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Judicial Custody, Police Custody, and Parole

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Judicial Custody, Police Custody, and Parole

Judicial custody and police custody sound alike, but they work in different ways. This lesson explains both under the BNSS, which began on 1 July 2024. It also covers a Supreme Court ruling of 27 July 2026 and the difference between parole and furlough. Facts are as of 9 October 2026.

At a glance

Four key facts on this topic

01 **Judicial custody** In prison, authorised by the Magistrate.

02 **Police custody** At a police station, up to 15 days in all.

03 **Limit** 90 days or 60 days of detention, then bail.

04 **Parole** A concession, not an absolute right.

Must Know · The two kinds of custody

1 Two kinds of custody

1.1 What is judicial custody?

In judicial custody the accused is held in prison. The Magistrate authorises the detention. The police do not run it.

The BNSS allows only three places. These are a police station for police custody, a prison for judicial custody, and a place declared a prison.

1.2 What is police custody?

In police custody the accused is held at a police station. The point is to let the police question the accused.

The Supreme Court's 2026 judgment shows the purpose. It gave the investigating officer unrestricted access to the accused for questioning during police custody.

1.3 Who decides which custody?

- **The Magistrate decides.** Section 187(2) lets the Magistrate authorise detention in the custody he thinks fit.
- **Second-class Magistrates:** they cannot authorise police custody unless the High Court has specially empowered them.
- **A woman under eighteen:** she is sent to a remand home or a recognised social institution.

Judicial custody and police custody compared

Point	Judicial custody	Police custody
Where held	In prison	In a police station
Who authorises it	The Magistrate	The Magistrate
Total time	Within the 60 or 90-day limit	Not more than 15 days in all
Appearance before the Magistrate	In person, or by audio-video means for later extensions	In person, the first time and every time

Our own table, built from section 187 of the BNSS.



Calcutta High Court. Photo by Avrajyoti Mitra, 2007. CC BY-SA 2.0. Credit: Wikimedia Commons.

> **Quick check 1.** True or false: A person in judicial custody is held in a police station. *(True or False?)* See answer ↓

Sources: mha.gov.in; blog.primelegal.in

2 How custody orders work

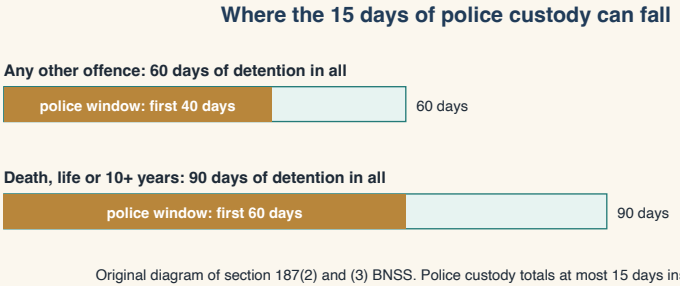
2.1 What happens after an arrest?

Sometimes the police cannot finish the questioning within 24 hours. Then they send the accused to the nearest Magistrate. They also send a copy of the case diary entries.

2.2 How long can detention last?

- **Police custody:** not more than fifteen days in the whole, or in parts.
- **When:** at any time during the initial forty days or sixty days of the detention period.
- **Beyond fifteen days:** the Magistrate needs adequate grounds.
- **Total limit:** ninety days for an offence punishable with death, life imprisonment or ten years or more. Sixty days for any other offence.
- **At the end:** the accused shall be released on bail if ready to furnish bail.

The fifteen days are a cap on police custody only. The rest of the time is judicial custody.



Original diagram of section 187(2) and (3) BNSS. Police custody totals at most 15 days inside the gold part.

Original diagram of the windows in section 187 BNSS.

2.3 Must the accused be present in person?

For police custody, yes. The Magistrate cannot authorise it unless the accused is produced in person. This applies the first time and every time after.

For further judicial custody, the Magistrate may use audio-video means instead.

If no Magistrate is available, an Executive Magistrate may authorise detention for up to seven days in all.

