INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

Peer-reviewed, open-access, refereed journal

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Introduction

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Preface

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Description

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POLICE POWERS UNDER THE BNSS, 2023: CONTINUITY, CHANGE, AND CONSTITUTIONAL COMPLIANCE

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Abstract

The Bharatiya Nagarik Suraksha Sanhita, known as BNSS, 2023, was enacted to take the place of the Code of Criminal Procedure from 1973, which is often referred to as CrPC. This marks a significant legislative effort aimed at modernizing the criminal procedural framework in India. This paper looks critically at the powers given to the police under the BNSS and evaluates how much the new code represents real reform compared to the procedural continuity with the older colonial-era laws. Provisions that relate to arrest, search and seizure, custodial detention, the use of forensic and electronic evidence, and preventive action are examined to see how police discretion and accountability mechanisms have changed. The study also looks at these powers in relation to constitutional guarantees found in Articles 14, 21, and 22, and checks whether procedural safeguards like timelines for arrest memos, mandatory videography, and provisions for legal aid are sufficient to prevent misuse of authority. The paper uses judicial precedents, compares provisions from the CrPC, and considers critiques from legal scholarship to argue that while the BNSS includes language that is technology-driven and focused on rights, the structural continuities in police power raise concerns about gaps in implementation, especially in areas with limited resources and different regional policing contexts. A case study of the Rayalaseema region in Andhra Pradesh is included to suggest safeguards and a framework for implementation that aligns police practice with constitutional compliance.

Keywords: BNSS 2023, CrPC, police powers, constitutional compliance, Article 21, arrest, Rayalaseema, criminal procedure reform.

Introduction

Background and Context

The relationship between police power and constitutional liberty has been a central issue in India's criminal justice discussions for a long time. The police, as the main enforcement body of the criminal justice system, have extensive authority over arrest, investigation, search, seizure, and preventive action. These powers directly affect the fundamental rights of citizens under Articles 14, 21, and 22 of the Constitution. For more than fifty years, this authority has operated under the CrPC, 1973, a law that, despite some amendments, has kept much of its colonial roots and has faced ongoing criticism for allowing arbitrary arrests, excessive custodial practices, and insufficient procedural safeguards. The BNSS, 2023, was enacted alongside the Bharatiya Nyaya Sanhita and the Bharatiya Sakshya Adhiniyam and was presented by lawmakers as a significant departure from colonial practices, aiming to reform criminal procedure to focus on victim-centric justice, technological advancements, and timely investigations and trials.

The BNSS includes several provisions that appear progressive, such as mandatory videography for search and seizure, set timelines for medical examinations and arrest documentation, increased use of forensic and electronic evidence, rules for handcuffing, and digitized processes meant to improve transparency and accountability. However, a closer examination shows that many core provisions of the BNSS regarding police powers, especially those about arrest, detention, and preventive action, still show significant continuity with the CrPC. Sections that deal with arrest without a warrant, police custody, and preventive detention largely repeat previous formulations with little substantive change, leading to questions about whether the BNSS truly represents procedural transformation or is simply a rebranding that keeps the discretionary framework of police authority mostly unchanged. This tension between continuity and change is the main focus of this study.

Statement of the Problem

Commentary on the BNSS, 2023 often evaluates the Code as either a complete reform or just a renumbering exercise, without a detailed assessment of each provision that can distinguish real change from structural continuity or test against constitutional standards. There is also a

lack of scholarship that examines how these provisions work or do not work in regional implementations, particularly in areas with limited resources and unique policing histories like Rayalaseema, Andhra Pradesh. This paper aims to fill both of these gaps.

Significance of the Study

The question becomes especially important when viewed through a constitutional perspective. Indian constitutional law, especially after the broad interpretation of Article 21 in the case of Maneka Gandhi v. Union of India and the procedural safeguards outlined in D.K. Basu v. State of West Bengal and Arnesh Kumar v. State of Bihar, has consistently aimed to limit police discretion to ensure fairness, reasonableness, and non-arbitrariness. Any new procedural code that governs police powers must be evaluated not just based on its stated legislative goals but also on how well its provisions put these constitutional guarantees into practice. This concern is heightened in regions that have distinct socio-historical relationships with police authority. The Rayalaseema region of Andhra Pradesh, which has a history of factional violence, limited police resources, and a complex relationship between the community and police, provides a critical context to assess whether the safeguards promised by the BNSS actually offer meaningful protection in practice.

