

Remand Under BNSS: A Comparative Study with UK & US Laws

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ABSTRACT

The Indian criminal justice system underwent a significant transformation with the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, replacing the Indian Penal Code, 1860. Alongside, the Code of Criminal Procedure, 1973, was replaced by the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. This paper critically examines the evolution and modifications in remand provisions under the BNSS, particularly Section 187 read with Section 58, compared to the earlier Section 167 of the CrPC. It explores the shifting judicial interpretations on remand duration and police custody, highlighting the Hon'ble Supreme Court's recent relaxation of the 15-day rule. The paper also analyses divergent High Court decisions on the transitional applicability of BNSS in pending matters. Drawing comparisons with US and UK criminal law procedures, this paper seeks to provide a comprehensive understanding of remand jurisprudence and the legal implications of the new legislation on procedural safeguards and individual rights. While all three jurisdictions recognize the necessity of pre-trial detention for ensuring justice and public safety, the U.S. and U.K. demonstrate stricter timeframes and clearer judicial oversight. The U.K.'s bifurcation of remand into pre- and post-charge phases and the U.S. emphasis on swift hearings underline their focus on due process and individual liberty. In contrast, India's remand provisions, particularly the extension of police custody, raise concerns of potential misuse and imbalance of power. The article questions whether current Indian practices align with constitutional protections and international human rights standards, urging a re-examination of remand procedures to prevent encroachments on civil liberties and uphold the principle of "innocent until proven guilty."

Keywords: Remand, BNSS, Police Custody, Judicial Interpretation, Criminal Law Reform, Remand Laws, Pre-trial Detention, Human Rights

INTRODUCTION

Over the past couple of years, the Indian Parliament had been deliberating on the topic of overhauling the 3 major criminal laws in force in India—the

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India Penal Code, 1860 (IPC), the Indian Evidence Act, 1872 (IEA), and the Code of Criminal Procedure, 1973 (CrPC). In a historic move last year, i.e. in 2023, new bills were passed by both Houses of Parliament and received the President's assent by 25th December, 2023. The IPC was replaced by the Bharatiya Nyaya Sanhita, 2023 (BNS), the IEA was replaced by the Bharatiya Sakshya Adhiniyam, 2023 (BSA), and the CrPC was replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (Universal's Criminal Manual, 2024). The new laws came into force on 1st July, 2024 (Abraham, 2024).

A perusal of the new laws shows that the essence of the respective previous legislations remains the same while certain major changes have been made in the new laws. One of the most obvious changes brought about is the change in the names of these legislations – using Hindi names. Apart from modernising the laws in force and updating the criminal justice system. Another objective was to symbolise the de-anglicisation of criminal law (Nambath, 2024). Changes within the legal provisions *inter alia* include the deletion of 'sedition,' replacing it with Section 150 that criminalises promoting of secessionism, separatism and armed rebellion, mob lynching and organised crime have been added while hate speech has been removed, making videography of seizures has been mandatory, and remand provisions have been altered to permit police custody beyond the 15-day limit (Nambath, 2024).

The present paper deals with the recent changes made to the remand provisions in the BNSS as compared to CrPC and a comparative study of the same regarding the US and US laws.

BNSS IMPLEMENTATION AND INTEGRATION

Before examining the new statutory provisions concerning remand, police custody, and judicial custody under the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), it is essential to contextualize the interpretative approaches adopted by various Hon'ble High Courts and the Hon'ble Supreme Court of India in harmonizing the procedural transition between the Code of Criminal Procedure, 1973 ("CrPC") and the BNSS in relation to pending matters (Mukherjee & Sinha, 2024). Given the considerable volume of pending cases initiated prior to the enforcement of the BNSS, there has emerged significant judicial discourse regarding the procedural regime to be applied by courts. Consequently, various High Courts have been compelled to engage with this transitional dilemma within their respective jurisdictions.

The Hon'ble High Court of Delhi in *Prince v. State (NCT of Delhi)*, 2024⁴ authoritatively held that a bail application filed subsequent to the commencement of the BNSS (i.e., post 1 July 2024), despite the FIR having been registered prior thereto, must be adjudicated in accordance with the BNSS rather than the CrPC.

