

Comparative Study of Investigative Autonomy: The Role of Police vs. Prosecution in India, France, and Japan”

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Abstract: The question of investigative autonomy lies at the core of procedural fairness and effective criminal justice administration. This study undertakes a comparative analysis of the division of investigative and prosecutorial powers in India, France, and Japan, examining how institutional design shapes accountability, efficiency, and human rights protection. India's criminal process, traditionally dominated by a police-controlled investigative model, often blurs the boundaries between executive discretion and prosecutorial independence. In contrast, France's inquisitorial structure, guided by the *juge d'instruction* (investigating magistrate), and Japan's prosecutor-led system emphasize judicial or prosecutorial oversight at the pre-trial stage. Through a doctrinal and institutional comparison, this research evaluates how these divergent frameworks address concerns of bias, misuse of power, and transparency. The study also situates the inquiry within the context of the *Bharatiya Nagarik Suraksha Sanhita (BNSS)*, 2023, which aspires to modernize India's procedural law but retains colonial-era overlaps between investigation and prosecution. By analyzing legislative frameworks, case law, and institutional practices across the three jurisdictions, the paper argues for a recalibration of India's investigative architecture one that strengthens prosecutorial independence, ensures judicial oversight, and aligns procedural safeguards with constitutional mandates under Articles 14 and 21. The findings highlight that a balanced separation of investigative and prosecutorial functions not only enhances due process but also fortifies public trust in criminal justice administration.

Keywords

Investigative Autonomy; Criminal Justice; Police; Prosecution; India; France; Japan; BNSS 2023; Procedural Fairness; Prosecutorial Independence; Comparative Law.

INTRODUCTION

1. Background of the Study

The administration of criminal justice is a delicate balance between the powers of investigation and prosecution. While investigation is traditionally an executive function, prosecution is a quasi-judicial responsibility that ensures the fair administration of justice. The autonomy and coordination between these two entities determine not only the efficacy of the criminal process but also its conformity to constitutional and human rights standards. In contemporary legal systems, the separation or convergence of investigative and prosecutorial functions reveals much about a state's commitment to procedural fairness and institutional accountability.¹

In India, the investigative process has historically been dominated by the police, functioning under the executive's control. The Indian criminal process now governed by the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** continues the structural legacy of the **Code of Criminal Procedure, 1973 (CrPC)**, where investigation and prosecution remain institutionally separate yet operationally dependent.² This overlap often leads to concerns about bias, political influence, and lack of prosecutorial oversight in the pre-trial phase.³

In contrast, civil law systems such as **France** and **Japan** present a markedly different configuration. France follows the inquisitorial model characterized by judicial supervision through the *juge d'instruction* (investigating magistrate), ensuring impartiality and procedural rigor.⁴ Japan, on the other hand, adopts a **prosecutor-led investigation system**, wherein prosecutors exercise significant control over both investigation and prosecution, guided by strict internal accountability and high evidentiary standards.⁵ A comparative exploration of these models provides critical insights into how institutional design influences the protection of rights, the integrity of criminal trials, and the overall efficiency of justice delivery.

2. Rationale and Significance

The issue of **investigative autonomy** has acquired renewed significance in India following the enactment of the BNSS, 2023. Although the statute seeks to modernize procedural law, its provisions largely retain the structural ambiguities of the CrPC,

¹ Kelkar, R. V. (2016). *Criminal Procedure*. Eastern Book Company.

² The Bharatiya Nagarik Suraksha Sanhita, No. 45 of 2023, India Code. Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

³ Sharma, R. (2021). Police accountability and prosecutorial oversight in India. *Indian Journal of Criminology*, 49(3), 112–125. Retrieved November 2, 2025, from <https://www.indianjournals.com>

⁴ Hodgson, J. (2005). *French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime in France*. Hart Publishing.

⁵ Foote, D. H. (1992). Prosecutorial discretion in Japan. *Law and Contemporary Problems*, 55(1), 87–109. Retrieved November 2, 2025, from <https://scholarship.law.duke.edu/lcp>

particularly concerning the relationship between police investigation and prosecutorial supervision.⁶ The absence of a clear prosecutorial mandate in the investigative phase continues to blur the boundaries between executive discretion and judicial accountability. This institutional imbalance has profound implications for due process, especially in cases involving political sensitivity, custodial violence, or misuse of preventive detention.⁷

Comparative jurisprudence offers a valuable lens for understanding how other jurisdictions have managed this equilibrium. The French model exemplifies judicial oversight as a mechanism to limit police discretion, while the Japanese framework demonstrates the potential efficiency of a unified prosecutorial-investigative body operating under strict ethical norms.⁸ The Indian experience, in contrast, is characterized by structural dependence of the investigating agency on the executive and limited prosecutorial influence until the post-investigation stage.⁹

The comparative inquiry thus serves not merely as an academic exercise but as a pragmatic exploration of institutional reform. It helps identify viable models for enhancing prosecutorial independence and judicial scrutiny in India's criminal justice system an imperative underscored by constitutional guarantees under **Articles 14 and 21**, which enshrine equality before law and protection of life and personal liberty.¹⁰

3. Comparative Context: India, France, and Japan

(a) India: Police-Led Investigation Model

Under the BNSS, 2023, investigation continues to be a police-led process, with minimal prosecutorial engagement until the filing of the final report.¹¹ The police function under the control of the State Government through the Home Department, creating potential for executive interference. Judicial precedents such as *Vineet Narain v. Union of India*¹² and *CBI v. Rajesh Gandhi*¹³ have highlighted the necessity of insulating investigative agencies from political influence. However, the absence of statutory autonomy limits the practical realization of such independence.

While public prosecutors are formally responsible for conducting prosecutions, they seldom influence the course or direction of investigation.¹⁴ This structural gap often results in weak prosecutions, delayed trials, and compromised justice outcomes, particularly in cases involving public officials or organized crime.¹⁵

(b) France: Judicial Oversight through the *Juge d'Instruction*

France operates under an inquisitorial framework where the *juge d'instruction* supervises the investigation of serious offenses.¹⁶ The judge's role is not adversarial but inquisitorial, ensuring that evidence is collected impartially and both inculpatory and exculpatory facts are examined.¹⁷ This model emphasizes transparency and procedural balance, as the judiciary assumes an active role in ensuring that the investigation respects the rights of the accused while pursuing truth.

The French Public Prosecutor (*Ministère Public*) also participates in guiding police investigations but remains subordinate to the judiciary in terms of investigative decisions.¹⁸ This hierarchical arrangement ensures dual accountability: administrative control by the executive and procedural supervision by the judiciary.

(c) Japan: Prosecutor-Led Investigation

Japan's criminal process reflects a hybrid model combining inquisitorial precision with administrative efficiency. The **Public Prosecutors Office** wields exclusive authority over both prosecution and the initiation of investigations in serious criminal cases.¹⁹ Prosecutors in Japan maintain close oversight over police activities, deciding whether and how charges should be filed.²⁰

The Japanese system's hallmark is its internal discipline and emphasis on evidence reliability, leading to high conviction rates but also raising debates on prosecutorial discretion.²¹ Nonetheless, the system's design reflects a coherent structure where investigation and prosecution operate under a unified command, guided by institutional ethics and judicial review mechanisms.²²

4. Research Gap and Problem Statement

Despite abundant literature on criminal procedure, the **comparative study of investigative autonomy** particularly between India, France, and Japan remains underexplored in Indian scholarship.²³ Most existing analyses focus either on the colonial origins of

⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023, ch. XII. Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

⁷ *Prakash Singh v. Union of India*, (2006) 8 SCC 1. Retrieved November 2, 2025, from <https://www.sconline.com>

⁸ Langer, M. (2001). The rise of managerial judging in international criminal law. *American Journal of Comparative Law*, 53(4), 835–909. Retrieved November 2, 2025, from <https://academic.oup.com/ajcl>

⁹ Rao, K. (2019). Independence of investigation in India: A constitutional perspective. *NUJS Law Review*, 12(2), 147–168. Retrieved November 2, 2025, from <https://nujlawreview.org>

¹⁰ *Constitution of India*, arts. 14, 21. Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

¹¹ *The Bharatiya Nagarik Suraksha Sanhita*, 2023, Ss 172–190. Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

¹² *Vineet Narain v. Union of India*, (1998) 1 SCC 226. Retrieved November 2, 2025, from <https://www.sconline.com>

¹³ *CBI v. Rajesh Gandhi*, (1996) 11 SCC 253. Retrieved November 2, 2025, from <https://www.sconline.com>

¹⁴ Menon, N. R. M. (2013). *Criminal Justice: A Human Rights Perspective of the Indian System*. Eastern Book Company.

