
AN ANALYSIS OF SECTION 187(3) BNSS: LEGAL AMBIGUITIES AND RISK OF CUSTODIAL ABUSE

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ABSTRACT

The three newly passed criminal laws have taken the spotlight position in India and have brought a huge shift in the legal landscape. The recent laws have several provisions that needs to be intricately researched. One such provision that needs a rethink is Section 187(3) of the Bharatiya Nagarik Suraksha Sanhitha (hereinafter, BNSS). It is contended that by omitting the phrase “otherwise than in police custody” in the said section, the duration of the police custody could extend potentially extending throughout the remand period which could contribute to the already existing police brutality in India. It also highlights the fact that poor legislative drafting could lead to misrepresentations which could essentially lead to consequences, one of them being police brutality in this particular case. This research paper aims to look at the relevance of Section 187(3) of BNSS. The first part of the article deals with how the new section could contribute a bane effect to society because of poor legislative drafting citing instances where such legislation created drawbacks in the society. The second part of the paper analyses the impact and consequences the new law can bring to the general public by giving importance to the aspect of police brutality and by citing numerous instances where custodial violence has been prevalent in India. Accordingly, it also examines and compares the former and latest section of the BNSS. It gives an insight about how the section could bring about a scapegoat effect, that can grow on the marginalized sections of society. The paper concludes by stating potential suggestions that can possibly lift the loopholes in the said law and eradicate custodial violence.

Keywords: Bhartiya Nagarik Suraksha Sanhitha, Police Brutality, Custodial Violence, Police Custody, Judicial Custody

INTRODUCTION

The newly advanced laws, namely, *Bhartiya Nyaya Sanhita*, *Bhartiya Nagarik Suraksha Sanhita*, and *Bhartiya Sakshya Adhinyam* implemented on July 1, 2024, aimed to replace the Indian Penal Code, 1860, Criminal Procedure Code, 1973 and the Indian Evidence Act, 1872, respectively. These major changes were brought for the criminal justice system to align with the rapidly evolving technology and forensic science. These laws were brought to life with an objective to protect the rights of the citizens and providing justice. They also contain provisions that help citizens, such as the provision to file zero FIR and e-FIR, relieving the public of the pressure to be present in a certain court or police station to provide their statement. Although they were introduced in the best interest of the citizens and to improve the efficiency of the legal system, the laws contain a wealth of gaps. Needless to say, the several addition and deletion of words in clauses have brought an immense shift in the legal field and have shaken the whole of the nation. This research paper highlights that poor legislative drafting of Section 187(3) of the BNSS could be interpreted in different ways, however, it could be misused among the police officers to use their power on the citizens, beyond what is directed by the State and the Centre. Although one could argue that the said Section was created to uplift the justice system, what is the guarantee that police brutality would nowhere be in the picture even though rules, which lack proper enforcement but have been enacted regardless? The loopholes that exist in the new laws must be addressed immediately in order to reach the executive and, essentially the parliament.

THE BANE EFFECT

One of the most prominent sections of BNSS that stands out is Section 187(3). Firstly, this clause has many loopholes and consequences. The said section has made duration of police custody and judicial custody extremely unclear. This is an example where improper drafting and implementation of laws by the legislature could bring about a detrimental effect to the citizens.

The replacement of Section 167 of the Criminal Procedure Code, 1973 is stated as:

(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall

authorise the detention of the accused person in custody under this sub-section for a total period exceeding-

(1) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more; (ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.

Clause 2 of the Section allows for an initial 15-day custody that can be extended under certain conditions. However, clause 3 allows for a longer custody period extending between 60 to 90 days without specifying whether it is judicial custody or police custody. In the original statute, there was a proviso 'otherwise than in police custody', which has been done away with. Due to this, it can be inferred that the magistrate can either give police custody or judicial custody, which could have been a drafting error. If it was a drafting error, the implication and consequences could be extremely serious.