A concurring interpretation was rendered by the Hon'ble High Court of Bombay in *Chowgule and Co. (P) Ltd. v. State of Goa*, 2024 wherein the Division Bench comprising Bharat P. Deshpande and Valmiki Menezes JJ. opined that while investigations initiated before 1 July 2024 must be concluded under the CrPC, any bail application preferred post-enforcement is to be governed by Section 482 of the BNSS.

In contrast, the Hon'ble High Court of Punjab & Haryana in *X v. State (UT of Chandigarh)*, 2024 adopted a divergent approach, holding that upon the coming into force of the BNSS, all proceedings—save for pending appeals, applications, revisions, and similar proceedings—must be conducted under the new legal framework, regardless of whether the matter was initiated under the previous enactments. The Court further clarified that any appeal, revision, or petition instituted after 1 July 2024 shall be governed by the BNSS.

The Hon'ble High Court of Kerala in *Abdul Khader v. State of Kerala*, 2024 similarly deviated from the Delhi and Bombay High Courts. Justice Sophy Thomas articulated that although a trial may have been conducted and judgment rendered under the CrPC, any appellate proceedings arising thereafter shall be regulated by the BNSS.

Endorsing the rationale of the Punjab & Haryana High Court, the Hon'ble High Court of Allahabad in *Deepu v. State of U.P.*, 2024 per Vivek Kumar Birla J., elucidated that where the offence was committed prior to the enforcement of the BNSS but the FIR was registered subsequently, the registration must occur under the Indian Penal Code, 1860 ("IPC"), while the subsequent investigation shall proceed in accordance with the BNSS. However, if the investigation had commenced and remained pending as of 1 July 2024, the procedural provisions of the CrPC would continue to apply until the stage of cognizance, after which the BNSS would govern.

The Court further affirmed that all trials, appeals, applications, or revisions instituted post-enforcement shall be conducted under the BNSS. In instances where a trial initiated prior to the enforcement concludes thereafter, any appeal or revision arising from such a judgment must be filed under

the BNSS. Additionally, the Court clarified that any challenge to criminal proceedings or charge-sheets before the High Court on or after 1 July 2024, even if the underlying investigation was conducted under the CrPC, shall be governed by the procedural framework of the BNSS.

REMAND: LEGAL CONCEPT AND PURPOSE

Cambridge Dictionary defines remand as sending someone who is accused of committing an offence away from the court until their trial begins (Jones, Roach, Setter, & Esling, 2011).

Merriam-Webster Dictionary (Merriam-Webster, 2024) defines remand as:

“the act of remanding something or someone or the state of being remanded: an order to return or send back someone or something the return of a person to custody pending trial or for further detention”

As per Wharton’s Concise Law Dictionary remand has been defined as to return from one court to another especially lower court or from a court to an administrative agency (Wharton’s Concise Law Dictionary, 2012).

Black’s Law Dictionary states remand is the act or instance of sending something (such as claim, claim or person) back for further action (Garner & Black, 2024).

From a perusal of the above definitions, it can be safely presumed that in the legal sense remand has two meaning – one is to return cases from the appellate court to the lower courts, and the other is to return or send back someone to the custody of an administrative agency or authority. The current paper will be dealing with the latter definition.

There are 2 main types of remand – police remand and judicial remand, with a third being added later i.e. transit remand.

Judicial Remand is where the Magistrate send the accused to a local jail or other facility under the supervision of the judiciary. The accused is under the supervision of the Magistrate.

Police remand is where the accused is sent by the Magistrate back to the police station. In such cases the accused is under the surveillance of the police.

Transit Remand is a sub-group of police remand and is usually practiced when the accused has been arrested outside the police jurisdiction. It is

meant to transport the accused from one place to another for the purpose of production before the court which had jurisdiction over the case (Wahab).

Until recently, the concept of remand was being dealt by under the CrPC under Section 167 read with Section 57. After the BNSS coming into force, remand is now being dealt with under Section 187 read with Section 58.

REMAND UNDER CODE OF CRIMINAL PROCEDURE

Before, the concept of remand was dealt with under Section 167 of the CrPC. Section 167 CrPC laid down that whenever a person accused of an offence is arrested, the police must produce that person before the Magistrate within 24 hours of such arrest. If it seems that the investigation cannot be completed within the 24 hours then his custody may be extended by the Magistrate, before the completion of the charge-sheet, upon an application made by the police requesting as such. This is also known as remand.