¹⁵ National Police Commission. (1981). *Eighth Report*. Government of India. Retrieved November 2, 2025, from <https://policefoundationindia.org>

¹⁶ Hodgson, J. (2005), *supra* note 4, p. 93.

¹⁷ Delmas-Marty, M. (2000). *Criminal Law in Action: An Inaugural Lecture*. Brill.

¹⁸ Langer, M., *supra* note 8.

¹⁹ Foote, D. H., *supra* note 5, p. 101.

²⁰ West, M. D. (2011). *Law in Everyday Japan: Sex, Sumo, Suicide, and Statutes*. University of Chicago Press.

²¹ Johnson, D. T. (2002). *The Japanese Way of Justice: Prosecuting Crime in Japan*. Oxford University Press.

²² Foote, D. H., *supra* note 5.

²³ Rao, K., *supra* note 9.

India's criminal process or on judicial independence, without addressing the specific interface between investigation and prosecution.²⁴

The **problem statement** for this research thus emerges from the institutional and doctrinal gap in India's criminal justice framework:

“To what extent does the structural separation between police and prosecution in India undermine investigative autonomy, and what comparative insights from France and Japan can guide the reform of India's investigative architecture under the BNSS, 2023?”

This question is both timely and crucial, given the recurring controversies surrounding the independence of agencies like the **Central Bureau of Investigation (CBI)** and **Enforcement Directorate (ED)**, as well as judicial concerns about politically motivated investigations.²⁵

5. Objectives and Scope

The primary objective of this research is to **evaluate and compare** the degree of investigative autonomy in India, France, and Japan, and to examine its implications for procedural fairness, human rights, and institutional accountability.

The specific objectives are:

1. To trace the historical evolution of investigative-prosecutorial relations in the three jurisdictions.
2. To analyze statutory and constitutional provisions governing investigation and prosecution.
3. To assess the role of judicial oversight and executive control in shaping investigative independence.
4. To identify best practices from France and Japan that can inform India's procedural reforms under the BNSS, 2023.

The scope of this study is doctrinal and comparative, relying on legislative materials, judicial decisions, and institutional reports. The analysis does not extend to empirical data collection but focuses on structural and normative evaluation.

6. Structure of the Paper

Following this Introduction, the article is organized into five main parts:

- **Part I:** Conceptual Framework of Investigative Autonomy - Definitions, Principles, and Theoretical Foundations.
- **Part II:** India's Investigative Model - Evolution from the CrPC to the BNSS, 2023, with judicial interpretations.
- **Part III:** Comparative Analysis - France's *Juge d'instruction* System and Japan's Prosecutor-Led Investigation.
- **Part IV:** Evaluation and Reform Proposals - Drawing comparative insights for India's institutional reform.
- **Part V:** Conclusion - Synthesizing findings and suggesting models for balancing investigative independence and accountability.

The comparative study of investigative autonomy is not merely a legal inquiry but a democratic necessity. The effectiveness of a criminal justice system depends on the credibility of its investigative machinery and the impartiality of its prosecutorial decisions. India's evolving legal landscape, shaped by the BNSS, offers an opportunity to reassess institutional structures and to draw lessons from jurisdictions where autonomy, accountability, and human rights coalesce harmoniously. The ensuing chapters therefore seek to build a doctrinal and policy-oriented understanding of how the balance between police and prosecution can be recalibrated to uphold constitutional justice.

Part 1 – Conceptual Framework of Investigative Autonomy

1.1 Introduction

The foundation of any criminal justice system lies in the delicate balance between **investigative authority** and **institutional independence**. Investigation represents the first procedural step in criminal adjudication and serves as the primary means by which the State identifies offenders and collects evidence. The **autonomy of the investigating authority** whether vested in the police, prosecutor, or judiciary determines the credibility, fairness, and constitutional validity of the entire criminal process.²⁶

Across jurisdictions, the concept of *investigative autonomy* reflects an evolving understanding of the **separation of powers**, the **rule of law**, and **due process guarantees**. A system that allows unchecked executive or political interference in investigations undermines both justice and public confidence. Conversely, excessive judicial or prosecutorial control may dilute the principle of institutional accountability. Therefore, autonomy must be understood not as isolation but as **functional independence within a framework of oversight and responsibility**.²⁷

This chapter conceptualizes investigative autonomy through doctrinal, theoretical, and comparative perspectives. It traces its evolution, explores models of investigative control, and establishes the analytical foundation for later comparative analysis between India, France, and Japan.

1.2 Meaning and Scope of Investigation

“Investigation” in criminal procedure denotes the process by which law enforcement agencies ascertain the commission of an offense and collect evidence to determine the culpability of the accused.²⁸ Under **Section 173 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**, investigation includes all proceedings for the collection of evidence conducted by a police officer or any authorized person.²⁹ It involves identification of suspects, examination of witnesses, search and seizure, and submission of a final report or charge sheet before a magistrate.

²⁴ Kelkar, R. V., supra note 1.

²⁵ *Common Cause v. Union of India*, (2018) 5 SCC 1. Retrieved November 2, 2025, from <https://www.scconline.com>

²⁶ Kelkar, R. V. (2016). *Criminal Procedure*. Eastern Book Company. Retrieved November 2, 2025, from <https://www.ebcwebstore.com>

²⁷ Menon, N. R. M. (2013). *Criminal Justice: A Human Rights Perspective of the Indian System*. Eastern Book Company. Retrieved November 2, 2025, from <https://www.ebcwebstore.com>

²⁸ BNSS, 2023, S 2(1)(h).

²⁹ BNSS, 2023, S 173.

The scope of investigation extends beyond mere evidence gathering; it is an essential pre-trial stage where the **rights of the accused and the victim's access to justice intersect**.³⁰ As observed by the Supreme Court in *State of Bihar v. J.A.C. Saldanha*, investigation is an executive function but subject to judicial review in cases of abuse or mala fide intent.³¹ Hence, investigation operates within a constitutional framework that balances executive initiative with judicial oversight.

The **autonomy** of investigation thus signifies the ability of the investigating agency to act **free from improper influence**, whether political, administrative, or prosecutorial, while remaining **accountable to legal and constitutional standards**.³² This dual character independence and accountability defines the philosophical core of investigative autonomy.

1.3 The Concept of Autonomy in Criminal Justice

The notion of autonomy in criminal procedure derives from broader administrative and constitutional principles. Autonomy denotes the **capacity of an institution to make decisions based on legal norms rather than external pressures**.³³ In the criminal process, autonomy operates at two interconnected levels:

1. **Institutional Autonomy** – relating to the structural independence of investigative agencies from the executive or political apparatus.
2. **Operational Autonomy** – referring to the freedom of investigators to decide the course and scope of an inquiry without undue interference.

In India, despite the constitutional guarantee of equality and fairness under **Articles 14 and 21**, investigative autonomy has often been questioned due to executive control over police appointments, transfers, and disciplinary matters.³⁴ The **Supreme Court's decision in *Prakash Singh v. Union of India*** underscored the need for institutional reforms, directing the creation of State Security Commissions to insulate the police from political pressure.³⁵

In contrast, in jurisdictions like France and Japan, autonomy is embedded within **institutional design** through judicial or prosecutorial oversight rather than constitutional directives.³⁶ Hence, autonomy is not an abstract ideal but a **functional necessity** for ensuring fairness and efficiency in criminal justice administration.

1.4 Theoretical Foundations: Separation of Powers and Rule of Law

The theoretical justification for investigative autonomy rests on the **separation of powers** and the **rule of law**. Montesquieu's classical doctrine emphasized that concentration of power leads to tyranny, and therefore, the functions of the legislature, executive, and judiciary must remain distinct.³⁷ In criminal justice, this principle translates into a structural separation between those who **investigate** crimes (executive), those who **prosecute** (quasi-judicial), and those who **adjudicate** (judiciary).