The statutes in India are often “cryptic, verbose, and unintelligible” to the ordinary citizen, and are frequently drafted without “any clear legislative policy or principle” guiding their structure.¹ These flaws are reflected in Section 187(3) of the BNSS, where the omission of the phrase “otherwise than in police custody” – a key safeguard present in Section 176(1A) of the CrPC, results in dangerous ambiguity regarding whether judicial inquiries are mandatory in custodial death cases. Giving police discretion over the inquiry process weakens accountability mechanisms. The Vidarbha² case is critical here: the Bombay High Court held that judicial inquiry under Section 176(1A) is mandatory and cannot be substituted by a police investigation, since such substitution violates the very object of ensuring independent scrutiny in custodial death cases. Section 187(3), through its careless wordings, disregards this judicial interpretation and opens the door to internal inquiries by the same police force implicated in the abuse. The poorly drafted Section 187(3) of BNSS not only removes a crucial safeguard

¹ Renuka Sane & Madhav Goel, ‘Lost in Translation: Legislative Drafting and Judicial Discretion’ (NLUD Journal of Legal Studies)

² *Axis Bank Ltd v. Vidarbha Industries Power Ltd* (2023) 7 SCC 321

but also represents a broader legislative failure that threatens justice, transparency, and constitutional accountability in cases of state violence.

CUSTODIAL VIOLENCE AND HUMAN RIGHTS VIOLATION

Custodial violence is one of the most pervasive and disturbing manifestations of state power in India. It refers to the infliction of torture, assault, harassment, or death by police or other authorities upon individuals while in custody. Far from being isolated acts of misconduct, custodial violence is deeply embedded within the structural framework of policing, where impunity and lack of accountability enable its persistence. Section 187(3) of the BNSS, by omitting adequate safeguards against illegal arrests and overbroad police discretion, exacerbates this problem by allowing conditions in which custodial abuse can flourish unchecked.

At its core, custodial violence represents a blatant violation of human rights.³ The right to life and personal liberty, guaranteed under Article 21 of the Indian Constitution, is directly threatened when individuals subjected to the authority of the State are tortured or killed.⁴ The Supreme Court has repeatedly held that these rights do not evaporate once a person enters custody. In *DK Basu v. State of West Bengal*⁵ (1997), the Court recognized custodial torture as one of the worst forms of abuse of power, stressing that protection of detainees' human rights is integral to the functioning of a democratic society. Yet, despite judicial pronouncements, the gap between law and practice remains wide.

Custodial violence also violates internationally recognized human rights standards.⁶ India is a signatory to several conventions that mandate the protection of individuals from torture and illtreatment, including the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966). Article 5 of the UDHR unequivocally states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Similarly, Article 7 of the ICCPR prohibits torture, while Article 9 ensures

³ Hiral Vora, 'Police Brutality in India: Its Impact on Individuals and their Rights' (LawFoyer International Journal of Doctrinal Legal Research)

⁴ T. Mythri Devi, 'Custodial Violence and Human Rights of Prisoners in India' (International Journal of Research in Engineering, Science and Management)

⁵ *DK Basu v. State of West Bengal* (1996) 6 SCC 642

⁶ Prem Kumar, 'Custodial Violence in India: A Legal and Human Rights Perspective' (Indian Journal of Law and Legal Research)

protection against arbitrary arrest or detention. Although India has not yet ratified the UN Convention Against Torture (UNCAT), its obligations under customary international law remain binding. Custodial violence thus places India in clear violation of its global human rights commitments.

The consequences of custodial violence extend beyond the immediate victims. It undermines the legitimacy of the criminal justice system and erodes public trust in law enforcement. From a human rights perspective, custodial violence must be understood not just as a law-and-order issue, but as a structural injustice perpetuated by legislative and institutional failures. Ultimately, the persistence of custodial violence in India highlights a deeper contradiction: while the Constitution enshrines the inviolability of human dignity, laws like Section 187(3) BNSS inadvertently enable its violation. Addressing custodial violence is therefore not merely a question of reforming police practices, but of reaffirming India's constitutional and international commitments to human rights.