Research Objectives

This paper has three main objectives:

i. to identify, through a comparison of provisions, the specific ways in which the BNSS, 2023 departs from or reproduces the police-power framework of the CrPC, 1973;
ii. to assess the constitutional compliance of these provisions against the standards set by Articles 14, 21, and 22 and the proportionality doctrine; and
iii. to evaluate the practical implications of these provisions in a resource-limited, historically distinct regional context, using Rayalaseema as a case study, and to suggest a reform framework that is tailored to this context.

Research Questions

1) To what extent does the BNSS, 2023 change the substantive and procedural structure of police powers compared to the CrPC, 1973?
2) Which provisions show real reform, structural continuity, or an increase in police discretion compared to the previous, judicially constrained situation?

3) Do the police-power provisions of the BNSS meet the constitutional standards set by Articles 14, 21, and 22?
4) What gaps in implementation arise when these provisions are considered in a resource-limited regional context like Rayalaseema, and what reforms could address these gaps?

Hypotheses

1. The BNSS, 2023 does not create a uniform change in police powers but instead leads to a varied pattern, showing genuine reform in areas of evidentiary and procedural transparency, continuity in coercive and preventive discretion, and an increase in discretion in specific areas like handcuffing and custody duration.
2. The constitutional compliance of the police-power provisions in the BNSS is uneven, with enforcement gaps that hinder the practical realization of its reformist provisions.
3. These enforcement gaps are more pronounced in resource-limited regional contexts, which require implementation strategies that are tailored to the specific region.

Scope, Limitations, and Methodology

This study uses a doctrinal and analytical method, relying on primary sources such as the text of the CrPC, 1973 and the BNSS, 2023, the Constitution of India, and relevant judicial decisions, along with secondary sources that include Law Commission reports, administrative reform documents, and scholarly commentary. The study does not include primary empirical fieldwork from Rayalaseema; the regional case study is based on an analysis of implementation contexts using secondary sources and documented institutional patterns, which is intended to inform the author's broader empirical doctoral research. The analysis focuses only on police powers under the BNSS and does not cover changes in substantive criminal law under the Bharatiya Nyaya Sanhita or evidentiary changes under the Bharatiya Sakshya Adhiniyam unless they are directly relevant.

Review of Literature

The literature regarding police powers within India's criminal justice system can be divided into four main themes: critiques of colonial continuities in policing law, constitutional jurisprudence concerning procedural safeguards, emerging commentary on the BNSS itself, and literature on community policing in specific regions.

Colonial Legacy and Police Reform Discourse

A significant amount of scholarship has critiqued the CrPC, 1973, and earlier codes as tools rooted in colonial governance, primarily designed for maintaining order and control rather than protecting rights. Scholars like K.S. Subramanian and David Bayley have studied how the Indian police have kept an institutional culture inherited from the Police Act of 1861, which is characterized by centralized control, limited public accountability, and broad discretionary powers for arrest and investigation. The Second Administrative Reforms Commission from 2007 and the Malimath Committee Report from 2003 both provided extensive documentation regarding the difference between formal procedural safeguards and the actual practices of police, recommending various structural reforms that included separating investigation from law-and-order functions, establishing accountability commissions, and reducing arbitrary powers of arrest. The ongoing presence of these recommendations over many years without complete legislative implementation is a recurring theme found in reform literature, which sets the context for evaluating the claims of reform made by the BNSS.

A significant body of jurisprudential literature has developed around the judicial interpretation of safeguards against police excess. The case of Maneka Gandhi v. Union of India from 1978 expanded Article 21 to require that any procedure that deprives personal liberty must be fair, just, and reasonable, which fundamentally changed how constitutional evaluations of arrest and detention powers were conducted. The case of D.K. Basu v. State of West Bengal from 1997 established binding guidelines regarding arrest and custodial procedures in response to documented instances of custodial violence, which were later partially codified into the Criminal Procedure Code through amendments made in 2008. The case of Arnesh Kumar v. State of Bihar from 2014 further limited mechanical arrest practices under Section 498A of the Indian Penal Code, requiring a checklist-based approach before making an arrest. Legal scholars such as Upendra Baxi and Usha Ramanathan have analyzed these judicial decisions as evidence of a developing judicial standard that legislative codes are expected to adopt, although this does not always happen successfully.

The academic literature that specifically addresses the BNSS is still in its early stages but is growing quickly due to its recent enactment. Supporters point to provisions like mandatory forensic investigations for offenses with sentences of seven years or more, requirements for videography during search and seizure, and the digitization of processes as real steps toward transparency and victim-centered justice. On the other hand, critics have raised concerns about the retention of broad preventive detention powers, the continuation of police custody

provisions, and the lack of sufficient independent oversight mechanisms. Some commentators have described the BNSS as mainly a renumbering and consolidation exercise rather than a significant rights-based overhaul, which echoes similar critiques made against the Bharatiya Nyaya Sanhita's approach to substantive criminal law.

