
PROTECTORS AND OPPRESSORS: DOES POLICE BRUTALITY STEM FROM LEGAL INSUFFICIENCY?

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Introduction

The year 2024 marked the enactment & implementation of the new Criminal Procedure Code (Bharatiya Nagarik Suraksha Sanhita)¹ with the grand claims and ambitious promises of replacing a colonial-era legal framework that had its roots in Indian justice system for over a century. However, towards the end of the same year, in District Jail of Guna in Madhya Pradesh, the son of one of the petitioners, Deva Pardi was murdered². Prior to being subjected to sexual abuse, physical torture for hours and eventually death, the deceased was taken into the escort van to the Government Civil Hospital where he was assaulted, stripped naked and threatened³ with regard to the petition filed by his father. Though the Gwalior bench of MP High Court admitted to the discrepancies in the investigation process⁴ and an FIR has been registered against the accused inspectors and constables⁵, the distrust in the capability of BNSS invites rightful critic. According to the yet-to-be-updated figures from the National Human Rights Commission (NHRC) which fails to capture the current reality of custodial deaths in India, the Ministry of Home Affairs stated that there have been around 669⁶ registered custodial deaths in the last five years till 2022. While the actual figures might be higher than what is being recorded and showcased especially due to the intersectional and socio-economic disparities⁷ in the country, we shall examine the foundation of the Indian legal system through the lens of its

¹ Ministry of Law and Justice, 'The Bharatiya Nagarik Suraksha Sanhita' (2023)

www.livelaw.in/pdf_upload/bharatiya-nagarik-suraksha-sanhita-513878.pdf accessed 18 March 2025.

² Anukriti Mishra, 'Madhya Pradesh HC Directs Shifting Of Eye-Witness To Gwalior Central Jail After Allegations Of Harassment By Police' (*Live Law*, 23 December 2024)

<<https://www.livelaw.in/highcourt/madhya-pradesh-high-court/madhya-pradesh-high-court-transfer-of-custodial-death-witness-policebrutality-case-279187?fromIpLogin=99893.82198918406>> accessed 18 March 2025.

³ *Hansura Bai And Others v State Of Madhya Pradesh And Others*, WP No. 33416 of 2024 [2].

⁴ Ibid [1].

⁵ Ibid [3].

⁶ Tribune News Service, '669 custodial deaths in past five years: MHA' (*The Tribune*, 12 February 2023)

<<https://www.tribuneindia.com/news/nation/669-custodial-deaths-in-past-five-years-mha-478876>> accessed 18 March 2025.

⁷ CJP Team, 'Dalit boy's death in police custody and arson attack on Dalit homes: A dual crisis of justice in BJP-ruled states' (*Citizens for Justice and Peace*, 19 September 2024) <<https://cjp.org.in/dalit-boys-death-in-police-custody-and-arson-attack-on-dalit-homes-a-dual-crisis-of-justice-in-bjp-ruled-states/>> accessed 18 March 2025.

procedural law, BNSS. The focus will be on the analysis of Chapter XII which gives some questionable powers to the Police in the name of 'Preventive Action' along with Section 187 with its concerning 'forty days or sixty days'⁸ bracket that brazenly attacks the rights of the accused(s).

Permissibility of Vague Language and Question of Discretion

The law should always be firm and precise in its definition as it holds the power to disarm and strip an individual off of their freedom entirely. This happens when the law does not protect, but gets weaponised by the state mechanisms like Police. Instances of police brutality are not new but also not analysed enough from the perspective of the vehicle that more often than not, supports this abuse: the Criminal code.

28 years ago, in the case of *DK Basu v. State of West Bengal*, Supreme court deliberated on keeping a check on police power but only focused on their actions, accountability and training methodology⁹. The emphasis throughout the judgment was on the behaviour of the police, violation of human rights and presence of the counsel for the arrestee but the court did not question the law itself that enables the police to abuse. The court laid down eleven requirements to be followed by the police in case of arrests and detention as the result and reason of preventive detention. Interestingly, one of the guidelines instructed the police to make sure that the arrestee(s) is examined by approved doctors in every two days during the time of their detention¹⁰ which is what section 53 of BNSS talks about.

However, another critic of this provision is based on how effective the statute actually is. Firstly, an arrested person(s) is rarely ever aware about even their basic rights when arrested such as right to silence, have an advocate, etc. Secondly, even if they might be, the impending fear of more violence, exploitation and torture at the hands of the police will discourage them from making a complaint before the magistrate¹¹. Therefore, if some of these sections exist to carry out the objective of protecting the arrested person(s)/suspects from custodial abuse, the statute should specify that the suspect when brought to the trial can express their grievances before the magistrate only in the absence of the police officer. This type of discussion rotates back to the lack of attention by the courts while doing the most surface-level interpretation of

⁸ Bharatiya Nagarik Suraksha Sanhita 2023, s 187(2).

⁹ *DK Basu v. State of West Bengal* (1997) 1 SCC 416 [29].

¹⁰ *Ibid* [35].

