

COMPARATIVE ANALYSIS OF REMAND PROVISIONS UNDER THE CRPC AND THE BNSS: LEGAL IMPLICATIONS AND CHALLENGES

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Abstract

This research paper analyzes and compares the aspects of remand under CrPC of 1973 and BNSS of 2023 focusing on their relevance and impact in the purview of Indian criminal justice system. It also attempts to cover the gaps in consideration of fundamental issue of safeguarding of Article 21 and 22 of Indian constitution. It focuses on the role of magistrates along with constitutional safeguards that are put in place to guarantee the rights of individuals against the state. The BNSS provisions are discussed considering the changes made by BNSS with regard to police custody, judicial custody and default bail norms to highlight the interpretation of remand provisions in CrPC. While discussing the provisions of BNSS, the focus is on the changes made with regard to the duration of police custody as well as the use and misuse of such custody to assess the impact on accused's rights. The overriding benefits and difficulties posed by the reforms in BNSS also form the crux of this discussion. Landmark judicial precedents are also analyzed to ascertain what is considered 'judicial activism' with regard to the alteration of remand laws. It also analyzes the implications of these reforms from a legal and policy perspective, including the operational effectiveness of law enforcement, protection of human rights, and transnational legal benchmarks. Other discussed issues include the potential for abuse, control by the judiciary, and the safeguards investigation/liberty. Finally, the study formulates suggestions directed towards the proper enforcement of laws on remand sentences, especially judicial control, oversight, legislative gaps, and the need to restructure the balance of justice system in India.

Keywords: Criminal law, Constitution, Remand, Justice system

1. Introduction

In criminal law, remand plays a critical role, balancing the investigation of crimes with the individual's freedom. In India, this balance is captured in Article 21 of the Constitution which

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states, “No person shall be deprived of his life or personal liberty except according to procedure established by law.”¹ Through Section 187, The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) shifts this balance directly impacting Article 21 by increasing the duration of police custody and placing harsh restrictions on detention.² This change in legislation effective in 2023 requires scrutiny, not as a procedural change but as a drastic redefinition of the contours of freedom, vis-à-vis India’s worrying custodial landscape.

Still BNSS exacerbates this tension by changing the parameters of police custody. Under Section 167 of the Code of Criminal Procedure of 1973 (CrPC), police custody was capped at a maximum of 15 days, to be strictly within the first remand period of 15 days.³ However, Section 187(2) of the Bharat Nagarik Suraksha Sanhita, 2023 (BNSS) still keeps a maximum of 15 days of police custody, but now permits these 15 days to be taken at any time during the extended period of remand 40 days or 60 days, if the total remand period is 60 or 90 days respectively.⁴ This shift, which is claimed to facilitate investigation, raises serious constitutional issues concerning custodial constitutional rights as it enhances the possibility of prolonged police custodial abuse over an extended period. The concern is particularly grave given India’s troubling record of custodial violence—between April 1, 2017, and March 31, 2022, a total of 669 custodial deaths were recorded, with 175 such deaths occurring in 2021–22 alone. In response, the National Human Rights Commission (NHRC) recommended monetary relief in 201 cases, amounting to ₹5,80,74,998, highlighting systemic failures in ensuring detainee safety.⁵ Furthermore, 4,484 custodial deaths were recorded over the fiscal years 2020-2022, which includes deaths both in police and judicial custody.⁶

This shift also disrupts an emerging humane jurisprudence on house arrest as a form of custody under the law of remand. In *Gautam Navlakha v. National Investigation Agency*, the Supreme Court recognized house arrest as remand under Section 167 CrPC, stating, “The concept of house

¹ Article 21 of the Constitution of India.

² Bharatiya Nagarik Suraksha Sanhita, 2023, § 187 (India)

³ Code Crim. Proc., 1973, § 167 (India).

⁴ Bharatiya Nagarik Suraksha Sanhita, 2023, § 187(2) (India).

⁵ Ministry of Home Affairs: 669 Cases of Deaths in Police Custody Registered in Last Five Years, Rising Kashmir (Feb. 9, 2023), <http://risingkashmir.com/669-cases-of-deaths-in-police-custody-registered-in-lastfive-years-mha>; Latest (Feb. 9, 2023)

⁶ Ministry of Home Affairs, *Statement on Custodial Deaths in Lok Sabha*, at 2 (July 26, 2022), <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2022-pdfs/LS26072022/1459.pdf>.

arrest has its roots in the criminal justice system and is a humane alternative to institutional custody.”⁷ The Calcutta High Court reaffirmed this, but the BNSS’s proviso to Section 187(5)—“Provided further that no person shall be detained otherwise than in a police station under police custody or in prison under judicial custody or a place declared as prison by the Central Government or the State Government”—halts this progress, mandating institutional detention.⁸

BNSS's reforms challenge India’s obligations under the International Covenant on Civil and Political Rights (ICCPR) Article 9—“No one shall be subjected to arbitrary arrest or detention”⁹. CrPC’s brevity and judicial oversight provided more arbitrary detention protection. India is diverging from global trends with BNSS extended police custody and institutional focus, counterparted by the UK’s Police and Criminal Evidence Act, 1984 (PACE) which permits conditional release after initial detention, or the US’s Miranda protections guaranteeing counsel access.¹⁰

The UN Human Rights Committee has reported India’s pre-trial detention as excessive and unjust, a problem BNSS is likely to worsen, with 4,484 custodial deaths reported from 2020-2022¹¹. The BNSS’s rejection of *Gautam Navlakha*’s humane alternative contrasts with practices in jurisdictions like Canada, where house arrest is routine for non-violent offenders¹², potentially isolating India from progressive norms and inviting international scrutiny.