In *Manoj v. State of Madhya Pradesh*, 1999 the Court held that two requisites must be followed by the investigating officer when the investigation cannot be completed within 24 hours after arrest of the accused – to transmit a copy of the case to the nearest judicial magistrate and to forward the accused to such magistrate. Referring to Section 57 the court also laid down that no person arrested without warrant can be kept in custody for a period longer than 24 hours of such arrest. If such person was not produced by the police officer to the nearest judicial magistrate within 24 hours of his arrest, then his further detention would be invalid and would be held vitiated.

However, once the person has been presented before the Magistrate, and the latter has decided to extend the police custody of the accused, such remand cannot be granted for more than 15 days in total. After this the remand will be that of judicial custody rather than police custody.

In *State (Delhi Admn.) v. Dharampal & Ors.*, 1980 the court held that subsequent to the 15 days' police custody an accused can only be sent to judicial custody.

In *C.B.I. v. Anupam Kulkarni*, 2024 the SC held:

“The detention in police custody generally disfavoured by law. The provisions of law lay down that such detention can be allowed only in special circumstances and that can be only be a remand granted by a magistrate for reasons judicially scrutinised and for such limited purposes as the necessities of the case may require. The scheme of Section 167 is

obvious and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers.”

The proviso states that a Magistrate may extend the detention or remand but for offence punishable with death. Life imprisonment or imprisonment for not less than 10 years the extension shall not be more than 90 days while for other offences it shall not be more than 60 days. Upon the expiry of said 60/90 days the accused shall be released on bail if he is ready and willing to furnish the bail (Code of Criminal Procedure, 1973, s. 167).

The 3-Judge Bench in Anupam Kulkarni, 1992 also held that the 60/90 days are to be calculated from the date of detention, not from the date of arrest.

The Hon'ble Supreme Court in Suresh Kumar Bhikamchand Jain v. State of Maharashtra, 2013 revised the interpretation of Section 167(2)(a)(ii) and held that default bail shall be granted to the accused irrespective of whether the court had taken cognizance of the police report submitted before it or not.

It was mandatory that in order for the Magistrate to authorise detention in police custody the accused had to be produced before the Magistrate not only for the first time but also subsequently every time, as long as the accused remained in police custody (Code of Criminal Procedure, 1973, s. 167(2)(b)).

Magistrates of Second Class could not authorise such detentions unless specially empowered by the High Court (Code of Criminal Procedure, 1973, s. 167(2)(c)).

In a proviso clause, which was added as an Amendment in 2009, it was laid down that a woman under 18 years of age would be detained in the custody of a remand home or recognised social institute only.

In a landmark judgment of Gautam Navlakha v. National Investigation Agency, 2021, a 3-judge Bench of the Hon'ble Supreme Court had included new terms - “house arrest” and “transit remand” – in the concept of Section 167 and held that an accused could be ordered to be held under house arrest by lower courts instead of judicial or police custody.

Amendment made in 1978 had added that if the investigating officer is a sub-inspector or above in rank, then in the absence of a Judicial Magistrate or Metropolitan Magistrate, the former was authorised to transmit the accused to the nearest Executive Magistrate instead. Said Executive Magistrate had

the power to grant police remand for a maximum of 7 days in aggregate subject to reasons given in writing for doing so. Section 167 (2A) also states that any extension of the detention period given by a competent Magistrate subsequently will include within its calculation the period of 7 days' detention authorised by the Executive Magistrate, i.e. the afore-mentioned 7 days will be a part of the period of 60/90 days' extended remand time. However, the Executive Magistrate must transmit the case with a copy of the diary entries related to the case to the nearest Judicial Magistrate before the expiry of the 7 days.

Sub-Sections (3) and (4) state that any police remand authorised under Section 167 by the Magistrate shall have reasons recorded by said Magistrate for doing so and said Magistrate (if not a Chief Judicial Magistrate) shall forward his reasons to the Chief Judicial Magistrate.

In *T. Jagdeeshwar and Anr. v. State of Andhra Pradesh*, 2003 the Hon'ble Supreme Court held that any extension of remand shall be accompanied by proper reasons and consequences mentioned by the investigating officer. If such a request is not made, remand should not be extended, and magistrate must inform the accused that he can be released on bail.

Sub-Sections (5) and (6) deal with cases that are to be dealt with as summons-case and the procedures to be followed in case the investigation of such summons-case does not conclude within 6 months. In such cases the Magistrate has the power to stop further investigations unless for special reasons and in the interest of justice. If investigation is stopped by the Magistrate and the Sessions Judge is of a different opinion then, on being satisfied on an application made to the latter or otherwise, that further investigation is necessary, then the Sessions Judge may vacate the previous order and direct further investigation subject to directions regarding bail and other matters.