Another relevant area of literature focuses on region-specific policing studies, particularly those addressing the historical association of Rayalaseema with factional violence and the relationship between communities and police. Studies on community policing models in India, including Kerala's Janamaithri Suraksha Project and Andhra Pradesh's Maitri initiative, provide comparative insights into how procedural reform interacts with local institutional capacity and community trust.

This aspect is largely missing from national-level discussions on the BNSS but is essential for assessing its practical constitutional compliance in resource-limited regional contexts like Rayalaseema. While existing literature covers either the doctrinal structure of the CrPC and BNSS or constitutional safeguards separately, there is a limited amount of scholarship that systematically evaluates the police powers provisions of the BNSS through a framework that integrates continuity, change, and constitutional compliance. There are even fewer studies that look at the implications of implementation at the regional level. This paper aims to fill that gap.

Historical and Legal Evolution of Police Powers in India

Organized law enforcement systems in India existed before colonial rule, although they were quite different from the centralized bureaucratic model that the British later imposed. Under various regional kingdoms, officials such as the kotwal in urban areas and village-level functionaries carried out policing duties that were closely linked to local community structures, customary law, and revenue administration. Policing authority was spread out and embedded within local governance rather than being concentrated in a separate, specialized coercive apparatus. The formal structure of modern Indian policing can be traced back to the aftermath of the Revolt of 1857. The colonial administration, alarmed by the uprising, aimed to create a police force whose main purpose was to maintain imperial authority rather than to protect the rights of citizens. The Police Act of 1861 was enacted based on the recommendations of the Police Commission from 1860, establishing a hierarchical and centralized police force under the control of a District Superintendent, who ultimately answered to the executive rather than to any independent oversight body. This structure granted police officers wide discretionary powers regarding arrest, investigation, and public order maintenance, with minimal statutory

checks against abuse. This "order and control" paradigm largely continued unchanged even after independence.

Alongside the establishment of the police force, procedural law governing investigation, arrest, and trial was codified through the Code of Criminal Procedure in 1861, which was later replaced by the Code of Criminal Procedure in 1898. These codes formalized police powers of arrest without a warrant, search and seizure, and investigation, embedding significant discretion within a framework primarily designed for administrative efficiency and colonial control rather than for individual liberty. The 1898 Code remained in effect, with periodic amendments, for over seventy years. India's independence in 1947 and the adoption of the Constitution in 1950 introduced fundamental rights, particularly Articles 14, 21, and 22, which, in principle, limited arbitrary state action, including police power.

However, the procedural framework governing policing was not immediately reformed. It was only in 1973, following the recommendations of the Law Commission of India, especially the 41st Report, that the CrPC of 1973 replaced the 1898 Code. While the new Code introduced some safeguards, such as a clearer separation of judicial and executive magistracy, critics have long noted that its core provisions regarding arrest, investigation, and police custody retained significant structural continuity with colonial-era formulations, particularly under Sections 41, 46, and 167. In the absence of a comprehensive legislative overhaul, much of the substantive limitation on police power in independent India has come through judicial intervention rather than through statutory redesign.

The case of Maneka Gandhi v. Union of India established that any procedure that restricts personal liberty must be fair, just, and reasonable, laying the constitutional groundwork for later scrutiny of police conduct. The case of Joginder Kumar v. State of U.P. determined that an arrest could not be made simply because it was lawful but must be justified by reasonable necessity. The case of D.K. Basu v. State of West Bengal established detailed guidelines on arrest and detention procedures in response to documented custodial deaths and torture, which were later partially codified through the Criminal Procedure Code (Amendment) Act in 2008. The case of Arnesh Kumar v. State of Bihar limited mechanical and punitive arrest practices, particularly under Section 498A of the Indian Penal Code. Collectively, these decisions illustrate a pattern where constitutional courts, rather than the legislature, took on the primary responsibility for checking police discretion.

Institutional Reform Efforts and Their Limits

In addition to judicial intervention, there were several institutional reform initiatives that aimed to change police governance in a more fundamental way. The National Police Commission, which operated from 1977 to 1981, suggested a Model Police Act to replace the existing framework from 1861, and it also proposed mechanisms for police accountability and protection from political interference. The Supreme Court's directions in the case of Prakash Singh v. Union of India in 2006 required specific structural reforms, which included the establishment of State Security Commissions, fixed tenures for important police officials, and the separation of investigation from law-and-order duties. However, the implementation of these reforms across various states, including Andhra Pradesh, has been documented as being partial and inconsistent, highlighting a continuing gap between the reforms that were prescribed and the actual practices in operation.

