

**The Legal Framework of Arrest Under the Bharatiya Nagrik Suraksha
Sanhita: A Rights-Based Approach**

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ABSTRACT

The Bharatiya Nagrik Suraksha Sanhita (BNSS), 2023 marks a transformative shift in India's criminal justice landscape by replacing the Code of Criminal Procedure, 1973. Focused on transparency, accountability and the protection of individual liberties, the BNSS introduces reforms to arrest procedures and custodial practices. Key features include strict conditions for warrantless arrests, compulsory electronic documentation, safeguards for vulnerable individuals and expanded rights for the accused. Notably, the Sanhita codifies the right to legal representation during interrogation, protection against self-incrimination, mandatory medical examinations and compensation for unlawful arrests. The BNSS strengthens procedural guarantees through Sections 35, 36, 43 and 187, aligning arrest protocols with constitutional safeguards such as Articles 20, 21 and 22. This paper critically examines these legal provisions and their judicial interpretations to assess whether the BNSS effectively balances state authority and individual freedom in the process of arrest and detention.

KEYWORDS: Arrest Procedure; Custodial Rights; Criminal Justice Reform; Section 187 BNSS; Human Rights; Due Process; Police Powers; Constitutional Safeguards; Legal Aid; Pre-trial Detention; Women's Rights; Judicial Oversight; Unlawful Arrest; Detention Reforms.

INTRODUCTION

Under the Bhartiya Nagrik Suraksha Sanhita (BNSS) 2023, arrest procedures in India are redefined with a focus on enhancing transparency, accountability and safeguarding individual rights. The BNSS, a landmark update that replace the Criminal procedure code of 1973, aims to modernize and streamline the process of arrest by addressing longstanding issues such as unlawful detention, lack of judicial oversight and the abuse of arrest powers.

The BNSS sets modern measures by introducing technological measures, emphasizing electronic recording during arrest and cross examination and ordering the prompt communication of an individual's detainment to their family. Police can arrest a person without a warrant only in certain endorsed cases (enumerated in S.41, CrPC and S.35, BNSS). For example, arrests for cognizable offenses, proclaimed criminals, military deserters, etc., may be made under the guidelines. However, without a warrant, arrests cannot be conducted for offenses that are not identifiable. The criminal procedural code's rules must be followed when making an arrest. Arrest implies "a seizure or coercive restriction; an exercise of the power to deprive a person of his or her liberty; the taking or keeping of a person in custody by legal authority, especially, in response to a criminal charge. In criminal law, an arrest is an critical device for bringing an accused before the court and to avoid him from absconding.

ARREST UNDER BNSS

-Arrest of decrepit or aged persons: Police cannot arrest an individual who is over 60 or infirm for offenses carrying a sentence of less than three years in jail without first obtaining the consent of an officer not lower than the level of DSP (Section 35(7), BNSS).

-Information of arrest: According to S.36 of BNSS, the person who is detained may now designate “any” person-not just a friend or family member-to be notified of his arrest.

-Designated police officer: In accordance with the BNSS, State Governments must allot a police officer to each district and police station in addition to these control rooms in order to keep track of officers who have been arrested and the offenses they have committed. This information must be clearly displayed in every district headquarters and police station, even digitally (S.37, BNSS).

-Arrest by Private Persons: Under BNSS, the private person is required to handover the arrested person to the police within 6 hours of the arrest (S. 40, BNSS). According to BNSS, a person who has been arrested by a private party being taken into police custody does not constitute “re-arrest,” but rather police custody.

-Handcuffs: If an individual is a repeat offender, has escaped from custody, or has committed a certain serious offense (such as murder, rape, terrorism, etc.), BNSS permits a police officer to use handcuffs when making an arrest or bringing him before the court. (BNSS, S. 43(3)).

-Medical Practitioner: According to S. 51 of the BNSS, any police officer may now seek such an examination. Although it was not specifically stated in the CrPC, the medical professional is now required to send the examination report to the investigating officer right away (S. 51(3), BNSS).

BNSS: Under the BNSS, this idea has completely changed and is now outlined in S. 187. Since S.187, BNSS, affects people’s personal liberty and the fundamental rights guaranteed by our Constitution, it is likely one of the most noticeable and controversial reforms.

(1) S.187(2) of BNSS provides that the Magistrate may authorise detention of the accused in ‘such custody’ as he deems fit for a period of 15 days. Such period can be in whole or part at any time during the:

-initial 60 days out of the 90 days’ period – in case of offences punishable with death, life imprisonment, or imprisonment of 10 years or more; and

-initial 40 days out of the 60 days’ period – in case of other offences.

