

***Title: In-Depth Analysis of Section 187 of BNSS And Its Comparative Analysis With Section 167 CrPC, Authored By: Ms. Fathima Nourin (B.Com.LL.B (Hons)), Bharata Mata School of Legal Studies, Aluva & Co-Authored By: Mr. Noel Immanuel Martin (B.Com.LL.B (Hons)), Sree Narayana Law College, Poothotta.  
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## **ABSTRACT:**

*"The replacement of the **Code of Criminal Procedure, 1973 (CrPC)** by the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNS)** constitutes a significant shift in India's criminal justice framework. One of the most debated provisions is Section 187 of the BNS, which corresponds to Section 167 of the CrPC and governs the detention of accused persons during the investigative stage. This paper critically examines whether Section 187 effectively addresses the long-standing ambiguities and practical limitations associated with Section 167, while continuing to uphold constitutional safeguards against arbitrary detention. Adopting doctrinal and comparative research methods, the study analyses statutory provisions, judicial interpretations, parliamentary debates, and relevant committee reports to assess the scope and implications of the changes introduced. The analysis suggests that although Section 187 seeks to resolve certain operational difficulties faced by investigating agencies, it simultaneously introduces new ambiguities, particularly regarding the permissibility of police custody beyond the initial fifteen days and the interpretation of offences punishable with "ten years or more." These ambiguities raise serious concerns for personal liberty under Article 21 of the Constitution and risk diluting statutory protections such as the right to default bail. The paper concludes that legislative clarification or authoritative judicial interpretation is necessary to strike a careful balance between investigative efficiency and constitutional rights".*

**Keywords: Section 187 BNS v. Section 167 CrPC; Default Bail; Police Custody; Constitutional Safeguards.**

## **I. INTRODUCTION<sup>1</sup>:**

The CrPC was created for the first time ever in 1882 and then amended in 1898, and then, according to the 41st Law Commission report in 1973. On 11 August 2023, a Bill to replace

<sup>1</sup> A language-editing tool (QuillBot) was used to assist with paraphrasing and improving clarity. The author conducted all research, provided all legal analysis, and takes full responsibility for the final content.

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the CrPC with the BNSS was introduced in the Lok Sabha. On 26 December 2023, it was replaced with BNSS due to its “*colonial*” nature.<sup>2</sup> Section 187 of the BNSS corresponds to Section 167 of the CrPC. Section 187 of the BNSS governs the detention of an accused during an investigation. The essence of Section 187 is that if the investigation cannot be completed within twenty-four hours, the investigating officer (*not below the rank of sub-inspector*) must produce the accused before a Magistrate along with the case diary. The Magistrate may authorize detention for up to fifteen days, with possible extensions up to ninety days for offences punishable with death, life imprisonment, or imprisonment of ten years or more, and sixty days for other offences. Upon expiry, the accused must be released on bail if they can furnish it. Physical production of the accused is required for granting police custody, while extensions of judicial custody may be permitted via audio-video means. If a Judicial Magistrate is unavailable, an Executive Magistrate may authorize detention for up to seven days, after which the accused must be released or transferred to judicial custody. In summons cases, if the investigation is not completed within six months, it must be stopped unless a Sessions Judge allows an extension for valid reasons. This section upholds due process by preventing arbitrary detention while allowing necessary custodial measures for investigation. Judicial precedents, including Central Bureau of Investigation vs. Anupam J. Kulkarni,<sup>3</sup> and Budh Singh v. State of Punjab,<sup>4</sup> have established that police custody beyond the initial fifteen-day period from the date of arrest is impermissible. While this principle upholds the accused’s right to liberty, it has led to practical difficulties in conducting investigations within the prescribed timeframe under Section 167. Recognising these challenges, the Law Commission recommended an extension to sixty days in complex cases. These concerns required legislative reforms, resulting in Section 187 of the BNSS which modifies the existing framework to accommodate investigative

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<sup>2</sup> Prawesh Lama, *Lok Sabha clears 3 bills to replace British-era criminal codes*, HINDUSTAN TIMES (Dec. 21, 2023, 12:44 AM), <https://www.hindustantimes.com/india-news/ls-clears-bills-to-replace-british-era-crime-codes-101703097130091.html>.

<sup>3</sup> Central Bureau of Investigation v. Anupam J. Kulkarni, (1992) 3 S.C.C. 141 (India).

<sup>4</sup> Budh Singh v. State of Punjab, (2000) 9 S.C.C. 266 (India).

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necessities while preserving fundamental rights. Before BNSS, if an accused person was hospitalized during the initial fifteen-day period, the police lost the opportunity to detain the individual for investigation due to the lapse of the statutory time limit. This critical issue was raised in *Central Bureau of Investigation vs. Vikas Mishra*,<sup>5</sup> before Shri Neeraj Kishan Kaul, learned Senior Counsel for the Respondent-Accused, regarding a scenario where a trial or Special Court erroneously refuses police custody within the first fifteen days of arrest, despite a timely request by the investigating agency. If such a decision is later overruled by a higher court after the fifteen-day period has elapsed, the question arises as to whether police custody can still be granted. This legal vacuum posed significant challenges to effective investigation, has now been addressed under the new criminal procedure framework. In *Senthil Balaji vs. The State Represented by Deputy Director & Ors.*<sup>6</sup>, the key issue concerned whether the period of hospitalization should be included in the custody period, given that no actual custody was taken during that time. The Supreme Court rejected the writ of *habeas corpus* and allowed Enforcement Directorate to have Senthil Balaji in custody. Section 58 of BNSS (that is, section 57 of CrPC) also complements this by stipulating that no person arrested without a warrant shall be kept in custody for more than twenty-four hours without being produced before a Magistrate.