> 6. **Think it through:** Why is the cap on police custody 15 days, but judicial custody can run for 60 or 90? See answer ↓

> **Quick check 2.** True or false: For an offence punishable with life imprisonment, the total detention limit during investigation is sixty days. *(True or False?)* See answer ↓

Good to Know · The BNSS and parole

3 What the BNSS changed

3.1 When did the BNSS begin?

The Bharatiya Nagarik Suraksha Sanhita, 2023 came into force on 1 July 2024. All India Radio reported this on that day.

The Supreme Court calls section 167 of the Code of Criminal Procedure, 1973 the “erstwhile” provision. Section 187 BNSS took its place.

3.2 What did the Supreme Court say in July 2026?

The case is *State of Andhra Pradesh v. Suda Suresh Veera Venkata Naga Raju*. Justices Vikram Nath and Sandeep Mehta decided it on 27 July 2026.

- **The facts:** an accused in a custodial death case was in judicial custody in a Central Prison.

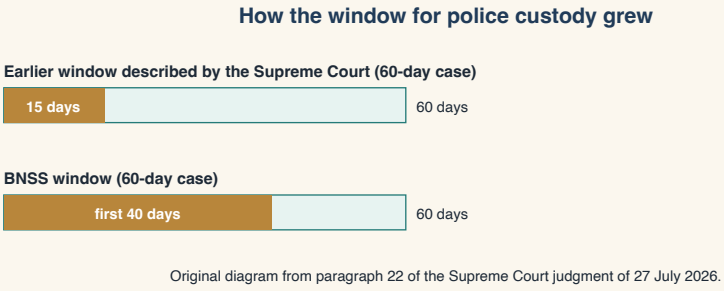
- **The request:** on 25 June 2026 the prosecution filed a memo under section 187 before the Magistrate. It sought twelve days of police remand.
- **The Magistrate:** on 2 July 2026 he granted eight days of police custody, with conditions.
- **The Court:** it ordered seven days of police custody. The total, with what the lower courts granted, would not exceed fifteen days.

3.3 What changed from the old rule?

The Court said sections 187(2) and (3) widen the window for police custody. The earlier rule confined the window to the first fifteen days of remand. Now the fifteen days may come in parts, during the first forty or sixty days.

The Court said the change was meant for fresh facts, discoveries or leads found during the investigation.

So the idea that police custody can only come in the first fifteen days of remand does not describe the BNSS.



Original diagram of the change the Supreme Court describes.

3.4 What safeguards did the Court keep?

- **Recording:** audio-visual recording of the actual interrogation sessions stays.
- **Advocate:** section 38 gives the right to meet an advocate during interrogation, though not throughout.
- **No outer limit:** the Court set aside an absolute, non-extendable outer limit on custody.

> **Quick check 3.** True or false: Under the BNSS the 15 days of police custody must all fall in the first 15 days of remand. *(True or False?)* See answer ↓

Sources: newsonair.gov.in

4 Parole and furlough

4.1 What is parole?

Parole is a temporary release for a short period. It helps a prisoner keep social ties with family and community.

The Model Prison Manual 2016 names two types:

- **Emergency parole:** for urgent matters like a death, a serious illness or a marriage in the family. It lasts up to 48 hours.
- **Regular parole:** for regular needs like house repair, school admission for children, a delivery, or sowing and harvesting.

The time spent on parole does not reduce the sentence. The prisoner serves extra time in prison.

4.2 What is furlough?

Furlough is a short release after a gap of some qualifying years in prison. It rewards good conduct.

The time spent on furlough counts towards the sentence. The Supreme Court in *Asfaq* says furlough is meant for breaking the monotony of imprisonment. It can be denied in the interest of society.

Parole and furlough compared

Point	Parole	Furlough
Reason	A specific reason is needed	Motivation for good conduct
Counts towards sentence?	No	Yes
Model Manual length	Up to 30 days at a time, twice a year	21 days in the first year after 3 years in prison, then 14 days a year
Undertrial prisoners	Only emergency parole, by the trial court	Not eligible

Sources: Model Prison Manual 2016, paragraphs 19.03, 19.04, 19.06.2, 19.11; Asfaq (2017). Our own table.

4.3 Can every prisoner claim parole?

- **Not an absolute right:** the Home Ministry's 2020 advisory calls parole a concession.
- **A right of the eligible:** the Model Manual says it is a legal right of every eligible prisoner on the conditions laid down.
- **Can be cancelled:** the concession is subject to cancellation.
- **Serious crime:** *Asfaq* held that a conviction for a serious crime cannot, by itself, be the reason to deny parole.

