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WHO WATCHES THE WATCHMEN? STRENGTHENING INSTITUTIONAL ACCOUNTABILITY IN INDIA'S CRIMINAL JUSTICE SYSTEM.

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Abstract

For the criminal justice system to operate in line with constitutional principles and accepted standards of human rights, institutional accountability is absolutely necessary. In India, regular worries about violence in custody, illegal imprisonment, and the wrong use of the authority to investigate have caused substantial doubts about how well the current systems of supervision are working. The passing of the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhiniyam is a large-scale change to Indian criminal law. These changes to the law are meant to bring the actual crimes up to date, make the criminal process more efficient, and make standards of evidence stronger. Nevertheless, a key question is whether these changes really deal with the longstanding problems of accountability within institutions.

In this paper the author seeks to highlight the points in the recently created criminal law which plays a pivotal role in accountability. Employing a method of doctrinal research, helped by the analysis of case law, the reading of statutes, and reports from institutions, the study looks at the process protections about arrest, investigation, and standards of evidence under the new legal system. It also considers the continuing value of protections in the constitution mainly under Article 21 and the function of bodies that supervise, like the National Human Rights Commission and Police Complaints Authorities, in stopping the abuse of power.

Through this paper, the author wants to emphasize on the fact that although the new criminal system brings in important changes to process, problems relating to carrying out the law, independence of institutions, and good supervision still exist. To make sure the changed legal system truly pushes Institutional Accountability, protects Human Rights, moves Criminal Justice Reform forward, improves Police Oversight, and puts the BNS–BNSS–BSA

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Framework into practice in India today, these systems must be made stronger.

Keywords: Institutional Accountability, Criminal Justice Reform, Human Rights Protection, Police Oversight, Abuse of power.

1. The Illusion of Accountability: Setting the Stage

1.1 The Crisis Within the System

The Indian criminal justice system is still struggling with a serious problem of people not being held responsible for their actions, and this is especially true when it comes to police violence while someone is in their care and police using their authority unfairly. Even though the constitution promises certain rights and the courts have protections in place, torture, unlawful imprisonment and people dying in police custody unfortunately happen again and again. These aren't just occasional mistakes; they show serious, basic flaws in how institutions are working. When the police use their powers, and in particular when they are arresting or questioning someone, it's frequently done without being properly checked, and this allows ways of doing things that go against the principle of being ruled by law³.

What the numbers show backs this up. The National Crime Records Bureau (NCRB) has published figures that continue to show people dying in custody, and claims of wrongdoing by the police, and this makes a big difference between what the law says should happen and what really is enforced⁴. This difference in what should be and is, demonstrates a problem with the system as a whole. Ways of making sure people are accountable are in place on paper, but they often don't work because there isn't enough supervision, and effective steps to make sure they are followed, are missing.

1.2 Reform Without Transformation

India has completely changed its criminal law system because of many criticisms over the years, doing this with the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam. The government says these new laws are about updating things, making the process of law more protective of people's rights, changing what crimes are, and setting a higher bar for evidence in court⁵.

³ D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, ¶¶ 22–23 (India).

⁴ National Crime Records Bureau, Crime in India 2022 172–175 (Ministry of Home Affairs 2023) (India).

⁵ Bharatiya Nyaya Sanhita, No. 45 of 2023 (India); Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023 (India); Bharatiya Sakshya Adhiniyam, No. 47 of 2023 (India).

But the important thing to ask is if these changes will actually do anything about the very solid problem of institutions not being held responsible for what they do. Although the steps for arrest and investigation (and specifically, the rules in the BNSS) are now more clear, the more basic problems remain: there isn't enough examination of the institutions from outside, they have their own biases, and they aren't very good at making sure the rules are followed⁶. Because of this, these reforms might just be a reshuffling of how laws are written currently and won't actually significantly change how accountability works.

1.3 Research Focus and Central Argument

This paper looks closely at whether India's newly revised criminal laws will actually make the criminal justice system itself more responsible for its actions. It considers the protections built into how things happen, what counts as proof in court, and the ways institutions are supposed to operate, all in relation to the rights people have under Article 21 of the constitution.