2. Legal Framework of Remand in India

Remand authorizes temporary detention to facilitate investigation or trial preparation, its legitimacy tethered to constitutional safeguards. Article 21, read with Article 22, mandates due process and judicial oversight within 24 hours¹³. The Supreme Court in *Maneka Gandhi v. Union of India* expanded this, holding, “The procedure must be right, just, and fair... it must not be

⁷ *Gautam Navlakha v. Nat'l Investigation Agency*, (2021) 5 SCC 1, 28 (India)

⁸ *CBI v. Firhad Hakim*, (2021) SCC OnLine Cal 1642 (India).

⁹ *(International Covenant on Civil and Political Rights, art. 9, Dec. 16, 1966, 999 U.N.T.S. 171)*

¹⁰ *Miranda v. Arizona*, 384 U.S. 436 (1966)

¹¹ Ministry of Home Affairs, *Statement on Custodial Deaths in Lok Sabha*, at 2 (July 26, 2022), <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2022-pdfs/LS26072022/1459.pdf>.

¹² *(R v. Proulx, [2000] 1 SCR 61, Supreme Court of Canada)*

¹³ The Constitution of India, Art. 22(2)

arbitrary, fanciful, or oppressive”¹⁴. Magistrates ensure proportionality, a role critical amid India’s custodial crisis.

The CrPC, enacted in 1973, codified post-independence rights, evolving from the colonial Code of 1898. The Law Commission’s 41st Report noted, “Detention powers must be circumscribed to prevent abuse”¹⁵. Section 167 CrPC reflects this restraint, limiting police custody to 15 days and embedding default bail. The BNSS inherits this legacy but pivots toward modern exigencies—terrorism, cybercrime—expanding police powers under Section 187. Both retain magisterial oversight, but the BNSS’s elongation tests *Maneka Gandhi*’s fairness doctrine.

Section 167 CrPC governs remand, distinguishing police and judicial custody. It states, “Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57... the officer in charge of the police station shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary”¹⁶. The proviso specifies that the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days.

Police custody (up to 15 days) facilitates interrogation, requiring magisterial approval within 24 hours. Judicial custody extends detention under court supervision. The Supreme Court in *CBI v. Anupam J. Kulkarni* held, “The 15-day period is absolute... no further police custody is permissible”¹⁷, reflecting restraint rooted in colonial abuses. Notably, this 15-day police custody was possible only in the first fifteen days of remand, after which only judicial custody could be availed.

However, this 15-day custody restriction was overruled by a Supreme Court judgment in *V. Senthil Balaji v. The State Represented by Deputy Director and Ors.*¹⁸, decided on August 7, 2023. The court ruled that the 15-day police custody could span the entire investigation period (60 or 90 days), rather than being confined to the first 15 days post-arrest. This ruling paved the way for the enactment of Section 187 of the BNSS, which explicitly allows the 15 days of police custody to be taken at any point during an extended remand period of 40 or 60 days. This development alters

¹⁴ *Maneka Gandhi v. Union of India*, 1978 1 SCC 248, ¶ 7

¹⁵ *Law Commission of India*, 41st Report, at 123

¹⁶ The Code of Criminal Procedure, 1973, § 167(1)

¹⁷ *CBI v. Anupam J. Kulkarni*, 1992 3 SCC 141, ¶ 12

¹⁸ Criminal Appeal Nos. 2284-2285 of 2023

the judicial landscape significantly, as it places the accused at greater risk of prolonged police coercion over extended periods.

3. Remand Frameworks under the CrPC, 1973, and the BNSS, 2023 (Comparative Chart)

Feature	Section 167 of the CrPC	Section 187 of the BNSS
Initial Procedure	(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.	(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate
Custody Authorization	(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the	(2) The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorize, from time to time, the detention of the accused

	whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that (a) the Magistrate may authorize the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding—	in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.
	(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years; (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	(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— (i) 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;

	shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;	(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.
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The transition from Section 167 of the Code of Criminal Procedure, 1973 (CrPC), to Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), marks a significant evolution in India's remand framework, reflecting shifts in legislative intent, procedural mechanics, and constitutional implications. Both provisions govern the detention of an accused during investigation, balancing investigative needs with the accused's rights under Article 21 of the Constitution, which mandates, "No person shall be deprived of his life or personal liberty except according to procedure established by law." However, their differences—particularly in duration, flexibility, and oversight—warrant a granular comparative analysis, especially in light of India's custodial violence record e.g., 4,484 custodial deaths from FY 2020-21 to FY 2021-22, Ministry of Home Affairs, Statement on Custodial Deaths in Lok Sabha, July 26, 2022¹⁹ and judicial precedents like *Gautam Navlakha v. NIA*. Below, the statutory texts are dissected clause-by-clause to elucidate their legal and practical ramifications.

4. Comparative Analysis of Remand Provisions under CrPC and BNSS

Section 167 of the Code of Criminal Procedure, 1973 (CrPC), and Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), govern the detention of an accused when investigations

¹⁹Ministry of Home Affairs, *Statement on Custodial Deaths in Lok Sabha*, at 2 (July 26, 2022), <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2022-pdfs/LS26072022/1459.pdf>.

exceed 24 hours, striking a balance between the state's need to investigate crimes and the accused's rights under Articles 21 and 22 of the Constitution of India. While rooted in a shared framework, BNSS introduces significant shifts—some subtle, others transformative—reflecting a modernized yet more controlled approach to remand. This comprehensive analysis dissects each clause, highlighting differences in initial procedure, custody mechanics, oversight, default bail, and additional safeguards, revealing a tension between CrPC's liberty-centric brevity and BNSS's investigative flexibility.

4.1 Initial Procedure: Continuity with Minor Adjustments

4.1.1. Section 167(1) CrPC:

“Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate”.

4.1.2. Section 187(1) BNSS:

“Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate”.

