

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 9 | Issue 4

2026

© 2026 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Preventive Action or Preventive Misuse? Examining Police Powers under the BNSS, 2023

RATHOD JAYKISHANSINH*

ABSTRACT

Preventive policing under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) empowers the police to intervene before a cognizable offence is committed in order to maintain public order. This paper examines the preventive powers conferred by Chapter XII of the BNSS, read with the substantive framework of the Bharatiya Nyaya Sanhita, 2023 (BNS), and argues that these powers, though necessary, are frequently misused by officers responding to informal case targets and institutional pressure. Using a combined doctrinal and empirical method, it analyses the relevant statutory provisions, the constitutional safeguards under Articles 14, 21 and 22, and the leading judicial responses in Maneka Gandhi, Joginder Kumar, D.K. Basu and Arnesh Kumar. It identifies recurring patterns of misuse, including arbitrary preventive detention, repeated harassment and the disproportionate targeting of marginalised groups, and it surveys comparative safeguards from the United Kingdom, the United States, Canada, Australia and Germany. The paper concludes with reforms directed at stronger oversight, transparent record-keeping, revised performance metrics and a rebalanced structure of police accountability.

Keywords: preventive detention, police powers, BNSS 2023, police accountability, Article 21, arbitrary arrest, criminal procedure, police reform

I. INTRODUCTION

Preventive laws and policies in India refer to the proactive steps taken by the police to prevent the commission of cognizable offences and to maintain public order, that is, action taken before a crime is committed rather than after it. These measures differ from those taken once an offence has occurred. This authority is conferred on the police by Chapter XII of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). The law empowers officers to intervene without waiting for an offence to be committed, with the object of preventing a violation and preserving public peace, while respecting the rights of individuals under Articles 19 and 21 of the Constitution of India.¹

* Author is a Student at Rashtriya Raksha University, Gandhinagar, Gujarat, India.

¹ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023 (India).

II. BACKGROUND OF PREVENTIVE POLICIES

These preventive policies address crime that could be prevented, before its commission, through anticipatory action. Their roots lie in modern criminological thought, in which prevention is considered more reasonable than reaction.

Preventive policing became a core function of the police during the late eighteenth and early nineteenth centuries. In 1829, Robert Peel established foot patrols in London to reduce crime and to prioritise the prevention of crime over reaction after its commission.²

A. Ideological Foundation

Philosophers such as Jeremy Bentham and Cesare Beccaria promoted this ideology, relying on the premise that prevention avoids the need for punishment for the betterment of society, and reflecting the utilitarian goal of maximising happiness and minimising crime. This thinking helped the law evolve towards intervention before a crime occurs.

The initial methods included patrols on foot, on horseback and by vehicle to maintain a clear line of sight, to deter offenders, to apprehend them, to earn public trust and to recover movable and immovable property. Modern methods include data and camera surveillance, community participation and record-driven databases for analysing an individual's involvement in crime.³

III. RATIONALE OF THE STUDY

Preventive laws are enacted with the aim of making society a safer and healthier place through timely intervention before an act is committed. In practice, however, actions taken under these laws increasingly reveal misuse by police officials seeking to demonstrate activity and to meet case targets. Such improper use of a law meant for the benefit of society leads to its unreasonable application against citizens and ends by curtailing individual rights.

This paper seeks to highlight, and to propose reform of, the policies governing preventive action, and to restrain their misuse for personal or institutional gain. Through an examination of the legal provisions, judicial responses and empirical experience, it demonstrates the clear need to review and correct preventive laws so that they are applied rationally and for the purpose for which they were intended.

² Bhavani Raman, *The Law that Refuses to Die: Preventive Detention in Early Colonial India*, Humanities Seminar at Azim Premji University (Feb. 17, 2023), <https://azimpremjiuniversity.edu.in/events/2023/the-law-that-refuses-to-die-preventive-detention-in-early-colonial-india>.

³ Vinayak R. Nidasosi, *Community Police and Crime Prevention: An Analytical Study to Show the Importance of Community Policing in the Crime Prevention from the Period 2012 to 2016 in India*, 7 INT'L J. RES. & ANALYTICAL REV. 417 (2020), <https://ijrar.org/papers/IJRAR2002059.pdf>.

IV. STATEMENT OF THE PROBLEM

Although preventive laws are meant to maintain public harmony, they are increasingly alleged to be used by police officials as a mechanism to meet case targets and performance benchmarks. Where this is the motive behind their application, preventive laws create an unjust threat to citizens, and such arbitrary action leads to a serious violation of constitutional rights.

The problem addressed in this paper is the lack of supervision over actions taken under preventive laws. Such conduct by officials erodes public confidence in the legal system and in public servants.

V. RESEARCH OBJECTIVES

- To interpret the nature, purpose and objectives of the preventive law and its importance in contributing to a better society.
- To examine how preventive laws are used arbitrarily by police officials to ease administrative pressure and to meet case targets.
- To study the misuse of preventive laws, particularly in the light of constitutional rights.
- To assess the impact of such laws on the social and economic status of the person detained, and on how that person is perceived by, and separated from, society.
- To recommend policies that ensure the fair and necessary application of these powers.
- To reveal the loopholes in the preventive provisions that create scope for misuse.

VI. RESEARCH METHODOLOGY

The research adopts a combined method, integrating doctrinal research with empirical investigation to produce a full assessment of the subject. The doctrinal approach follows an organised method for studying and analysing the Bharatiya Nyaya Sanhita, 2023 (BNS), together with the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which serve as the primary reference materials.