The main point of this paper is that simply changing the laws won't automatically make for accountability. The new laws do make some important changes to procedure and the organization of things, but they don't deal with the widespread, deep seated problems that allow people to get away with wrong doing. Courts have repeatedly stressed the need for accountability, but how well that is done in reality is very inconsistent⁷. So, the core idea stays the same: changing the law doesn't guarantee that institutions will be held to account.

1.4 Scope of the Paper

The paper looks at accountability in the main parts of the criminal justice system from the point of view of how these organizations are set up and work. It considers what the police do with their power to use force, how prosecutors operate, and what life is like for those in prisons and holding facilities. Also, it assesses how well groups meant to provide supervision, like the National Human Rights Commission and authorities for police complaints, are making sure accountability actually happens.

By looking at all these institutions together, the paper aims to show accountability isn't just something the law says should happen, it's essential to the system's very structure. Sadly, the present system doesn't really achieve this⁸.

⁶ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 35–41 (India).

⁷ Nilabati Behera v. State of Orissa, (1993) 2 SCC 746, ¶ 10 (India).

⁸ Upendra Baxi, The Crisis of the Indian Legal System 98–102 (Vikas Publ'g 1982).

2. Constitutional Morality vs Institutional Reality

2.1 Article 21 and Human Dignity

According to Article 21 of the Indian Constitution, nobody can be sent to prison or have their freedom taken away unless the legal system is followed⁹. Courts have said this isn't simply about being alive; it also means having the right to a dignified life and being safe from torture or anything that is harsh, inhumane or humiliating¹⁰. The Supreme Court has repeatedly stated that violence by those holding people in custody and illegally holding someone are at the most important part of what Article 21 protects, and any attempt by the government to do those things is against the Constitution¹¹.

Although there isn't one specific law against torture, the courts have made it very clear that protection from torture is a fundamental part of the Constitution. So, abuse of people in custody isn't just breaking a particular law, but a direct attack on a person's dignity, and dignity is at the centre of how we understand basic rights.

2.2 Expansion of Rights through Judiciary

The Indian courts have hugely changed how fairly people are treated by the criminal justice system and how properly things are done. The Supreme Court, with some very important rulings, has explained "procedure established by law" to mean a process that is equitable, just and sensible¹². Because of this shift, the idea of a fair process that also looks at the actual fairness of a law (what's called substantive due process) has now become a part of Indian constitutional law.

The courts have been especially important in improving protections for people when they are in police custody. In the case of *D.K. Basu versus the State of West Bengal*, the court created a lot of specific rules about how arrests and being held are handled, and they stressed that police actions must be open to inspection and that the police must be responsible for what they do¹³. And in *Joginder Kumar versus the State of Uttar Pradesh*, the court made very clear that arresting someone shouldn't be automatic, and has to be something that is absolutely necessary¹⁴. These rulings demonstrate how the judiciary is trying to ensure the government's strong powers are used within the boundaries of the constitution.

⁹ INDIA CONST. art. 21.

¹⁰ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, ¶ 7 (India).

¹¹ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494, ¶¶ 52–53 (India).

¹² *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, ¶ 56 (India).

¹³ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416, ¶¶ 35–36 (India).

¹⁴ *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260, ¶ 20 (India).

2.3 Accountability as a Constitutional Obligation

It's not just something governments aim for, being answerable for how they use their power is actually required by the constitution. Because the government's main job is to protect everyone's basic rights, it must make sure its people working for it don't take those rights away from anyone. And this isn't just about stopping illegal things from happening. The government needs to work to stop abuse of rights, and offer a way to fix things if someone's rights are broken¹⁵.

The idea of a 'constitutional tort' - as the Nilabati Behera v. State of Orissa case shows - supports this. It means the government is responsible if someone's fundamental rights are violated because of something someone in custody does¹⁶. This represents a move from just saying something is wrong to actually giving people money to make up for the harm, and in doing so, makes the system of accountability much stronger.