In recent years, despite strict interpretations of the Hon'ble Supreme Court regarding remand, certain relaxation has been noticed. For example, in *V. Senthil Balaji v. State rep. by Deputy Director*, 2023 Justices Bopanna and Sundresh have held that the maximum period of 15 days of police custody is meant to be applied during the entire period of 60/90 days, as a whole. This decision of the Hon'ble Supreme Court has been in contravention of several judgments some of which are in fact binding in light of being a 3-judge Bench decision in *Budh Singh v. State of Punjab*, 2000 (Ramkumar, 2024a).

REMAND UNDER BNSS

As has been mentioned before, the BNSS was introduced to replace the current CrPC. Even though the CrPC has been repealed in light of the legislative step; in order to maintain order, it would still be applicable in certain situations. Section 531(1) of the BNSS states that the CrPC shall be considered repealed. However, in its saving clause under Section 532(2)(a), if any appeal, application, trial, inquiry, or investigation is pending prior to 1-7-2024, the same shall be disposed of, continued, held, or made, as the case may be, in accordance with the CrPC (Mukherjee & Sinha, 2024).

Before 2023, it was well-settled that the accused could be remanded to police custody only with the first 15 days of his presentation before the Magistrate after his arrest. Multiple decisions of the Hon'ble Supreme Court have affirmed this interpretation of the provision. In *State (Delhi Admin) v. Dharampal & Ors.*, it was held that the accused could only be sent to judicial custody after the 15 days' police remand (2024 SCC Online Bom 2501). In *CBI v. Anupam J. Kulkarni*, it was observed that there cannot be police custody beyond 15 days from the date of arrest (CRM-M-31808-2024).

However, a major change was brought about compared to the previous provision. Where before the accused could not be remanded in police custody after the initial 15 days of the investigation and arrest, now the said 15 days of police custody can be granted at any time during the initial 40/60 days out of the total 60/90 days' pre-chargesheet remand period.

With regard to this the new Section under the BNSS i.e. Section 187 reads as follows:

“(2) The Magistrate to whom an accused person is forwarded.....authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding 15 days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided under sub-section (3)

The current provision has led to certain ambiguities thereby creating a rift between expert opinions regarding the applicability of this section. Where previously it was limited to the initial 15 days after arrest it has now been extended to initial 40 to 60 days after arrest. Many experts have shared their fear that such a departure from the previous legislation gives the police greater opportunity to express their power as sub-section (3) clearly states the Magistrate may even extend the custody beyond the 15 days thereby giving rise to the apprehension that it can be extended up to more the entire 60/90

days as well. Not only this but the omission of the words “otherwise than in police custody” in sub-section (3) has created an ambiguity as to whether such further detention shall be under police remand or judicial remand thereby contributing to the above-mentioned apprehension (Gonsalves, 2024).

Further ambiguity can be seen in Section 187(2) wherein the words “in such custody as such Magistrate thinks fit” leaves it up to interpretation of the Magistrate as to whether to authorise police custody or judicial custody. Lack of specification has led many to believe that the 15 days mentioned in the new section is not a one-time detention rather the ambiguous language could just as easily be interpreted to mean a maximum of 15 days’ police remand followed by a day or more of judicial custody and then a further order for police remand with the maximum limit of 15 days; this process being capable of repetition for the initial 40/60 days, as the case maybe (Ramkumar, 2024b).

The BNSS was criticised by many experts who believed that the provisions enumerated in it were lacking in details and showed potential for being misused by authorities having malicious intent (Das, 2024). The Parliamentary Standing Committee on Home Affairs (Parliament of India, Rajya Sabha, 2023), in its report submitted the following:

“There is a concern that this clause could be vulnerable to misuse by authorities, as it does not explicitly clarify that the custody was not taken in the first fifteen days either due to the conduct of the accused or due to extraneous circumstances beyond the control of the investigating officer. The committee recommends that a suitable amendment may be brought to provide greater clarity in the interpretation of this clause.”

The Committee even received suggestions that the 40/60 days initial period provided for police custody be treated as an exception applicable only under certain conditions such as the accused is trying to evade the police, or extenuating circumstances beyond the control of the investigating officer. This order for extension of remand should only be granted if the police record its reasons for not being able to complete its investigations within the initial 15 days of remand (Kumar, 2024).