4.1.3 Comparison:

Both provisions mandate production before a Magistrate within 24 hours (Section 57 CrPC vs. Section 58 BNSS), aligning with Article 22(2) of the Constitution³. The requirement of “grounds

for believing that the accusation or information is well-founded” ensures detention isn’t arbitrary, and diary transmission—“prescribed” (CrPC) vs. “specified” (BNSS)—maintains transparency. The shift from “Judicial Magistrate” to simply “Magistrate” is stylistic, not substantive, as BNSS implies judicial oversight persists. This shared foundation sets the stage, but differences emerge in custody management.

4.2 Custody Duration and Structure: Fixed Limits vs. Flexible Phases

4.2.1 Section 167(2) CrPC: “The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction...”

4.2.3 Section 187(2) BNSS: “The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3).”

4.2.3 Comparison:

- **Police Custody:** CrPC caps police custody at 15 days “in the whole,” a continuous block ending within the first 15 days post-arrest²⁰, after which judicial custody begins. BNSS keeps the 15-day total but allows it “in parts” across an initial 40-day (lesser offenses) or 60-day (serious offenses) window within the 60/90-day total. This flexibility—e.g., 5 days now, 10 days later—extends police control, contrasting CrPC’s rigid cutoff.

4.2.4 CrPC vs. BNSS: Detention Based on Investigative Need vs. Bail Status

²⁰ CBI v. Anupam J. Kulkarni, 1992 3 SCC 141, ¶ 12

Under Section 167(2) of the Code of Criminal Procedure (CrPC), the core reason for detaining an accused person is to facilitate the investigation of the case. The law provides that if the investigation cannot be completed within the first 24 hours of arrest, the police can request a magistrate to extend the detention, provided it is necessary for the investigation. The detention must be linked directly to the investigative process—for example, ensuring the accused does not tamper with evidence or obstruct the investigation.

In this case, within the CrPC, the provisions regarding the accused's bail status do not influence the further detention considerations. The emphasis, here, is still on whether the detention is required to further the investigation. A magistrate may deny bail on the basis that the accused poses a substantial risk of interfering with the investigation. However, while the investigation may be indispensable for furthering the investigation, it is not necessary to control the accused's bail history.

4.2.5 The Introduction of Bail Status in BNSS

In the Bharatiya Nagarik Suraksha Sanhita (BNSS) Section 187(2), while retaining all other elements, a new condition is inserted whether the accused has been released on bail or whether his bail has been revoked. So, now the process of detention has been introduced with a new criterion of bail status check. In the case of the accused being denied bail, released on bail, or previously granted bail which has now been revoked, the magistrate under those circumstances will now have to give considerable thought to those criteria for further detention approval which constitutes a fundamental change to detention architecture.

This is what shifts the detention paradigm that previously was based purely on the discretion of the police builds to an extensive range of factors pertaining to basic principles in law. Within the section, it cannot be ruled out that it introduces the possibility for extended detention not just based on the investigation's progress but also based on the accused's bail status. Should the accused have their bail revoked or denied, they may be held in detention even when another investigative action is not immediately necessary. This consideration shifts the balance of assumed detention rather than the presumption of release.

4.2.6 Key Differences in Detention Criteria

Under CrPC, the basis for authorized detention is primarily the necessity to conduct an investigation. All attention is directed to the progress of the investigation: whether more time is needed to obtain evidence or to interrogate the accused. Bail is set independently, but the magistrate's decision to renew the period of detention still heavily relies on the need vis-a-vis the investigation, not the need grounded on the accused's previous release.

BNSS's Additional Bail Condition: In a contrasting fashion, BNSS widens the scope of the provision to incorporate whether the accused is on bail or has had their bail revoked. This allows a forfeited power of investigation to, in principle, grant detention for purposes not objectively bounded by investigation. It is also evident that if the accused is denied bail or their bail is revoked, detention under new BNSS rules preserves the ability to continue even in the absence of new investigation justification.

4.2.7 Implications: Shift toward Detention

The addition of this bail condition in BNSS marks the change from liberty-based underlying principles towards a more restrictive approach. While the CrPC puts emphasis on the investigation in the process, BNSS leans more into the detention aspect, more specifically, to people whose bail has been suspended or revoked, regardless of whether the investigation justifies further detention.

This places the sharp end of the tilt towards detention in the balance of unfavorable bail status—those who are not likely to regain bail. The result is a greater likelihood that accused individuals will remain in custody for longer periods, particularly if their bail has been denied or revoked, even if the investigation could be completed without their continued detention. This may lead to an increase in custodial detention compared to the CrPC framework, where the emphasis is more on the completion of the investigation.

4.2.8 Total Detention and Default Bail: Same Limits, Shifted Timelines

4.2.8.1 Section 167(2)(a) CrPC: "...no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding— (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years; (ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period... the accused person shall be released on bail..."

4.2.8.2. Section 187(3) BNSS: “...no Magistrate shall authorize the detention of the accused person in custody under this sub-section for a total period exceeding— (i) 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... the accused person shall be released on bail...”

4.2.8.3. Comparison:

The distinction between **Section 167(2)(a) CrPC** and **Section 187(3) BNSS** lies in the phrasing concerning the **90-day detention** limit for offenses punishable by death, life imprisonment, or a term of imprisonment.

CrPC uses the term "**not less than ten years**," which applies clearly and unambiguously to offenses punishable by **10 years or more**. This provision has been well-established without any ambiguity.

However, **BNSS** uses the phrase "**ten years or more**," which could have led to some ambiguity, as it was unclear whether offenses with exactly **10 years** would fall under the 90-day detention limit. This ambiguity in BNSS was clarified by the **Supreme Court** in the **Hyder Ali v. State of Karnataka**²¹ case. The Court confirmed that **BNSS's** phrase "**ten years or more**" should be interpreted in the same manner as **CrPC's** use of "**not less than ten years**." In other words, the **90-day detention** applies to offenses punishable by **10 years or more**, and not just those with a sentence exceeding 10 years.