2.4 Gap Between Law and Practice

We have a really good constitution and judges who generally understand it in a forward-thinking way, but the law doesn't really match what happens in the real world. Things like being treated with respect, having a fair legal process and being safe from harm are officially protected by the law, but aren't applied equally or dependably. The system itself is slow to change, isn't checked by anything truly separate from itself and has pretty poor ways of making sure the protections in the constitution actually do protect people.

Because of this, the criminal justice system is something of a puzzle. It should, by its principles, be defending human rights, yet it doesn't actually manage to make those rights happen. This difference between what should be and what is really is the main problem when you are trying to make the good ideas in the constitution become how things are done by the institutions that are meant to uphold them.

3. The Broken Machinery: Anatomy of Institutional Failure

3.1 Policing Without Accountability

The fundamental problem with accountability in policing is how much freedom the police still have in what they do, and how little useful checking of that power exists. While the Bharatiya Nagarik Suraksha Sanhita has rules for making arrests, they can still be abused, especially

¹⁵ M.P. Jain, Indian Constitutional Law 1385–1388 (8th ed. 2018).

¹⁶ Nilabati Behera v. State of Orissa, (1993) 2 SCC 746, ¶¶ 16–17 (India).

because there aren't strong ways to make sure those rules are followed¹⁷. A lot of the time people aren't arrested because the law actually requires it, but to be controlled, frightened, or to do what the police want, and protections for people's freedom are ignored.

The issue of violence in custody is a clear example of this. Torture and deaths in custody still happen, even though courts have said how things should be done to be open and to hold people responsible¹⁸. The fact that this is becoming normal shows that within the police system, forcing people to talk is seen as a good way to solve crimes. And because officers aren't punished quickly, and don't often get found guilty of doing wrong, a cycle of getting away with things continues, with wrong doing not being properly looked at or penalized.

3.2 Investigations as Instruments of Power

Investigating isn't just about finding facts, and in fact, it's often a way for those in authority to exert control. Investigations are very commonly coloured by the way an organization thinks, resulting in some people being specifically chosen as targets, evidence being twisted, and proper rules not being followed¹⁹. Furthermore, because investigative bodies don't really operate independently from those in government, outside forces can easily control what happens during an investigation and what the final result will be.

A huge problem is how investigations are wrongly used in politics. Well known cases show us that authorities looking into crimes can be employed to help politicians reach their goals, and this damages how trustworthy the entire justice system is²⁰. This kind of activity doesn't just make the public lose faith; it also breaks down the basic idea that everyone is treated the same under the law, as law enforcement then depends on who has power, on their position, not on the actual legal strength of a case.

3.3 Custodial Systems: Invisible Violations

The problem with people being held responsible isn't just about the police or how they're investigated, but also at places like prisons and detention centers. These locations generally operate with very little openness, which means when things go wrong, the public rarely knows. Detainees' dignity and rights are consistently damaged by too many people being crammed

¹⁷ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 35–41 (India).

¹⁸ D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, ¶¶ 35–36 (India).

¹⁹ State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222, ¶ 50 (India) (discussing misuse of investigative powers).

²⁰ Vinay Sitapati, The Rise of Political Investigations in India, 10 NUJS L. Rev. 45, 52–55 (2017).

into a space, poor healthcare, and being kept waiting for trial for a very long time²¹.

Because of worrying about what will happen to them, and because there aren't good ways to complain and get problems fixed, abuse in these kinds of places is seldom reported. And because nobody from outside the system is regularly checking on things, the problems which happen all the time continue. Even though courts have said prisoners do have rights, this hasn't led to prisons and jails changing in a regular way, showing a big difference between what the law says and what happens in reality.

3.4 Toothless Oversight Institutions

The systems meant to stop people in power from taking advantage of that power have a lot of problems in how they are built and how they work. The National Human Rights Commission (NHRC) is supposed to look into human rights problems, but it doesn't have much actual power to make things happen because its suggestions aren't something anyone has to do²². This really weakens its ability to hold people responsible for their actions.