### **I.I STATEMENT OF THE PROBLEM:**

The criminal procedural code in India has undergone change in the recent time, the old statute has long been marred by ambiguity, employing loose phraseology in providing that an accused "*may be detained in custody for a period not exceeding fifteen days.*" This uncertainty persists, as the provision also omits to clarify whether the limitation attaches solely to police custody, solely to judicial custody, or to a composite of both. The coexistence of the old and new provisions has engendered interpretative loopholes, enabling accused persons potentially culpable, to exploit the poorly constructed language and temporal limits contained therein.

<sup>5</sup> Central Bureau of Investigation v. Vikas Mishra, (2023) 3 S.C.R. 321 (India).

<sup>6</sup> Senthil Balaji v. State Represented by Deputy Director & Ors., (2024) 3 S.C.C. 51 (India).

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Such ambiguity threatens to impede the progress of investigation and may prove fatal where delay in securing evidence is occasioned by fraudulent concealment or manipulation on the part of the perpetrator. Despite the complexity of certain offences, the procedural ceiling of fifteen days' custody often renders them helpless at a critical juncture of inquiry. In such circumstances, valuable evidence may be lost or manipulated, thereby frustrating the very object of investigation and weakening the pursuit of justice. Moreover, such procedural rigidity curtails the true spirit of justice for the victim, whose right to a fair and effective adjudication stands compromised by the inadequacies of the law.

### **I.II RESEARCH QUESTION:**

***To what extend does section 187 of the BNSS resolve the ambiguities and challenges inherent in section 167 of CrPC?***

### **I.III RESEARCH OBJECTIVES:**

- 1) To critically examine whether Section 187 of the BNSS adequately balances the protection of personal liberty with the investigatory requirements of the State.
- 2) To assess the extent to which the newly introduced provisions under Section 187 address the procedural gaps and ambiguities that were inherent in Section 167 of the CrPC.
- 3) To evaluate the constitutional validity of Section 187 with reference to Articles 21 and 22 of the Constitution of India.
- 4) To analyse judicial interpretations, if any, and scholarly opinions on the scope and application of Section 187 in comparison with Section 167 of the CrPC.
- 5) To determine whether the procedural modifications under Section 187 safeguard against arbitrary and unreasonable curtailment of life and liberty.

### **I.IV METHODOLOGY OF RESEARCH:**

This research adopts a doctrinal methodology, primarily focusing on the critical analysis of statutory provisions, case law, and scholarly commentary. The study is qualitative in nature and does not involve any empirical or field-based investigation.

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The primary sources examined include the Bharatiya Nagarik Suraksha Sanhita, 2023, the Code of Criminal Procedure, 1973, and relevant provisions of the Constitution of India, particularly Articles 21 and 22. Secondary sources comprise academic articles, commentaries, online legal databases, judicial pronouncements available through official portals, and law digest. Both online and offline sources were used to trace the legislative intent, examine judicial trends, and evaluate scholarly critiques of Section 167 CrPC and Section 187 BNSS. The methodology involves a comparative doctrinal analysis, wherein Section 167 of the CrPC is juxtaposed with Section 187 of the BNSS to identify continuities, modifications, and departures. The analysis further seeks to assess the implications of these changes on the balance between personal liberty and the investigatory needs of the State.

## **I.V HYPOTHESIS:**

The procedural modification introduced under section 187 have resulted in arbitrary and unreasonable curtailment of life and liberty under the guise of investigation.

## **I.VI LITRATURE REVIEW:**

**I.VI.I** According to Richa Kochhar & Vijata Ukey, in their article on 'Unrestricted Expansion of Police Authority Under the BNSS and its Effect on Accountability: A Critique', published on Anusandhanvallari Vol 2025, No.1 January 2025, the authors undertake a critical analysis of the enhanced powers vested in police officers under the newly enacted criminal procedure framework, with particular emphasis on the rationale underlying the sixty- and ninety-day remand provisions. Framing remand as an investigative rather than punitive measure, the author highlights the delicate balance between constitutional safeguards and the expanded powers of law enforcement. The study offers a comparative assessment of the Bharatiya Nagarik Suraksha Sanhita (BNSS) and the erstwhile Code of Criminal Procedure (CrPC), contributing valuable insights into the legislative transition. However, the work lacks a comprehensive exploration of Section 187 BNSS, notably omitting discussion of the additional judicial safeguards embedded in Section 187(2), which were absent in Section 167(2) of the

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*CrPC. The author does not address the magistrate's statutory duty to verify bail status or its cancellation, leaving a significant gap for further scholarly inquiry.*

**I.VI.II** According to the findings of Bhumika Induliya in her article published on SCC Online, which was particularly on the extend of the term custody. *the Supreme Court in Gautam Navlakha v. National Investigation Agency (2024) expanded the meaning of the term custody under Section 167 of the Code of Criminal Procedure by recognising house arrest as a valid form of detention during investigation.* Her contention was that the court did not give detailed guidelines on the procedure, safeguards, or scope of house arrest.