The analysis is supported by legal commentaries and judicial decisions, which help to evaluate the existing law and its core legal concepts. The empirical approach demonstrates how these laws function in real-world situations.

The empirical component draws on primary information obtained from case studies of persons who have undergone preventive detention. This enables a fuller understanding of what happens in practice, as those affected share their personal experiences and the obstacles they face in navigating legal procedures. The study focuses on two main areas: identifying overlapping

processes, and examining how those overlaps affect the people who bear the most severe consequences of systemic failure.

VII. RESEARCH QUESTIONS

- What are the laws governing the preventive arrests made by the police?
- For what period, and at what times, may the police detain a person under the preventive detention provisions, and how might this violate a person's rights?
- How does target-oriented conduct lead to unlawful and unreasonable detention without due procedure?
- What provisions exist to prevent illegal detention, and how do the courts treat such matters?
- What is the aftermath of illegal detention, and how does it affect an individual?
- What legal gaps allow the police to arrest without reasonable cause?
- What responsibilities should the police bear to eliminate unlawful arrests influenced by administrative pressure?
- What legal provisions should be made to rectify and prevent the misuse of this liberty?

VIII. MEANING AND SCOPE OF PREVENTIVE ACTION

A. Powers and Duties of Police Officials in Preventive Action

Police officials play a major role in maintaining order in society through the powers conferred by the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita. Their preventive powers include the authority to detain an individual on the basis of a reasonable apprehension, to disperse unlawful assemblies and to take steps to stop the commission of any act prohibited by law. They may also require persons to execute bonds to keep the peace and to maintain good behaviour, particularly where there is a likelihood of a breach of public tranquillity. Police officers have the authority to conduct searches and to take control of property, and they must respond promptly to situations that threaten public safety, cause public disturbance or endanger members of the community. These powers are intended to enable the police to protect the community through active law enforcement and to prevent those inclined to crime from becoming a serious threat.⁴

Along with these powers comes the duty to protect the fundamental rights of every citizen. The police operate within the constitutional framework of Articles 14 and 21 of the Constitution of

⁴ The Bharatiya Nagarik Suraksha Sanhita, 2023, ch. XII, §§ 168–172, No. 46 of 2023 (India).

India, and must therefore act justly, without unfair treatment and with a proportionate response. Officers must inform a person of the reasons for arrest, must produce an arrested individual before a magistrate within 24 hours as required by Article 22 of the Constitution of India, and must use only such force as is strictly necessary. In *D.K. Basu v. State of West Bengal*, the Supreme Court laid down judicial guidelines requiring the police to prepare arrest records, to provide medical care to detainees and to prevent any abuse in custody. The police must perform their duties in accordance with the law while protecting justice, maintaining accountability and defending the rule of law in the exercise of their preventive functions.

B. Judicial Interpretation and Guidelines Against Misuse of Police Powers

The Indian judiciary has consistently recognised that, although preventive police powers are necessary, they are prone to abuse. In *D.K. Basu v. State of West Bengal*, the Supreme Court laid down specific rules to protect citizens from mistreatment in police custody and from the misuse of the power of arrest. Police officers sometimes abuse their power through harassment, unlawful detention and coercion. In *Joginder Kumar v. State of Uttar Pradesh*, the Court held that mere suspicion is not enough to justify an arrest, and that officers must observe the constitutional protection of citizens against unnecessary detention under Article 21. The case law demonstrates that officers have at times used their preventive authority to detain people without proper reason and to target innocent individuals without evidence.

In *Arnesh Kumar v. State of Bihar*, the Supreme Court introduced further safeguards to prevent officers from making arrests that exceed their authority, particularly where they act without conducting the necessary inquiry. The Court noted that such actions cause two significant harms, unnecessary detention and social stigma, alongside the violation of basic rights. Judicial interpretation has established that law enforcement agencies sometimes misuse preventive provisions for oppressive ends, affecting people caught up in personal disputes or political rivalries, and to display unjustified authority. Taken together, these rulings show that officers have at times acted improperly, and that strict procedural guidelines and judicial supervision are required to protect citizens from abuse and to preserve their rights.

C. Case Targets and Police Accountability Systems

The powers that the police exercise under the *Bharatiya Nagarik Suraksha Sanhita* and the *Bharatiya Nyaya Sanhita* are influenced by informal demands to achieve particular 'case targets' and to demonstrate operational efficiency. The focus then shifts from securing justice to securing quick case resolution. Where preventive functions are reduced to automatic arrest, detention and investigation, people are sometimes falsely accused or deprived of their liberty

without valid reason. Such practices endanger the rights guaranteed by Articles 14 and 21 of the Constitution of India, because they permit arbitrary decision-making instead of adherence to established legal procedure.

Weak accountability mechanisms compound the problem, creating a cycle in which misuse persists while officers face little responsibility. Officers may rely on institutional protection, wide discretion and practical immunity to escape sanction for questionable conduct. Complaints about unlawful detention, coercive investigation techniques and the abuse of preventive authority face numerous obstacles, resulting in slow processes without proper independent evaluation. The current system therefore requires stronger independent monitoring, greater transparency in police operations and a commitment to protecting constitutional rights rather than to meeting predetermined targets.⁵

D. Impact of Target-Driven Policing

Target-driven policing is used as an administrative tool to boost operational performance, yet it produces serious harm for those subjected to it. Officers under pressure to reach target numbers tend to treat their powers under the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita as automatic procedures, resulting in wrongful arrests and needless proceedings against innocent people. Such actions, taken to close cases, violate the rights that Article 21 of the Constitution of India guarantees to every person, including the right to dignity and fair treatment.