Legislative Context Leading to the BNSS, 2023

The BNSS, 2023 must be understood within the long history of colonial structures, gradual judicial corrections, and stalled institutional reforms. The legislature has positioned the BNSS as a significant departure from the criminal procedures that originated during colonial times. The BNSS addresses police powers such as arrest, search, seizure, and preventive action, and it carries forward this complex historical context. To determine whether the BNSS represents a true transformation or merely replicates the discretionary framework established in 1861 and solidified in 1973, a historically informed doctrinal analysis is necessary.

Conceptual and Constitutional Framework

Meaning and Scope of "Police Powers"

The term "police power" in Indian criminal justice refers to the coercive and regulatory authority that the state exercises through its law enforcement agencies to investigate crimes, restrict individual liberty, and maintain public order. This authority operates along three main axes: investigative power, which includes search, seizure, interrogation, and forensic collection; coercive power, which involves arrest, detention, and custody; and preventive power, which covers security proceedings and preventive arrest. Each of these axes presents different risks to individual liberty, and they are treated with varying degrees of specificity in the CrPC and BNSS.

Constitutional Provisions Governing Police Action

Three main constitutional provisions serve as checks on police power. Article 14 guarantees equality before the law and prohibits arbitrary actions by the state, which is directly relevant to the issue of unstructured police discretion. Article 21 ensures that no individual shall be deprived of life or personal liberty except according to a procedure established by law, and this guarantee, after judicial expansion, requires that the procedure itself be fair, just, and reasonable. Article 22 provides specific protections for individuals who are arrested or detained, including the right to be informed of the reasons for arrest, the right to consult a legal practitioner, and the right to be presented before a magistrate within twenty-four hours.

Doctrine of Procedure Established by Law

Before 1978, Article 21 was interpreted narrowly, requiring only that a procedure be established by a law that was validly enacted, without examining its substantive fairness, as seen in A.K. Gopalan v. State of Madras in 1950. The case of Maneka Gandhi v. Union of India in 1978 changed this interpretation, ruling that the "procedure established by law" under Article 21 must also meet the standards of Article 14, which addresses non-arbitrariness, and Article 19, which concerns reasonableness. This shift in doctrine serves as the interpretive framework through which every provision related to police power, whether in the CrPC or BNSS, must be evaluated; a procedure is not constitutionally adequate simply because it has been enacted by Parliament.

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Standards from D.K. Basu, Joginder Kumar, Arnesh Kumar

In the case of Joginder Kumar v. State of U.P. in 1994, it was determined that the power to arrest is separate from the justification for making an arrest. D.K. Basu v. State of West Bengal in 1997 established specific safeguards, such as requiring an arrest memo to be attested by a witness, informing a relative or friend of the arrest, and ensuring access to a lawyer, many of which were later included in the CrPC. Arnesh Kumar v. State of Bihar in 2014 mandated that police must record reasons in writing before making an arrest for offenses that carry a punishment of less than seven years. Collectively, these rulings necessitate a genuine justification that is recorded, transparency and access for family or legal representatives, and decision-making that is structured and not merely mechanical.

Proportionality and Reasonableness

The doctrine of proportionality, which became part of Indian constitutional law following the case of Justice K.S. Puttaswamy v. Union of India in 2017, requires that any state action that restricts a fundamental right must pursue a legitimate aim, be suitable and necessary, and not impose a burden that is disproportionate to the benefit gained. When applied to police powers, this means that measures such as handcuffing, extended custody, or preventive detention must be evaluated to see if less restrictive alternatives are available and whether the safeguards in place are proportionate to the liberty interests involved. This framework, which includes Articles 14, 21, 22, and the principle of proportionality, serves as the analytical tool.

Provision-Wise Analysis: CrPC, 1973 vs. BNSS, 2023

This section provides a comparative analysis of police powers under the repealed CrPC, 1973, and the BNSS, 2023, to evaluate the extent of substantive change in relation to formal continuity.

Arrest Without Warrant

Section 41 of the CrPC allowed police to arrest without a warrant under certain conditions and was amended between 2008 and 2010 to introduce Section 41A, which required a notice of appearance when an arrest was not immediately necessary for offenses punishable by up to seven years in prison. Section 35 of the BNSS largely mirrors Section 41, keeping the same categories, and Section 35(3) replicates the notice requirement from Section 41A. Assessment: there is near-total continuity, as the BNSS renumbers rather than fundamentally changes the criteria for arrest.