*As a result, Induliya argues that Section 167 CrPC remains ambiguous on this issue, since the judicial interpretation left crucial questions unanswered. She further raises concerns such as whether house arrest should always be treated as judicial custody or, in some circumstances, as police custody, what interrogation rights the police would retain, and how the conditions of house arrest would be enforced.*

*Building on this critique, the present paper takes the view that the legislature, through Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023, has intentionally eliminated the possibility of house arrest by restricting custody to police custody, judicial custody, and prisons recognised by the Central or State Government. In doing so, the legislature appears to have sought to address the legislative vacuum surrounding house arrest, which arose from the lack of clarity in judicial interpretation under Section 167.*

**I.VI.III** According to the article "Police Custody under CrPC & BNSS: A Paradigm Shift in Balancing Liberty and Investigation" published on CJP.org.in by an unknown researcher, the inclusion of the phrase "or in parts" under Section 187(2) of the BNSS creates practical hurdles in the grant of bail. The researcher notes that judicial officers may hesitate to grant bail until the police have exhausted the entire 15-day custody allowance, since granting bail at an earlier stage could require the cumbersome process of cancelling bail and subsequently approving further custody requests from the police. This observation suggests that the new provision under Section 187(2) has the potential to negatively impact the constitutional

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safeguards guaranteed under Articles 21 and 22 of the Constitution. The relevance of this finding to the present research lies in the fact that one of its objectives is to examine whether Section 187 maintains a fair balance between investigative proceedings and the protection of fundamental rights. The concern highlighted by the researcher reinforces the possibility that the provision, in its current form, may tilt disproportionately in favour of investigation at the cost of personal liberty.

## **II. CONSTITUTIONAL PROVISION:**

The Indian Constitution upholds the right to life and personal liberty, safeguarding individuals from unlawful and arbitrary detention.<sup>7</sup> In *Bikramjit Singh v. State of Punjab*,<sup>8</sup> the Supreme Court ruled that the right to default bail under Section 167(2) of the CrPC is not merely statutory but a fundamental right derived from Article 21. Likewise, in *M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence*,<sup>9</sup> the Court reaffirmed that Section 167(2) serves as a constitutional safeguard against illegal detention. The Hon'ble Supreme Court, in *Muzammil Pasha & Ors. v. National Investigation Agency*,<sup>10</sup> also recognised this principle. In *Central Bureau of Investigation v. Kapil Wadhawan & Ors. (2024)*<sup>11</sup>, the Supreme Court reiterated that default bail is a right rooted in Article 21. However, like other fundamental rights, the right to life and personal liberty is not absolute and is subject to reasonable restrictions. A person's liberty can be curtailed only through a procedure established by law, as provided under Section 187 of the BNSS (corresponding to Section 167 of the CrPC). This provision ensures that any deprivation of liberty adheres to constitutional principles, maintaining a balance between individual rights and lawful detention.

<sup>7</sup>INDIA CONST. art. 1, cl. 21.

<sup>8</sup>Bikramjit Singh v. State of Punjab, (2020) 10 S.C.C. 616 (India)

<sup>9</sup>M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence, (2021) 2 S.C.C. 485 (India).

<sup>10</sup>National Investigation Agency v. Muzammil Pasha, SLP (Crl.) Nos. 838–842 of 2022 (India).

<sup>11</sup>Central Bureau of Investigation v. Kapil Wadhawan, (2024) 1 S.C.R. 677 (India).

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## **II.I PROTECTION AGAINST ARREST AND DETENTION:**

### **FUNDAMENTAL RIGHT:**

As per the Indian constitution it is a fundamental right of every person who is arrested and detained in custody to be produced before a magistrate, within twenty-four hours of such arrest. The necessary time taken for the journey from the place of arrest to the court shall be excluded. Further detention shall be with the authority of the magistrate.<sup>12</sup> This fundamental right is embodied in section 58 of BNSS (that is, Section 57 of CrPC)

**However, the abovementioned constitutional protection is not available to;**

1. Any person who for the time being is from an enemy alien; or
2. to any person who is arrested or detained under any law providing for preventive detention<sup>13</sup>

## **II.II DEFAULT BAIL: A FUNDAMENTAL RIGHT:**

Once the accused has been in custody for ninety days or sixty days as the case may be, an indefeasible right to be released on bail accrues in favour of the accused. This right to be released on bail is referred to as ‘default bail’ or ‘statutory bail’. This provision keeps the investigation agencies and police on their toes and ensures that the investigation process is not misused to keep people behind bars indefinitely by prolonging the investigations. There are plethora cases like the Court in *M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence*,<sup>14</sup> on its judgment held that, if accused fails to apply for default bail when his right accrues, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. In *Anandu V. G. v. State of Kerala*,<sup>15</sup> the Kerala High Court held that if the investigation is not completed and the charge sheet is not filed within 90 days of custody, the accused has an

<sup>12</sup> INDIA CONST, art. 22, cl. 2.