The individual affected may suffer severe and lasting consequences. A person subjected to illegal detention or unauthorised police action loses both time and money, including legal costs and lost wages. Social trust is eroded once a person is drawn into a criminal case, as society tends to judge them harshly. Those affected may suffer physical harm as well as intense psychological distress, including stress and anxiety, and a diminished ability to trust others. While target-based policing may appear successful in institutional terms, it produces unfair and lasting harm to innocent people, which is why law enforcement needs a system that protects individual rights and ensures proper oversight.

E. Institutional Pressure and Its Consequences

Institutional pressure shapes how police officials perform their duties in daily operations. Demands from senior management for case registration and visible activity create a system that

⁵ J.A. Dhrishith, *Bharatiya Nagarik Suraksha Sanhita and its Implication on Citizens' Right and Security*, NAYA LEGAL, <https://www.nayalegal.com/bharatiya-nagarik-suraksha-sanhita-and-its-implication-on-citizens-right-and-security> (last visited Apr. 18, 2026).

measures police performance by numbers rather than by outcomes. Officers working under intense pressure are more likely to over-use the preventive and coercive powers of the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita, leading to unnecessary and unjust legal action. This produces three main results: false accusations, police overreach and declining public confidence in law enforcement.

It must be recognised that the performance of a police force should not be judged by crime statistics or by the number of arrests made. Both the public and senior officers need to understand that police effectiveness is not measured by the number of cases registered. A lower number of cases may in fact reflect success in prevention and a more orderly society. Police work should follow constitutional duty and genuine operational need, rather than external demands or the impulse to appear busy. The force should move from counting numbers to measuring the quality of justice and community well-being, because this approach discourages the misuse of power and creates a fairer legal system.

F. Forms and Patterns of Misuse

The police misuse their preventive authority in various ways, which stem from wide power, weak accountability and organisational directives. The Bharatiya Nyaya Sanhita, together with the Bharatiya Nagarik Suraksha Sanhita, grants officials broad power to take preventive action against crimes before they occur. This wide discretion enables some officers to make unjustified arrests that lack a proper legal basis, to hold people in custody unlawfully for extended periods and to use coercive methods during questioning. People are sometimes wrongfully implicated in investigations because officers wish to meet targets and appear productive, abandoning proper procedure in favour of results.⁶ Measures meant to protect public safety thereby become tools that harm personal liberty.

Officers sometimes direct their enforcement at particular individuals through biased decisions rooted in personal belief, external pressure or a desire to build cases quickly. Repeated searches may be conducted without the multiple authorisations they require, and preventive powers may be used through intimidation and without valid justification. The system fails where officers do not maintain proper documentation, delay the submission of evidence and remain secretive during investigations. These patterns breach the rights guaranteed by Articles 14 and 21 of the Constitution of India and cause citizens to lose faith in the legal system. Identifying and

⁶ Dhrishith, *supra* note 5.

addressing these abusive practices requires immediate action, so that preventive policing offers safety rather than injustice.⁷

G. Preventive Detention and Arbitrary Action

The State uses preventive detention as a legal power to hold a person without trial in order to avert a possible danger to public safety or national security. The Indian legal system grants this authority through Article 22 of the Constitution of India, which permits preventive detention but requires the authorities to inform detainees of the grounds of detention, subject to certain restrictions on access to legal counsel. The Bharatiya Nagarik Suraksha Sanhita and related procedural law enable the authorities to take preventive action to stop crimes from occurring and to protect public safety.⁸

These powers become arbitrary when they are exercised without proper reason and without following established legal rules and procedures. The constitutional framework guards against arbitrariness through Articles 14 and 21 of the Constitution of India, which require that any restriction on liberty follow a fair and reasonable procedure. The legal system continues to develop clear rules that allow the State to use its preventive detention power to avert harm while preventing the unauthorised detention of individuals.⁹

H. Harassment, Repeated Detentions and False Implications

A major problem in preventive policing is the repeated detention of individuals accompanied by false accusations against them. The Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita allow the police to take preventive action, but the exercise of these powers can result in repeated, unnecessary police encounters and the continuous monitoring of a person without valid reason. Repeated action of this kind subjects people to multiple proceedings, without substantial proof, and disrupts their personal and working lives.¹⁰

The same person may appear across multiple official records because the system tracks their name through various processes that generate separate documents. This may be part of the standard process, but it is sometimes triggered by a desire to settle personal scores, by prejudice, or at the instigation of others. Recording a person repeatedly in connection with alleged

⁷ Megha Dhawan, *Balancing Act: Navigating Police Discretion and Accountability Under the BNSS*, 8 INDIAN J.L. & LEGAL RSCH. (Feb. 27, 2025), <https://www.ijllr.com/post/balancing-act-navigating-police-discretion-and-accountability-under-the-bnss>.

⁸ Pooja, *Powers of Police: A Context of India According to Bharatiya Nagarik Suraksha Sanhita*, 4 INDIAN J. INTEGRATED RSCH. L. 195 (2024).

⁹ Manan Daga, *Power of Police – Use, Misuse, & Abuse: Critical Analysis of Provisions Related Powers of the Police in The Indian Evidence Act, 1872*, 2 HPNLU L.J. 136 (2021).