Rights of the Arrested Person

Section 50 of the CrPC mandated that the arrested person be informed of the reasons for their arrest and their right to bail, while Section 50A required informing a friend or relative. Sections 47 to 48 of the BNSS largely replicate these provisions, with Section 37 adding a new requirement for police stations to maintain and display information about arrested individuals. Assessment: there is a modest procedural addition, but the core rights notification framework remains unchanged.

Handcuffing

The CrPC did not have an explicit provision regarding handcuffing; restrictions on this practice developed through judicial rulings, such as in Prem Shankar Shukla v. Delhi Administration in 1980 and Citizens for Democracy v. State of Assam in 1995, which deemed routine handcuffing unconstitutional unless specifically authorized by a court. Section 43(3) of the BNSS introduces explicit statutory language that permits handcuffing for certain categories, including habitual offenders, those at risk of escape, offenses against the State, terrorism, organized crime, drug offenses, illegal possession of arms, murder, rape, acid attacks, counterfeiting, and offenses against women and children. Assessment: this represents a genuine and significant change, as it codifies and expands a power that was previously limited by judicial rulings, raising concerns related to Article 21 and proportionality.

Search and Seizure

Sections 100, 165, and 166 of the CrPC govern the search of places and require independent witnesses but do not mandate recording. Section 105 of the BNSS introduces a requirement for audio-video recording of search and seizure, which must be sent to the magistrate without delay. Assessment: this is one of the more significant reforms that directly addresses criticism regarding fabricated panchnamas, but the lack of a statutory consequence for not complying limits its practical effect. 5.5 Police Custody and Remand Section 167 of the CrPC allowed police custody for up to fifteen days within the first fifteen days after an arrest. Section 187 of the BNSS keeps the fifteen-day limit but allows it to be used in parts within the first forty or sixty days of the investigation period, depending on the severity of the offence. Assessment: this is a substantive change with significant implications, as it effectively extends the time during which police custody can be requested, increasing the state's coercive power over an accused for a longer duration.

Forensic Investigation

The CrPC did not have a mandatory requirement for forensic examination. Section 176(3) of the BNSS requires forensic experts to visit and collect evidence for offences punishable by seven years' imprisonment or more, which requires states to improve forensic infrastructure. Assessment: this is a genuine reform that depends on the capacity of forensic infrastructure, which is a concern in resource-limited areas like Rayalaseema. 5.7 Preventive Detention and Security for Good Behaviour Sections 107 to 110 of the CrPC and Section 151, which allows

arrest to prevent a cognizable offence, give broad preventive powers to police and executive magistrates. Sections 126 to 130 and Section 170 of the BNSS largely replicate these with minimal changes in wording. Assessment: this is a clear case of continuity, as preventive powers, which have historically faced criticism for enabling arbitrary actions, remain structurally unchanged.

Timelines for Investigation and Trial

Section 173 of the CrPC outlined investigation procedures without strict timelines. Section 193 of the BNSS introduces stricter timelines, including a 90-day limit for filing the police report, which can be extended to 180 days, and Section 175(3) requires magistrates to act on complaints within specified timeframes. Assessment: this is a meaningful tightening of procedures, but its effectiveness depends on police staffing and infrastructure. 5.9 Zero FIR and Electronic Filing The CrPC did not have a specific provision for "Zero FIR"; this practice developed through executive guidelines and judicial support. Section 173(1) of the BNSS explicitly codifies Zero FIR and allows for electronic filing, including e-filing for offences against women and children without needing physical presence in certain situations. Assessment: this is a genuine codification of a previously informal safeguard, improving accessibility for victims of sexual and gender-based offences.

Comparative Summary Table

Area	Nature of Change
Arrest without warrant	Continuity
Arrest procedure / rights	Minor addition
Handcuffing	Substantive change (expansion of power)
Search & seizure	Substantive reform (with enforcement gap)
Police custody / remand	Substantive change (extended window)
Forensic investigation	Genuine reform (infrastructure-dependent)
Preventive detention	Continuity
Investigation timelines	Procedural tightening
Zero FIR / e-filing	Genuine codification

Analytical Assessment

Provisions Reflecting Structural Continuity

The analysis shows that several core police powers remain largely unchanged from the CrPC to the BNSS. Arrest without warrant, as stated in Section 35 of the BNSS, retains the same discretionary triggers of "reasonable complaint," "credible information," or "reasonable suspicion" without further definitional tightening. Preventive powers under Sections 126 to 130 of the BNSS and the power to arrest to prevent a cognizable offence in Section 170 are reproduced with only minor rewording. This continuity is significant because these provisions are often criticized in reform literature by various commissions and scholars for enabling arbitrary and discriminatory police actions.