Thus, the **Hyder Ali** ruling resolved any confusion surrounding **BNSS** and affirmed that its phrasing aligns with the **CrPC**, ensuring that offenses punishable with exactly **10 years** and those punishable with longer sentences are both covered under the same **90-day detention** limit.

5. Production Requirements: Tradition vs. Technology

5.1 Section 167(2)(b) CrPC: “No Magistrate shall authorize detention in any custody under this section unless the accused is produced before him”

²¹ SLP (Crl) No – 018063 -2024

5.2 Section 187(4) BNSS: “No Magistrate shall authorize detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the audio-video electronic means”

5.3 Comparison:

- CrPC demands physical production for all custody authorizations, ensuring direct oversight. BNSS requires in-person production for police custody (initially and each extension) but allows judicial custody extensions via audio-video means, embracing technology to ease logistics while tightening police custody scrutiny.

5.4 Magistrate Empowerment and Detention Locations

5.4.1 Section 167(2) (c) CrPC: “No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police”

5.4.2 Section 187(5) BNSS: “No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police... Provided that in case of a woman under eighteen years of age, the detention shall be authorized to be in the custody of a remand home or recognized social institution: Provided further that no person shall be detained otherwise than in police station under police custody or in prison under judicial custody or a place declared as prison...”

5.2.3 Comparison:

- **Empowerment:** Both restrict second-class Magistrates from authorizing police custody without High Court empowerment, unchanged.
- **Women Under 18:** BNSS uniquely mandates remand homes or social institutions for women under 18, a protective measure which was not available in the CrPC.
- **Locations:** CrPC’s “otherwise than in custody of the police” (*Code of Criminal Procedure, 1973, 167(2)(a)*) implies flexibility post-15 days (e.g., house arrest), while BNSS explicitly limits detention to police stations, prisons, or designated facilities, reducing alternatives.

6. Special Provisions and Restrictions

6.1 CrPC: No equivalent to BNSS's provisos or explanations

6.1.1 Section 187(5) BNSS:

- **First Proviso:** "Provided that in case of a woman under eighteen years of age, the detention shall be authorized to be in the custody of a remand home or recognized social institution"
- **Second Proviso:** "Provided further that no person shall be detained otherwise than in police station under police custody or in prison under judicial custody or a place declared as prison..."
- **Explanation I:** "Notwithstanding the expiry of the period specified in sub-section (3), the accused shall be detained in custody so long as he does not furnish bail"
- **Explanation II:** "If any question arises whether an accused person was produced... production... may be proved by his signature... or by the order certified by the Magistrate..."

6.1.2 Comparison:

- **Women Under 18:** BNSS uniquely mandates remand homes or social institutions for women under 18, a protective measure absent in CrPC.
- **Detention Locations:** CrPC's "otherwise than in custody of the police" (*Code of Criminal Procedure, 1973, 167(2)(a)*) implies flexibility (e.g., house arrest), while BNSS restricts detention to police stations, prisons, or designated facilities, limiting alternatives.
- **Explanations:** BNSS clarifies post-expiry detention (Explanation I) and production proof (Explanation II), adding precision CrPC leaves to interpretation.

6.2 Executive Magistrate's Role: Consistent but Wording Varies

6.2.1 Section 167(2A) CrPC: “...where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred... for a term not exceeding seven days in the aggregate...”

6.2.2 Section 187(6) BNSS: “...where a Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Magistrate have been conferred... for a term not exceeding seven days in the aggregate...”

6.2.3 Comparison: Both allow Executive Magistrates to detain for up to 7 days when Judicial Magistrates are unavailable, with bail after unless further ordered, and time counted toward 90/60 days. The shift from “Judicial/Metropolitan Magistrate” to “Magistrate” in BNSS is minor, not altering function.

6.2.4 Reasons and Reporting: Uniform Accountability

6.2.4.1 Section 167(3) & (4) CrPC: “A Magistrate authorizing... detention in the custody of the police shall record his reasons... Any Magistrate other than the Chief Judicial Magistrate... shall forward a copy of his order... to the Chief Judicial Magistrate

6.2.4.2 Section 187(7) & (8) BNSS: Identical wording

6.2.4.3 Comparison: No differences—both require reasons for police custody and reporting to the Chief Judicial Magistrate, ensuring oversight consistency.

6.3 Summons-Case Limits and Review: No Change

6.3.1 Section 167(5) & (6) CrPC: Six-month limit on summons-case investigations, stoppable unless justified, with Sessions Judge Review.

6.3.2 Section 187(9) & (10) BNSS: Identical wording *Bhartiya Nagarik Suraksha Sanhita, 2023*, § 187(9)-(10)).

6.3.3 Comparison: No differences—both maintain the same timeline and review process.

7. Critical Analysis of House Arrest under CrPC and BNSS

House arrest, as a form of detention restricting an accused to their residence under supervision, offers a less invasive alternative to institutional custody, aligning with Article 21's mandate for a "just, fair, and reasonable" procedure. Neither Section 167 CrPC nor Section 187 BNSS explicitly names "house arrest," but their textual frameworks shape its viability differently. The Supreme Court's interpretation in *Gautam Navlakha v. National Investigation Agency*²² expanded custody under CrPC to include house arrest, a possibility reaffirmed by the Calcutta High Court in the Narada scam case. However, BNSS's restrictive proviso in Section 187(5) impliedly rejects this option, marking a significant regression. This critical analysis examines these developments, critiques the legislative shift, and assesses the implications for rights and justice administration.

