

## **India's New Criminal Laws: A Double-Edged Sword for Police Powers**

By Avishka Verma

In a monumental shift for India's legal landscape, 2023 witnessed the enactment of three transformative criminal laws: the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA). These legislations, replacing the colonial-era Indian Penal Code, Code of Criminal Procedure, and Indian Evidence Act, respectively, herald a new chapter in the nation's criminal justice system. The overarching aim is to modernize, streamline, and infuse a sense of justice, efficiency, and technological prowess. At the heart of this overhaul lies a significant enhancement of police powers, a change that promises substantial benefits but also carries inherent risks, demanding meticulous legal scrutiny. As a lawyer, I delve into these changes, examining their implications from legal, societal, and practical vantage points.

### **Redefining the Scope of Police Authority**

The BNSS, the newly minted procedural law, fundamentally redefines the scope of police authority across several critical areas:<sup>1</sup>

- **Extended Custody:** Section 187 of the BNSS grants police the power to seek custody beyond the previous 15-day limit, extending it to up to 60 or 90 days for grave offenses. This provision aims to facilitate more thorough and complex investigations, particularly in cases involving organized crime and terrorism.
- **Forensic Mandates:** A crucial step towards scientific policing, the BNSS mandates the collection of forensic evidence by experts at crime scenes for offenses punishable by seven years or more. This move is designed to enhance investigative accuracy and bolster conviction rates.
- **Digital Integration:** Acknowledging the digital age, both the BNSS and BSA recognize electronic records as admissible evidence. Furthermore, they permit digital processes for various stages of trials and inquiries, including the collection of finger impressions and voice samples, embracing technological advancements in evidence collection and presentation.

- **Zero FIR:** A victim-centric reform, the "Zero FIR" allows individuals to file a First Information Report (FIR) at any police station, irrespective of territorial jurisdiction. This initiative is designed to improve immediate access to justice and prevent delays often caused by jurisdictional wrangles.
- **Trial in Absentia:** The new laws empower courts to proceed with trials against absconding offenders, a measure aimed at streamlining case resolution and preventing perpetual delays caused by the non-appearance of accused persons.

The BNS, in parallel, introduces and strengthens provisions for modern offenses such as cybercrime and terrorism, thereby necessitating the broadened police powers outlined in the BNSS. Concurrently, the BSA modernizes evidence rules to accommodate and support these investigative and prosecutorial efforts, particularly in the realm of electronic evidence.

#### **The Promised Benefits: A Leap Towards Efficiency**

The enhanced police powers, if implemented judiciously, offer a multitude of benefits for the Indian criminal justice system:

- **Efficiency and Speed:** With strict timelines – 60 days to frame charges and 45 days for judgments – the new laws directly address the staggering backlog of over five crore pending cases (as of July 2023). This focus on expeditious justice aims to reduce prolonged incarceration and ensure timely resolution.
- **Stronger Investigations:** The provision for extended custody, coupled with mandatory forensic evidence collection, equips law enforcement with potent tools to combat sophisticated crimes like organized crime and terrorism. The recognition of electronic evidence significantly enhances the scope and efficacy of cybercrime investigations.
- **Victim Empowerment:** The BNSS prioritizes victims by ensuring they are consistently informed of investigation progress and can actively participate in proceedings. This shift aims to create a more victim-centric system, fostering trust and engagement. As the Supreme Court observed in *Vishakha v. State of Rajasthan* (1997), emphasizing the need for a victim-centric approach in sexual harassment cases, the new laws extend this principle to the broader criminal justice framework.

- **Technological Alignment:** The integration of digital tools and electronic evidence modernizes policing, moving away from archaic methods and enhancing the reliability and admissibility of evidence.
- **Accessibility:** The concept of Zero FIR significantly improves access to justice, particularly for vulnerable populations who might otherwise face challenges in reporting crimes due to geographical limitations or fear. This reform aligns with the spirit of *State of Haryana v. Bhajan Lal* (1992), which underscored the importance of prompt FIR registration.

These reforms collectively envision a more responsive, effective, and modern criminal justice system, better aligned with India's evolving societal needs and technological advancements.