Provisions Reflecting Genuine Reform

On the other hand, some provisions represent substantive innovation. The mandatory audio-video recording of search and seizure in Section 105 of the BNSS directly addresses the long-standing issue of fabricated panchnamas and coerced witness statements. The mandatory forensic investigation requirement in Section 176(3) of the BNSS responds to ongoing criticism regarding conviction rates affected by weak evidentiary standards. The statutory codification of Zero FIR and electronic complaint filing in Section 173 of the BNSS turns previously informal executive practices into enforceable statutory rights. The statutory timelines for filing police reports in Section 193 of the BNSS impose a discipline on investigations that was absent from the CrPC.

Provisions Reflecting Expansion of Police Discretion

A third category includes provisions where the BNSS arguably expands police power compared to the previous situation, not because the CrPC was silent, but because judicial restrictions had previously narrowed the scope, and the BNSS's codification reopens it. A clear example is the handcuffing provision in Section 43(3) of the BNSS, which allows for express statutory permission for a practice that the Supreme Court had deemed presumptively unconstitutional without specific case authorization. Similarly, the restructuring of the police custody window in Section 187 of the BNSS extends the time frame of police coercive control over an accused, which has direct implications for Article 22 protections.

Technology Integration as a Reform Strategy

A consistent theme across the genuinely reformist provisions of the BNSS is the reliance on technology, such as video recording, electronic filing, digital summons, and forensic science, as the main mechanism for accountability, largely replacing independent institutional oversight. This approach is politically easier to legislate than structural reform and creates a documentary record that is subject to judicial review. However, technology-based safeguards depend on implementation, which structural reforms do not require; they assume functioning equipment, trained personnel, connectivity infrastructure, and judicial willingness to treat non-compliance as significant. The BNSS does not impose an automatic exclusionary consequence for failing to comply with the Section 105 videography requirement, leaving enforcement to judicial discretion.

Assessment of the "Decolonization" Claim

The BNSS is framed as a significant break from colonial-era criminal procedure, but the evidence suggests a more accurate description is that the BNSS brings about partial and uneven reform. It is genuinely transformative in terms of evidence generation and procedural transparency but remains structurally conservative and, in some respects, regressive compared to the judicially evolved position regarding coercive and preventive police authority. The claim of comprehensive decolonization is only partially supported, as the discretionary framework inherited from the Police Act of 1861 and solidified in the CrPC of 1973 persists in its most significant aspects.

Constitutional Compliance Analysis

Compliance with Article 14 (Non-Arbitrariness)

Article 14 jurisprudence, following the case of E.P. Royappa v. State of Tamil Nadu in 1974, treats arbitrariness as contrary to equality, requiring clear, non-manipulable criteria for state actions. Provisions that retain broad, undefined discretionary triggers, such as "reasonable suspicion" in Section 35 or the categories for preventive actions in Sections 126 to 130, remain open to arbitrary application. The handcuffing provision in Section 43(3), despite specifying certain offence categories, still leaves the final decision to the arresting officer’s interpretation of vague terms like "habitual" conduct, which can lead to inconsistent application.

Compliance with Article 21 (Fair Procedure)

Using the Maneka Gandhi standard, the reformist provisions of the BNSS, such as mandatory forensic investigation, search videography, and statutory timelines, enhance compliance with Article 21 by making the investigative process more transparent. However, the extended police custody window in Section 187 creates a direct conflict: the fifteen-day limit was historically understood as a protective ceiling for liberty, limiting the time an accused is most vulnerable to custodial coercion. By allowing this limit to be spread across a forty or sixty-day period, the BNSS increases the duration during which an accused may be called back to police custody, weakening the protective function that the provision was intended to serve.

Compliance with Article 22

The BNSS largely replicates the safeguards from Article 22 that are already present in the CrPC, including grounds for arrest, requirement for production within twenty-four hours, and the right to legal consultation, without diminishing these protections. It adds some transparency measures, such as the requirement for displaying arrest information under Section 37. However, compliance with Article 22 should be evaluated in relation to the provisions regarding handcuffing and extended custody. The protective framework of Article 22 was built on the premise of a limited custody period and restricted use of restraints, and any provisions that expand these aspects reduce the practical protective effectiveness even if the text remains unchanged.

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Proportionality Concerns:

Handcuffing and Custody Using the proportionality framework from Puttaswamy, Section 43(3) of the BNSS raises issues at the stages of "necessity" and "balancing." The legitimate aim of preventing escape and ensuring safety during custody is not disputed, but the broad scope of the provision, which includes wide categories without requiring an individual assessment of flight risk, indicates that less restrictive alternatives could be available, which the BNSS does not require. Additionally, the lack of a requirement to record reasons and have them reviewed by a judge promptly is a notable shortcoming. The changes to the custody period under Section 187 also need examination: whether extending the time frame is the least restrictive way to handle complex investigations is not clearly established in the text, as it does not specify that extensions should only be granted based on a documented necessity.