- **The main ground:** *Asfaq* calls keeping family and social ties the most important ground.

> **Quick check 4.** True or false: The time a prisoner spends on furlough counts towards the sentence. *(True or False?)* See answer ↓

> **Quick check 5.** True or false: Undertrial prisoners can get regular parole and furlough. *(True or False?)* See answer ↓

Sources: xn--i1b5bzbybhfo5c8b4bxh.xn--11b7cb3a6a.xn--h2brj9c; api.sci.gov.in

5 Who makes the rules?

5.1 Is there one national rule?

No. The Home Ministry says prisons and the persons detained in them are State subjects. States have made their own rules.

The Ministry prepared the Model Prison Manual and circulated it in May 2016. Each State or Union Territory may make its own law or instructions on parole and furlough.

So the numbers in the Manual are a model. A State's rules may differ.

5.2 What does the Home Ministry ask of States?

In its advisory of 3 September 2020, the Ministry reminded States that parole is a concession and not an absolute right.

The Supreme Court noted in *Asfaq* that many State governments have guidelines on parole to bring objectivity into decisions.

Exam Practice

6 Exam traps

6.1 Which mix-ups does this topic invite?

- **Judicial custody:** in prison, under the Magistrate. **Police custody:** at a police station.
- **Police custody cap:** fifteen days in all. It is not “the first fifteen days” under the BNSS.
- **Total detention:** 60 or 90 days, depending on the offence.
- **Parole:** a concession. Time does not count towards the sentence.
- **Furlough:** time counts. It is not tied to a particular reason.
- **Rules:** made by States. The Model Manual is only a model.

Remember this

- **Judicial custody:** in prison, authorised by the Magistrate.
- **Police custody:** at a police station, up to 15 days in all.
- **Detention limit:** 90 days for death, life or 10+ years. 60 days otherwise.
- **BNSS (1 July 2024):** police custody can come in parts during the first 40 or 60 days.
- **Parole:** a concession. Time does not count.
- **Furlough:** good-conduct leave. Time counts.

Explain it back: Say in your own words how the police-custody window changed under the BNSS. Then state one difference between parole and furlough.

Practice MCQs

1. With reference to India, consider the following statements:

1. Judicial custody means an accused is in the custody of the concerned magistrate and such accused is locked up in police station, not in jail.

2. During judicial custody, the police officer in charge of the case is not allowed to interrogate the suspect without the approval of the court.

A. 1 only

B. 2 only

C. Both 1 and 2

D. Neither 1 nor 2

See answer ↓

2. With reference to India, consider the following statements:

1. When a prisoner makes out a sufficient case, parole cannot be denied to such prisoner because it becomes a matter of his/her right.