Police Complaints Authorities (which the courts ordered to be created) aren't doing much better, thanks to not having enough money, not being free to act on their own, and being carried out differently in each state²³. A lot of the time, they can't properly investigate things themselves, or are affected by the police departments they should be watching. Because of all this, oversight is mostly for show, and doesn't really result in any meaningful accountability.

3.5 Intersectional Injustice

People from groups that are already at a disadvantage, specifically those with little money, people from the Scheduled Castes and Scheduled Tribes, and religious minorities, are affected far more when institutions aren't held responsible for their actions. Existing social ranks and widespread unfairness mean they are much more likely to be arrested without good reason, abused while in police custody, and have investigations that are against them²⁴.

And when someone experiences disadvantage in multiple ways at once (intersectionality), this makes them even more open to being treated unfairly and facing a build-up of injustice. Instead of being fair and unbiased, the criminal justice system often just continues the inequalities that are already there, repeating patterns of keeping people out of the picture and on the edges of

²¹ Sunil Batra v. Delhi Administration, (1978) 4 SCC 494, ¶¶ 52–53 (India).

²² Protection of Human Rights Act, No. 10 of 1994, § 18 (India).

²³ Prakash Singh v. Union of India, (2006) 8 SCC 1, ¶¶ 31–32 (India).

²⁴ Marc Galanter, Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change, 9 Law & Soc'y Rev. 95, 103–110 (1974).

society. This really shows that making institutions answer for what they do isn't just about the law, but about fixing the way our society is organized.



4. Reform or Rebranding? Analysing BNS–BNSS–BSA

4.1 The Promise of New Criminal Laws

Many people are saying that India’s criminal justice system has reached a turning point with the new Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam. These laws are meant to take the place of very old, British-time systems, and to offer a legal system that’s more up to date, can use technology easily, and works better for how things are now²⁵.

The way these changes are being talked about focuses on how things will be done (a much clearer process), using digital tools for detective work and proof, and giving victims of crimes more importance. But we need to really look at this “modernization” and think it through. The actual wording of the laws sounds new, yet the more important thing is whether these reforms truly change who has power in the criminal justice system, or just put the old ways of doing things into new law books.

4.2 Bharatiya Nagarik Suraksha Sanhita: Procedure Without Accountability

The Bharatiya Nagarik Suraksha Sanhita has improved rules about how people are arrested, held while police investigate and how the investigations themselves happen. The rules for making an arrest specifically say that everything must be written down, the reason for the arrest told to the person, and the correct steps followed²⁶. Supposedly, these rules show a desire to defend people’s freedom and to stop the police from using their power unfairly.

But whether these rules actually work depends on whether they are actually used. The BNSS doesn’t really do much to make police actually follow those rules. Because there isn’t anyone from outside the police to supervise and there aren’t serious punishments for breaking the rules, these protections could just be on paper, not in reality. Courts have for a long time said arrest shouldn’t happen as a matter of course, and yet police still do it even though there are very clear rules about it²⁷.

In the same way, how the BNSS details investigations now includes new technology and a

²⁵ Ministry of Home Affairs, The Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam: Statement of Objects and Reasons (2023) (India).

²⁶ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 35–41 (India).

²⁷ Joginder Kumar v. State of U.P., (1994) 4 SCC 260, ¶ 20 (India).

fixed order for what happens and when. Yet it doesn't solve the bigger problem of detectives being prejudiced or of people outside of the official investigation influencing it.

4.3 Bharatiya Nyaya Sanhita: Criminalization vs Enforcement

The Bharatiya Nyaya Sanhita changes what crimes are considered when it comes to things like wrongdoing by government workers. The fact that the law now says it is a crime to misuse official power shows that law-makers know this kind of thing happens in organizations²⁸.