<sup>13</sup> INDIA CONST, art. 22, cl. 3.

<sup>14</sup> M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence, AIR 2020 SC 5245 (India).

<sup>15</sup> Anandu V. G. v. State of Kerala, 2024 KHC 1595 (India).

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indefeasible right to statutory bail. In *Rathnakumar K. v. State of Kerala*,<sup>16</sup> the Kerala High Court (C. S. Dias, J.) held that when all statutory conditions are fulfilled, the right to default bail becomes indefeasible and must be granted, subject to appropriate conditions. In *Azharudheen v. State of Kerala*,<sup>17</sup> the Kerala High Court (C. S. Dias, J.) held that an order granting bail under proviso (a) to Section 167(2) CrPC is appropriately termed as an order on default, as it arises from the prosecution's failure to file the charge sheet within the prescribed period. The right to default bail under this provision is absolute and operates as a legislative mandate, leaving no room for judicial discretion. The court also held that whether an accused applies for default bail through a written or oral application is inconsequential. In *Renjith Kumar V. K. v. State of Kerala*<sup>18</sup>, the Kerala High Court (Bechu Kurian Thomas, J.) reaffirmed that the right to statutory bail under Section 167(2) CrPC is not merely a statutory right but a fundamental right flowing from Article 21 of the Constitution.

The Hon'ble Supreme court in *Ritu Chhabaria v. Union of India*,<sup>19</sup> stated that when the police file an incomplete charge sheet just to stop an accused person from getting statutory bail, it is not legally valid. The Court made it clear that an accused has an indefeasible right to bail under Section 167(2) of the CrPC if the investigation is not finished within the prescribed time. However, in *CBI v. Kapil Wadhawan*,<sup>20</sup> the Court took a different view. It relied on the earlier judgment in *K. Veeraswami*<sup>21</sup> and said that once a chargesheet is filed, even if the investigation is not fully complete, the accused can no longer claim the right to statutory bail under Section 167(2). This is because the provision only applies when no chargesheet is filed at all. The procedural and substantive protections provided by Section 167 CrPC are central to ensuring that the fundamental right of personal liberty of an accused is upheld and there is a continuous

<sup>16</sup>Rathnakumar K. v. State of Kerala, 2024 KHC 1571 (India).

<sup>17</sup>Azharudheen v. State of Kerala, 2024 (1) KHC 309 (India).

<sup>18</sup>Renjith Kumar V. K. v. State of Kerala, 2024 (2) KHC 658 (India)

<sup>19</sup>Ritu Chhabaria v. Union of India, 2023 SCC OnLine SC 502 (India).

<sup>20</sup>CBI v. Kapil Wadhawan, 2024 (3) SCC 734 (India).

<sup>21</sup>K. Veeraswami v. Union of India, (1991) 3 S.C.R. 189 (India).

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check on the powers of the investigative agencies during the process of investigation. The Supreme Court's judgment in Gautam Navlakha<sup>22</sup> which, as explained in the following section, expanded the traditional concept of 'custody' under Section 167, is consequently a landmark judgment that has the potential to significantly affect the rights of accused in criminal cases.

### **III. MAJOR CHANGES UNDER THE SANHITA:**

- Period of declaration:**

The CrPC empowers a Magistrate, irrespective of their jurisdiction to try the case, to authorise the detention of an accused for up to fifteen days in a custody deemed appropriate. If the Magistrate lacks jurisdiction to try or commit the case for trial and finds further detention unnecessary, they may direct the accused to be presented before a competent Magistrate.<sup>23</sup>

Whereas the B NSS empowers a Magistrate, regardless of their jurisdiction to try the case, to authorise the detention of an accused, considering whether they have been denied bail or had their bail revoked.<sup>24</sup> This detention may be sanctioned in parts or as a whole, for up to fifteen days, within the first forty or sixty days of the prescribed sixty- or ninety-day detention period.<sup>25</sup> If the Magistrate lacks jurisdiction to try or commit the case for trial and finds further detention unnecessary, they may direct the accused to be presented before a Judicial Magistrate with the requisite jurisdiction.

- Detention in police station:**

A person may only be detained in a police station under police custody, in a prison under judicial custody, or in a place designated as a prison by the Central or State Government<sup>26</sup>

- Audio-video electronic means:**

<sup>22</sup>Gautam Navlakha v. National Investigation Agency, 2021 KHC 6278 (India).

<sup>23</sup>Code of Criminal Procedure, No. 2, Acts of Parliament, 1973, § 167(2) (India).

<sup>24</sup>Bharatiya Nagarik Suraksha Sanhita, No. 46, Acts of Parliament, 2023, § 187(2) (India).

<sup>25</sup>Bharatiya Nagarik Suraksha Sanhita, No. 46, Acts of Parliament, 2023, § 187(3) (India).

<sup>26</sup>Bharatiya Nagarik Suraksha Sanhita, No. 46, Acts of Parliament, 2023, proviso 1 to § 187(5) (India).