¹⁰ Hritik Sharma, *Laws You Must Know to Handle Police Harassment in India*, IPLEADERS (Jan. 5, 2018), <https://blog.ipleaders.in/police-harassment-how-tackle-india/>.

involvement creates negative assumptions about their conduct, damaging their reputation and standing in society. Such practices raise doubts about their compatibility with the rights under Articles 14 and 21 of the Constitution of India, because they impose unjust restrictions on the personal freedom of different groups of people. These patterns show the need for better procedural safeguards, so that preventive powers do not become tools for resolving personal conflict or for intimidation.¹¹

I. Impact on Marginalised and Vulnerable Groups

Preventive policing produces unequal effects, falling mainly on people from economically poor communities, minority groups and socially marginalised populations. Although the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita exist to protect public safety and every member of society, their actual application can lead to discriminatory treatment. Vulnerable people who are subjected to preventive detention often remain under continuous surveillance and suspicion because they lack money, are unaware of their rights and cannot obtain legal help. The law, which should protect citizens, can thereby expose them to its harshest enforcement.¹²

The legal system's primary mission is to uphold equality and to protect those most at risk of harm. Yet the preventive powers used by the authorities create serious difficulties for Articles 14 and 21 of the Constitution of India, because they fall disproportionately on defenceless groups. The justice system often fails to treat members of these groups fairly, as they face ongoing discrimination and inadequate legal support. People in this position may feel they have no way to report their grievances or to obtain help, which leads them to lose faith in the legal system, and which underlines the need for stronger protection, greater public awareness and simpler avenues to seek justice.¹³

J. Right to Personal Liberty and Due Process: Harm and Protection

The Indian legal system is founded on personal liberty and due process, which Article 21 of the Constitution of India protects through a procedure that must be fair and just. Preventive policing under the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita can work against these rights where officers carry out arrests, detentions and searches without proper

¹¹ Avishka Verma, *India's New Criminal Laws: A Double-Edged Sword for Police Powers*, 1 DEFACTO L.J. (2025), <https://defactolawjournal.org/papers/indias-new-criminal-laws-a-double-edged-sword-for-police-powers/>.

¹² Praveen Kumar, *How Marginalised People Are Left Behind in India's Criminal Justice System*, IDR (July 31, 2025), <https://idronline.org/article/social-justice/how-marginalised-people-are-left-behind-in-indias-criminal-justice-system/>.

¹³ Srestha Nag, *Emergence of Community Policing in India: Challenges and Practicality*, 3 INDIAN J. INTEGRATED RSCH. L. 1 (2023).

reason and fail to observe established safeguards. Due process is undermined by arbitrary detention, repeated summonses and the failure to communicate the grounds of action. Personal liberty is violated where the State imposes prolonged and unwarranted restrictions on movement.¹⁴ Article 14 of the Constitution of India is also engaged, because the law is at times applied in a discriminatory manner, leading to unequal treatment.

The legal framework nonetheless contains protective elements capable of defending these rights, provided its provisions are properly implemented. The protection of personal liberty and due process depends on adherence to all procedural rules: officers must explain the reasons for their actions, detainees must receive timely legal help, and the authorities must produce detainees before the appropriate court within the prescribed time. Preventing police misconduct requires operational transparency, proper record-keeping and independent monitoring. Defending individual rights against State intrusion requires enhanced legal aid, public education and strict penalties for violations, so that constitutional limits are respected during preventive measures and unfair restrictions on liberty are avoided.¹⁵

IX. ABUSE OF DISCRETIONARY POWERS

A. Misuse of Discretionary Powers

Discretionary powers are given to police officials to enable them to make quick and effective decisions where immediate preventive action is needed. When an officer exercises discretion under the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita, it allows them to assess threats, carry out arrests, conduct searches and take preventive action on reasonable grounds of suspicion.¹⁶ The broad and flexible nature of these powers, however, can allow for misuse, particularly where officers do not apply objective standards, where there is insufficient evidence, or where there is a lack of accountability for the decisions taken. Where discretionary decisions rest on subjective satisfaction rather than on objective criteria, they can lead to arbitrary action, including unnecessary detention, the selective targeting of individuals and excessive interference with the rights of others.¹⁷

¹⁴ *Article 21 of the Constitution of India*, WIKIPEDIA, https://en.wikipedia.org/wiki/Article_21_of_the_Constitution_of_India (last visited Apr. 18, 2026).

¹⁵ K.S. Subramanian, *Police, Human Rights, and the Constitution*, in THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION (Sujit Choudhry et al. eds., 2016).

¹⁶ *BNSS Has Clause to Check Misuse of Power by Cops*, ECON. TIMES (July 4, 2024), <https://economictimes.indiatimes.com/news/india/bnss-has-clause-to-check-misuse-of-power-by-cops/articleshow/111467932.cms>.

¹⁷ Avisha Singla, *Arrest Under BNSS: A Careless Mistake or Deliberate Accord of Wide Discretionary Power?*, 6 INDIAN J.L. & LEGAL RSCH. (2024), <https://www.ijllr.com/post/arrest-under-bnss-a-careless-mistake-or-deliberate-accord-of-wide-discretionary-power>.