Another point of contention arises with regard to which Magistrate has the power to pass the remand order for the maximum period of 15 days and which Magistrate has the power to order further extension of the remand order. Wherein taking into consideration Section 57 and Section 167, it was clear that the nearest Magistrate only had the power to order remand for the

initial 15 days of police custody whereas the Jurisdictional Magistrate has the power to order for the extension of the remand order beyond the 15 days. In the current Sanhita however, there is no clarity as to the division of this power. This gives the nearest Magistrate not only the power to authorise the detention of the accused/arrestee for the maximum 15 days in police custody but also gives him power to further order police or judicial custody within the given initial 40 to 60 days (extendable to 60 and 90 days respectively).

On the one hand the Sanhita under Section 187(5) the second proviso states:

“...no person shall be detained otherwise than in “police station” under “police custody” and otherwise than in “prison” under “judicial custody” or a place declared as “prison” by the Central or State Government.”

On the other hand, Section 457 of the BNSS which states that the State Government has the power to decide in what place a person liable to be imprisoned or committed to custody shall be confined creates redundancy and confusion as to whether the confinement will be police or judicial custody (Ramkumar, 2024c).

US LAWS ON REMAND

The US laws have always given emphasis to human right especially the concept of freedom and liberty. That is not to say that this concept alone has been the driving force behind formulating their laws. concepts of arrests, warrants, summons, pre-trial detention (also known as reman in India) do exist and there have been time when preventive detention in the interest of justice and security, has outweighed an individual's freedom. The Hon'ble Supreme Court, interpreted that the US Constitution authorises preventive detention when the government's security takes priority over an individual's rights to liberty (United States v. Salerno, 1987).

The Federal Rules of Criminal Procedure lays down provisions for the procedure to be followed upon arresting an individual. It states that upon arrest, an individual must be brought before a Magistrate Judge or a State or Local Judicial Officer without any delay as per Rule 5(c), unless any statute otherwise provides (Federal Rules of Criminal Procedure, Rule 5, 1961).

It is pertinent to mention here that unlike in India, there is no time limit fixed for the appearance of the accused before the magistrate. There is no limitation of 24 hours provided.

As per Ruel 5.1(c), it has been laid down that the preliminary hearing after the initial appearance of the accused before the magistrate must be held within a maximum of 14 days if the person is in custody or 21 days if not. This is subject to extension one or more times upon showing of good cause, considering the public interest, and with the defendant's consent. However, if the defendant's consent is not given, then such extension is not possible on merely good-cause, rather one has to show extraordinary circumstances that are compelling enough for the court to grant custody (Federal Rules of Criminal Procedure, Rule 5.1, 1961).

Another difference that the authors have noted is that while in India remand is classified broadly into police and judicial, under the current Federal Rule, custody is mostly dependant on whether it would be federal or state/local in nature. There has been no distinction made as to whether the arrestee will be taken back into police custody or is there is any mechanism in place for judicial custody.

As per an article (Stevenson & Mayson, 2022) the authors have found out that pre-trial detention cannot extend beyond 24 to 48 hours (Ludwig & Mullainathan, 2021). Upon being brought before the magistrate, said magistrate has several options to choose from – releasing the arrestee upon their own recognizance i.e. a promise to return for trial, release the arrestee while implementing certain conditions of such release, or refusal to release the arrestee and instead extending the detention (18 USC § 3142, 1926). All this is of course non-arbitrary and subject to public safety and security and the arrestee propensity to thwart the laws.

Without going into too much detail, a bare perusal of these two laws shows that even though the concept of detention in both contemporaries – India and US are the same as regards remand – i.e. to prevent further harm to the society, to enable better investigation into the offence and the arrestee, and to enable proper justice. However, it can also be seen that where India has made efforts to bifurcate and distribute the powers and responsibilities between the judiciary and the executive, when it comes to custody, there is no such classification in the US laws. On the one hand it can be said that emphasis instead has been given to the arrestee's rights by the latter country by overlooking such classifications and instead focusing on holding the pre-trial hearings as soon as possible. On the other hand, it can also be said that this has led to ambiguity and potential for misuse of police powers no matter how short a time it may take. The authors would also like to point out

however, that the current Indian concept of extending the police custody to 40/60 days is no less concerning as here to police is being given substantial amount of power in its hands.