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The phrase 'audio-video electronic means' has replaced 'medium of electronic video linkage' in Section 167 of the CrPC.

#### **IV. ANALYSIS OF SECTION 187 BNSS AND ITS COMPARISON WITH SECTION 167 CRPC:**

##### **IV.I 167(2) CRPC V. 187(2) BNSS - TIMEFRAME FOR MAGISTRATE'S AUTHORISATION OF DETENTION:**

Under Section 187(2) of the BNSS, before granting detention, the Magistrate must first check whether the accused has already been released on bail or if their bail has been cancelled. This ensures that a person who is legally out on bail is not wrongfully detained again. In contrast, Section 167(2) of the CrPC does not have this requirement, meaning the Magistrate under the old law could authorize detention without verifying the accused's bail status. This change in the BNSS adds an extra layer of judicial scrutiny to protect individual rights. Section 187(2) of BNSS allows the Magistrate to authorize detention for up to fifteen days, either continuously or in separate periods, as deemed necessary. And at any time within the first forty or sixty days of the total sixty or ninety-day detention period. Whereas the Section 167(2) of CrPC does not include the phrase 'or in parts.' And it does not include this specific timeframe. The inclusion of the phrase, "at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days,"<sup>27</sup> deployed under the Sanhita was interpreted in State of Karnataka by Kavoor Police Station v. Kalandar Shafi (2024),<sup>28</sup> the Karnataka High Court held that, "The language deployed of the statute i.e., BNSS projects no ambiguity. Therefore, the order rendered in terms of Section 187 does not also brood any ambiguity. There is no error, much less an error apparent on the face of the record. Therefore, it becomes a clear case where if the

<sup>27</sup>Bharatiya Nagarik Suraksha Sanhita, No. 46, Acts of Parliament, 2023, § 187(2) (India).

<sup>28</sup>State of Karnataka by Kavoor Police Station v. Kalandar Shafi, (2025) 1 KLJ 123 (India).

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offence is punishable where term can be extended up to ten years, it could vary from one to ten. The police custody in such cases would be available for fifteen days within the first forty days of investigation. fifteen days could vary from day one to day forty, but the total would be fifteen days. If the offence is punishable with ten years or more with the minimum sentence being ten years, the police custody would range from day one to day sixty, fifteen days in total”.

#### **IV.II SECTION 187(3) - PERIOD FOR WHICH THE MAGISTRATE MAY ORDER DETENTION OF THE ACCUSED:**

Suppose if an accused is ‘*detained during an investigation*’, the Magistrate may extend custody beyond the initial fifteen-day period, but not beyond ninety days if the offence under investigation is punishable with death, life imprisonment, or imprisonment for ten years or more, and sixty days for all other offences. A Magistrate may authorise the “*detention of an accused, already in police custody*”, beyond fifteen days if satisfied that adequate grounds exist. For all other offences, the detention period shall not exceed sixty days. The court further added that a Magistrate can authorise the detention of an accused in custody for a maximum period of ninety days if the investigation pertains to an offence punishable with death, life imprisonment, or imprisonment for not less than ten years. The accused maybe detained for a period of ninety days even if the offence is not punishable with a minimum sentence of ten years’ imprisonment. If the investigation remains incomplete after ninety days, the accused must be released on bail if they are willing and able to furnish it, reinforcing the principle that detention cannot be indefinite and must comply with legal safeguards.

#### **IV.III 167(2)(A) PROVISO 1, CRPC V. 187(3) BNSS – SCOPE OF CUSTODY:**

Under the CrPC, a Magistrate can authorize detention beyond fifteen days, but only in judicial custody, as indicated by the phrase “*otherwise than in the custody of the police*.<sup>29</sup>” However,

<sup>29</sup>Code of Criminal Procedure, No. 2, Acts of Parliament, 1973, proviso (1)(a) to § 167(2) (India).

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BNSS (i.e. § 187(3)), this phrase is absent, suggesting detention beyond fifteen days for both police and judicial custody.<sup>30</sup> In special legislations like the Unlawful Activities (Prevention) Act, the maximum duration of police custody is only up to thirty days, the investigating officer is required to submit an affidavit providing reasons for seeking police custody from judicial custody. Such safeguards are absent in the BNSS, which practically nullifying the constitutional safeguards and creates room for prolonged custodial detention, which ultimately cause forced confessions, and fabrication of evidences especially against the marginal section of the society.

#### **IV.IV CONTRADICTION BETWEEN 187(2) AND 187(3) OF BNSS:**

There exists a contradiction between Sections 187(2) and 187(3) of the BNSS creating ambiguity regarding the period of detention, leading to inconsistencies in their interpretation. The apparent legislative intent behind Section 187(2) was to modify the position under Section 167(2) of the CrPC by extending the period during which police custody could be granted. This change seems to counter the Supreme Court's ruling in ***CBI v. Anupam J. Kulkarni***,<sup>31</sup> which held that police custody cannot be granted beyond the first fifteen days. However, the wording of Section 187(2) lacks clarity, as it does not explicitly state that only police custody is being referred to. Similarly, Section 187(3) does not specify whether detention beyond fifteen days pertains to police or judicial custody. When read together, these provisions create confusion—while Section 187(2) allows remands up to forty or sixty days, Section 187(3) implies that detention beyond fifteen days is possible without specifying its nature, making Section 187(2) seem redundant.