¹¹ *Sheela Barse v. State of Maharashtra* (1983) 2 SCC 96 [4].

these statutes that continue to exploit and abuse the suspects in detention centres and/or lockups. A hollow statute such as this can easily be considered close to legal fiction where it acts more like a tool for systemic oppression rather than carrying out justice. “Imagine the helpless condition of a prisoner who is lodged in a jail who does not know to whom he can turn for help in order to vindicate his innocence or defend his constitutional or legal rights or to protect himself against torture and ill treatment or oppression and harassment at the hands of his custodians.”¹²

Police Custody: Preventive Action or Over-Criminalisation

The very core of police custody is built upon the principle of preventive action. The line of reasoning behind the same is that it is fully justified if an ordinary citizen is arrested as the ‘suspect’ by the police, even better if kept in custody in order to carry out the objective of justice. Chapter XII of BNSS aids this questionable function as Section 170 (1) empowers the police to arrest without any warrant or judicial orders if they think of the arrest extremely necessary, in order to prevent the crime to be committed. Even though the aim of this section is legitimate, the language of the same indicating discretion of the police opens the potential pathway to abuse and harassment.

However, what actually strengthens this discretion of police is the addition of an entirely new section which was absent in CrPC—making it compulsory (‘bound to conform’) for ‘all’¹³ the ordinary citizens to obey and cooperate with police. To make things even worse, section 172 (2) gives unrestricted powers¹⁴ to the police as it calls for detention or removal of ‘any’ person who disobeys the instruction given by the police. A bare reading of this section gives out a clear message that resistance and refusal will be manhandled into silence. Even though the newly adopted criminal code promises the so-called decolonisation, the language and subsequent application seems to be inching towards deliberate over-criminalisation. One another problematic element about this section is that it does not protect but treats every person as a potential suspect which is why the detention/arrest seems to be totally justified. Although the statute acknowledges the proviso for release within twenty-four hours in cases of innocence, at its core, it disregards a citizen’s dignity. By allowing detention based on only suspicion rather

¹² Ibid [1].

¹³ Bharatiya Nagarik Suraksha Sanhita 2023, s 172(1).

¹⁴ Press Trust of India, ‘Police can detain people who resist, disregard law under BNSS provisions’ (*Business Standard*, 3 July 2024) <https://www.business-standard.com/india-news/police-can-detain-people-who-resist-disregard-law-under-bnss-provisions-124070300469_1.html> accessed 20 March 2025.

than concrete evidence, chapter XII especially with section 172 (2) compromises with fairness and justice.

Concluding Analysis: Legal Loophole, Silent & Slick Expansion of Police Powers

So, what actually goes on inside the legal mechanism after the arrest has been done? This essay's analysis has more to do with the structure of the statute than the actual procedural steps and requirement(s). According to Section 167 of CrPC, there has been a limit of 15 days¹⁵ on police custody after which the accused is to be granted bail or put into judicial custody¹⁶. The aim of this provision was to make sure the individual liberty of the accused(s) was preserved and not abused in police detention.¹⁷ This is still the same in Section of 187 of BNSS but one of the concerning alterations in the wording of the statute is what raises alarms. '[..] for a term not exceeding fifteen in the whole, *or in parts, at any time.*' Earlier, the initial 15 days of police custody had to be availed only within those first 15 days. Now, it will be justified to keep an accused in detention beyond 15 days as long as it is scattered throughout 40 or 60 days¹⁸. If an innocent accused has been diligently cooperating with the investigation process initially but feels frustrated with the acrimonious chain of process, the police can still 'legally' utilize the remaining days of police custody for the next two months which will mentally agonize the accused even without any trial.

As recently in August 2023, Supreme court in the case of *Senthil Balaji v. State (2023)* took the opposite stance to the decision in *CBI v. Kulkarni (1992)* in the interpretation of this statute 162(2) CrPC¹⁹ which was roughly a year before the implementation of BNSS. The court held that the police custody will not be restricted to only the first 15 days but throughout the entirety of the investigation process.²⁰ The rationale of only the initial 15 days of police custody decided in *CBI v. Kulkarni (1992)* was rejected by the court in this case.²¹ Prioritizing the rigorous investigation process over individual liberty, the court seems to be taking a jab at the opposing interpretations²² by calling for a more literal ('same manner') interpretation by understanding

¹⁵ *Central Bureau of Investigation v. Anupam J. Kulkarni* (1992) 3 SCC 141 [4].

¹⁶ *Ibid* [13].

¹⁷ CJP Team, 'Police custody under CrPC & BNSS: A paradigm shift in balancing liberty and investigation' (*Citizens for Justice and Peace*, 7 January 2025) <<https://cjp.org.in/police-custody-under-crpc-bnss-a-paradigmshift-in-balancing-liberty-and-investigation/>> accessed 20 March 2025.

¹⁸ *Bharatiya Nagarik Suraksha Sanhita* 2023, s 187(2).

¹⁹ Equivalent to *Bharatiya Nagarik Suraksha Sanhita* 2023, s 187(2).

²⁰ *V. Senthil Balaji v. The State* (2024) 3 SCC 51 [55].

²¹ *Ibid* [85].

²² *Ibid* [61].

and applying them in the way the language of the provision has intended to²³. Interestingly, the court remarks that the objective of this provision is not to hamper the individual liberty of the accused as the given time period would only aid the accused in the process of faster trial and subsequent release.²⁴

The alarming point of contention remains, the weaponisation of the criminal code to escalate abuse, torture and exploitation. Limited and accountable police custody should not be considered a too much of an expectation to have. While people may argue that this new decolonized version of the CrPC will help in enhancing the investigation process and hence, facilitate better delivery of justice, the above detailed analysis of some of these new additions to BNSS tell a different, slightly dangerous story.

²³ Ibid [70].

²⁴ Ibid [71].