(2) According to BNSS S.187(3), a magistrate may permit detention for longer than 15 days if he is convinced that there are sufficient grounds to do so. However, the length of time that a person may be held in custody cannot be longer than 90 days for offenses carrying a death sentence, life in prison, or a minimum of 10 years in prison, or 60 days for other offenses.

(3) According to S.187 of the BNSS, the magistrate may only authorize detention after determining if the accused has been granted bail. Therefore, it recognizes that even while the accused is being held by the police, a bail application may be filed.

(4) The BNSS also aims to define the phrases “judicial custody” and “police custody.” No person may be held in a location other than a “police station under police custody,” “a prison under judicial custody, or a place declared as prison by the central or state government,” according to the BNSS. To put it another way, BNSS stipulates that judicial detention and

police custody can only take place in prisons or locations designated as prisons by the government.

PROCEDURE OF ARREST

In the Cr.P.C., Section 41 had given wide powers of arrest to the police whose abuse led to the Apex Court and the legislature directing and amending the portions to improve reasonability and credibility of arrests. This was done by including guidelines, limitations and procedure for when and how a police officer may or may not effect arrest. They are present in the BNSS, 2023 under Sections 36, 43, 46 and 53.

Section 36 comes from the guidelines made in the D.K. Basu case in 1996. This section says that when a police officer is making an arrest, he has to have a clear and visible identification to facilitate easy identification of his name. Also when he is doing the arrest, he should prepare an arrest memo which contains the details of that arrest. That memorandum must be attested by a signature of a member of the family of the person arrested who, through this memorandum, is informed of the arrest. The memorandum should also be countersigned by the person arrested. If in absence of a family member of the person arrested, a respectable member of the locality where the arrest is made shall attest the arrest memo and the police officer shall inform the person arrested that he has a right to have a relative or a friend or any other person named by him to be informed of the fact of his arrest. The authentications and the right given in provision ensures that the arrest is legal, fair and free from abuse.

Section 43 corresponds to Section 46 in the Cr.P.C. and went through two amendments. The amendments came from guidelines by the Supreme Court, largely introduced by the case of Prem Shankar Shukla v. Delhi Administration (1980) and Article 21. The general rule established in Section 43(1) is that the police should not touch or confine the body of the person arrested unless circumstances demand so. A person can submit to custody through words or actions. This is because being handcuffed and paraded harms the dignity of an individual irreparably. Section 43(3) says that a police officer while arresting can handcuff a person depending on the nature of offence and its gravity, i.e. if the accused has been observed to have violent tendencies. Apart from that, if the accused is a repeat offender, has escaped from custody, related to organised crime, terrorist act, drug related crime, or has committed murder, rape, acid attack, counterfeiting of coins, human trafficking, sexual offence against children or offence against the State or illegal possession or arms and ammunition, he can be handcuffed while being arrested or while producing such offender before the court.

Section 43(2) with Section 43(4), we see that if a person forcibly resists or attempts to evade arrest, the police officer or person can use all means necessary to effect the arrest. Such necessary means can extend to causing death when the offence that the person is accused of is punishable with imprisonment for life or death. Also the exception in Section 43(1) and subsection 43(5) talk about special provisions for women's arrest. In case of women, it will be presumed that she has submitted to custody or oral intimation of arrest. Women shall also be arrested only between sunrise and sunset. If any confinement is needed due to the circumstances and she needs to be touched, it will only be done by a woman police officer. If

the arrest is to be made at any other time due to exceptional circumstances, the woman police officer shall obtain prior permission of Judicial Magistrate (FC) of the area of arrest or offence.

RIGHTS OF AN ARRESTED PERSON

1. Right to Be Informed of the Grounds of Arrest and Right to Bail

According to Section 47 of the Bharatiya Nagarik Suraksha Sanhita (BNSS):

Every police officer or any other person arresting an individual without a warrant is required to immediately inform the arrested person of the full particulars of the offence for which they are being arrested. In cases where the arrest is made without a warrant for an offence that is not non-bailable, the police officer must inform the arrested individual of their entitlement to bail and allow them to arrange for sureties on their behalf. This provision aligns with Article 22(1) of the Constitution of India, ensuring procedural fairness. In *Joginder Kumar v. State of U.P.* The Supreme Court held that the arrested individual must be informed of the reasons for their arrest and their family or friends should be notified promptly. In *State of Rajasthan v. Balchand*, the court held that “bail is the rule and jail is an exception,” underscoring the significance of liberty.