However, the main problem isn't that these crimes weren't on the books, it's that they aren't enforced. In the past, it's been very unusual for officials to be charged for violence when someone is in their custody, or for abusing their position, and even when they are charged, those cases rarely go very far. Because permission from higher up is needed to begin a prosecution, and because the authorities themselves don't often want to bring cases against their own, it's very difficult to make anyone answer for what they've done²⁹. So, simply having these crimes as laws doesn't actually stop them from happening.

This gap between having crimes defined and actually doing something about them shows a much bigger issue with how things are set up. The system is slow to punish its own people.

4.4 Bharatiya Sakshya Adhinyam: Evidentiary Reform and Its Limits

The Bharatiya Sakshya Adhinyam (Indian Evidence Act) has been updated with significant changes to what's accepted as proof in court, and specifically, now acknowledges electronic evidence and the ways we document things in the digital age³⁰. These updates are intended to bring the law up to date with technology and make criminal trials go faster.

But, changing the rules of evidence doesn't automatically solve the issue of confessions being forced out of people or evidence being messed with during an investigation. The law still says confessions gotten through force can't be used in court, but in reality, those protections aren't very strong³¹. Because of the limited supervision in places where people are held by police, being forced to confess is still a danger, even though it's against the law.

²⁸ Bharatiya Nyaya Sanhita, No. 45 of 2023 (India).

²⁹ State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40, ¶¶ 7–8 (India) (discussing requirement of sanction for prosecution of public servants).

³⁰ Bharatiya Sakshya Adhinyam, No. 47 of 2023, §§ 61–65 (India).

³¹ Selvi v. State of Karnataka, (2010) 7 SCC 263, ¶¶ 200–201 (India).

What's more, using electronic evidence a lot more brings up new problems with proving it's real, whether it's been altered, and how to manage digital information. This is especially true when the police are the ones collecting the evidence. So, we have to ask if these changes to the evidence rules actually make things fairer, or if they just add more difficulties and don't fix the main issues of who is responsible for what.

4.5 The Core Critique

Looking at the BNS, BNSS and BSA, we find they all do the same thing. They change how things are done and the steps that are followed, but they don't really change who has the power in the criminal justice system. The priority is making the way things work better, not making sure the people who work within the system are responsible for their actions.

Because of this, this paper's main argument is that the changes are just a reshuffling of the system, and don't bring with them real accountability. No matter how good the rules about how to proceed, what proof is used, or what the crimes are, justice won't happen unless there's someone independent to check things, strong ways to make sure the rules are followed, and an acceptance in the system itself to hold government officials responsible.

So, the real change the new criminal laws are supposed to bring could very easily fall short. If the widespread problems that allow people in power to abuse that power aren't dealt with, the reform might just be a new image, not a true overhaul.

5. Courts as Watchdogs: Guardians or Band-Aids?

5.1 Landmark Judgments on Accountability

For a long time, the Indian courts have been hugely important for making the criminal justice system answer for its actions, and they've done this mainly by interpreting basic rights in a broad way. For example, in the *D.K. Basu v. State of West Bengal* case, the Supreme Court made a very thorough set of rules about how arrests and being held in jail should happen - the process must be open, things must be written down, and people who are arrested have to be able to get a lawyer³². Also in *Joginder Kumar v. State of Uttar Pradesh*, the Court was clear that police shouldn't arrest people just as a matter of course, but only when it's absolutely needed; this limits how much power the police can use in a random way³³.

And in *Nilabati Behera v. State of Orissa*, the Court went even further in holding things accountable, saying the state is responsible when someone dies in police custody and should give money to those whose fundamental rights are broken³⁴. All of these rulings are the courts' way of forcing the government to follow the rules of the Constitution, and of giving people a way to deal with when institutions are used in ways that are unfair.

5.2 Judicial Activism vs Institutional Inertia

Even with all the improvements being made, things as they should be according to the courts, don't actually happen. The rules set out in the *D.K. Basu* case and similar ones are still broken, showing that organizations are slow to change³⁵. Courts have said very plainly how people should be held responsible, but getting this to happen is mostly up to the government departments who are frequently not keen to police their own actions.