The exercise of discretion can undermine constitutional protections such as Articles 14 and 21 of the Constitution of India where it is used in a discriminatory way. Discretion used without transparency or adequate checks may be driven by personal bias, external influence or institutional demand, departing from the principles of fairness and reasonableness. The persistent misuse of discretion may require structural reform, including limits on discretion and the establishment of specialised policies to reduce the associated risks. One example would be a dedicated preventive policing unit, modelled on the way the Emergency Response Support System (112) operates, that assists the community through non-coercive means such as regular patrolling and community engagement rather than through coercion. A prevention-centred approach of this kind would emphasise visibility and early intervention, build public trust, and promote police accountability, transparency and a citizen-centred model of policing.¹⁸

B. Role of Human Rights Commissions

Human Rights Commissions, such as the National Human Rights Commission, are essential bodies for reviewing complaints about the abuse of preventive police powers, including illegal detention, harassment and arbitrary action. A Commission can initiate investigations against officers, call for reports from the police and issue recommendations or awards of compensation. It thus provides an independent layer of oversight over the exercise of power under the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita, and plays a critical role in ensuring that these powers are not exercised in a way that violates the fundamental rights of individuals to dignity and liberty.¹⁹

Nonetheless, the non-binding nature of the recommendations and the length of the process limit their effectiveness. Over time, numerous complaints about the same agency may place a heavy burden on the Commission and reduce the impact of its interventions. Such bodies remain important for holding public officials accountable, documenting violations and protecting the rights guaranteed under Article 21 of the Constitution of India, but stronger enforcement mechanisms are needed to support their role.²⁰

X. JUDICIAL SCRUTINY AND CASE LAW ANALYSIS

A. Landmark Judgments on Preventive Policing

¹⁸ Poonam Mohanty, *Arrest, Discretion and Behavior of Police in India*, POLICE FOUND. INDIA (July 30, 2021), [https://www.policefoundationindia.org/images/resources/pdf/MOHANTY_-_ARREST_DISCREION_BEHAVIOR_POLICE_IN_INDIA_30_JULY_\(1\).pdf](https://www.policefoundationindia.org/images/resources/pdf/MOHANTY_-_ARREST_DISCREION_BEHAVIOR_POLICE_IN_INDIA_30_JULY_(1).pdf).

¹⁹ *National Human Rights Commission (NHRC)*, VAJIRAM & RAVI, <https://vajiramandravi.com/upsc-exam/national-human-rights-commission-nhrc/> (last visited Apr. 18, 2026).

²⁰ Gaurav Kumar, *Empowering Law Enforcement or Imperiling Liberties? A Critical Analysis of Police Powers under the Bharatiya Nagarik Suraksha Sanhita (BNSS)*, 2023, 13 INT'L J. CREATIVE RSCH. THOUGHTS 1 (2025).

Judicial oversight is critical to the regulation of preventive enforcement, as it ensures that the power exercised by the police remains within constitutional limits. The courts have held that the police should impose preventive measures only where they are necessary, reasonable and supported by due process. In *Maneka Gandhi v. Union of India*,²¹ the Supreme Court expanded the scope of Article 21 of the Constitution of India, holding that any procedure that deprives a person of liberty must be just, fair and reasonable, thereby narrowing the scope for arbitrary preventive enforcement. This principle now provides the basis for determining whether the police have exercised their power lawfully.

It was further held in *Joginder Kumar v. State of Uttar Pradesh*²² that arrests should not be made as a matter of course, but only where there is a valid reason, and that preventive powers cannot be used in a blanket fashion. In *D.K. Basu v. State of West Bengal*,²³ the Court set out specific guidelines governing arrest procedures in order to prevent custodial abuse and to ensure transparency in relation to those arrested and detained. Finally, in *Arnesh Kumar v. State of Bihar*,²⁴ the Court found that many police departments abuse their power of arrest by detaining suspects when detention is unnecessary.

This line of authority highlights the judiciary's proactive role in preventing the improper use of preventive police powers and in safeguarding individual rights. By reaffirming the guarantees under Articles 14 and 21 of the Constitution of India, the courts have ensured that preventive action is not used arbitrarily but remains subject to rigorous legal scrutiny and accountability.

B. Observations on Police Excesses

Over the years, judicial and institutional observations have noted that police excesses frequently arise from the improper exercise of the preventive and discretionary powers available under the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita. In some cases, the authorities have exercised these powers disproportionately or without lawful basis, resulting in arbitrary arrests and detentions, unnecessary detention, coercive investigation methods and a failure to comply with the due process prescribed by law. In doing so, the police disregard the principle that preventive policing should be used only as a last resort, where there is an immediate danger to public safety and order.

²¹ *Maneka Gandhi v. Union of India*, WIKIPEDIA, https://en.wikipedia.org/wiki/Maneka_Gandhi_v._Union_of_India (last visited Apr. 18, 2026).

²² Diva Rai, *Preventive Action of the Police Under Code of Criminal Procedure*, IPLEADERS (June 18, 2019), <https://blog.ipleaders.in/preventive-action-police-code-criminal-procedure/>.

²³ Gautam Bhatia, *Punitive Use of Preventive Powers in India*, OX. HUM. RTS. HUB (Aug. 12, 2019), <https://ohrh.law.ox.ac.uk/punitive-use-of-preventive-powers-in-india/>.

²⁴ Harshita Sharma, *Preventive Detention: Judicial Approach and Rule of Law*, 1 INDIAN J.L. & LEGAL RSCH. (2020), <https://www.ijlrr.com/post/preventive-detention-judicial-approach-and-rule-of-law>.

Police misconduct of this kind violates Article 14 of the Constitution of India, which guarantees equality before the law, and Article 21, which guarantees the right to life, because police action may affect people differently, subjecting some to unlawful and unequal treatment.

The evidence shows that excessive policing erodes public confidence in law enforcement and raises serious concerns about oversight and accountability.

Because such excesses have occurred on a continuing basis, there is a need for stricter compliance with procedural safeguards, enhanced training and better monitoring, so that police powers are exercised according to law and with respect for fundamental rights.