THE POTENTIAL AFTERMATH OF THE IMPLEMENTED SECTION

The provision given to law enforcement officers to take an accused in custody beyond 15 days could lead to misuse of power by them. Police brutality has been prevalent in the country even before the implementation BNSS. Police brutality has always been a matter of sensitivity. India has witnessed several cases where custodial violence has taken many forms. Data from Union Home Ministry reveal a horrid statistic: 669 deaths occurred in police custody between 2017 and 2022. Torturing, beating, harassing, mayhem and killing are acts that are done when people are taken into custody. Instances are rampant where law enforcement officers take custody of innocent citizens particularly the marginalized sections of the society. They mercilessly torture, the guiltless to the point they force them to commit crimes they have never committed. The saying "Power corrupts and absolute power corrupts absolutely." is extremely prevalent in this case.

Cases like *Rudul Shah v. State of Bihar*⁷ and *Nilabati Behera v. State of Orissa*⁸ have witnessed custodial violence wherein the fundamental rights of individuals were violated. Although proper compensation was provided, there existed an absence of proper guidelines for providing the same. It was in 1997 when D.K Basu brought about the matter of custodial violence to the

⁷ *Rudul Shah v. State of Bihar* (1983) 4 SCC 141

⁸ *Nilabati Behera v. State of Orissa* (1993) 2 SCC 746

then Chief Justice of India, stating there must be custodial jurisprudence and to develop modes for awarding compensation.

Although the new section was brought in place to speed up the trials and respond to the needs of the victims, critics are sceptical about this new stretch, i.e., police custody of 15 days can be authorised in whole or in parts at any time during the initial 40 or 60 days out of the 60- or 90-day periods of judicial custody.

Even after formulating guidelines and precedents regarding police brutality, there have been several instances where police officers have misused their power.⁹ *Nilabati Behera v. State of Orissa* is a landmark Supreme Court case that has witnessed custodial death. The case arose through the letter from Nilabati stating that her son Suman Behera held in custody for theft, died as a result of police violence and torture on him. No doubt that if violent acts of police exist against the very own people they swore to protect, even after several cases being brought to the Court and ruling against them, the same could continue even with the new section in place.

The police are of the opinion the new clause would help them conduct proper investigation and prevent injudicious interrogations. Moreover, they believe that this new extension would particularly help them in property offences and cheating cases. However, there are several critics out there who think this is a retrograde step. The earlier bar on seeking police custody once the remanding magistrate grants judicial custody is lifted. This could expose society to coerced confessions, torture and other dangers and ultimately go against the Constitution by violating the fundamental rights of the people.

This would have an even more drastic effect on the poor and marginalized section of society. Several cases were present where police officers abused and misused their powers in order to torture and force confessions from the impoverished.¹⁰ They mercilessly torture the guiltless to the point they force them to commit crimes they have never committed. For instance, a case involved a 40-year-old woman, Ambadipudi Mariyamma from the Mala caste. She was arrested for allegedly robbing and died shortly thereafter in police custody. Her son stated that she was tortured, leading to her death. The case highlighted how the lower caste, like the Dalits are

⁹ Oviya Kumar, 'The Surge of Police Brutality in India' (Supreme Amicus)

¹⁰ Srijoy Mukherjee, 'A Critical Analysis on the Police Brutality in India' (Indian Journal of Law and Legal Research)

mistreated and abused by law enforcement officers. In 2020, Bharat witnessed a gruesome case, wherein victims of police brutality, Jayaraj and Bennicks underwent 12 hours of spine-chilling beatings to the point where they had to change their waistcloths at least seven times due to blood oozing out of their rectums. This happened just because they had closed their shop 15 minutes past curfew time. This case also projected how casteism is practised by the police officers, wherein the Sub-inspector Raghuganesh belonged to a caste named Konars and was one of the prime individuals in instigating outbreaks of violence against Nadars, another caste, especially during the parliamentary and local body elections. The claim that Jayaraj and Bennicks are members of the other community, the Nadars, raises questions about whether caste antagonism is present in this case. Another recent case that took place on June 29th, 2025 was that of the custodial death of a temple security guard named Ajith Kumar, following his unlawful detention over mere suspicion of jewel theft. The post-mortem of Ajith Kumar revealed a grim discovery. He endured severe torture, which led to multiple brain haemorrhages. According to the autopsy report, Ajith suffered as many as 44 external injuries and had cigarette burn marks on his body. The Madras High Court called the injuries “worse than murder” which implies the need for stricter oversight. These are humans and not toys. They are not to be tortured in such a manner.

