



THE BHARATIYA NYAYA SANHITA, 2023: EVALUATING ITS IMPACT ON POLICE POWERS AND PROCEDURAL REFORMS

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ABSTRACT

In 2023 India Legislative enacted The Bharatiya Nyaya Sanhita, 2023 by replacing the long-standing colonial era Indian Penal Code, 1860 (IPC), alongside they also enacted the Bharatiya Nagarik Suraksha, 2023 (BNSS) and The Bharatiya Sakshya Adhiniyam, 2023 (BSA). The BNS reforms aim to modernise substantive offences, align penalties with contemporary needs and introduce technologically relevant provisions. While its proponents hail it as a decolonisation of criminal law, critics caution against the expansion of police discretion and procedural gaps that may undermine safeguards. Judicial Precedents such as D.K. Basu v. State of West Bengal and Prakash Singh v. Union of India underscore the necessity of embedding safeguards into procedural law to ensure that reforms do not lead to abuse of power. This Article critically analyses the BNS 2023 with a focus on its operational and procedural implications for policing in India, assessing both opportunities and risks and recommending reforms to ensure that enhanced police powers are matched by institutional accountability.

INTRODUCTION

The Bharatiya Nyaya Sanhita, 2023 came into force on 1st of July 2024, by repealing the IPC in its entirety and introducing 358 Sections in place of 511 Sections in the IPC. The change is not an isolated legislative event but part of a comprehensive overhaul of India's Criminal Law framework, accompanied by the BNSS and the BSA. The Government of India justified the reforms on three principal grounds:

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- 1) The need to remove the colonial-era provisions that no longer reflect Indian societal values.
- 2) For the Simplifications and clarity of legal language.
- 3) The introduction of modern offences and procedures suited to digital and transnational crime.

Replacing Legal codes does not automatically transform the functionality of the Police or Courts. The impact of the BNS on policing must be evaluated in the context of Procedural changes under the BNSS and evidentiary innovations in the BSA. This Article evaluates the BNS 2023 with respect to Police Powers and Procedural Reforms, identifying its potential and pitfalls.

STRUCTURAL AND SUBSTANTIVE CHANGES IN BNS,2023 AFFECTING POLICE POWERS

• Reorganisation of offences:

The BNS reduces the total number of sections but merging and reclassifying, and expands the definition of offences. For the police, the reclassification has direct operational implications: the cognizable and non-cognizable status of offences determines when they can arrest without warrant, initiate investigations or require Magistrate Approval.

For example: Terrorism is now explicitly codified in Section 113 of the BNS, borrowing from the Prevention of Unlawful Activities Act, 1967, but made a substantive offence within the main criminal code. This incorporation gives police broader power to register FIR without recourse to special legislation, effectively mainstreaming counter- terrorism policing.

• Enhanced Punishments:

Certain offences now carry higher minimum punishments, such as Mob Lynching (BNS section 103(2)), sexual offences against minors (BNS section 64) and organised crime (BNS section 111). Police priorities may shift toward cases with heavier statutory consequences as these often attract more scrutiny from higher authorities and greater prosecutorial attention.

• New Technology-Oriented Offences:

The BNS explicitly addresses the cyber fraud (BNS section 340 (2)), identity theft (BNS section 337) and dissemination of sexually explicit content without consent (BNS section 63). These require police to develop new cyber forensic capabilities, often in coordination with specialised state or central cyber cells.

PROCEDURAL CHANGES IN BNSS 2023 RELEVANT TO POLICING

When the BNS governs substantive law, it is the BNSS that determines how police act on those offences. Three procedural reforms stand out:

• A Digital Evidence and Remote Testimony:

The BNSS read with the BSA permits greater reliance on electronic records and video conference testimony. In Delhi, all 226 stations have been notified under these rules, allowing about 2000 officers daily to avoid courtroom appearances. Police officers can now depose from designated video conference facilities in police stations, reducing travel to courts but raising concerns about transparency and supervision.

• Forensic Evidence Mandates:

The BNSS mandates forensic collection in certain categories of offences and requires videography of crime scenes for heinous crimes punishable with seven years or more. While this could improve evidentiary quality, it also imposes heavy logistical demands on police stations lacking forensic vans or trained staff.

• Stricter Timelines for Investigation:

The BNSS imposes tighter timelines for completing investigations in specific categories especially against vulnerable victims. This is intended to prevent undue delays but risks investigative shortcuts if resources are inadequate.

POSITIVE IMPLICATIONS FOR POLICE EFFICIENCY**1) The Reduction in Court Time:**

Video conferencing can allow police to focus more on investigations rather than spending hours waiting in court corridors.

2) It Improve Evidence Quality:

Mandatory Forensic Protocols and digital record keeping have the potential to reduce the wrongful acquittals caused by evidentiary gaps.

3) The Clarity in Offence Definitions:

More precise drafting reduces the scope for interpretive confusion at the FIR stage, streamlining charge framing.

RISKS AND CONCERNS**1) The Expanded Discretion without oversight:**

The broader definition of terrorism or organised crime could be used against political dissent or marginalised communities without adequate judicial safeguards.

2) The Resource Gaps:

Many rural Police stations still lack basic forensic kits compliance with BNSS mandates may be patchy and uneven.

3) Data Privacy and Digital Security:

Increased reliance on electronic evidence raises the risk of data breaches and manipulation without strong cybersecurity protocols.