#### **IV.V SECTION 187(4) - PROCEDURE TO PRODUCE THE ACCUSED BEFORE THE MAGISTRATE:**

<sup>30</sup>Bharatiya Nagarik Suraksha Sanhita, No. 46, Acts of Parliament, 2023, § 187(3) (India).

<sup>31</sup>Central Bureau of Investigation v. Anupam J. Kulkarni, (1992) 3 SCC 141 (India).

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The law mandates that an accused must be presented before the Magistrate each time before their detention is extended. If the police seek to keep the accused in police custody, they must produce them physically before the Magistrate. However, if the accused is in judicial custody, their production can be done either in person or through audio-video means.

#### **IV.VI SECTION 187(5) - MAGISTRATE OF SECOND CLASS**

##### **CANNOT AUTHORISE DETENTION IN POLICE CUSTODY:**

Section 187(5) means that a Second-Class Magistrate cannot order police custody unless they have been specifically authorized by the High Court. Explanation I clarifies that even if the period prescribed under sub-section (3) has expired, the accused shall remain in custody until they furnish bail. This provision ensures that an accused person cannot be released solely due to the expiry of the detention period, reinforcing the necessity of securing bail for release. Explanation II addresses the proof of production of the accused before the Magistrate, as required under sub-section (4). It states that such production can be established through the signature of the accused on the detention order or by the order certified by the Magistrate, including production via audio-video electronic means, where applicable. This provision ensures that procedural compliance can be demonstrated through documentary or electronic evidence, reducing disputes regarding physical production before the Magistrate. The proviso to Section 187(5) mandates that if the accused is a minor woman, her detention shall be authorised only in a remand home or a recognised social institution. This provision aligns with the proviso to Section 167(2) of the CrPC.

#### **IV.VII NEW PROVISO REGARDING CUSTODY:**

Under the criminal procedure code, the scope of section 167 with regards to “custody”, the Supreme Court in Gautam Navlakha v. National Investigation Agency<sup>32</sup>(2024), expanded the scope of the term “custody” by recognising house arrest as a valid form of detention during investigation. However, it left gap as the court did not give detailed provisions with regarding

<sup>32</sup>Gautam Navlakha v. National Investigation Agency, SLP (Crl.) No. 167 of 2024 (India).

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the same. This eventually gave raise to serious questions regarding the extend of the interrogation right of the police, and the conditions on how to enforce house arrest. However, the new code explicitly defines the scope “custody” as police and judicial custody, specifying that police custody shall be limited to the police station, while judicial custody shall mean detention in a prison or any place declared as a prison by the Central or State Government.<sup>33</sup> Inclusion of this provision avoided the potential ambiguities with regards to the house arrest or any form of arrest. In ***Ghulam Qadir Bhat v. State & Ors.***<sup>34</sup> the definition of ‘prison’ was examined in the broader context of detention facilities. A ‘borstal school’ is a corrective institution where adolescent offenders, while in custody, receive industrial or agricultural training along with moral and disciplinary guidance aimed at their reformation and crime prevention. Since borstal schools function as places of lawful detention, they fall within the scope of a prison as declared by the Central or State Government. However, the first proviso to Section 187(5) of the BNSS contradicts the intent of the Juvenile Justice Act, 2015, making its application unreasonable in light of the special provisions for juvenile offenders.

#### **IV.III AUDIO-VIDEO ELECTRONIC MEANS:**

The CrPC, 1973, introduced the term ‘electronic video linkage’ through an amendment, though it did not define the expression. Under the BNSS the phrase ‘audio-video electronic’ is defined as ‘any communication device’ that can be used for the purposes of recording investigation as prescribed.<sup>35</sup> The BNSS uses both terms ‘audio-video’ recording and ‘videography’, and there is a lack of clarity about the respective scope of these terms. It is unclear whether ‘audio-video’ recording includes a requirement for both audio and video or provides an option of recording either audio or video of the proceedings. Since the BNSS also uses the term ‘videography,’ there is a possibility that the scope of this recording would be limited to visual recording, without the corresponding audio. The new Code now provides a definition; however, its

<sup>33</sup>Bharatiya Nagarik Suraksha Sanhita, No. 46, Acts of Parliament, 2023, proviso to § 187(5) (India).

<sup>34</sup>Ghulam Qadir Bhat v. State & Ors., (2010) 4 JKJ 729 (India).

<sup>35</sup>Bharatiya Nagarik Suraksha Sanhita, No. 46, Acts of Parliament, 2023, § 2(1)(a) (India).

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meaning remains largely unchanged. The shift in terminology from 'electronic video linkage' to 'audio-video electronic means' does not create any significant difference. Therefore, the introduction of the new phrase appears redundant.