This difference between what is ordered and what actually occurs shows a basic weakness. Judges being active and making decisions (judicial activism) is vital, but it won't do the job on its own if the institutions don't obey the rulings. How well the court's protections work depends on them becoming part of the way things are done in government, and this doesn't happen very regularly.

³² *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416, ¶¶ 35–36 (India).

³³ *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260, ¶ 20 (India).

³⁴ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746, ¶¶ 16–17 (India).

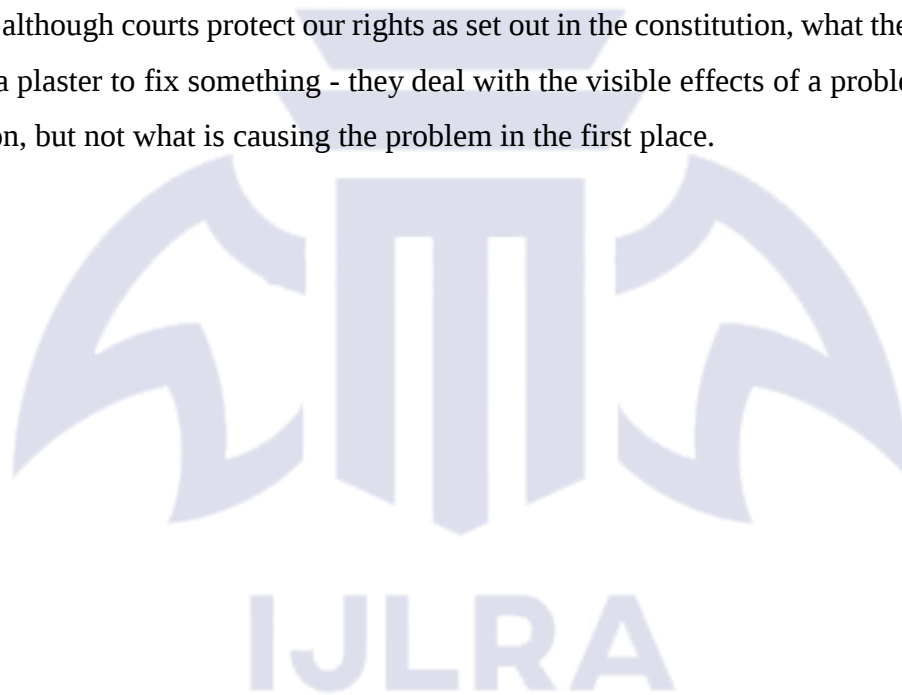
³⁵ National Human Rights Commission, Annual Report 2021–2022 45–48 (2022) (India).

5.3 Limits of Judicial Oversight

Courts are designed to be watchdogs, but they only get involved after something has already gone wrong, fixing issues instead of stopping them in the first place. Because of this, they aren't very effective at making big changes to the whole criminal justice system³⁶.

Furthermore, courts don't have ways of constantly checking that their orders are actually being followed. They can offer advice, give money to those harmed, but they can't on their own make police or investigators truly change how they are organised. So, even though court supervision is important, it mostly corrects problems as they arise and doesn't fundamentally change things.

Therefore, although courts protect our rights as set out in the constitution, what they do is often like using a plaster to fix something - they deal with the visible effects of a problem within an organisation, but not what is causing the problem in the first place.



³⁶ M.P. Jain, Indian Constitutional Law 1390–1392 (8th ed. 2018).

6. From Power to Accountability: A Reform Blueprint

6.1 Strengthening Oversight Institutions

For a real shift from having power to actually being held responsible for what they do, we need strong, truly separate ways of keeping an eye on things. Police Complaints Authorities (PCAs) are meant to be outside organizations that examine police doing wrong, and they need to be made better by having a strong legal basis, plenty of money, and the ability to do their work without being told what to do by the police³⁷. Right now, the fact that they can't investigate cases completely on their own or force the police to do as they say seriously weakens how useful they are. And we also need to change the National Human Rights Commission (NHRC) to help it actually enforce its decisions. If the NHRC's suggestions had to be followed, or if there was a system to check up on whether its advice is being put into practice, the whole system of accountability would be much improved³⁸.