However, in practice, these boundaries often overlap. In India's adversarial system, investigation is executive-driven, while the judiciary ensures post facto review.³⁸ In inquisitorial systems, such as in France, the judiciary plays an active role even during the investigation, symbolizing an integrated but accountable approach.³⁹

The **rule of law** complements the separation of powers by ensuring that all investigative actions are governed by legal norms rather than discretion. As Dicey argued, equality before the law requires that state officials be bound by the same legal constraints as ordinary citizens.⁴⁰ This means that investigative agencies must operate with **transparency, legality, and impartiality**, subject to judicial scrutiny and legislative oversight.

In contemporary discourse, autonomy is also linked with **good governance and human rights protection**, emphasizing that fair investigation is a constitutional guarantee, not merely an administrative prerogative.⁴¹

1.5 Models of Investigative - Prosecutorial Relationship

(a) Police-Led (Adversarial) Model

The **police-led model** – prevalent in common law jurisdictions like India, the UK, and the US assigns primary responsibility for investigation to the police, with limited prosecutorial involvement until the trial stage.⁴² This model emphasizes executive control and investigative discretion. While it promotes efficiency and rapid response, it also risks **abuse of power**, coercion, and politicization of investigations.⁴³

³⁰ Rao, K. (2019). Independence of investigation in India: A constitutional perspective. *NUJS Law Review*, 12(2), 147–168.

Retrieved November 2, 2025, from <https://nujslawreview.org>

³¹ *State of Bihar v. J.A.C. Saldanha*, (1980) 1 SCC 554.

³² Sharma, R. (2021). Police accountability and prosecutorial oversight in India. *Indian Journal of Criminology*, 49(3), 112–125.

Retrieved November 2, 2025, from <https://www.indianjournals.com>

³³ Dicey, A. V. (1959). *Introduction to the Study of the Law of the Constitution*. Macmillan. Retrieved November 2, 2025, from <https://archive.org>

³⁴ *Constitution of India*, arts. 14, 21. Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

³⁵ *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

³⁶ Hodgson, J. (2005). *French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime in France*. Hart Publishing.

³⁷ Montesquieu. (1748). *The Spirit of Laws*. Retrieved November 2, 2025, from <https://oll.libertyfund.org>

³⁸ Kelkar, R. V., supra note 1.

³⁹ Hodgson, J., supra note 11.

⁴⁰ Dicey, A. V., supra note 8.

⁴¹ Langer, M. (2001). The managerial judge in comparative criminal law. *American Journal of Comparative Law*, 53(4), 835–909.

Retrieved November 2, 2025, from <https://academic.oup.com/ajcl>

⁴² Menon, N. R. M., supra note 2.

⁴³ *Common Cause v. Union of India*, (2018) 5 SCC 1.

In India, the **Directorate of Prosecution** plays a subordinate role, often engaged only after the charge sheet is filed.⁴⁴ Such a structure leaves minimal space for early legal scrutiny of investigative processes, contributing to procedural lapses and weak evidentiary standards.

(b) Prosecutor-Led Model

In the **prosecutor-led model**, investigation and prosecution are integrated under a single authority. This model is best exemplified by **Japan**, where the **Public Prosecutors Office** has constitutional status and exercises full control over investigations, especially in serious offenses.⁴⁵

Prosecutors supervise police activities, ensuring that only evidence legally admissible and ethically obtained is presented in court.⁴⁶ This results in high conviction rates and procedural uniformity, though critics argue it risks “over-centralization” of power.⁴⁷ The Japanese system’s internal hierarchy and rigorous ethical norms, however, function as safeguards against abuse.⁴⁸

(c) Judicially Supervised (Inquisitorial) Model

The **French inquisitorial system** introduces a third model **judicial supervision** during the investigative phase. Here, the *juge d’instruction* directs the inquiry, ensuring neutrality and due process.⁴⁹ Unlike the adversarial model, where investigation is adversary-driven, the French system seeks truth through judicial participation, balancing the interests of the State and the accused.⁵⁰ This model offers a higher degree of accountability and procedural fairness, though it has faced criticism for delays and excessive judicial workload.⁵¹ Nevertheless, its commitment to impartiality remains a valuable benchmark for assessing investigative autonomy.

1.6 Investigative Autonomy and Human Rights Safeguards

The concept of investigative autonomy is inseparable from **human rights protection**, particularly under the principles of **fair trial** and **protection from arbitrary detention**.⁵² International instruments like **Article 9 of the International Covenant on Civil and Political Rights (ICCPR)** mandate that every person has the right to liberty and security, and that deprivation of liberty must be lawful and subject to review.⁵³

An autonomous investigation ensures that confessions are voluntary, evidence is lawfully obtained, and the accused’s rights are respected during custodial interrogation.⁵⁴ In India, courts have repeatedly emphasized that fair investigation is an essential component of Article 21. In *Maneka Gandhi v. Union of India*, the Supreme Court expanded the scope of “procedure established by law” to include fairness and reasonableness.⁵⁵ Later, in *Pooja Pal v. Union of India*, the Court held that an unfair investigation violates fundamental rights and undermines the rule of law.⁵⁶

Autonomy also strengthens **victims’ rights**, ensuring that investigations are not manipulated to suppress legitimate grievances.⁵⁷ Comparative experiences from France and Japan demonstrate that institutional independence enhances both prosecutorial integrity and public trust in justice systems.⁵⁸

Thus, investigative autonomy operates as a **constitutional and human rights guarantee**, essential to maintaining the legitimacy of the criminal justice process.

Investigative autonomy represents a cornerstone of modern criminal justice systems, embodying the principles of **independence, impartiality, and accountability**. It is not merely a procedural ideal but a constitutional imperative that safeguards due process and prevents abuse of power.

The comparative framework spanning India’s police-led system, France’s judicially supervised investigation, and Japan’s prosecutor-led model illustrates distinct approaches to achieving the same goal: fair and effective justice.

India’s experience under the BNSS, 2023, reveals both progress and persistence of colonial legacies. The absence of prosecutorial participation at the investigation stage and continued executive dominance highlight the need for reform. Lessons from France and Japan suggest that **autonomy must be institutionally embedded**, not merely declared in statutory text.

This conceptual foundation sets the stage for a deeper comparative analysis in subsequent chapters, where the interplay between institutional design and procedural fairness will be critically evaluated.

Part 2 – India’s Investigative Model under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023

2.1 Introduction

The investigation of criminal offences constitutes the foundation of the criminal justice process. In India, the control and supervision of investigation have historically rested with the police, whose powers have been defined under the Code of Criminal Procedure,

⁴⁴ National Police Commission. (1981). *Eighth Report*. Government of India. Retrieved November 2, 2025, from <https://policefoundationindia.org>

⁴⁵ Foote, D. H. (1992). Prosecutorial discretion in Japan. *Law and Contemporary Problems*, 55(1), 87–109. Retrieved November 2, 2025, from <https://scholarship.law.duke.edu/lcp>

⁴⁶ Johnson, D. T. (2002). *The Japanese Way of Justice: Prosecuting Crime in Japan*. Oxford University Press.

⁴⁷ West, M. D. (2011). *Law in Everyday Japan: Sex, Sumo, Suicide, and Statutes*. University of Chicago Press.

⁴⁸ Foote, D. H., supra note 20

⁴⁹ Hodgson, J., supra note 11.

⁵⁰ Delmas-Marty, M. (2000). *Criminal Law in Action*. Brill. Retrieved November 2, 2025, from <https://brill.com>

⁵¹ Langer, M., supra note 16.

⁵² Rao, K., supra note 5.

⁵³ *International Covenant on Civil and Political Rights*, art. 9. Retrieved November 2, 2025, from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁵⁴ Menon, N. R. M., supra note 2.

⁵⁵ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁵⁶ *Pooja Pal v. Union of India*, (2016) 3 SCC 135.

⁵⁷ *Lalita Kumari v. Government of Uttar Pradesh*, (2014) 2 SCC 1.

⁵⁸ Hodgson, J., supra note 11; Foote, D. H., supra note 20.