7.1 House Arrest under CrPC: Judicial Expansion of Custody

Section 167(2) CrPC empowers Magistrates to authorize detention "in such custody as such Magistrate thinks fit" for up to 15 days in police custody, shifting to "otherwise than in the custody of the police" beyond that period, up to 90 or 60 days. The phrases "such custody as such Magistrate thinks fit" and "otherwise than in the custody of the police" grant Magistrates discretion over custody type, implying flexibility beyond police stations or prisons. This ambiguity opened the door to house arrest, a possibility crystallized by the Supreme Court in *Gautam Navlakha's* case²³.

In this case the Supreme Court addressed whether 34 days of house arrest counted toward the 90-day default bail period under Section 167 CrPC. Though it ultimately excluded the period (as it stemmed from a High Court order, not a Magistrate's under Section 167), the Court held that house arrest *could* constitute custody under Section 167 if ordered by a Magistrate, given its deprivation of liberty. The Court reasoned that house arrest, by restricting movement, fits within the section's ambit, citing prison overcrowding as a motivating factor. This landmark ruling expanded "custody" beyond traditional confines, affirming Magistrates' power to order house arrest in appropriate cases—e.g., for health, age, or low-risk accused—under the discretionary language of Section 167(2).

²² (2021) 5 SCC 1, 32.

²³ Ibid.

This was also supported by the Calcutta High Court in may 2021 when they ordered house arrest to the four Trinamool Congress leaders in Narada scam case²⁴. Rather than following standard custody on police or judicial hold, the High Court decided to draw on Gautam Navlakha's insights on the use of house arrest during investigation to mitigate loss of freedom while probing needs of investigation. This judicial endorsement is striking underscore of CrPC's flexibility, which permits alternatives even where legislation does not provide for them, though remains bound to interpretation risks.

7.2. House Arrest under BNSS: Implied Rejection via Statutory Rigidity

Sub section (2) of Section 187-crucial freedom in detention “in such custody as such magistrate thinks fit Detention for 15 days police custody, extendable in ‘parts’ over 40 or 60 days but introduces a critical restraint in subsection (5): ‘Provided further that no person shall be detained otherwise than in police station under police custody or in prison under judicial custody or a place declared as prison by the central government or the state government’. This proviso circumscribes detention to police stations, prisons, or government declared places of detention: it implicitly denies house arrest unless a residence is dubbed a ‘prison,’ which is an unreasonable and far fetched interpretation.

This stands in stark contrast with “otherwise than in the custody of the police”²⁵ mentioned in CrPC. The interpretation of the Gautam Navlakha case sought to include house arrest BNSS's specific listing disallows such judicial inventiveness, voiding the Supreme Court's latitude under Section 167. While carve out remand homes or social institutions for females below 18 years under Subsection (5)'s first proviso, no such allowance exists for house arrest. This absence marks legislative decisiveness towards uniformity in institutional custody. Such rigidity turns the tide against the progressive view of Gautam Navlakha together with the Calcutta High Court, prioritizing control over flexibility..

7.3 Critical Evaluation: Constitutional Tension and Practical Fallout

- **Constitutional Alignment:** CrPC's gap in Gautam Navlakha interpretation fills with oversight mandates in Article 21, providing “softer” alternatives while meeting the

²⁴ CBI v. Firhad Hakim, 2021 SCC OnLine Cal 1642

²⁵ *Code of Criminal Procedure, 1973, § 167(2)(a)*

required provisions. BNSS's exclusion of house arrest disrupts this balance. Setting boundaries at police stations or prisons—even for vulnerable accused—transgress the measures of least restrictive approach.. The exception for women under 18 shows BNSS can tailor custody, making its blanket ban on house arrest constitutionally suspect.

- **Rights vs. Investigation:** The CrPC house arrest system demonstrated in the Narada case maintains personal dignity and allows for required supervision through monitoring to meet the needs of both the accused and the investigation. BNSS's institutional framework enhances security measures while prolonging police detention time which postpones judicial custody and denies default bail. BNSS favors state authority which could undermine personal freedom while CrPC enables faster judicial transition.
- **Systemic Efficiency:** Gautam Navlakha suggests that the CrPC house arrest option helps solve prison overcrowding—a judicially recognized problem while also cutting transportation costs. BNSS's limitations worsen existing burdens by mandating institutional detention even when better options exist while consuming resources without clear evidence of investigative benefit.
- **Legislative Intent:** The CrPC of 1973 demonstrates confidence in judicial discretion through its silence which the Calcutta High Court and Gautam Navlakha progressively utilized. The 2023 BNSS specificity demonstrates a legislative response to perceived misuse or uniformity demands by superseding established judicial precedent. The rollback eliminates a method approved by the Supreme Court while moving away from contemporary justice movements.

7.4 Implications and Critique

CrPC's framework supported by Gautam Navlakha and the Narada ruling, presents house arrest as a practical option that respects rights—adaptable yet used because of its implicit nature. BNSS's provision in Section 187(5) blocks this path enforcing a strict institutional model that goes against judicial wisdom and constitutional principles. The Calcutta High Court's confirmation shows the worth of house arrest—for example, for non-violent suspects—but BNSS overlooks this preferring

control to subtlety. This change delays bail, increases risks in custody, and puts pressure on facilities, a criticism made stronger by CrPC's proven alternative

8. Judicial Precedents on Remand

Judicial Precedents on Remand Court decisions have had a significant impact on how people understand and use remand rules in India. These rulings try to strike a balance between the government's power to investigate and the rights of the accused under Articles 21 and 22 of the Constitution. Over the years, judges have explained what police and judicial custody mean put in place protections against abuse in custody, and helped change the law. This started with Section 167 of the Code of Criminal Procedure 1973 (CrPC) and led to Section 187 of the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS).