4) Authorship Control:

Video evidence taken in police precincts without independent monitoring may allow spliced or edited testimonies.

CASES**A) Ahmedabad Collisions, August 2025:**

Two fatal traffic crashes within days resulted in divergent charges – culpable homicide up to

10 years of imprisonment against a municipal driver and Negligence up to 2 years against Rohan Sani for a similar accident on August 10. These discrepancies suggest inconsistencies in charging thresholds under BNS.

Case: State v. Rahul Parmar (Culpable Homicide) and State v. Rohan Sani (Negligent Driving).

B) Remote deposition Pilot in Delhi:

A notification to L-G Saxena (August 2025) designates all Delhi police stations as VC-enabled for police deponents. Roughly 2000 officers are daily are expected to benefit from generating efficiencies, but encounter concerns over judicial oversight.

Recommendations:

The Nature of BNS, in conjunction with the BNSS and BSA, demands a set of robust, multi-layered implementation strategies to ensure that the enhanced police powers translate into effective yet rights-respecting law enforcement. Without such measures, the reforms risk either not developing at the statute book level or, worse, creating a policing environment prone to arbitrary application and abuse.

• Development of Uniform Charging Guidelines:

One of the most immediate needs is the creation of National Charging protocols that establish clear criteria for invoking specific sections of the BNS. The recent Ahmedabad example, where similar vehicular homicide incidents led to drastically different charges, culpable homicide in one case and negligent driving in the other case this illustrates that Joe's inconsistent interpretation can erode public trust. A model charging manual prepared jointly by the

Ministry of Home Affairs, Bureau of Police Research and Development and Judicial

Representatives should outline offence elements, evidentiary threshold and mitigating factors. Such a manual could be periodically revised based on appellate judgments to keep pace with evolving jurisprudence.

• Infrastructure and Capacity Enhancement:

While the BNSS and BSA mandate the integration of videoconferencing, forensic evidence protocols, and cyber investigation techniques, large swathes of India's police infrastructure remain outdated. The government must adopt a tiered infrastructure upgrade plan:

Short term (1–2years): supply all district headquarters with functional Videoconferencing facilities, forensic kits, and trained operators.

Medium term (3-5years): Equip every police station with basic digital evidence storage facilities, secure network access and trained cyber crime liaisons.

Long term (5-10years): Established forensic science laboratories in every state and satellite branches in each district.

This funding could come from a combination of state budgets, central assistance and public-private partnerships especially for technology and training modules.

• Data Transparency and Public Dashboard:

In the digital age, statistical opacity undermines accountability. The National Crime Record Bureau (NCRB) should maintain real-time public dashboards detailing the number of FIRs, arrests, prosecutions and convictions under the new BNS provisions broken down by state, offence, category and demographic data of the accused. This would allow independent researchers, journalists and citizens to track trends and hold institutions accountable.

• Cyber Security and Digital Evidence Protocols:

Given in the BNSS and BSA on digital evidence, the MHA must issue Minimum cybersecurity Standards for all police stations, encrypted storage, restricted access, chain of custody logs and multi-layer authentication for digital evidence handling. Periodic third-party audits should be mandated to ensure compliance and minimize tampering risks.

• Training and Human Resource Development:

Legal reforms without human capacity building are ineffective. The Bureau of Police Research and Development, in collaboration with judicial academies, should create continuous training programmes for police personnel. These should focus on:

- 1) Legal changes and procedural mandates under the new codes.
- 2) Forensic and cyber investigation skills.
- 3) Rights-based policing and community engagement.

This training should be mandatory with periodic refresher courses linked to promotions.

CONCLUSION

The BNS, coupled with BNSS and BSA, represents the boldest attempt at overhauling India's criminal justice system since the mid-20th century by consolidating and rephrasing offences, introducing technology-oriented crimes and restructuring procedural timelines. These statutes promise a more efficient and contemporary policing framework, yet the sheer ambition of these reforms is both their strength and theoretical vulnerability. The BNS recalibrate offence definitions and enhances the punishments framework for emerging crimes, granting law enforcement broader tools to address technology driven and organized criminal activity. Simultaneously, the BNSS introduces expedited procedural timelines, provisions for digital evidence, videoconferencing and victim-centric safeguards. These are intended to improve investigation quality and reduce systemic delays.

However, the expansion of police authority, particularly in preventive detention, seizure powers and certain warrant-less investigation provisions, raises legitimate concerns regarding potential misuse and the erosion of civil liberties. Without robust oversight, training, and uniform application of charging protocols, these powers may be exercised inconsistently across jurisdictions, undermining public trust. The reform success hinges on infrastructure readiness, digital capacity and Human Resource Development. Modernised laws without modernised policing risk create a procedural gap that delays justice delivery. Moreover, BNS presents a rare opportunity to modernise India's criminal Justice System, but its promise will only be realised if legislative intent is matched by consistent implementation, robust oversight, and unwavering commitment to protecting both public safety and individual rights.

REFERENCES

1. D.K Basu v. State of West Bengal, AIR1997 SC 610
2. Prakash Singh v. Union of India(2006) 8 SCC 1.

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4. BNS § 113 (defining terrorism within the main code), see also UAPA, No 37 of 1967.
5. Id. § 340 (2), §357 and § 63 (cyber offences).
6. Bharatiya Nagarik Suraksha Sanhita, No. 45