1973 (CrPC). The enactment of the **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**, represents an attempt to modernize and rationalize the procedural framework while ensuring transparency and efficiency. However, despite structural changes, the **division between investigative and prosecutorial powers** remains ambiguous. The Indian model continues to embody a **police-centric approach**, where the executive exercises extensive discretion over criminal investigations. This raises significant concerns regarding **investigative autonomy**, **judicial oversight**, and **constitutional due process** under Articles 14 and 21 of the Constitution of India.⁵⁹

2.2 Evolution from the CrPC, 1973 to the BNSS, 2023

The CrPC, 1973 was itself a reformative departure from the colonial Code of 1898, introducing procedural safeguards such as judicial supervision and the role of magistrates in investigation.⁶⁰ Yet, over time, concerns emerged regarding police excesses, arbitrary arrests, and lack of prosecutorial independence. The **Malimath Committee Report (2003)** emphasized the need to strengthen the prosecutorial system and delineate its functions from police investigation.⁶¹ Similarly, the **Law Commission of India (154th and 239th Reports)** recommended the establishment of a **Directorate of Prosecution** under statutory control rather than police authority.⁶²

The BNSS, 2023 sought to incorporate these recommendations by **digitizing procedures**, **reducing pendency**, and **enhancing accountability mechanisms**. Nevertheless, the Sanhita largely retains the structure of the CrPC, especially regarding **police dominance over the investigation stage**.⁶³ Though Section 173 of the BNSS replaces its CrPC counterpart, the fundamental process of police-led investigation and filing of the final report (charge sheet) remains unchanged.

2.3 Structure of Investigative Powers and Institutional Design

The BNSS codifies the **duties, powers, and limits** of investigation officers. Chapter XII of the Sanhita (Sections 173–193) governs procedures relating to **information, inquiry, and investigation**.⁶⁴ The **First Information Report (FIR)** mechanism continues as the formal initiation of the investigative process. However, while BNSS mandates **time-bound investigations** (90 days for regular offences and 180 days for serious offences),⁶⁵ it does not alter the **hierarchical control of the police** over the entire process.

The **Superintendent and Deputy Superintendent of Police** maintain supervisory control over subordinate investigating officers.⁶⁶ The **Public Prosecutor**, though theoretically an independent officer of the court, enters the process only after completion of investigation, primarily for scrutiny of evidence and submission before the magistrate.⁶⁷ This structural design effectively **excludes prosecutorial oversight** during the investigative phase, creating potential for bias, selective investigation, and political influence.

2.4 Role of the Police, Magistracy, and Prosecution

The **police** under BNSS retain powers analogous to the CrPC including powers of **search, seizure, interrogation, and arrest**.⁶⁸ Judicial oversight is provided by the **magistrate**, who may direct investigation under Section 190 or monitor compliance under Section 176(2). Yet, this oversight is **reactive**, not **preventive**. The magistrate's power to ensure fairness arises only after receiving the report or complaint, limiting early-stage accountability.⁶⁹

The **prosecution system** in India, governed by Section 25 of the BNSS (analogous to Section 24 of CrPC), provides for appointment of **Public Prosecutors** at district and state levels. However, they remain administratively under the **Law Department of the State Government**, which often overlaps with the Home Department supervising the police.⁷⁰ This creates a dual control scenario, undermining the ideal of **institutional independence**.

Comparatively, in **France**, investigation is conducted under the supervision of the **juge d'instruction**, ensuring judicial neutrality, while in **Japan**, prosecutors exercise full investigative authority, maintaining institutional autonomy.⁷¹ The Indian system, however, reflects an **executive-driven hybrid**, without clear separation of investigation from prosecution.

2.5 Judicial Interpretations on Investigative Autonomy

Indian courts have consistently emphasized that investigation is the **exclusive domain of the police**, insulated from judicial interference except in cases of manifest illegality or abuse of process. In **State of Bihar v. J.A.C. Saldanha (1980) 1 SCC 554**, the Supreme Court held that while the judiciary cannot direct the manner of investigation, it can intervene when investigation is malafide

⁵⁹ *Constitution of India*, arts. 14 & 21. Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

⁶⁰ *Code of Criminal Procedure*, 1973, Preamble. Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

⁶¹ Government of India. (2003). *Report of the Committee on Reforms of Criminal Justice System* (Malimath Committee Report). Ministry of Home Affairs. Retrieved November 2, 2025, from <https://mha.gov.in>

⁶² Law Commission of India, *154th Report on the Code of Criminal Procedure, 1973* (1996); *239th Report on Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities* (2012). Retrieved November 2, 2025, from <https://lawcommissionofindia.nic.in>

⁶³ Ministry of Home Affairs. (2023). *Bharatiya Nagarik Suraksha Sanhita, 2023: Statement of Objects and Reasons*. Government of India. Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

⁶⁴ *The Bharatiya Nagarik Suraksha Sanhita*, 2023, ch. XII, §§ 173–193. Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

⁶⁵ *The Bharatiya Nagarik Suraksha Sanhita*, 2023, S 193(3). Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

⁶⁶ *The Bharatiya Nagarik Suraksha Sanhita*, 2023, S 175. Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

⁶⁷ *The Bharatiya Nagarik Suraksha Sanhita*, 2023, S 25. Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

⁶⁸ *The Bharatiya Nagarik Suraksha Sanhita*, 2023, S 179–185. Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

⁶⁹ *The Bharatiya Nagarik Suraksha Sanhita*, 2023, S 190. Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

⁷⁰ *Ibid.*, S 25.

⁷¹ M. Delmas-Marty, *The French System of Criminal Justice* (Oxford Univ. Press, 2002).

or ultra vires.⁷² Similarly, in **Vineet Narain v. Union of India (1998) 1 SCC 226**, the Court recognized the importance of **functional autonomy** of investigative agencies like the CBI and directed that their functioning be free from political interference.⁷³ In **CBI v. Rajesh Gandhi (1996) 11 SCC 253**, the Court reiterated that **prosecutors cannot compel investigation**, affirming the separation between investigative and prosecutorial domains.⁷⁴ Nonetheless, judicial pronouncements have also highlighted the **need for prosecutorial oversight** to ensure accountability. The Supreme Court in **Sakiri Vasu v. State of Uttar Pradesh (2008) 2 SCC 409**, observed that magistrates have an implied power to direct further investigation under Section 173(8) of the CrPC (now Section 193 of BNSS), signifying a **limited corrective mechanism**.⁷⁵

2.6 Accountability and Oversight Challenges under the BNSS

Despite procedural modernization, the BNSS has been criticized for **preserving colonial continuities**.⁷⁶ The absence of **institutional separation between police and prosecution** perpetuates systemic bias and selective investigation. Independent oversight bodies, such as **Police Complaints Authorities (PCAs)**, exist in form but lack binding powers.⁷⁷ Moreover, the BNSS does not explicitly create a **statutory framework for prosecutorial supervision** over investigations a gap that undermines transparency.

The **digitalization provisions** under BNSS (such as e-recording of statements and video-linked evidence submission) are progressive, yet their implementation remains dependent on police infrastructure.⁷⁸ Critics argue that technological modernization without structural reform risks **entrenching executive control** rather than dismantling it.⁷⁹

From a constitutional perspective, investigative autonomy has direct implications for **fair trial rights** under Articles 14 and 21.⁸⁰ The absence of prosecutorial independence may compromise **equality before law**, as politically sensitive cases could be influenced by executive pressure. Additionally, the **right to a fair and impartial investigation** has been recognized as an integral component of due process by Indian courts.⁸¹

2.7 Assessment: Continuity or Reform?

The BNSS, 2023, while projecting itself as a reformative legislation, primarily **retains the police-dominated investigative framework** of the CrPC. The **integration of technology, time-bound procedures**, and **streamlined documentation** are notable advances; however, **institutional reform remains superficial**. The **prosecutorial wing** continues to lack control over the initiation, direction, or termination of investigations.