## **V. JUDICIAL INTERPRETATIONS OF SECTION 187:**

### **V.I CUSTODY; PLACE AND PERIOD OF DETENTION:**

The new provision creates an anomaly where an accused, once released on bail after being placed in judicial custody, can still be re-apprehended under police custody. This inconsistency raises serious concerns about procedural fairness and the protection of fundamental rights under Articles 19, 21, and 22 of the Constitution. The frequent shifting between police and judicial custody may lead to arbitrary detention. The Supreme Court in *V Senthil Balaji v. the State represented by the deputy director and Ors*<sup>36</sup> observed that the word 'custody' under Section 167(2) of the CrPC shall mean actual custody also the words 'such custody' occurring in Section 167(2) of the CrPC would include not only police custody but also that of other investigating agencies. The CrPC did not leave much ambiguity regarding the period of detention however the BNSS creates room for confusion regarding the same, therefore the Courts must interpret statutory provisions in a way that ensures their practical application, as established in *Commissioner of Income Tax v. M/s Hindustan Bulk Carriers*<sup>37</sup>. If a case concerning Section 187 arises, the Supreme Court would need to clarify its ambiguity. The solution is to remove the phrase "*at any time during the initial forty days or sixty days out of the detention period of sixty days or ninety days*" from Section 187(2), restoring the legal position under the previous Code. While this may not align with Parliament's intent, the lack of clarity makes it impossible to determine that intent with certainty. As held in *Bhavnagar University v. Palitana Sugar Mill (Pvt) Ltd.*<sup>38</sup>, statutory wording can only be altered if leaving

<sup>36</sup>Senthil Balaji v. The State Represented by Deputy Director & Ors, (2024) 3 SCC 51 (India).

<sup>37</sup>Commissioner of Income Tax v. M/s Hindustan Bulk Carriers, AIR 2002 SC 3491 (India).

<sup>38</sup>Bhavnagar University v. Palitana Sugar Mill (Pvt) Ltd., AIR 2003 SC 511 (India).

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it unchanged leads to absurdity or unworkability. Given these issues, the most effective solution would be for Parliament to amend Section 187 to remove inconsistencies and ensure clarity.

In *Sabu v. State*,<sup>39</sup> which was implicitly upheld by the Supreme Court in *Gautam Navlakha v. National Investigation Agency*,<sup>40</sup> the Court held that the total period of custody must be considered, regardless of which authority had jurisdiction over the accused. In *Central Bureau of Investigation v. Kapil Wadhawan*,<sup>41</sup> the Supreme Court, relying on *K. Veeraswami*<sup>42</sup> and earlier precedents, held that the right under the proviso to Section 167(2) of the CrPC is available only if the investigation remains incomplete and no chargesheet has been filed. Once a chargesheet is submitted, this right stand extinguished.

## **V.II “TERM OF TEN YEARS OR MORE”:**

The judicial precedents regarding the interpretation on the legal conundrum regarding the phrase “*term of ten years or more*”, the Kerala high court held that, ‘*An offence punishable with a sentence of death or imprisonment for life or imprisonment for a term that may extend to 10 years is a serious offence entailing intensive and perhaps extensive investigation*’; the bench consisting of *Madan B. Lokur, Prafulla C. Pant, Deepak Gupta, JJ.* held that, ‘*if the sentence is a minimum period of 10 years, then the relevant period will be 90 days*’; ‘*the term can be between one year to ten years. If it is one year to ten years, Section 187(3) of BNSS cannot be pressed into service for the purpose of police custody or any other reason for that matter, as the investigation for offences punishable upto ten years must get completed in sixty days*’. Justice *M. Nagaprasanna* clarified that the offence in question does not mandate a minimum sentence of ten years but allows punishment up to ten years, leaving sentencing to the court’s discretion. As a result, the ten-year threshold does not apply. For offences punishable up to ten years, the investigation must be completed within sixty days, whereas for offences punishable by death, life imprisonment, or ten years or more, the period extends to ninety days.

<sup>39</sup> *Sabu v. State*, 2020 (2) KHC 601 (India).

<sup>40</sup> *Gautam Navlakha v. National Investigation Agency*, SLP (Crl.) No. 167 of 2024 (India).

<sup>41</sup> *Central Bureau of Investigation v. Kapil Wadhawan*, 2024 (3) SCC 734 (India).

<sup>42</sup> *K. Veeraswami v. Union of India*, (1991) 3 SCR 189 (India).

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If the investigation period is sixty days, police custody can be taken at any time between day one and day forty from the registration of the crime. If it is ninety days, custody can be taken between day one and day sixty. However, in both cases, the total period of police custody remains fifteen days. Since the offence in this case is punishable up to ten years, police custody is limited to the first forty days of the investigation period. The phrase 'term of ten years or more' has been interpreted in ***State of Karnataka by Kavoor Police Station v. Kalandar Shafi (2024)***.<sup>43</sup> as "*the term can be between one year to ten years. If it is one year to ten years, Section 187(3) of BNSS cannot be pressed into service for the purpose of police custody or any other reason for that matter, as the investigation for offences punishable up to ten years must get completed in sixty days. I hasten to add that it is only in few cases where it relates to life, death or ten years or more, the investigation can be for ninety days. In all other offences under the Indian Penal Code or Bharatiya Naya Sanhita, investigation must complete within sixty days.*" As per ***KH Rakesh Kumar Paul v. State of Assam, (2017)***,<sup>44</sup> Madan B. Lokur, Prafulla C. Pant, Deepak Gupta, JJ, pronounced that if the sentence is a minimum period of ten years, then the relevant period will be ninety days.