UK LAWS ON REMAND

The meaning of remand in the UK is similar to that of India i.e. it refers to the temporary detention of a suspect. The similarity in the definition however, ends here as in the UK remand can be ordered either before or after the suspect has been charged with offences, it can be imposed at any stage of the legal process (Makwanas, 2023).

Where in India one finds remand to be classified based on the jurisdiction, in the UK one will find that it has been classified based on the stage in which the legal proceeding is at – pre-charge remand and post-charge remand.

Pre-Charge remand in the UK is regulated by the Police and Criminal Evidence Act (PACE), 1984. As per this Act an arrestee can be held in pre-charge remand for not more than 24 hours, subject to extension in case of serious offences (Police and Criminal Evidence Act, 1984, §§ 41(1) & 42). Where one might find a semblance of similarity to India regarding the maximum limit of custody after the arrest, the difference can be seen in Section 42 of the PACE, 1984 wherein a Police Officer not lower than rank of Superintendent can extend this detention up to 36 hours while a Magistrate may do so up to a maximum of 72 hours (*Pre-Charge Detention in Terrorism Cases*).

A major difference in the very fundamentals of the two contemporaries that the authors would like to point out is that where in India the remand is for further investigation, in the UK the remand can be for the purpose of investigation as well as after framing of the charges of offence against the suspect/arrestee.

Following the requisite 24 to 96 hours of pre-charge custody, upon being charged with offences, the suspects are either released on bail in case of minor offences or held in remand for a longer period in case of serious offences. There is, however, no maximum period for which a suspect can be held in post-charge remand. This decision is dependent upon the magistrates of the court and is based on different factors such as the propensity to abscond or re-offend or tamper with the witnesses and evidences, etc. (Bail Act, 1976, Sch. 1).

In the humble opinion of the authors, at a single glance it may seem that the laws relating to Remand in India as well as the UK appear to be similar except for the terminologies. However, there are major differences in the essence of each country's incorporation of remand laws. The primary purpose of remand in the UK is to ensure that the accused is available. In India, remand is to ensure the carrying out of further investigation.

A particular aspect of remand in the UK that the authors appreciate as compared to in India is a much shorter and stricter time frame for pre-charge remand or, in India, what is known as police custody or police remand. This would ensure that the police are forced to complete the investigations without any inordinate, unnecessary delays and risking the destruction of evidences while at the same time are given more than just 24 hours to carry-out their investigation in a proper manner. The current ambiguity in the BNSS regarding the 15 days police custody as well the extension periods has opened up avenues for those with mala fide intentions to misuse their authority and power to evade justice.

CONCLUSION

The authors deem it imperative to underscore that international legal instruments, including the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, the *International Covenant on Civil and Political Rights* (ICCPR, 1966), and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), have consistently reaffirmed the obligation to treat individuals accused of crimes with fairness, dignity, and respect for their inherent human rights.

In the Indian context, similar commitments are reflected in a range of statutory rules and administrative guidelines that emphasise the humane treatment of prisoners and undertrial detainees. Notably, the *Model Prison Manual* (Ministry of Home Affairs, 2016) sets forth detailed provisions to ensure the well-being and dignity of inmates, including entitlements to appropriate clothing, bedding, nutritious food, and hygiene (Model Prison Manual, Chapter IV, 2016, p. 20). These standards have been judicially recognised and read into the ambit of Article 21 of the Constitution of India — the right to life and personal liberty — by the Hon'ble Supreme Court of India, thereby conferring them with constitutional protection.

It is a cardinal principle of criminal jurisprudence that mere arrest or suspicion of involvement in an offence does not extinguish an individual's

fundamental rights. The presumption of innocence until proven guilty is a cornerstone of India's legal system. Accordingly, no stage of investigation or trial should be permitted to encroach upon or derogate from the fundamental rights of the accused, save in accordance with procedure established by law and under circumstances of compelling necessity.

In view of the foregoing, the authors conclude by raising a critical question: whether the contemporary practice of extending periods of remand — particularly police custody — is in consonance with the aforesaid principles of human rights and constitutional safeguards. Further, whether the conferment of such significant coercive powers exclusively upon the executive branch creates an asymmetry in the doctrine of separation of powers and poses a potential threat to the rights of ordinary citizens, thereby unsettling the foundational principles of our constitutional framework and democratic polity.

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