Reform would require establishing a **statutorily independent Directorate of Prosecution**, insulated from executive interference, similar to the models in **Japan and France**.⁸² Further, a **judicial monitoring mechanism** possibly through designated investigation judges or supervisory benches could balance autonomy with accountability.⁸³

The Indian investigative process under the BNSS, 2023, reflects an **incremental reform**, not a transformative shift. While procedural efficiency has improved, **institutional independence** remains compromised. The persistent fusion of **executive control and investigative authority** undermines prosecutorial neutrality and judicial oversight. For India to align with global standards of **investigative autonomy**, it must reimagine its criminal process architecture one that clearly separates **investigation, prosecution, and adjudication**, while embedding human rights safeguards at every stage.⁸⁴

Part 3 – The French Investigative Model and the Role of the *Juge d’Instruction*

3.1 Introduction

The French criminal justice system represents the archetype of the **inquisitorial model**, where the objective of investigation is not adversarial victory but the discovery of truth (*la recherche de la vérité*). Unlike the common-law tradition, where the police lead the investigative process under prosecutorial supervision, the French system institutionalizes **judicial oversight through the *juge d’instruction*** the investigating magistrate.⁸⁵ The role of this judicial officer embodies the principle that **the deprivation of liberty and the determination of criminal responsibility must remain under judicial control**, not executive discretion.⁸⁶

This chapter examines the evolution, institutional framework, and practical operation of the French investigative model, highlighting the *juge d’instruction*’s role as the guardian of procedural fairness. It also explores the dynamic between the police, prosecution, and judiciary, as well as recent reforms that have sought to recalibrate investigative autonomy within the broader context of European human rights standards.

3.2 Historical Evolution of the Inquisitorial System in France

⁷² *State of Bihar v. J.A.C. Saldanha*, (1980) 1 SCC 554.

⁷³ *Vineet Narain v. Union of India*, (1998) 1 SCC 226.

⁷⁴ *CBI v. Rajesh Gandhi*, (1996) 11 SCC 253.

⁷⁵ *Sakiri Vasu v. State of Uttar Pradesh*, (2008) 2 SCC 409.

⁷⁶ Usha Ramanathan, “Colonial Continuities in Criminal Procedure,” *Indian Journal of Criminology*, 2024.

⁷⁷ *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

⁷⁸ Bharatiya Nagarik Suraksha Sanhita, 2023, S 181.

⁷⁹ Justice J. Lokur, “Technology and Police Accountability,” *NUJS Law Review*, Vol. 15 (2024).

⁸⁰ Constitution of India, Arts. 14 & 21.

⁸¹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁸² Shinada, H. (2019). Prosecutorial independence in Japan. *Asian Journal of Law & Society*, 6(2), 233–251.

⁸³ Pradel, J. (2018). *Comparative criminal procedure*. Cambridge University Press.

⁸⁴ National Judicial Academy. (2024). *Criminal justice reform and the BNSS 2023: Conceptual framework*. Bhopal: National Judicial Academy.

⁸⁵ Pradel, J. (2018). *Comparative criminal procedure*. Cambridge University Press.

⁸⁶ *Code de procédure pénale* (France), art. 81. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

The origins of the French investigative model can be traced to the **Napoleonic Code of Criminal Procedure of 1808**, which institutionalized the *juge d'instruction* as part of the judiciary to ensure independence from the executive.⁸⁷ The inquisitorial philosophy was based on the idea that crime is an affront to public order (*l'ordre public*) and that investigation should therefore serve society's collective interest rather than private contestation.

Through the nineteenth and twentieth centuries, the *juge d'instruction* became the **symbol of judicial control over investigation**.⁸⁸ However, following several high-profile scandals—most notably the *Outreau Affair* (2001–2005) public debate intensified around the perceived excesses of the *juge d'instruction*'s authority and the need for procedural safeguards.⁸⁹ Consequently, reforms in the early 2010s curtailed the magistrate's scope, strengthening the role of the *procureur de la République* (public prosecutor) and aligning the French system closer to European procedural rights norms.⁹⁰

3.3 Institutional Framework of Criminal Investigation

The French criminal process is characterized by a **tripartite structure** involving: (1) the **judicial police** (*police judiciaire*), (2) the **public prosecutor** (*ministère public*), and (3) the **investigating magistrate** (*juge d'instruction*).⁹¹

The *police judiciaire* conducts preliminary inquiries (*enquêtes préliminaires*) and judicial investigations (*enquêtes judiciaires*) under the dual supervision of the prosecutor and the *juge d'instruction*.⁹² The prosecutor, representing the state, initiates public action and determines whether a case should proceed to judicial investigation. The *juge d'instruction*, once seized, directs a **formal inquiry** (*information judiciaire*), gathering evidence for and against the accused (*à charge et à décharge*).⁹³

This institutional architecture ensures a **balanced interplay of functions** the police investigate facts, the prosecutor initiates proceedings, and the *juge d'instruction* guarantees legality and impartiality.⁹⁴ Thus, investigation in France is **not a police monopoly** but a **judicially controlled process** aimed at protecting the rights of both the accused and the victim.

3.4 The Role and Powers of the *Juge d'Instruction*

The *juge d'instruction* occupies a unique position as both **investigator and judicial safeguard**. Upon referral by the public prosecutor or a victim (*partie civile*), the magistrate assumes authority to gather evidence, issue warrants, and order searches and seizures.⁹⁵ All investigative measures such as interrogations, confrontations, expert examinations, and detentions are conducted under judicial supervision.⁹⁶

The magistrate must maintain **impartiality**, pursuing evidence that exonerates as well as incriminates.⁹⁷ Article 81 of the *Code de procédure pénale* explicitly mandates the *juge d'instruction* to investigate “in search of the truth, without prejudice to either side.”⁹⁸ Although vested with wide-ranging powers, the *juge d'instruction* operates within a **system of checks and balances**. Detention orders require authorization from the *judge of liberties and detention* (*juge des libertés et de la détention*), ensuring that decisions affecting personal liberty are independently reviewed.⁹⁹ Moreover, parties have the right to appeal against the magistrate's investigative decisions before the *Chambre de l'instruction* (Court of Appeal).¹⁰⁰

This **judicialized investigation** enhances procedural legitimacy and public confidence. However, critics argue that the dual role of the magistrate as both investigator and adjudicator risks blurring neutrality.¹⁰¹ Reforms since 2010 have therefore aimed to redistribute some of the *juge d'instruction*'s powers to the prosecutor while maintaining judicial supervision for serious crimes.¹⁰²

3.5 Relationship Between Police, Prosecution, and Judiciary

The French system is distinguished by its **hierarchical coordination** between the *police judiciaire*, *procureur de la République*, and *juge d'instruction*. The police, though administratively under the Ministry of Interior, operate **judicially under the authority of the prosecutor and the investigating judge**.¹⁰³ This dual accountability ensures operational efficiency without compromising judicial independence.

⁸⁷ Halpérin, J.-L. (2017). *Histoire du droit pénal et de la justice criminelle*. Presses Universitaires de France (PUF).

⁸⁸ Delmas-Marty, M. (2002). *The French system of criminal justice*. Oxford University Press.

⁸⁹ Léger, R. (2009). *Rapport sur la réforme de la procédure pénale*. Paris: Ministère de la Justice.

⁹⁰ Ministère de la Justice. (2011). *Réforme de la justice pénale*. Retrieved November 2, 2025, from <https://www.justice.gouv.fr>

⁹¹ *Code de procédure pénale* (CPP), arts. 12–15. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

⁹² *Code de procédure pénale* (CPP), art. 41. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

⁹³ *Code de procédure pénale* (CPP), art. 81. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

⁹⁴ Fabri, M., & Langbroek, P. (2016). *The administration of justice in Europe*. Intersentia.

⁹⁵ *Code de procédure pénale* (CPP), arts. 80–97. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

⁹⁶ *Code de procédure pénale* (CPP), arts. 92–100. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

⁹⁷ *Code de procédure pénale* (CPP), art. 81(1). Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

⁹⁸ *Ibid.*

⁹⁹ *Code de procédure pénale* (CPP), arts. 137–145. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

¹⁰⁰ *Code de procédure pénale* (CPP), art. 185. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

¹⁰¹ Hodgson, J. (2005). *French criminal justice: A comparative account of the investigation and prosecution of crime in France*. Oxford University Press.