6.2 Structural Police Reforms

Fixing how police are organized is absolutely vital if we want to make sure they are properly answerable for what they do. The Supreme Court has suggested a really important change: splitting up who investigates crimes from the more general work of keeping order³⁹. Doing this would mean politicians have less of a say in cases and investigations are more fair. Also, if decisions about who gets to be a police officer and where they work aren't made by people in charge of the whole executive branch, the police department as a whole will be more independent and much less likely to abuse their authority.

6.3 Technological Transparency

Technology is really helpful for making people responsible for their actions. CCTV in police stations and where people are held when arrested is now considered a vital way to prevent people in custody from being mistreated⁴⁰. And body cameras on police officers while they're making arrests or looking into crimes give an immediate, as-it-happens account of how the police are behaving, which should stop them doing wrong and make it easier to hold them to account using evidence. Still, these things only work well if they're set up correctly, if the information is kept safe, and if people who aren't on the force can look at the recordings.

³⁷ Prakash Singh v. Union of India, (2006) 8 SCC 1, ¶¶ 31–32 (India).

³⁸ Protection of Human Rights Act, No. 10 of 1994, § 18 (India).

³⁹ Prakash Singh v. Union of India, (2006) 8 SCC 1, ¶ 24 (India).

⁴⁰ Paramvir Singh Saini v. Baljit Singh, (2021) 1 SCC 184, ¶¶ 14–16 (India).

6.4 Legal Accountability Mechanisms

Changes to the law need to do more than just set out how things should happen; they also need to have ways of making sure people are actually held responsible. If we made it so police are automatically legally responsible for violence while in charge of people or when they misuse their power, this would likely stop it happening more often because it would be easier to show they did wrong⁴¹. Plus, it's vitally important to get investigations into accusations against the police started quickly and to have those investigations be unbiased. The rules of how things work in the Bharatiya Nagarik Suraksha Sanhita won't be enough; they have to be paired with specific, definite punishments for when they aren't followed.

6.5 Cultural and Institutional Change

True accountability won't happen just by changing the laws; the way things are done at police departments and other institutions needs to change. Police officers need regular training, specifically on human rights, doing things ethically, and the values of the Constitution, to change how they think⁴². And we can build a system of responsibility based on how well they do their jobs by following the number of complaints made, what punishment officers get, and if they're sticking to the correct procedures.

If this kind of overall change doesn't occur, even really good laws on paper probably won't have much effect and will just show how different the law is from what actually happens.

⁴¹ Law Commission of India, 273rd Report on Implementation of UN Convention Against Torture 45–47 (2017).

⁴² M.P. Jain, Indian Constitutional Law 1395–1398 (8th ed. 2018).

7. Conclusion: Who Really Watches the Watchmen?

7.1 Reaffirming the Argument

The Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam are India's new laws relating to criminal matters, and this paper has shown that although they do bring in significant changes to how things are done and how the system is organised, they won't magically solve the fundamental problem of institutions being held responsible for their actions. Even if the details of the laws are good, they won't work unless there's someone to independently check on things, enforcement is steady, and the institutions themselves are committed to following the constitution. Things like continuing violence in custody, bias in investigations, and oversight that isn't strong enough, all show that simply having the laws on the books isn't enough to guarantee accountability.

7.2 Final Reflection

How fair the criminal justice system is doesn't really come from the fact that laws exist, but from how people in power use and limit their power. Being answerable for what's done isn't just something extra with how things are run, it's the most important part. If there aren't good ways to stop those with authority from going too far, the system can easily change from defending people's rights to being a way for people to hold power over others.

So, the question of who keeps the police and justice officials in line is still hugely important. And the solution isn't only about changing the laws, it's about building organizations that have the ability, can act on their own, and are prepared to make sure power is used responsibly. Really, accountability isn't simply a rule the system must follow, it's what allows the criminal justice system to be considered just in the first place.