#### **The Shadow of Doubt: Disadvantages and Risks**

While the benefits are promising, the expansion of police powers without adequate checks and balances raises serious concerns:

- **Potential for Abuse:** The extended custody periods, up to 90 days under Section 187 of the BNSS, carry an inherent risk of custodial violence or coerced confessions. India has a regrettable history of police misconduct and custodial deaths. As the Supreme Court sternly cautioned in *D.K. Basu v. State of West Bengal* (1997), laying down comprehensive guidelines to prevent custodial torture and deaths, the new provisions necessitate heightened vigilance to prevent their misuse.
- **Privacy Threats:** Expanded surveillance capabilities and data collection, particularly in the absence of a comprehensive data protection law, pose a significant threat to individual privacy rights. The landmark judgment in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), which recognized the right to privacy as a fundamental right, will undoubtedly serve as a critical yardstick for judicial scrutiny of these expanded surveillance powers.
- **Implementation Gaps:** The successful implementation of forensic and digital mandates hinges on substantial resources, infrastructure, and specialized training. Many rural police stations and even urban ones may lack the necessary facilities and trained personnel, risking uneven enforcement and creating disparities in justice delivery. As highlighted in various reports, a significant challenge in forensic science integration in

India is the "lack of standardization and delays in forensic reports," which could undermine the effectiveness of these mandates.

- **Weakened Judicial Oversight:** Greater police discretion in matters of custody and inquiries could potentially diminish the role of magistrates, thereby undermining a crucial check on executive authority. The existing jurisprudence, as seen in *Arnesh Kumar v. State of Bihar* (2014), emphasizes the need for magistrates to satisfy themselves about the necessity of arrest and detention, a principle that must be rigorously upheld under the new framework.
- **Disproportionate Impact on Marginalized Communities:** Enhanced police powers, if not applied equitably and with sensitivity, could disproportionately target vulnerable and marginalized groups, exacerbating existing societal discrimination.

These concerns underscore the urgent need for a delicate balance to prevent the erosion of civil liberties in the pursuit of efficiency.

### Legal and Constitutional Implications

The expansion of police powers under the new laws must strictly adhere to the fundamental rights enshrined in the Indian Constitution, particularly Article 21 (right to life and personal liberty, including the right to fair trial) and Article 22 (protection against arbitrary arrest and detention).

The extended custody periods, while practical for complex investigations, inherently risk infringing upon the presumption of innocence. This aspect will undoubtedly invite rigorous judicial scrutiny. The Supreme Court's pronouncements on speedy trial, an integral part of Article 21, as articulated in cases like *Hussainara Khatoon v. Home Secretary, State of Bihar* (1979), will continue to guide the interpretation and application of these provisions.

Furthermore, the legality of expanded surveillance powers will be meticulously tested against the principles laid down in the *Puttaswamy* judgment, demanding strict adherence to proportionality, legitimate aim, and procedural safeguards. The BSA's provisions on electronic evidence, while modernizing evidentiary standards, will require rigorous authentication procedures to ensure fairness and prevent manipulation. Section 63 of the BSA (corresponding to Section 65B of the repealed Evidence Act) details these conditions, emphasizing the need for a certificate from a person in charge of the system for admissibility.

The introduction of trials in absentia also necessitates careful consideration to ensure that the fundamental principles of natural justice and due process are not

violated. Harmonizing these new laws with existing statutes, judicial precedents, and the fundamental tenets of the Constitution will be a paramount challenge for the legal community during this transitional phase.

### **Conclusion: Balancing Power with Protection**

The Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam represent a bold and necessary step towards a modern criminal justice system in India. The enhanced police powers are undeniably designed to foster efficiency, strengthen investigations, and empower victims.

However, the attendant risks – the potential for abuse, threats to privacy, significant implementation gaps, and the possibility of weakened judicial oversight – cannot be overlooked. The success of these reforms hinges not merely on their legislative enactment but on their judicious and equitable implementation. Robust oversight mechanisms, adequate resource allocation for training and infrastructure, and unwavering judicial vigilance are absolutely essential to safeguard fundamental rights while harnessing the full potential of these transformative laws.

As lawyers, our role is crucial in navigating this complex legal landscape. We must advocate for a system that strikes a delicate and crucial balance between effective policing and the unwavering principles of justice, accountability, and the protection of civil liberties for every citizen. The true measure of these reforms will be their ability to deliver swifter justice without compromising the very foundations of a democratic society.