## **VI. GAPS IN CLAUSE 187: UNRESOLVED CONCERNS IN BNSS, 2023:**

The Department-Related Parliamentary Standing Committee on Home Affairs, in its Two Hundred Forty-Seventh Report on BNSS, 2023, highlighted critical ambiguities in Clause 187, particularly regarding the fifteen-day limit on police custody. While the provision restricts custody to fifteen days, Clause 187(2) permits its exercise at any time within the first forty or sixty days, depending on whether the total detention period is sixty or ninety days. The Committee noted that this flexibility lacks safeguards, leaving room for potential misuse, as it does not specify why custody was not secured within the initial fifteen-day period. To mitigate

<sup>43</sup> State of Karnataka by Kavoor Police Station v. Kalandar Shafi, (2025) 1 KLJ 123 (India).

<sup>44</sup> KH Rakesh Kumar Paul v. State of Assam, (1991) 3 S.C.R. 189 (India).

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this risk, the Committee recommended that, generally, police custody should be taken within the first fifteen days of remand, with the forty-day and sixty-day window available only in exceptional cases, such as when the accused intentionally evades custody or unavoidable external circumstances prevent immediate interrogation. To ensure greater accountability, the Committee suggested that investigating officers must record reasons for failing to obtain custody within the prescribed fifteen-day period and seek Magistrate approval before invoking the extended timeframe. However, despite these clear recommendations, no amendments were incorporated into Clause 187, leaving its ambiguities and potential for misuse unaddressed. Furthermore, the proposal to amend Clause 482, to explicitly clarify that police custody may be required beyond the first fifteen days in justified circumstances, was also not implemented. The failure to incorporate these crucial safeguards weakens the intended reform, potentially affecting both investigative efficiency and the protection of individual rights.

## **VI.I SECTION 167 CRPC VS. SECTION 187 BNSS:**

Aspect	CrPC	BNSS	Impact
Maximum Initial Custody	Magistrate may authorise custody (police/judicial) up to fifteen days from date of arrest.	Magistrate may authorise custody up to fifteen days (in part or whole), but at any time within the first forty days (for sixty days cases) or sixty days (for ninety days cases).	Expands flexibility to take police custody beyond the initial fifteen day block, creating ambiguity on limits.
Extended custody periods.	Up to ninety days (for offences punishable with	Same framework: ninety days (for offences punishable	Substantively same but linked with extended

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	death, life imprisonment, or imprisonment up to ten or more years). Up to sixty days (for other offences).	with death, life imprisonment, or imprisonment up to ten or more years) And sixty days for other offences.	scope of police custody in sub-section (2).
Custody type beyond fifteen days	Only judicial custody allowed (as per Anupam J Kulkarni). Police custody impermissible after fifteen days.	“Absence of otherwise than in police custody” phrase creates ambiguity – may allow police custody even beyond fifteen days.	Contradicts long-settled judicial precedent; risk of arbitrary detention
Bail status	No express requirement to check whether accused is already on bail.	Magistrate must check if accused is already on bail or bail has been cancelled before granting detention.	Stronger safeguard for liberty; prevents wrongful re-detention.
Production before Magistrate.	Physical production required; later amendments	Physical production for police custody; audio-video electronic means allowed for judicial	Modernises procedure; reduces logical burden.

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	allowed video linkage.	custody examinations.	
Definition of custody.	Ambiguities led to Supreme Court to recognise house arrest as custody.	Explicitly restricted to police custody (police station) and judicial custody (prison/declared prison).	Closes door on house arrest; narrow interpretative scope.

## **VII. CONCLUSION:**

Section 187 of the BNSS is framed as a reformative step, intended to remedy the difficulties that arose under Section 167 of the CrPC. However, its language introduces fresh uncertainties that may compromise the careful balance between the investigation needs and the protection of personal liberty. The provision allows police custody within the forty- or sixty-day period and exists absence of a sharper line between police and judicial custody which weakens procedural safeguards that have served as checks on arbitrary detention. Certain research works contend that the newly introduced provision strikes a balance between personal liberty and the requirements of investigation, a closer examination reveals that their works often omit discussion of crucial aspects. Beginning with the very definition of custody, which itself warrants careful scrutiny, to the mechanism of judicial oversight in extending detention, the legal framework has undergone significant modifications and procedural deviations. Judiciary has repeatedly underscored that the right to default bail is not merely statutory but a constitutional guarantee flowing from Article 21. Any provision that dilutes or obscures this right must therefore be approached with caution. Section 187, unless clarified through legislative amendment or judicial construction, could end up repeating many problems it set out to address. For this reason, greater precision is needed: both in defining the circumstances in which extended detention may be justified, and in ensuring that police powers remain subject

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to strict judicial oversight. Whether Section 187 will be remembered as a genuine reform or as a missed opportunity will depend on its practical interpretation and its capacity to uphold constitutional commitments to personal liberty.

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