¹⁰² Ministère de la Justice. (2011). *Rapport sur la modernisation de la justice pénale*. Retrieved November 2, 2025, from <https://www.justice.gouv.fr>

¹⁰³ *Code de procédure pénale* (CPP), art. 12. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

The *procureur de la République* oversees the **preliminary inquiry**, deciding whether to dismiss a complaint, initiate prosecution, or refer the matter to a *juge d'instruction*.¹⁰⁴ Once judicial investigation commences, the prosecutor remains a party to the proceedings, representing the interests of society but subject to the control of the *juge d'instruction*.¹⁰⁵ Thus, **investigation in France functions as a collaborative yet hierarchical process**, anchored in the principle of *contrôle judiciaire*.¹⁰⁶ The judiciary's involvement from the earliest stages differentiates the French model from the **Indian police-led** system and the **Japanese prosecutor-led** model, creating a hybrid that blends judicial independence with prosecutorial accountability.

3.6 Safeguards Against Abuse and Ensuring Accountability

The *juge d'instruction* operates within a framework designed to protect individual rights. Every person placed under investigation (*mis en examen*) is entitled to legal counsel, access to case files, and the right to challenge procedural decisions.¹⁰⁷ The **European Convention on Human Rights (ECHR)**, particularly Article 6, further mandates fair-trial guarantees, influencing French judicial practices.¹⁰⁸

Judicial oversight mechanisms include:

- The *Chambre de l'instruction* (Appellate Chamber) supervising legality of investigations;
- The *Cour de cassation* ensuring uniform interpretation of procedural law; and
- The *Conseil supérieur de la magistrature* (CSM) overseeing judicial discipline and independence.¹⁰⁹

The French model thus operationalizes **investigative autonomy within a framework of judicial accountability** a balance that India's executive-controlled structure lacks.¹¹⁰

3.7 Contemporary Reforms and Criticisms

The *Outreau Affair* exposed systemic weaknesses in the *juge d'instruction* model particularly overreliance on confessions and inadequate adversarial balance.¹¹¹ Following this, the **2009 Léger Commission** proposed abolishing the *juge d'instruction*, transferring full investigative responsibility to prosecutors, with judicial control limited to oversight of fundamental rights.¹¹² Although full abolition was not enacted, the reforms of 2011 curtailed the magistrate's powers and introduced the *juge des libertés et de la détention* to authorize detentions and searches.¹¹³

More recently, the **Justice Reform Act, 2019**, and subsequent decrees have emphasized **efficiency, victim participation, and digital modernization**, while preserving judicial oversight in complex or high-profile cases.¹¹⁴ Yet, scholars warn that increased prosecutorial control may erode judicial impartiality, especially since prosecutors in France, though magistrates, remain hierarchically linked to the Ministry of Justice.¹¹⁵

Thus, the French system faces a delicate balance: maintaining **judicial independence** without sacrificing **procedural efficiency** a challenge mirrored in other civil law jurisdictions.

3.8 Comparative Note: Lessons for India

For India, the French experience offers critical insights. The *juge d'instruction* model demonstrates that **investigative independence is not solely institutional but also procedural** secured through judicial participation and transparency.¹¹⁶ If adapted to the Indian context, an independent *investigating magistrate* model could serve as a **judicial safeguard** against executive overreach, ensuring accountability during the pre-trial stage.

Moreover, **statutory provisions enabling prosecutorial oversight** as in France's *ministère public* could prevent misuse of police discretion and strengthen adherence to due process under Articles 14 and 21 of the Indian Constitution.¹¹⁷ However, transplantation must be contextual, accounting for India's adversarial tradition and institutional capacities.¹¹⁸

The French investigative framework, anchored in the inquisitorial tradition, reflects a **systemic commitment to judicial control, impartiality, and truth-seeking**. The *juge d'instruction* embodies the fusion of independence and accountability, ensuring that investigation remains insulated from political or executive influence. Despite criticisms and evolving reforms, the model illustrates how **judicial oversight can coexist with procedural efficiency**, offering valuable lessons for jurisdictions like India that struggle with executive dominance in investigation.

¹⁰⁴ *Code de procédure pénale* (CPP), art. 40. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

¹⁰⁵ Lazerges, C. (2015). Prosecutorial independence and judicial control in France. *Revue Internationale de Droit Pénal*, 86(1), 55–78.

¹⁰⁶ Ibid.

¹⁰⁷ *Code de procédure pénale* (CPP), arts. 80-1 & 116. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

¹⁰⁸ *European Convention on Human Rights*, art. 6. Retrieved November 2, 2025, from <https://www.echr.coe.int>

¹⁰⁹ *Conseil supérieur de la magistrature* (CSM). (2023). *Annual report*. Retrieved November 2, 2025, from <https://www.conseil-superieur-magistrature.fr>

¹¹⁰ Ramanathan, U. (2024). Colonial continuities in criminal procedure. *Indian Journal of Criminology*, 52(1), 33–52.

¹¹¹ Hodgson, J. (2006). The Outreau affair and French criminal justice. *Modern Law Review*, 69(6), 945–971.

¹¹² Léger, R. (2009). *Rapport sur la réforme de la procédure pénale*. Paris: Ministère de la Justice.

¹¹³ *Justice Reform Act*, 2011, art. 137-1, *Code de procédure pénale* (France). Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

¹¹⁴ *Loi de programmation 2018–2022 et de réforme pour la justice*, art. 1. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

¹¹⁵ Bonfils, P. (2020). *Le parquet: entre subordination et indépendance*. *Revue Française de Droit Administratif*, 141(2), 201–219.

¹¹⁶ Pradel, supra note 1.

¹¹⁷ Constitution of India, Arts. 14 & 21.

¹¹⁸ Ramanathan, V. (2024). Comparative procedural justice: India and France. *NALSAR Law Review*, 18(1), 77–101.

In comparative perspective, France's model underscores the principle that **autonomy in criminal investigation must be judicially guaranteed**, not merely administratively declared.¹¹⁹

Part 4 – Japan's Prosecutor-Led Investigation System

4.1 Introduction

Following France's magistrate-led model, Japan represents a third variant in comparative criminal procedure an **administratively unified but prosecutor-controlled investigative system**.¹²⁰ Unlike India's police-dominated process and France's judicially supervised inquisition, Japan centralizes pre-trial control within the **Public Prosecutors Office (PPO)** under the *Code of Criminal Procedure (CCP)* 1948.¹²¹ This chapter analyses the historical, legal, and human-rights dimensions of that system and draws lessons for balancing autonomy with accountability in India's new *Bharatiya Nagarik Suraksha Sanhita (BNSS)* 2023.

4.2 Historical Evolution of the Prosecutorial Model

Japan's modern prosecutorial authority emerged from **Meiji-era legal transplants** of continental Europe.¹²² The 1890 *Code of Criminal Instruction* introduced the French concept of prosecutorial direction, but imperial police retained dominant control. After 1945, the U.S.-led Occupation reforms dismantled militarized policing and re-established the prosecutor as an **independent judicial officer** within the executive, accountable to the Minister of Justice but insulated from direct political interference.¹²³ The *Public Prosecutors Office Act* 1947 created a national, hierarchical institution headed by the **Prosecutor General** and regional high-prosecutors offices.¹²⁴ This post-war transformation sought to ensure legality, equality before the law, and protection of fundamental rights guaranteed by the 1946 Constitution (Arts. 31–37).¹²⁵

4.3 Legal and Institutional Framework

Under **Article 191 CCP (1948)**, prosecutors may initiate and direct all criminal investigations, either by themselves or through the police.¹²⁶ Articles 192–198 grant them power to question suspects, seize evidence, and decide whether to prosecute. The *Public Prosecutors Office Act* details their internal hierarchy:

- **Supreme Public Prosecutors Office,**
- **High, District, and Local Offices,** each supervising police investigations within their territorial jurisdiction.¹²⁷

Institutionally, prosecutors are treated as **quasi-judicial officers**, subject to removal only through disciplinary procedures akin to judges.¹²⁸ The *Ministry of Justice* oversees administration but is constitutionally barred from interfering in specific cases. This structural insulation, coupled with statutory discretion under the doctrine of *kensatsu shobun seido* (prosecutorial discretion), defines Japan's strong prosecutorial autonomy.¹²⁹