C. Guidelines Issued by Courts (with Case References)

D.K. Basu v. State of West Bengal

- The arrest memo must record the time, date and a witness.
- The arrestee has the right to inform a friend or relative of the arrest.
- The arrestee must undergo a medical examination.
- Records of custody must be maintained to ensure transparency.

Joginder Kumar v. State of Uttar Pradesh

- Arrests should not be made as a matter of course or automatically.
- The police must be able to demonstrate a reason for the arrest.
- The detainee has a right to contact family.

Arnesh Kumar v. State of Bihar

- No arrests as a matter of course; officers must exercise judgment before making an arrest.
- A notice to appear should be used in place of arrest where appropriate.
- Officers must be held accountable for unlawful or unnecessary arrests.

Maneka Gandhi v. Union of India

- Any procedure relating to liberty must be fair, just and reasonable.
- Article 21 of the Constitution of India guarantees enhanced due process.

Khatri v. State of Bihar

- The accused have a right to free legal aid.
- The State is under an obligation to provide legal representation.

Sheela Barse v. State of Maharashtra

- Detainees are protected from custodial violence.
- Special protections apply to women in custody.

These guidelines ensure that police power is exercised with accountability and transparency and in strict compliance with the constitutional safeguards.

XI. EMPIRICAL ANALYSIS AND FIELD STUDY

Real-world experiences illustrate how gaps in implementation can arise in preventive policing. In one instance, a student was unlawfully detained by the police at a public tourist destination on an allegation of public nuisance, simply because he was sitting with a friend in a public area late at night, neither intoxicated nor doing anything illegal. Both the student and his friend were taken into custody during a weekend 'sweep' of students in similar situations, all subjected to the same allegation. On reaching the police station, they found many other people arrested for the same reason, so that the station was overcrowded and the police could not maintain proper separation between detainees.

Nor were the procedural safeguards properly observed. There was no immediate communication with the family members of those detained, and the detention procedures were not followed. The detainees were held for too long, approximately 22 hours, before they were produced before a competent authority and released on bond through a lawyer. The incident raises concerns about how preventive powers under laws such as the Bharatiya Nagarik Suraksha Sanhita are exercised with respect to due process and the protection of personal liberty under Article 21 of the Constitution of India. It highlights how preventive action can exceed what is necessary, and it raises significant questions about procedural compliance, proportionality and accountability.

XII. PRECAUTIONARY MEASURES OBSERVED IN OTHER COUNTRIES

United Kingdom

- Strict rules of engagement under the Police and Criminal Evidence Act 1984 (PACE) govern the conduct of stop and search.
- Every stop and search must be documented, recording the officer's name and the reasons for it.
- An independent authority receives complaints from affected persons and reviews the outcomes of police investigations.²⁵

²⁵ *Police and Criminal Evidence Act 1984 (PACE) Codes of Practice*, Gov.UK, <https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice> (last visited Apr. 18,

United States

- Preventive stops are permitted on the basis of reasonable suspicion.
- Police departments are increasingly required to use body cameras, and the relevant policies and footage must be retained on file for 90 days for review.
- Civilian review boards and annual independent internal audits provide oversight.²⁶

Canada

- Officers responsible for the preventive detention of a person must have documented justification for that detention.
- Officers must provide, in writing, the rights of persons taken into custody immediately after they are stopped or detained.
- Independent police complaints and review agencies provide oversight.²⁷

Australia

- Preventive detention is permitted only for short periods.
- Every request for preventive detention must have the written approval of a constable and must comply with police procedures.
- All preventive detention is documented and presented to external agencies for oversight.²⁸

Germany

- A strong administrative law framework governs all aspects of preventive policing.
- Judicial approval is required for most acts of preventive policing.
- Police agencies maintain extensive records of how preventive policing is used.²⁹

XIII. CHALLENGES TO REGULATING PREVENTIVE POLICE ACTIONS

A. Oversight Mechanisms Fall Short

2026).

²⁶ *Reasonable Suspicion*, WEX, https://www.law.cornell.edu/wex/reasonable_suspicion (last visited Apr. 18, 2026).

²⁷ Amit Kumar & J.S. Tiwari, *Police Powers and Civil Liberties: A Comparative Study of the Provisions of Arrest and Detention in India and United Kingdom*, 2 INT'L J. L. 101 (2016).

²⁸ Bhatia, *supra* note 23.

²⁹ John Vervaele & Stanislaw Tosza, *General Report: Criminal Justice and Corporate Power*, INT'L ASS'N PENAL L. (Sept. 2025), <https://www.penal.org/wp-content/uploads/2025/09/A-02-23.pdf>.

Oversight bodies are often unable to monitor police action effectively because they lack the authority, independence or resources to do so. The result is insufficient scrutiny before preventive action is taken, and a limited ability to take corrective action afterwards.³⁰

B. Weak Integrity Framework

Although most jurisdictions have systems intended to establish responsibility for improper action, these systems are often not robust or enforceable enough to hold officials accountable for conduct such as arbitrary detention or the excessive use of power.³¹

C. Lack of Transparency

Preventive action is frequently taken without adequate documentation and without any clear statement of the reasons for it, making it difficult to trace events and to seek review or appeal.³²

D. Political and Administrative Interference

Political and senior administrative authorities are, in various places, able to exert external pressure on police decision-making, resulting in the selective application of the law and in action based on non-legal criteria.³³

E. Inconsistent Ground-Level Application

Even where laws such as the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita prescribe safeguards, regional differences in how officers apply them lead to inconsistent enforcement and create scope for abuse.