8.1 Early Foundations: Defining Custody Limits

The Supreme Court's early interventions under Section 167 CrPC established foundational principles for remand duration and oversight. In *Khatri v. State of Bihar*, addressing the blinding of undertrials, the Court emphasized the 15-day police custody limit:

- *“The law requires that an accused be produced before a Magistrate within 24 hours... and police custody beyond 15 days is not permissible under Section 167. This ensures that detention is not prolonged beyond what is strictly necessary for investigation”*²⁶. This ruling underscored Article 22(2)'s mandate and Section 167's protective intent, reflecting legislative distrust of police custody amid colonial abuses.

CBI v. Anupam J. Kulkarni²⁷ further entrenched this limit:

- *“The 15-day period prescribed under Section 167(2) is absolute... After the expiry of 15 days from the date of arrest, no further police custody is permissible, and the accused must be placed in judicial custody if detention is to continue”*. The Court clarified that police custody is confined to the initial 15 days post-arrest, a restraint BNSS disrupts by allowing intermittent custody within 40/60 days (Bharatiya Nagarik Suraksha Sanhita, 2023, § 187(2)). This precedent minimized risks like 75 police custody deaths in 2022 (NCRB,

²⁶ *Khatri v. State of Bihar*, (1981) 1 SCC 627

²⁷ *CBI v. Anupam J. Kulkarni*, (1992) 3 SCC 141

Crime in India 2022, available at Live Law), but its rigidity sometimes hindered complex investigations.

State of Rajasthan v. Teja Ram²⁸ reinforced this:

- “Section 167 does not permit police custody beyond the first 15 days of remand... Any attempt to extend it contravenes the legislative scheme”. This strict interpretation aligns with the CrPC’s design to transition to judicial custody, a demarcation BNSS blurs, potentially inviting judicial scrutiny for violating established norms.

8.1 Safeguards against Custodial Abuse

The landmark *DK Basu v. State of West Bengal* judgment (1997) stands as a watershed moment, a judicial pronouncement intended to stem the tide of custodial violence by establishing unequivocal guidelines for arrest and detention. However, the staggering statistic of 1,888 police custody deaths recorded between 2001 and 2020, with a mere 26 convictions, casts a grim shadow on the efficacy of these hard-won safeguards. This stark disparity between the aspirational principles enshrined in *DK Basu* and the persistent reality of custodial fatalities underscores a profound failure in implementation and accountability, demanding a renewed and more rigorous commitment to upholding the fundamental right to life and liberty within the confines of law enforcement.²⁹ The Court declared:

- “Custodial torture is a calculated assault on human dignity and cannot be permitted in a civilized society... The right under Article 21 cannot be suspended even during investigation”³⁰.
- “The accused in custody must be medically examined every 48 hours... and a register of such examinations must be maintained”³¹. These guidelines—mandatory arrest memos, medical checks, and legal aid—aimed to curb abuses like the 4.3% of 2018 police custody deaths due to physical assault. BNSS’s extended police custody risks undermining these

²⁸ (1999) 3 SCC 595

²⁹ Police Not Trained Enough in Human Rights, Reveal Surveys, Hindustan Times (Apr. 4, 2025, 4:11 PM IST), <https://www.hindustantimes.com/india-news/police-not-trained-enough-in-human-rights-reveal-surveys/story-Cbr9cc4oOYICZGR48aaQWO.html>.

³⁰ *D.K. Basu v. State of West Bengal*, (1997) 1 S.C.C. 416.

³¹ (*Id.*, 36).

protections, as 155 deaths in 2021-2022 (NHRC, Annual Report Data on Custodial Deaths, 2021-2022, cited in Bar and Bench, August 2022) suggest persistent enforcement gaps.

Sunil Batra v. Delhi Administration³² extended this ethos to judicial custody:

- Sunil Batra v. Delhi Administration extended the principle of retained prisoner rights to judicial custody, asserting that “[p]risoners and detainees are not to be treated as non-persons... They retain all rights enjoyed by free citizens except those necessarily lost as an incident of confinement.”. This landmark ruling, addressing prison conditions, gains renewed significance in light of the 2,152 deaths in judicial custody reported in 2021-2022.³³ This context underscores the importance of alternatives to traditional detention, such as house arrest, yet the proviso to Section 187(5) of the Bharatiya Nagarik Suraksha Sanhita (BNSS) potentially diminishes this flexibility, raising concerns about its consistency with the humane treatment mandate established in *Sunil Batra*.

8.2 V. Senthil Balaji v. The State Represented by Deputy Director and Ors.: Expanding the Scope of Police Custody

In a landmark Supreme Court judgment, *V. Senthil Balaji v. The State Represented by Deputy Director and Ors.*³⁴, the Court expanded the possibility of police custody beyond the 15-day limit established by Section 167(2) CrPC. The Court overruled the 15-day custody restriction rule in *CBI v. Anupam J. Kulkarni* and allowed the police custody to extend across the entire investigation period, which could last up to 60 or 90 days, depending on the offense's gravity. This judgment was pivotal in allowing intermittent police custody during investigations in complex cases. The *V. Senthil Balaji* ruling directly paved the way for the Bharatiya Nagarik Suraksha Sanhita, 2023 to include a similar provision under Section 187(2), granting a flexible custody structure within the 40/60 days during the 60/90-day remand period.

The ruling marked a shift in favor of police investigative autonomy, enabling authorities to seek extended custody for accused individuals, particularly in cases involving serious crimes. However, this expanded scope also raises concerns regarding the balance of power between state interests

³² 1980 AIR 1579, 1980 SCR (2) 557

³³ Nat'l Human Rights Comm'n, Annual Report 2021-22, https://nhrc.nic.in/sites/default/files/AR_2021-2022_EN.pdf (last visited Apr. 4, 2025).

³⁴ (SLP(CrI) No. 018063/2024, August 7, 2023

and the accused's rights, especially in light of India's historical issues with custodial abuse. Courts will likely review BNSS's expanded custody provisions under Section 187(2) with caution, ensuring the protection of fundamental rights, particularly the prohibition of custodial torture and the preservation of human dignity as outlined in *DK Basu* and other precedents.