Enforcement Gaps and Accountability

A common issue in the reform provisions is the disconnect between what is mandated and what can be enforced. Section 105 does not clearly state that evidence obtained without following the videography requirement is inadmissible. Section 176(3) does not outline consequences for situations where forensic resources are lacking. Section 193's timelines do not have automatic repercussions beyond the existing default-bail rules. Most importantly, the BNSS, as a code of criminal procedure, cannot create independent police accountability bodies such as State Security Commissions or Police Complaints Authorities, which are required by the ruling in Prakash Singh v. Union of India. These bodies are governed by state-level Police Acts, which have been inconsistently implemented, including in Andhra Pradesh, leaving the BNSS's procedural protections without the necessary independent oversight for consistent enforcement. 8. Regional Case Study: Rayalaseema, Andhra Pradesh.

Socio-Historical Context

The Rayalaseema region, which includes districts historically linked to Kadapa, Kurnool, Anantapur, and Chittoor, provides a unique socio-legal backdrop for examining how police powers operate in practice. The region has a long history of political violence, which has led to a policing environment where preventive and coercive powers are frequently used, making it an important area for evaluating whether the safeguards in the BNSS are effectively implemented.

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Infrastructure and Resource Constraints

The most genuinely reform-oriented provisions of the BNSS, such as mandatory forensic investigations under Section 176(3) and mandatory videography under Section 105, depend on infrastructure in ways that the statutory text does not sufficiently address. Forensic laboratory capabilities in Andhra Pradesh are mainly located in urban areas, while regional labs often deal with backlogs and staffing issues. In the Rayalaseema districts, the practical ability to have a forensic expert visit a crime scene in a timely manner is limited by distance and a shortage of qualified personnel relative to the number of cases. The videography requirement also assumes that there is easy access to working devices and reliable methods for transmitting recordings, which is complicated by connectivity issues in less urbanized areas.

Implementation Gaps and Comparative Insight

The gap between what is mandated by law and what happens in practice is worsened by the lack of clear consequences for failing to comply. In a region where oversight of police conduct has historically been weak, the effectiveness of a videography requirement without an exclusionary rule relies heavily on the attentiveness of individual magistrates and defense attorneys, which may vary due to differences in legal representation in rural and semi-urban areas. Looking at community policing initiatives, such as Kerala's Janamaithri Suraksha Project and Andhra Pradesh's Maitri initiative, suggests that simply reforming statutory procedures, without investing in community-oriented policing structures, is unlikely to fully resolve the trust issues that affect how BNSS safeguards are perceived in areas impacted by factional violence.

This analysis supports the idea that a regionally tailored implementation framework is preferable to a one-size-fits-all national approach. This paper's broader doctoral research proposes the Rayalaseema Integrated Community Policing Model (RICPM) as such a framework. This model includes structured community liaison mechanisms, a plan for district-level investment in forensic and videography infrastructure based on identified capacity gaps, a regional police accountability system coordinated with state-level oversight bodies, and community-focused training that addresses the context of factional violence in the region. Understanding constitutional compliance requires looking beyond the statutory text to the point of implementation, where infrastructure, oversight, and community trust together determine whether a formally sound safeguard achieves its intended protective effect.

Findings and Discussion

This paper's analysis, both provision-wise and thematically, shows that the BNSS, 2023 does not reflect a consistent pattern of reform. Real change is focused on areas such as evidence generation, procedural transparency, and technology integration, including mandatory forensic investigations, videography of searches, statutory timelines, and the establishment of Zero FIR/e-filing. However, there is significant structural continuity in coercive and preventive powers, such as arrest without a warrant and preventive security proceedings, where discretionary triggers from the CrPC and the Police Act of 1861 remain largely unchanged. A third category, which includes handcuffing and the revised custody period, indicates an increase in police discretion compared to the pre-BNSS situation, which was more constrained by judicial oversight, complicating the narrative of the BNSS as a reform that enhances rights.

When evaluated against the frameworks of Articles 14, 21, and 22, as well as proportionality, the BNSS's compliance is similarly inconsistent. Provisions that enhance transparency support the fair procedure aspect of Article 21, while undefined discretionary triggers are susceptible to challenges under Article 14.