XIV. AUTHORITIES, ARREST GUIDELINES AND SUGGESTED REFORMS

A. Authorisation for Preventive Policing

The police may take preventive action on the basis of the procedural and substantive authority set out in the Bharatiya Nagarik Suraksha Sanhita and the Bharatiya Nyaya Sanhita. These statutes empower the police to act in anticipation of criminal activity, but only within the limits defined by law and in accordance with the procedures they establish.³⁴

B. Arrest Procedures

³⁰ Anja Bienert, *Police Oversight*, in SHORT PAPER SERIES NO. 2 (Amnesty Int'l ed., 2015).

³¹ UNITED NATIONS OFFICE ON DRUGS AND CRIME, HANDBOOK ON POLICE ACCOUNTABILITY, OVERSIGHT AND INTEGRITY, U.N. Sales No. E.11.IV.5 (2011).

³² S. Islam, *Community Policing (CP): Challenges on Preventing Crime and Human Security in Bangladesh*, 9 REV. PUB. ADMIN. & MGMT. 1 (2021).

³³ G. Selvi, *Community Policing and Challenges in India*, 2 INT'L J. ENG'G MGMT. & HUMANITIES 115 (2021).

³⁴ Hemant More, *Procedure of Arrest under BNSS (Ss. 36–37, 43–46, 49–54, 60–62)*, THE LEGAL QUOTIENT (May 12, 2025), <https://thelegalquotient.com/criminal-laws/bharatiya-nagarik-suraksha-sanhita/procedure-of-arrest-under-bnss-ss-36-37-43-46-49-54-60-62/7000/>.

When making an arrest, every officer must follow the same procedure. This includes informing the person of the grounds of arrest; identifying the arresting officer; and ensuring that the arrest is made only because it is necessary and not as a matter of routine. The arresting officer must properly document the procedure at the time of arrest, and these safeguards apply equally to all forms of arrest, including voluntary surrender and arrest in custody.

C. Record Keeping

In addition to documenting matters after the event, every officer involved in a police action, such as an arrest, search or stop-and-frisk, must create a written record of the action taken and the reason for it. Officers should also make a video recording to demonstrate transparency and to prevent abuse of the power of arrest. Digital records of all police action should be stored securely for future reference and accountability.³⁵

D. Time Limit for Production Before an Authority

Although current practice may allow longer, any person held on preventive grounds should be produced before a competent authority within 12 hours, reducing the risk of prolonged or unjustified detention and giving greater protection to individual liberty.

E. Reducing Outside Pressures

Preventive policing must be free from external interference. Police managers should not be motivated by quotas or by an expected increase in cases. A lower number of cases should be regarded as a sign of a flourishing social order, not of incapacity.³⁶

F. Setting Up Outbreak Response Teams

This recommendation is to establish outbreak response teams, modelled on the Emergency Response Support System (112), to assist the community through patrolling and immediate, non-coercive help to citizens rather than through the routine issuing of penalties. Such teams would focus on prevention by maintaining a visible presence and building community trust.³⁷

G. Fast-Tracking Judicial Review of Detention and Police Action

³⁵ Sukhmeet Kaur Sohal, *Police Procedures Under Bharatiya Nagarik Suraksha Sanhita, 2023: A Shift Towards Responsive Policing*, 7 INDIAN J.L. & LEGAL RSCH. (2025), <https://www.ijllr.com/post/police-procedures-under-bharatiya-nagarik-suraksha-sanhita-2023-a-shift-towards-responsive-policin>.

³⁶ PRS LEGISLATIVE RESEARCH, *Police Reforms in India* (Analytical Report, 2017), <https://prsindia.org/policy/analytical-reports/police-reforms-india>.

³⁷ DRISHTI IAS, *Police Reforms and Accountability*, DRISHTI IAS BLOG (Nov. 21, 2023), <https://www.drishitias.com/blog/police-reforms-and-accountability>.

Cases involving preventive detention or police action should have fast-track mechanisms for swift review by judicial or administrative authorities, in order to avoid undue hardship to the individual.

H. Independent Oversight

An effective oversight body should carry out regular monitoring of preventive action, review the records of identified incidents, including video recordings, and use these to hold accountable those who unlawfully misuse preventive powers, thereby creating a policing system that is both effective and transparent.³⁸

XV. LEGAL SAFEGUARDS AND OVERSIGHT: LIABILITY OF POLICE OFFICIALS

- **Departmental or disciplinary liability:** Officers may face internal disciplinary measures, such as suspension, demotion or dismissal, where they are found to have exercised their preventive powers in violation of the procedures laid down in the Bharatiya Nagarik Suraksha Sanhita.
- **Criminal liability:** Officers may be prosecuted and punished under the Bharatiya Nyaya Sanhita for unlawful detention, wrongful confinement or abuse of authority.³⁹
- **Contempt of court:** Officers may face contempt proceedings for failing to comply with mandatory legal procedures and judicial directions, and may be subject to penalties imposed by the courts.
- **Personal liability for compensation:** A court may order the payment of compensation for unlawful detention or the violation of rights, and may in certain circumstances impose personal liability on the officer for such payment.
- **Violation of fundamental rights:** Any action that violates the fundamental rights guaranteed under Articles 21 and 14 of the Constitution of India is subject to judicial scrutiny, may result in strict action and may have a reputational impact on the officer.⁴⁰
- **Reporting to oversight bodies:** National human rights institutions can investigate misconduct, recommend disciplinary action or order the offending agency to pay restitution to the victim, adding to the pressure of accountability on the official.

