

Concerns emerge over BNSS provision on police custody

The new law, set to replace the Cr.PC, allows police custody beyond the first 15 days of arrest; legal and civil rights activists say this is a 'retrograde step' opposed to the fundamental right of citizens

R. Sivaraman
CHENNAI

With the three new criminal laws set to be implemented across the country from Monday, legal and civil rights activists have expressed concern over certain "retrograde provisions".

The Code of Criminal Procedure (Cr.PC) empowers the jurisdictional magistrate to grant police custody up to 15 days in case investigation cannot be completed within 24 hours. However, Section 187 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which replaces the Cr.PC, says police custody of 15 days can be authorised in whole or in parts at any time during the initial 40 or 60 days out of the 60- or 90-day period of judicial custody.

The police custody of 15 days may be spread over 60 days where the offence is punishable with at least 10 years of imprisonment, or 40 days for any other offence.

Human rights activists are apprehensive that the provision could pave the way for the police to take undue advantage over the



Strong resistance: Advocates talk to the police during their protest against the new criminal laws, in Chennai on Friday. ANI

arrested persons and indulge in extrajudicial measures.

D. Nagasaila, an advocate practising in the Madras High Court, said: "The main point of concern is the change in police custody rules. Earlier, police custody was permitted for a maximum period of 15 days, and that too could be sought only in the first 15 days following the arrest. The BNSS allows the police to make requests for custody beyond 15 days. On face of it, extending powers of police to request custody up to the initial 60 days [after arrest] is a retrograde step. It is opposed to fundamental right of citizens."

The new provision could lead to bail being de-

nied during this period if the police argue that they need to take the person back in their custody.

Extrajudicial measures

V. Suresh, general secretary of People's Union Civil Liberties (PUCL), said, "The provision extending police remand is perhaps one of the dangerous provisions in the new law. The bar of police custody within the first 15 days from time of arrest is removed, permitting the magistrate to order police custody for a period of 15 days anytime during the initial 40-60 days of detention. This effectively means the earlier bar on seeking police custody once the remanding magistrate grants judicial

custody is lifted. Thus, the magistrate may order that any accused person can be shifted from judicial custody back to police custody at any time beyond the first 15 days of arrest, even if he has been granted judicial custody. This prolongation is a very serious infringement on protections available for the accused, and exposes them to more police torture, intimidation, and other dangers."

"The new law hits the spirit of custodial jurisprudence in India where the police have not been trusted in ensuring safety of people in their custody. You can end up going against the morality and spirit of the Constitution by changing procedural laws. The fundamental rights of citizens will be affected by the new provision," Henri Tiphagne, executive director, People's Watch, said.

However, police officers argue that the new provision will allow them to conduct proper investigation in cases and prevent hasty interrogations. It will also give them more time to collect all evidence. A senior police officer said, "It will be more useful in cases relating to property offences or cheating."