Similarly, women in custody face a gendered dimension of violence that extends beyond torture to include sexual harassment, assault, and custodial rape. Such acts violate not just Article 21’s guarantee of life and liberty, but also the equality principle under Article 15(1), which prohibits discrimination on grounds of sex. The jurisprudence in *Sheela Barse v. State of Maharashtra*¹¹ further highlights the pressing need for gender-sensitive custodial safeguards. With the ambiguity under Section 187(3), prolonged police control over detainees creates fertile ground for gendered violations.

As outlined in *DK Basu v. State of West Bengal*, Article 21 ensures right to life and liberty and hence mandates arrest procedures. If India is a democratic country, why not enforce such policies that can lead to police convictions?

PATH TO A BETTER FUTURE

The two issues at hand, i.e., imprecise legislative drafting and custodial violence, have been

¹¹ *Sheela Barse v. State of Maharashtra*, AIR ONLINE 1987 SC 31

rampant in India. It is highly unlikely that this issue of poor legislative drafting leading to police brutality would ever be eradicated in the near future. The only path for this painful brutality to end is to implement clear and clarified laws regarding the powers, rights and duties of law enforcement officers. The following are some of the measures that could potentially eradicate the said issues:

- **Mandatory Stakeholder Consultations:** All criminal law reforms must involve wide public consultation, including with civil society, bar associations, law universities and human rights organizations. This helps identify loopholes, anticipate misuse, and build democratic legitimacy.
- **Use of Plain Language Drafting:** Laws should be drafted in plain, concise, and accessible language. The current trend of overly legalistic and ambiguous wording increases scope for misinterpretation and misuse.
- **Introduce Legislative Impact Assessments:** Before tabling a bill, the government should publish a Legislative Impact Assessment Report, evaluating legal clarity, social impact (especially on marginalized groups), implementation feasibility, cost and administrative burden etc. The EU and Australia require such assessments. In India, NITI Aayog can be tasked with preparing these reports in collaboration with law universities.
- **Create a Dedicated Legislative Drafting Wing within the Ministry of Law and Justice:** A permanent Legislative Drafting Cell staffed with constitutional experts, retired judges, legal academicians, and language editors should be made mandatory within the department of Legal Affairs. This could prevent ad hoc and potentially rushed drafting.
- **Mandatory Videography and Legal Access:** Videography of all police interrogations and ensuring the presence of legal aid from the moment of arrest could act as deterrents against torture.
- **Police Training and Accountability:** Integrate human rights and custodial ethics into police training programs. Police officers must be made aware that abuse under custody not only violates the Constitution but is punishable under law.
- **Fast-Track Courts for Custodial Violence Cases:** Set up dedicated courts to handle cases

of custodial torture and deaths to ensure speedy justice and deter repetition of abuse.

- **Judicial Oversight and Magistrate Responsibility:** Guidelines should be developed for magistrates to scrutinize police requests for extended custody rigorously. Mandatory documentation of reasons for extending custody beyond 15 days should be recorded to ensure transparency.
- **Parliamentary Accountability:** The Parliamentary Standing Committee on Home Affairs should hold periodic reviews on the implementation of custodial safeguards, and civil society groups should be empowered to participate in policy recommendations.

Section 187(3) of BNSS though implemented with the consideration to overcome the difficulties faced by the courts before in terms of efficiency, has brought about major confusion in not only enforcing it but also even understanding it. This research paper not only highlights how the said section could bring out about the very act of custodial violence but also calls attention to how a law, if not stated with clarity and lucidity can cause the society to comprehend the regulations incorrectly causing the concentration of powers in just one segment, leading to chaos and disruption of harmony in the society. True reform lies not just in new laws, but in how clearly they are drafted, how fairly they are enforced, and how courageously the system protects its weakest. The path to a safer Bharat lies in legislation that upholds dignity, not just procedure.

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