicated offence of custodial torture that reflects its gravity, and an evidentiary framework suited to the inherent difficulty of proof.

Sanction - Section 218 of the BNSS (successor to section 197 CrPC) requires prior sanction of the appropriate government for prosecuting a public servant for an act done in the discharge of official duty. The Court has long tested this by asking whether the act has a reasonable connection with

official duty (*Matajog Dobey v H.C. Bhari* AIR 1956 SC 44). It is difficult to describe torture or the fabrication of custody records as an official duty. Yet in practice the sanction requirement is invoked in custodial cases and can delay or defeat prosecution. As I read the BNSS, it adds a time limit within which the government must decide, with deemed sanction

on default, which is a step forward; the more complete reform would be an express clarification that custodial violence is outside the protection.

Proof - The Law Commission of India in its 113th Report (1985) recommended inserting a provision in the Evidence Act to raise a presumption against the police when a person sustains injuries in custody. The proposal was not enacted, and the Bharatiya Sakshya Adhiniyam, 2023 does not appear to have adopted it. In the absence of a statutory presumption, reliable recording and medical records are the only practical substitutes, which is why the weaknesses in compliance with *Paramvir Singh Saini* are so damaging.

Statute - India signed the UN Convention against Torture in 1997 but has not ratified it. The Prevention of Torture Bill, 2010 lapsed, and the Law Commission in its 273rd Report (2017) recommended enacting an anti-torture law as a step towards ratification. Compensation, the remedy developed in *Nilabati Behera* and *D.K. Basu*, is valuable but does not substitute for a criminal sanction and a deterrent.

Compliance - Reports of the suo motu proceedings on CCTV show the Court expressing displeasure at the failure of the Centre and several States to comply, and later recognising progress while noting funding obstacles (*Bar & Bench*). The outcome of those proceedings should be checked for the Court's final directions.

11. Comparative and International Perspectives

Comparison is useful for the structure of safeguards, not for transplanting rules. Systems differ on when charge occurs and who supervises detention, so the figures below describe different stages and should be read with that in mind.

India - Judicial scrutiny must come within 24 hours (Article 22(2); section 58). After remand, police custody of up to 15 days in aggregate may be authorised within the first 40 or 60 days. A detainee may meet a lawyer during interrogation but not throughout (section 38). Recording rests on the Supreme Court's directions in *Paramvir Singh Saini*, with section 180(3) merely enabling it. Oversight comes from a designated officer under section 37 and from the magistrate.

England and Wales - Under the Police and Criminal Evidence Act 1984, detention without charge is limited to 24 hours, extendable to 36 hours by a superintendent and up to 96 hours

by magistrates (sections 41 to 44). There is no equivalent of post-remand police custody, and further questioning after charge is tightly limited. A detainee has a right to free legal advice (section 58) and a solicitor may attend the interview. Statutory codes require recording of interviews, and a custody officer independent of the investigation controls the custody record (section 36).

United States - A prompt judicial determination of probable cause is required after a warrantless arrest, and a determination within 48 hours is presumptively reasonable (*Gerstein v Pugh*, 420 US 103 (1975); *County of Riverside v McLaughlin*, 500 US 44 (1991)). A suspect has the right to counsel at custodial interrogation (*Miranda v Arizona*, 384 US 436 (1966)). Recording practice varies by State, and oversight is judicial.

European Convention on Human Rights - Article 5(3) requires prompt production before a judge, and a detention of four days and six hours was held too long in *Brogan v UK* (1988) 11 EHRR 117. Access to a lawyer must be available from the first police interrogation unless compelling reasons justify a restriction (*Salduz v Turkey*, 2008). Article 3 applies throughout custody and has generated case law on effective investigation and on evidence of ill-treatment.

Three observations follow. First, the Indian system allows a much longer period of police custody than the pre-charge detention limits in England, although the two systems are structured differently, and the fifteen-day figure should therefore be balanced by proportionally stronger supervision. Second, the Indian system lacks the independent custody officer who in England owns the custody record and can refuse the transfer of a detainee. Section 37 of the BNSS, with its designated officer in each police station, is a modest gesture in that direction but does not create independence from the investigating officer. Third, recording is firmly established as a safeguard elsewhere by statute, whereas in India it rests on judicial directions whose compliance is still being monitored.

Internationally, India is a party to the International Covenant on Civil and Political Rights, which prohibits torture and cruel treatment (Art 7), requires prompt production before a judge (Art 9(3)) and protects the right not to be compelled to confess guilt (Art 14(3)(g)). The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) addresses access to counsel and medical examination. These

instruments reinforce, though they do not replace, the constitutional standards already derived from Articles 20 to 22.