The handcuffing and extended custody provisions raise significant proportionality concerns that were largely addressed before the BNSS but are reopened by the new statutory language. The lack of enforceable consequences for failing to comply with the Code's own reformist safeguards represents a structural weakness that undermines practical constitutional compliance. Meaningful accountability will rely on factors outside the Code, such as the willingness of the judiciary to treat procedural non-compliance as significant, the state-level implementation of the institutions mandated by Prakash Singh, and investment in the infrastructure that the BNSS's reform provisions assume. The case study of Rayalaseema illustrates that practical constitutional compliance cannot be uniformly assessed across India's diverse administrative and socio-historical contexts, as regions with limited infrastructure and oversight capacity are likely to experience a greater gap between what the law promises and what is actually practiced compared to more resource-rich urban areas.

Suggestions and Recommendations

Legislative Recommendations

This paper suggests:

a. amending the statute to include a clear evidentiary consequence, specifically a rebuttable presumption of inadmissibility, for non-compliance with the videography requirement in Section 105;
b. narrowing the categories for handcuffing in Section 43(3) to necessitate an individualized and recorded assessment of flight risk or dangerousness instead of broad categories based on offenses, along with prompt review by a magistrate; and
c. reevaluating the extended custody period under Section 187 to require a new, case-specific judicial demonstration of necessity for each instance of custody sought within the fragmented time frame.

Institutional and Infrastructure Recommendations

To effectively implement the safeguards of the BNSS, there is a need for faster state-level execution of the Prakash Singh directives which include functional State Security

Commissions, independent Police Complaints Authorities that have investigative powers, and fixed-tenure protections for officers who are investigating cases. The implementation record of Andhra Pradesh should be looked at closely because of the preventive-policing intensity that has been documented in Rayalaseema. The forensic mandate under Section 176(3) needs targeted investments in regional forensic laboratory capacity, mobile forensic units, and hiring personnel in proportion to the regional caseload, with the districts in Rayalaseema being identified as priority areas. Compliance with videography and e-filing mandates also requires investments in baseline connectivity and device infrastructure at the police-station level.

The RICPM Framework for Regional Implementation

Based on the findings mentioned earlier, this paper suggests the Rayalaseema Integrated Community Policing Model, or RICPM, as a framework for regional implementation. This model integrates structured community liaison mechanisms that are based on Kerala's Janamaithri Suraksha Project and Andhra Pradesh's Maitri initiative. It includes a district-level investment plan for forensic and videography infrastructure that prioritizes documented capacity gaps. There is also a regional police accountability mechanism that works in coordination with state-level oversight institutions. Additionally, community-oriented training protocols are included that specifically address the historical context of factional violence which affects police-community trust in the region. The RICPM framework is further developed in the author's broader doctoral research and is presented here as a template for aligning national procedural reform with regionally specific constitutional realization.

Conclusion

This paper aimed to analyze police powers under the BNSS, 2023, through the interconnected perspectives of continuity, change, and constitutional compliance. The analysis shows that the BNSS's assertion of being a comprehensive decolonization of India's criminal procedure is only partially supported. There is genuine reform in evidentiary transparency and investigative modernization, which includes mandatory forensic investigation, search videography, codified Zero FIR, and statutory timelines, all of which respond to long-standing deficiencies in the CrPC framework. However, the discretionary framework that governs arrest, preventive detention, and in cases of handcuffing and extended custody, coercive restraint, remains largely continuous with or in some respects expanded compared to the pre-BNSS situation, despite decades of constitutional jurisprudence that has limited these powers. When assessed against

Articles 14, 21, and 22 and the proportionality doctrine, the compliance of the BNSS is uneven. It is strengthened in terms of procedural transparency but remains unresolved and in some cases newly contested regarding coercive discretion. This unevenness is made worse at the level of practical implementation due to infrastructural and institutional gaps, as illustrated by the Rayalaseema case study.

The most reform-oriented provisions of the BNSS assume forensic, technological, and oversight capacities that are unevenly distributed across India's states and districts, creating a significant gap between the statutory text and actual constitutional protection. The main contribution of this paper is twofold. First, it demonstrates that the concept of "continuity versus change" is not a simple binary but a complex pattern that requires assessment on a provision-by-provision basis. Second, it argues, based on the Rayalaseema case study and the proposed RICPM framework, that constitutional compliance should be evaluated not just at the level of statutory design but also at the point of regional implementation. Future legislative and policy efforts should focus on addressing the enforcement gaps identified in this paper's recommendations and ensuring that the institutional and infrastructural requirements for the reformist provisions of the BNSS are met with the same seriousness that led to the creation of the Code itself. Only then can the BNSS's stated goal of a citizen-centric, constitutionally compliant framework for police powers be considered genuinely realized, rather than just existing in text.

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