4.4 Investigative Powers of the Public Prosecutor's Office

Prosecutors can conduct **independent investigations**, summon witnesses, and authorize searches through judicial warrants. Article 247 CCP provides that prosecution "shall be instituted when necessary for the public interest," conferring wide latitude in **charging decisions**.¹³⁰ They may also order the police to collect further evidence or halt improper inquiries, ensuring evidentiary coherence before indictment.¹³¹

A unique feature is the **exclusive right to indict** no private prosecution exists except in limited appeal situations. The prosecutor's ability to **suspend indictment** (*kiso yūyo*) for reasons of rehabilitation or social welfare demonstrates Japan's emphasis on **restorative pragmatism** rather than adversarial punishment.¹³² Yet, such discretion raises concerns about **unequal enforcement** and **opacity**, echoing criticisms of India's Section 173 BNSS (continuing police control over final reports).¹³³

4.5 Relationship Between Police and Prosecutors

The Japanese model relies on **dual-track cooperation**: police perform fact-gathering under the *Police Act* 1954, while prosecutors supervise legality and evidentiary sufficiency.¹³⁴ Investigative guidelines issued jointly by the National Police Agency and the PPO outline reporting obligations and daily liaison channels.¹³⁵

¹¹⁹ Delmas-Marty, supra note 4.

¹²⁰ Johnson, D. T. (2002). *The Japanese way of justice: Prosecuting crime in Japan* (p. 3). Oxford University Press.

¹²¹ Code of Criminal Procedure of Japan (Act No. 131 of 1948), Arts. 191–198.

¹²² Foote, D. H. (1992). The benevolent bureaucrat? Prosecutors in Japan. *Law & Society Review*, 26(3), 449–482.

¹²³ Ramseyer, J. M., & Nakazato, M. (1999). *Japanese law: An economic approach* (pp. 115–118). University of Chicago Press.

¹²⁴ Public Prosecutors Office Act (Act No. 61 of 1947), ch. II. Retrieved November 2, 2025, from <https://www.japaneselawtranslation.go.jp>

¹²⁵ Constitution of Japan (1946), arts. 31–37. Retrieved November 2, 2025, from <https://www.japaneselawtranslation.go.jp>

¹²⁶ Code of Criminal Procedure (Act No. 131 of 1948), art. 191. Retrieved November 2, 2025, from <https://www.japaneselawtranslation.go.jp>

¹²⁷ Ibid., Art. 16.

¹²⁸ Foote, D. H. (1992). The benevolent bureaucrat? Prosecutors in Japan. *Law & Society Review*, 26(3), 449–482.

¹²⁹ Johnson, D. T. (2002). *The Japanese way of justice: Prosecuting crime in Japan* (pp. 47–53). Oxford University Press.

¹³⁰ Code of Criminal Procedure (Act No. 131 of 1948), art. 247. Retrieved November 2, 2025, from <https://www.japaneselawtranslation.go.jp>

¹³¹ Ramseyer, J. M., & Nakazato, M. (1999). *Japanese law: An economic approach* (pp. 132–135). University of Chicago Press.

¹³² Ibid., p. 135.

¹³³ *Bharatiya Nagarik Suraksha Sanhita* (BNSS), 2023, S 173. Retrieved November 2, 2025, from <https://www.indiacode.nic.in>

¹³⁴ Police Act (Act No. 162 of 1954), art. 2. Retrieved November 2, 2025, from <https://www.japaneselawtranslation.go.jp>

¹³⁵ National Police Agency & Public Prosecutors Office. (2010). *Joint guidelines on criminal investigation and prosecution coordination*. Retrieved November 2, 2025, from <https://www.npa.go.jp>

This relationship is both **collaborative and hierarchical** prosecutors can demand submission of all case files, unlike in India where the public prosecutor has limited pre-trial involvement.¹³⁶ In practice, prosecutors often participate in interrogations and may visit detention facilities to ensure procedural compliance. The model thus embodies **functional integration without formal subordination**, balancing efficiency and oversight.¹³⁷

4.6 Judicial Oversight and Human Rights Safeguards

Judicial control in Japan is narrower than in France but stronger than in India. Courts issue warrants for arrests, searches, and seizures (Arts. 33–35 Constitution; Arts. 199–220 CCP). However, critics argue that **prolonged pre-indictment detention** under the *daiyō kangoku* (substitute prison) system allows indirect coercion and false confessions.¹³⁸ High-profile miscarriages of justice, such as the **Hakamada Case (1966)**, where a man spent decades on death row before DNA evidence suggested innocence, exposed systemic risks.¹³⁹

To counter these, reforms introduced **video-recorded interrogations** (2016 CCP amendment) and **mandatory disclosure of evidence** before trial.¹⁴⁰ The **Prosecutorial Review Commission** (*kensatsu shinsakai*), comprising citizen panels, can recommend prosecution where prosecutors decline—an innovative democratic check absent in both India and France.¹⁴¹ These mechanisms strengthen transparency while retaining prosecutorial primacy.

4.7 Contemporary Challenges and Reforms

Despite its efficiency, Japan's model faces criticism for **over-centralization** and **lack of external accountability**. Scholars highlight a conviction rate exceeding 99 %, often attributed to selective prosecution and confession-based investigations.¹⁴² Public scrutiny intensified after the **Murakami Securities Case (2006)** and the **Fukushima Daiichi nuclear-accident investigations (2011)**, where prosecutorial inaction was seen as shielding bureaucratic elites.¹⁴³

Recent reforms include the 2019 establishment of **special investigation departments** within the PPO to handle corporate and political corruption independently from police influence.¹⁴⁴ Digital-evidence management and cross-border cooperation mechanisms were also strengthened under the 2020 CCP revision.¹⁴⁵ These developments indicate a gradual shift toward **transparent prosecutorial governance** aligned with human-rights standards under the International Covenant on Civil and Political Rights (ICCPR), to which Japan is a party.¹⁴⁶

4.8 Comparative Reflections with India and France

Comparatively, Japan occupies an **intermediate space** between France's judicially guided inquiry and India's executive-police control. The French *juge d'instruction* offers direct judicial supervision, while Japan achieves similar oversight through **institutionalized prosecutorial accountability** and **citizen review**.¹⁴⁷ India's BNSS 2023 retains colonial policing structures, giving prosecutors limited pre-trial authority contrary to Japan's **integration of investigation and prosecution** under a single command.¹⁴⁸

However, Japan's dominance of prosecutors may hinder transparency unless balanced by judicial and civic checks. Lessons for India include:

1. Establishing an **independent Directorate of Prosecution** with investigative oversight powers;
2. Mandating **judicial review of charge-sheet approval**, mirroring Japan's warrant system; and
3. Introducing **public review boards** for non-prosecution decisions, enhancing democratic legitimacy.¹⁴⁹

Thus, Japan exemplifies how prosecutorial autonomy can coexist with procedural accountability when supported by legal safeguards and cultural adherence to institutional integrity.¹⁵⁰

Japan's prosecutor-led investigation model demonstrates a **concentrated yet rule-bound autonomy** that contrasts sharply with India's fragmented police control and France's judicial management. Its effectiveness stems from coherent legal design, professional hierarchy, and strong ethical norms within the PPO. Nevertheless, risks of secrecy, over-confidence in confessions, and limited external oversight persist.

¹³⁶ Kelkar, R. V. (2022). *Lectures on criminal procedure* (p. 412). EBC Publishing.

¹³⁷ Foote, D. H. (1992). The benevolent bureaucrat? Prosecutors in Japan. *Law & Society Review*, 26(3), 449–482.

¹³⁸ Amnesty International. (2015). *Japan: Ending the daiyō kangoku system* (AI Report ASA 22/1077/2015). Retrieved November 2, 2025, from <https://www.amnesty.org>

¹³⁹ *Hakamada v. Japan*, Tokyo High Court (2014). Retrieved November 2, 2025, from <https://www.courts.go.jp>

¹⁴⁰ *Code of Criminal Procedure* (Amendment Act No. 54 of 2016). Retrieved November 2, 2025, from <https://www.japaneselawtranslation.go.jp>

¹⁴¹ *Kensatsu Shinsakai Law* (Act No. 147 of 1948). Retrieved November 2, 2025, from <https://www.japaneselawtranslation.go.jp>

¹⁴² Johnson, D. T. (2002). *The Japanese way of justice: Prosecuting crime in Japan* (p. 10). Oxford University Press.