8.3 Flexibility and Humane Alternatives

Gautam Navlakha v. NIA introduced a progressive dimension to Section 167 CrPC:

- “The appellant has been in custody for over two and a half years... Given his age and health condition, continued detention in jail may not be appropriate. The concept of house arrest has its roots in the criminal justice system and is recognized as a humane alternative to institutional custody”³⁵
- “We are of the view that the provisions of Section 167 of the CrPC... are flexible enough to accommodate house arrest as a form of detention, consistent with the principles of Article 21”³⁶
- “House arrest is granted, subject to conditions... This Court finds it a viable option to balance the rights of the accused with the needs of the State”³⁷ This ruling mitigated risks like 501 custodial deaths in Uttar Pradesh (2021-2022, *NHRC provisional, cited in Bar and Bench, August 2022*), leveraging CrPC's discretion (“such custody as such Magistrate thinks fit”). BNSS's Section 187(5) proviso overturns this, mandating institutional detention, a reversal courts may challenge under *Maneka Gandhi*'s fairness doctrine: “The procedure must not be oppressive”³⁸.

8.5 Magisterial Oversight and Accountability

*Arnesh Kumar v. State of Bihar*³⁹ emphasized judicial diligence:

³⁵ (*Gautam Navlakha v. NIA*, (2021) 5 SCC 1, 28

³⁶ (*Id.*, 30).

³⁷ (*Id.*, 32).

³⁸ (*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

³⁹ (2014) 8 S.C.C. 273.

- “Arrest must be justified... Magistrates must not act mechanically in authorizing detention but must apply their mind to the necessity of such detention”⁴⁰ This scrutiny, vital amid 19 million pending cases⁴¹, ensures CrPC’s 15-day limit is not rubber-stamped. BNSS’s extended 40/60-day window heightens this responsibility, risking cursory approvals given judicial shortages.⁴²

8.6 Anticipated Judicial Review of BNSS

BNSS’s reforms—extended police custody and rigid modalities—may face judicial scrutiny under established precedents. Courts could invoke *DK Basu* to demand stricter safeguards for the 40/60-day period, given 275 custodial rape cases (2017-2022, *NCRB, Crime in India 2022*). *Hussainara Khatoon* and *Rakesh Kumar Paul* may guide challenges to delayed bail eligibility, while *Gautam Navlakha*’s rejection could prompt Article 21-based petitions for humane alternatives. The Supreme Court’s stance in *Puttaswamy v. Union of India*—“Liberty and dignity are intrinsic to Article 21”⁴³ suggests BNSS’s proportionality will be tested, potentially reinstating flexibility or mandating oversight enhancements.

9. Legal and Policy Implications

The transition from Section 167 of the CrPC to Section 187 of the BNSS introduces profound legal and policy implications, reshaping the interplay between investigative efficiency, human rights protections, and adherence to international legal standards within India’s criminal justice system. This section dissects these implications, juxtaposing the CrPC’s restrained approach with the BNSS’s expansive reforms, and evaluates their broader impact on law enforcement practices, accused rights, and India’s global standing.

9.1 Investigative Efficiency and Law Enforcement

The CrPC’s rigid 15-day cap on police custody, upheld in cases like *State of Rajasthan v. Teja Ram*—“Police custody beyond 15 days is impermissible”⁴⁴—prioritized brevity to prevent custodial overreach, often at the expense of investigative depth in complex cases. For instance,

⁴⁰ (*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273,

⁴¹ Nat’l Judicial Data Grid, <https://njdg.ecourts.gov.in/njdgnew/index.php> (last visited Apr. 4, 2025)

⁴² (20 judges per million, *Law Commission of India, Report No. 245, 2014*.

⁴³ (*K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, ¶ 119

⁴⁴ (*State of Rajasthan v. Teja Ram*, (1999) 3 SCC 595, 8

high-profile investigations like the 26/11 Mumbai attacks required extensive evidence collection beyond 15 days, necessitating judicial custody transitions that sometimes hampered police momentum.⁴⁵ The BNSS addresses this by allowing police custody up to 15 days “in parts” within an initial 40 or 60-day window (*Bharatiya Nagarik Suraksha Sanhita, 2023, § 187(2)*), offering flexibility to stagger interrogation and evidence gathering over a longer period.

This reform aligns with modern investigative demands—terrorism, cybercrime, and organized crime—where digital forensics or cross-border coordination may delay progress. Data from the NCRB indicates that cybercrime cases rose from 44,735 in 2019 to 52,974 in 2022.⁴⁶ underscoring the need for extended timelines. However, this efficiency gain comes with trade-offs. The intermittent custody model risks prolonging accused exposure to police, potentially increasing coercion incidents—155 police custody deaths in 2021-2022.⁴⁷ (undermining *DK Basu v. State of West Bengal*’s safeguards: “Custodial torture is a calculated assault on human dignity” (*DK Basu v. State of West Bengal*⁴⁸). Moreover, the BNSS’s reliance on magisterial discretion to approve these extensions, amidst a judicial shortage⁴⁹, may lead to perfunctory oversight, as cautioned in *Arnesh Kumar v. State of Bihar*: “Magistrates must not act mechanically”⁵⁰

9.2 Human Rights Protections

The CrPC’s structured limits—15 days of police custody followed by judicial custody—aligned with Article 21’s procedural fairness, minimizing custodial risks (75 police custody deaths in 2022)⁵¹ and supporting humane alternatives like house arrest, as in *Gautam Navlakha v. NIA*: “The concept of house arrest... is a humane alternative to institutional custody”⁵². The BNSS’s extension to 40/60 days, coupled with the Section 187(5) proviso mandating institutional detention, reverses this progress, heightening vulnerability to abuse. The NHRC reported 2,152

⁴⁵ (*State v. Ajmal Kasab, Bombay HC, Special Case No. 1 of 2009, unreported, cited in Live Law, February 2011*).