2. Right to Remain Silence

BNSS recognizes the right of an arrested individual to remain silent during custodial interrogation. This principle is derived from the constitutional protection against self-incrimination under Article 20(3). In *Nandini Satpathy v. P.L. Dani*, the court ruled that compelling an accused person to answer questions or sign statements violates their fundamental right under Article 20(3).

3. Right to Be Produced Before a Magistrate

Section 58 of the BNSS mandates that an arrested person must be presented before a magistrate within 24 hours of their arrest, excluding travel time. This ensures judicial oversight to prevent unlawful detention.

4. Right of Arrested Person to Meet an Advocate of his choice during Interrogation

Section 38 states that any person who is arrested and interrogated by the police has the right to meet an advocate of their choice during the interrogation, though not for its entire duration. In *Hussainara Khatoon v. State of Bihar*, the court recognized free legal aid as an essential component of Article 21, ensuring fair representation for the underprivileged.

In *Khatri v. State of Bihar*, the court held that the right to free legal services is a fundamental component of a reasonable, fair and just procedure for an accused person. It is inherently included within the guarantee of Article 21 of the Constitution. Consequently, the State is constitutionally obligated to provide legal representation to an accused when the circumstances and the interests of justice demand it, as long as the accused does not object. Moreover, the State must ensure free legal aid for those unable to afford legal services due to poverty, taking all necessary steps to fulfill this obligation.

5. Examination of Arrested Person by the Medical Officer

Section 53 of the BNSS provides that when a person is arrested, they must be examined by a medical officer in the service of the Central or State Government, or, if such an officer is unavailable, by a registered medical practitioner as soon as possible after the arrest. If the

medical officer or practitioner deems it necessary, they may conduct additional examinations. In the case of a female arrested person, the examination must be conducted only by or under the supervision of a female medical officer, or, if unavailable, by a female registered medical practitioner. The examining medical officer or practitioner is required to prepare a record of the examination, detailing any injuries or marks of violence on the arrested person and noting the approximate time these may have been inflicted. A copy of this examination report must be provided to the arrested person or someone nominated by them. In *D.K. Basu v. State of West Bengal*, the court laid down guidelines for arrest and detention, emphasizing medical examination as a safeguard against custodial violence.

6. Health and Safety of Arrested Person

Section 56 mandates that the individual responsible for the custody of an accused must take reasonable measures to ensure the accused's health and safety.

7. Rights of Women and Vulnerable Groups

The BNSS includes specific provisions to protect the rights of women, children and other vulnerable groups during arrest. For instance: Women cannot be arrested after sunset or before sunrise except in exceptional circumstances, as per Section 43. Special care must be taken to ensure that children and individuals with disabilities are treated humanely during arrest. In *Sheela Barse v. State of Maharashtra*, the court underscored the need for special protection of women and children in custody.

8. Right to Compensation for Unlawful Arrest

Section 399 of the BNSS empowers magistrates to award compensation to individuals subjected to wrongful arrest or detention. This provision seeks to deter misuse of power by law enforcement agencies. In *Rudal Shah v. State of Bihar*, the Supreme Court awarded compensation to an individual unlawfully detained for 14 years.

9. Right to Fair Trial

While the right to a fair trial is not limited to the period post-arrest, BNSS ensures procedural guarantees to uphold this right throughout the criminal justice process. This includes the right to access evidence, cross-examine witnesses and contest the legality of the arrest. In *Maneka Gandhi v. Union of India*, the court ruled that procedures affecting personal liberty must be "fair, just and reasonable."

CONCLUSION

The *Bharatiya Nagrik Suraksha Sanhita (BNSS)*, 2023 signifies a landmark reform in India's criminal procedural law, aligning the arrest and detention process with constitutional mandates and international human rights standards. By codifying safeguards such as prompt intimation of arrest, restricted use of handcuffs, mandatory medical examinations and the right to consult an advocate during interrogation, the BNSS seeks to curb arbitrary arrests and custodial abuse. Provisions under Sections 35, 36, 43 and 187 notably strengthen the framework of accountability, transparency and dignity for the arrested person. The redefinition of police and judicial custody, specific protections for women, elderly and vulnerable groups and the introduction of compensation for unlawful detention represent progressive steps toward a fairer criminal justice system. Nevertheless, the effectiveness of these reforms depends largely on

their faithful implementation by law enforcement agencies, oversight by the judiciary and awareness among the general public. While the BNSS introduces legal precision and procedural clarity, continuous training of police personnel, robust institutional mechanisms and vigilant public interest litigation will be key to realizing the intent behind the law. Ultimately, the BNSS offers an opportunity to recalibrate the balance between state power and individual liberty in a democratic society governed by the rule of law.

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