³⁸ ULADZIMIR DZENISEVICH, STATE SECURITY COMMISSIONS: A STUDY OF POLICE OVERSIGHT IN INDIA (Devyani Srivastava ed., 2019).

³⁹ The Bharatiya Nyaya Sanhita, 2023, § 127 (India).

⁴⁰ Mansi Vora et al., *Police Accountability and Public Trust Through Transparency and Community Collaboration*, 12 INT'L J. ADV. RES. 938 (2024).

- **Career impact:** Evidence of abuse of power can affect an officer's promotions, assignments and overall service record, with a lasting detrimental effect on career progression.
- **Public confidence:** Beyond the legal consequences, such conduct erodes public confidence in law enforcement, indirectly diminishing the legitimacy and effectiveness of policing institutions.

XVI. TRAINING AND SENSITISATION OF POLICE OFFICIALS

- **Training in law and procedure:** All officers should receive periodic training on the legal framework, including the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita, with a focus on correctly carrying out the procedures for preventive measures, arrest, detention and search, so as to ensure lawful enforcement.
- **Human rights and constitutional awareness:** Officers should be trained to understand that their actions must uphold Article 21 of the Constitution of India (the right to life) and Article 14 (the right to equal protection of the law), and must preserve the dignity, fairness and non-arbitrariness to which every citizen is entitled.
- **Ethical policing and accountability:** Sensitisation programmes should address ethical decision-making and discourage the misuse of police power and discrimination, while providing measures by which officers can be held accountable for their conduct.
- **Treatment of vulnerable and marginalised communities:** Specialised training should equip officers to deal sensitively with women, minorities and economically vulnerable members of the community, so as to prevent bias, harassment and unnecessary targeting.
- **Use and maintenance of personal data and documentation:** Officers should be trained in the correct professional use of electronic filing, documentation and video recording, where appropriate, so that all police action is thoroughly documented for transparency and traceability.
- **Decision-making under stress:** Training should address the impact of stress on rapid decision-making and the resources available to officers to support fair decisions rather than spontaneous or overzealous action.
- **Community policing:** Community policing programmes should promote cooperative work with the public, building trust and effective communication before enforcement is used as a means of interaction.

- **Ongoing evaluation:** Officers should take part in regular evaluations and refresher courses to keep pace with legal updates and procedural changes and to improve their crime-prevention skills.

XVII. REDEFINING PERFORMANCE METRICS

A. Factors on Which the Police Are Judged

The police should not be judged solely on the number of cases registered or arrests made; rather, they should be assessed on the quality of investigation, the fairness of process and compliance with laws such as the Bharatiya Nyaya Sanhita, which replaced the Indian Penal Code, and the Bharatiya Nagarik Suraksha Sanhita, which replaced the Code of Criminal Procedure.

B. Recognition of Preventive Success Without Unnecessary Action

Fewer cases or instances of offending should be seen as a positive sign that order in the community is being maintained effectively, not as evidence of the department's inability to act. Successful crime prevention should be understood as prevention achieved by reasonable means, without the use of force or the overpowering of citizens.

C. Indicators Based on Fundamental Rights

In evaluating the police, the indicators used should include adherence to procedural safeguards, respect for the fundamental rights guaranteed under Articles 21 and 14 of the Constitution of India, and instances where police action is found to be unlawful because complaints against it have been upheld.

D. Accountability Through Complaint-Driven Evaluation

An evaluation of an officer's performance should take account of the number and nature of complaints made against them, including complaints of unlawful detention or breach of procedure, so that accountability is built into the assessment.

E. Community Confidence and Public Input

Public satisfaction and community confidence in the police are major measures of how effectively the police serve the community, and should be used alongside the other statistics that are compiled regularly.

F. Promotion of Responsible and Ethical Policing

Officers who act with restraint, exercise their discretion appropriately and follow due process should be recognised and rewarded, in order to foster a culture of responsible policing.

G. Removal of Target-Driven Pressure

Institutions should reduce the unnecessary or unjustified pressure on officers by moving away from informal 'targets' and numerical expectations.

H. Transparency of Performance Evaluation and Use of Data

Introducing digital record-keeping, conducting audits and adopting transparent reporting will ensure that performance evaluation is objective, verifiable, fair and consistent.

XVIII. CONCLUSION

Preventive policing under the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita is intended to maintain public order. The way it is enforced on the ground, however, reveals significant flaws in how these tools are applied in practice. It is chiefly the responsibility of junior officers to carry out preventive duties, and to perform at a level that meets the demands placed on them by their superiors. As a result, officers feel intense institutional pressure to demonstrate success through additional arrests and detentions and through visible enforcement. While their conduct on the street ultimately determines how their performance is judged, it is the systemic pressure from above that most strongly shapes their actions. This creates a situation in which discretion is exercised not strictly on legal grounds but under coercive circumstances. A central problem is the imbalance in accountability. When power is abused, whether through arbitrary detention, procedural violations or the overuse of preventive policing, the consequences are usually borne only by the lowest-ranking officers, while the senior officers who shape the management structure largely escape scrutiny. This disconnect produces a situation in which accountability is enforced downward even though control and influence flow from the top down. The result is that the harm falls both on those subjected to the abuse and on the officers who acted on the orders given to them, while the underlying systemic problems remain unresolved. Correcting this imbalance requires not only legal reform but also a rethinking of how accountability is defined at every level, so that preventive policing can move towards a fair, transparent and just model.