12. A Custody Charter: Ten Proposals

The analysis points to a set of reforms that could be adopted by legislative amendment, by rules, or by judicial directions in the exercise of the Supreme Court's jurisdiction under Articles 32 and 142. They are offered as a coherent package aimed at the four limbs.

1. Reasoned, cumulative custody orders. Every application for police custody should disclose the days already used, the outcome of earlier spells and the fresh material relied on, and the magistrate should record reasons. This serves the necessity and supervision limbs and rests on *Arnesh Kumar* and *Suda Suresh* (para 22). It can be done by judicial directions.

2. Independent medical examination. A doctor not attached to the investigating agency should examine the detainee at the start and end of every spell, and the magistrate should record the report and the detainee's own account. This serves dignity and supervision, rests on *D.K. Basu* and *Sheela Barse*, and can be done by rules or directions.

3. An independent custody officer. An officer separate from the investigating officer should own the custody record and control access to the detainee. This serves dignity, draws on section 36 of PACE and builds on section 37 of the BNSS, and requires legislation.

4. Verifiable recording. Interrogation sessions and discovery should be recorded continuously, with tamper-evident storage and a section 63 BSA certificate. An unexplained gap in the recording of a session should attract an adverse inference, and transit should be covered by movement logs and vehicle tracking. This serves dignity, rests on *Paramvir Singh Saini* and *Suda Suresh* (para 25), and can be done by rules or directions.

5. Counsel within sight. Presence of counsel within sight of the interrogation should be the default in serious cases, with a recorded consultation at every break. This serves legality and dignity, rests on Article 22(1), *Nandini Satpathy* and *Salduz*, and calls for an amendment to section 38 or judicial guidelines.

6. Individualised use of handcuffs. Handcuffs should be used only on a recorded

individual risk assessment, and the magistrate should ask on each production whether restraints were used. This serves dignity, rests on *Prem Shankar Shukla* and Article 21, and is achieved by reading down section 43(3).

7. Written grounds before remand. Grounds of arrest should be furnished in writing, in a language the arrestee understands, at least two hours before production for remand. This serves legality, rests on *Mihir Rajesh Shah* and Article 22(1), and can be codified in section 47.

8. Prompt independent investigation of custodial deaths. Every custodial death or disappearance should be investigated independently within a fixed time, with the FIR registered on receipt of information and prompt reporting to the NHRC. This serves dignity, builds on section 196(2) and the NHRC's directions, and needs legislative and administrative action.

9. Clarifying sanction. Section 218 should state that custodial violence is not an act in official duty. This serves supervision, rests on *Matajog Dobey*, and requires legislation.

10. An anti-torture law. Parliament should enact a dedicated offence of custodial torture, ratify the UN Convention against Torture and create a statutory presumption where injury occurs in custody. This serves dignity, rests on the Law Commission's 113th and 273rd Reports, and requires legislation.

The proposals vary in cost. Numbers 1, 6 and 7 cost nothing beyond training and discipline. Numbers 2 and 4 require infrastructure and sustained funding, which the proceedings in the CCTV case suggest remains a real obstacle. Numbers 3, 8, 9 and 10 require legislative will. A phased approach is possible: the judicial directions can begin immediately, and the legislative proposals can follow.

13. Conclusion

Police custody is constitutional in India because, and only to the extent that, it is hedged by safeguards. Articles 20(3), 21 and 22 together impose four demands: that custody rest on a lawful basis, that it be necessary, that a judge supervise it, and that the detainee's dignity be preserved by checks that can be verified. The BNSS keeps the framework that meets these demands. It retains the 24-hour rule, the fifteen-day cap and default bail, adds protection

for the elderly and infirm, and confirms the right to meet a lawyer and the role of audio-video recording.

But the BNSS and the recent case law also move the system towards longer and more fragmented exposure to custody. The 40/60-day window, confirmed in *Suda Suresh*, is defensible because the cap remains, and indefensible if magistrates treat each spell as a formality. The reading of section 38 is textually sound but leaves open a constitutional argument for more. Section 43(3) is saved only if read as an enabling provision subject to *Prem Shankar Shukla*. And the weakest links remain what they were in 1997 when *D.K. Basu* was decided: the absence of independent custody supervision, the reliance on recordings that are not always made, and the difficulty of holding officers to account.

The constitutional answer to the question posed at the outset is therefore qualified. Police custody under the BNSS is valid on its face. Whether it is valid in practice is decided every day, in the order of a magistrate who either asks why custody is needed or does not, in the camera that is either working or not, and in the sanction decision that either permits a prosecution or buries it. Law that protects liberty must be tested at those points, and the ten proposals above are intended to make the test measurable.

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