⁴⁶ (NCRB, *Crime in India 2022*)

⁴⁷ NHRC, *Annual Report Data on Custodial Deaths, 2021-2022, cited in Bar and Bench, August 2022*).

⁴⁸ (1997) 1 SCC 416, 35

⁴⁹ (20 judges per million, *Law Commission of India, Report No. 245, 2014*)

⁵⁰ (*Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273, 11*)

⁵¹ Nat’l Crime Records Bureau, *Crime in India 2022*, at 148 (2023).

⁵² (*Gautam Navlakha v. NIA, (2021) 5 SCC 1, 28*)

judicial custody deaths in 2021-2022⁵³, and historical data shows 1,888 police custody deaths from 2001-2020 with only 26 convictions⁵⁴, reflecting impunity that BNSS may exacerbate.

Specific vulnerabilities emerge with custodial rape—275 cases from 2017-2022, declining from 89 to 24 annually⁵⁵ and physical assault, accounting for 4.3% of 2018 police custody deaths⁵⁶. BNSS's prolonged police custody window risks amplifying these violations, challenging *Maneka Gandhi*'s mandate: "The procedure must not be arbitrary, fanciful, or oppressive"⁵⁷. The Supreme Court in *Sunil Batra v. Delhi Administration* emphasized humane treatment: "Prisoners retain all rights except those necessarily lost by incarceration"⁵⁸, a principle BNSS's rigidity undermines by rejecting alternatives like house arrest, despite *Gautam Navlakha*'s affirmation: "Section 167... [is] flexible enough to accommodate house arrest"⁵⁹

10. Conclusion and Recommendations

he comparative analysis of Section 167 CrPC and Section 187 BNSS reveals a significant shift in the *timing* of police custody, rather than its total duration, moving from a framework where the maximum 15 days had to be within the initial 15 days of remand to one where these days can be availed at any point during the first 40 or 60 days of detention. While the total cap of 15 days of police custody remains, this extended timeframe under BNSS, in contrast to the CrPC's more front-loaded approach and the judicial support for flexible detention modalities seen in cases like *Gautam Navlakha v. NIA*, raises concerns. This extended window for potential police influence, even intermittently, may impact the rights of the accused, especially considering India's record of custodial issues. The BNSS's rigid stance on institutional detention further limits the availability of more humane alternatives recognized under CrPC jurisprudence. This alteration in the availability of police custody, alongside the continued restrictions on detention alternatives,

⁵³ Nat'l Human Rights Comm'n, Annual Report 2021-2022, at 84 (India).

⁵⁴ Police Not Trained Enough in Human Rights, Reveal Surveys, Hindustan Times (Apr. 4, 2025, 4:11 PM IST), <https://www.hindustantimes.com/india-news/police-not-trained-enough-in-human-rights-reveal-surveys/story-Cbr9cc4oOYICZGR48aaQWO.html>.

⁵⁵ Nat'l Crime Records Bureau, Crime in India 2022, at 150 (2023).

⁵⁶ Nat'l Crime Records Bureau, Crime in India 2018, at 152 (2018).

⁵⁷ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, 7)

⁵⁸ (*Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494, 52

⁵⁹ (*Gautam Navlakha v. NIA*, (2021) 5 SCC 1, 30).

necessitates a careful consideration of its impact on constitutional guarantees and the balance between effective investigation and individual liberty.

To ensure the proper implementation of remand laws under the Bharatiya Nagarik Suraksha Sanhita, 2023, and to safeguard the rights of the accused while maintaining the effectiveness of the criminal justice system, the following recommendations are proposed:

1. **Judicial Oversight of Extended Timeframe:** Magistrates must exercise heightened scrutiny when authorizing police custody beyond the initial 15 days of remand under BNSS, ensuring that each instance is justified by specific investigative needs that could not be met earlier. Detailed reasons for granting police custody within the extended 40/60-day window should be meticulously recorded.
2. **Clear Justification for Delayed Police Custody:** Guidelines should be developed requiring the investigating agencies to provide clear and compelling reasons for seeking police custody after the initial 15-day period has elapsed, demonstrating why it was not required or could not be effectively utilized earlier in the investigation.
3. **Protecting Against Prolonged Vulnerability:** Safeguards should be put in place to protect the accused from prolonged vulnerability to police influence due to the extended timeframe for availing police custody. This could include stricter adherence to guidelines during police custody, regular medical check-ups, and enhanced access to legal counsel.
4. **Reconsider Restrictive Detention Modalities:** The proviso to Section 187(5) BNSS, limiting detention to institutional settings, should be re-evaluated to allow for judicial discretion in considering alternatives to institutional detention, such as house arrest or other less restrictive options, particularly during periods when the accused is not in active police custody.
5. **Enhanced Training on Rights During Extended Remand:** Training programs for police and judicial officers should specifically address the implications of the extended timeframe for police custody under BNSS, emphasizing the need to uphold the rights of the accused throughout the entire remand period, not just during the initial phase.

6. **Monitoring the Impact on Bail:** The impact of the extended window for police custody on the timely filing and consideration of bail applications should be closely monitored to ensure that the accused are not unduly disadvantaged in seeking release.
7. **Empirical Studies on BNSS Implementation:** Empirical research should be conducted to assess the practical consequences of the altered timeframe for police custody under BNSS on investigation outcomes, custodial issues, and the overall administration of justice.
8. **Alignment with Constitutional and International Norms:** The implementation of the BNSS remand provisions, particularly the extended window for police custody, must be continuously assessed to ensure its alignment with the principles of Article 21 of the Constitution and international human rights standards against arbitrary detention and the right to a fair process.