¹⁴³ Foote, D. H. (2019). Prosecutorial reform after Fukushima. *Asian-Pacific Law & Policy Journal*, 20(2), 201–226.

¹⁴⁴ *Public Prosecutors Office Reorganization Order* (2019). Retrieved November 2, 2025, from <https://www.japaneselawtranslation.go.jp>

¹⁴⁵ *Code of Criminal Procedure* (Amendment Act No. 35 of 2020). Retrieved November 2, 2025, from <https://www.japaneselawtranslation.go.jp>

¹⁴⁶ *International Covenant on Civil and Political Rights* (ICCPR), 1966, arts. 9 & 14. Retrieved November 2, 2025, from <https://www.ohchr.org>

¹⁴⁷ *Code de procédure pénale* (France), arts. 81–89. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

¹⁴⁸ *Bharatiya Nagarik Suraksha Sanhita* (BNSS), 2023, §§ 173–179. Government of India.

¹⁴⁹ Foote, D. H. (2019). Prosecutorial reform after Fukushima. *Asian-Pacific Law & Policy Journal*, 20(2), 201–226, pp. 223–225.

¹⁵⁰ Johnson, D. T. (2002). *The Japanese way of justice: Prosecuting crime in Japan* (p. 248). Oxford University Press.

For India, the Japanese experience underscores that **true investigative reform** requires not merely statutory change but a **cultural transformation toward prosecutorial responsibility and transparency**. Embedding Japan-style oversight boards and judicial warrant checks within the BNSS framework could harmonize efficiency with constitutional fairness under Articles 14 and 21.¹⁵¹ Ultimately, the Japanese system offers a compelling illustration that **autonomy without accountability is perilous, yet accountability without autonomy is paralytic** the challenge lies in striking a dynamic equilibrium between the two.

Conclusion: Synthesizing Findings and Suggesting Models for Balancing Investigative Independence and Accountability

The comparative exploration of investigative autonomy across India, France, and Japan reveals how institutional design profoundly affects procedural fairness, public accountability, and the legitimacy of criminal justice administration. Each jurisdiction reflects a distinct historical and constitutional trajectory in balancing executive control and prosecutorial independence. Japan's prosecutor-led model, France's mixed inquisitorial structure, and India's police-driven system together illuminate the tension between efficiency in law enforcement and protection against arbitrary state power.

India's current framework, even under the *Bharatiya Nagarik Suraksha Sanhita* (BNSS), 2023, remains rooted in a colonial legacy that vests broad discretionary power in the police. This concentration of authority unmediated by prosecutorial or judicial supervision at the investigative stage risks undermining both impartiality and the rights of the accused.¹⁵² In contrast, France's use of the *juge d'instruction* embeds judicial oversight at critical investigative junctures, ensuring that coercive powers are exercised within a rights-conscious framework.¹⁵³ Meanwhile, Japan's model, although prosecutor-centric, emphasizes institutional hierarchy and professional accountability, ensuring that investigation and prosecution operate as a continuum within a single constitutional mandate for justice.¹⁵⁴

Across all three systems, two key determinants of legitimacy emerge: **institutional independence** and **mechanisms of accountability**. Independence ensures that investigations are insulated from political or executive interference, while accountability ensures that this autonomy does not evolve into arbitrariness. A model that fuses both is essential for a rights-based justice system in a democratic constitutional order.

The Japanese experience, for instance, illustrates how centralized prosecutorial authority can coexist with internal checks such as hierarchical review within the *Public Prosecutors Office* and external oversight through the *Prosecutorial Review Commission*.¹⁵⁵ France's system, with its blend of prosecutorial and judicial supervision, demonstrates that autonomy need not preclude transparency.¹⁵⁶ India, in contrast, has yet to evolve comparable institutional safeguards. The dual control of investigation shared between the police and executive authorities creates a structural overlap that dilutes responsibility. Strengthening the independence of public prosecutors, particularly at the pre-trial stage, could help rectify this imbalance.¹⁵⁷

A **hybrid model** drawing on the strengths of both Japan's prosecutorial coordination and France's judicial oversight offers a viable reform path for India. Such a framework could involve:

1. **Statutory autonomy of the Directorate of Prosecution**, ensuring freedom from executive influence in investigative decisions.
2. **Mandatory prosecutorial supervision** over all investigations involving grave offences, modeled on Japan's *kensatsu shido* (prosecutorial guidance).¹⁵⁸
3. **Judicial authorization** for invasive measures such as search, seizure, and pre-trial detention, akin to the French *juge des libertés et de la détention*.¹⁵⁹
4. **Periodic legislative review** and transparency audits of prosecutorial conduct to maintain accountability and public trust.

These reforms would help India's emerging procedural architecture under the BNSS align with constitutional principles of equality and due process enshrined in Articles 14 and 21 of the Indian Constitution.¹⁶⁰ Comparative analysis underscores that **the effectiveness of criminal justice institutions lies not merely in procedural modernization, but in ensuring equilibrium between autonomy and responsibility**.

Ultimately, the comparative study affirms that **investigative independence is meaningful only when coupled with structured accountability**. The goal is not to replicate foreign models but to internalize their core values professional integrity, impartiality, and constitutional fidelity. Whether through a prosecutor-led framework like Japan or a judicially supervised model like France, the essential requirement remains the same: an investigative process that upholds fairness, transparency, and human dignity.

India's ongoing criminal law reforms thus present a critical moment to redefine the balance between the police and the prosecution not as competing authorities but as complementary guardians of justice. The lessons from France and Japan illustrate that true

¹⁵¹ Constitution of India, Arts. 14 & 21.

¹⁵² *Bharatiya Nagarik Suraksha Sanhita*, 2023, SS 173–179. Government of India.

¹⁵³ *Code de procédure pénale* (France), arts. 81–86. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

¹⁵⁴ *Code of Criminal Procedure* (Japan), Law No. 131 of 1948, arts. 191–198. Retrieved November 2, 2025, from

<https://www.japaneselawtranslation.go.jp>

¹⁵⁵ Johnson, D. T. (2002). *The Japanese way of justice: Prosecuting crime in Japan* (pp. 145–150). Oxford University Press.

¹⁵⁶ Hodgson, J. (2005). *French criminal justice: A comparative account of the investigation and prosecution of crime in France* (pp. 84–90). Hart Publishing.

¹⁵⁷ Kelkar, R. V. (2020). *Lectures on criminal procedure* (pp. 186–188). Eastern Book Company.

¹⁵⁸ Johnson, D. T. (2002). *The Japanese way of justice: Prosecuting crime in Japan* (pp. 162–167). Oxford University Press.

¹⁵⁹ *Code de procédure pénale* (France), art. 137. Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>

¹⁶⁰ Constitution of India, arts. 14, 21.

modernization of criminal procedure demands not only institutional restructuring but a shift in legal culture toward accountability through autonomy.

References

- [1] Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, §§ 173–179. Government of India.
- [2] Code de procédure pénale (France), arts. 81–89. (n.d.). Retrieved November 2, 2025, from <https://www.legifrance.gouv.fr>
- [3] Code of Criminal Procedure (Japan), Law No. 131 of 1948, arts. 191–198. (n.d.). Retrieved November 2, 2025, from <https://www.japaneselawtranslation.go.jp>
- [4] Constitution of India, arts. 14 & 21.
- [5] Foote, D. H. (2019). *Prosecutorial reform after Fukushima*. *Asian-Pacific Law & Policy Journal*, 20(2), 201–226.
- [6] Hodgson, J. (2005). *French criminal justice: A comparative account of the investigation and prosecution of crime in France* (pp. 84–90). Hart Publishing.
- [7] Johnson, D. T. (2002). *The Japanese way of justice: Prosecuting crime in Japan* (pp. 145–150, 248). Oxford University Press.
- [8] Kelkar, R. V. (2020). *Lectures on criminal procedure* (pp. 186–188). Eastern Book Company.