2. State Governments have their own Prisoners Release on Parole Rules.

A. 1 only

B. 2 only

C. Both 1 and 2

D. Neither 1 nor 2

See answer ↓

3. Can a police officer interrogate a suspect who is in judicial custody without seeking anyone's approval?

A. No, the police need the court's approval first.

B. No interrogation is ever legally possible once judicial custody begins.

C. Yes, freely, at any time.

D. Yes, but only with the suspect's own written consent.

See answer ↓

4. Is parole granted automatically to a prisoner who presents a sufficient case for it?

A. No, parole does not exist under Indian law.

B. Yes, it becomes an enforceable right once the case is sufficient.

C. Yes, but only for prisoners serving under 5 years.

D. No, courts treat parole as discretionary, not a matter of right.

See answer ↓

5. Where is an accused physically held during judicial custody, as opposed to police custody?

A. A police station, in both cases

B. Jail, under a magistrate's custody

C. The accused's own home, under surveillance

D. A court holding cell only

See answer ↓

6. Who frames the Prisoners Release on Parole Rules?

A. The President

B. The Supreme Court

C. The Union government only

D. Each state government

See answer ↓

7. Which of these is a key difference between police custody and judicial custody?

A. None

B. Judicial custody allows torture

C. Police custody is longer by law

D. Police custody permits interrogation at the station, judicial custody does not

See answer ↓

Answer Key

1. **B.** The answer is **2 only**. Statement 1 is wrong. The BNSS allows a person to be held in a police station under police custody, or in a prison under judicial custody. So judicial custody means prison. Statement 2 is right. The Magistrate decides the custody. In the 2026 Supreme Court case the police asked the Magistrate for police custody of an accused already in judicial custody. Why the others fail: “1 only” and “both” accept the police-station claim. “Neither” rejects the approval rule. Memory hook: judicial means jail, police means station. ↑ Q1
2. **B.** The answer is **2 only**. Statement 1 is wrong. The Home Ministry says parole is not an absolute right. It calls parole a concession. The Model Prison Manual calls it a legal right only of an eligible prisoner, on stated conditions. Statement 2 is right. Prisons are State subjects, and States have made their own rules. Why the others fail: “1 only” and “both” treat parole as a right. “Neither” denies the State rules. Memory hook: parole is a concession, States write the rules. ↑ Q2
3. **A.** The answer is **No, the police need the court's approval first**. The Magistrate decides in which custody an accused is held. In the 2026 case the police filed a memo before the Magistrate seeking police custody. The Supreme Court then gave seven days with unrestricted access for questioning. Why the others fail: “freely, at any time” ignores the Magistrate. A “written consent” of the suspect is not the test. “Never possible” is wrong, because police custody can be granted. Memory hook: the Magistrate holds the key to the interrogation room. ↑ Q3
4. **D.** The answer is **No, parole is discretionary, not a matter of right**. The Home Ministry says parole is not an absolute right. It calls it a concession. The Model Prison Manual says the concession can be cancelled. The Supreme Court in Asfaq added a limit: a conviction for a serious crime cannot, by itself, be the reason to deny it. Why the others fail: it does not become an enforceable right. No “under 5 years” rule appears in the model rules. Parole does exist in Indian prison rules. Memory hook: parole is a concession, not a claim. ↑ Q4

5. **B.** The answer is **jail, under a magistrate's custody**. The BNSS says nobody may be detained except in a police station under police custody, or in a prison under judicial custody, or in a place declared a prison. In the 2026 Supreme Court case the accused in judicial custody was lodged in a Central Prison. Why the others fail: a police station is police custody. Home surveillance is not one of the places the BNSS allows. A court holding cell is not the place for judicial custody. Memory hook: judicial means jail. ↑ Q5
6. **D.** The answer is **each state government**. The Home Ministry says prisons are State subjects. States have made their own rules for parole and furlough. The Model Prison Manual 2016 only guides them. Each State or Union Territory may make its own law or instructions. Why the others fail: the Union government, the Supreme Court and the President do not frame one national parole rule. Memory hook: prisons are a State subject, so the rules are State rules. ↑ Q6
7. **D.** The answer is **Police custody permits interrogation at the station, judicial custody does not**. In the 2026 Supreme Court case the police sought police custody to question the accused. Judicial custody is detention in prison under the Magistrate. Police custody is capped at fifteen days in all, while total detention can run to sixty or ninety days. Why the others fail: Why the others fail: there is a clear difference. Nothing in the BNSS allows torture.ldquo;NoneWhy the others fail: there is a clear difference. Nothing in the BNSS allows torture.rdquo; is wrong because the two differ. Nothing in the BNSS allows torture. And police custody is the shorter one, not the longer. Memory hook: police custody is short and for questioning. ↑ Q7

Quick-check answers

1. **False.** The BNSS says judicial custody is in a prison. Police custody is in a police station. ↑ 1
2. **False.** The limit is ninety days for an offence punishable with death, life imprisonment or ten years or more. Sixty days is for any other offence. ↑ 2
3. **False.** The Supreme Court said the window is wider. The fifteen days may be taken in parts during the first forty or sixty days. ↑ 3
4. **True.** The Model Prison Manual says so. Parole time does not count. ↑ 4
5. **False.** The Model Prison Manual says they are not eligible. They can get only emergency parole, by order of the trial court. ↑ 5

6. **Think it through.** Our own reading of section 187. The 15-day cap applies to custody with the police. The 60 and 90-day limits apply to the whole period of detention during investigation. Most of that period is judicial custody. ↑ 6

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