

## PROCEDURE OF ARREST UNDER BNSS

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### Abstract

The Indian parliament replaced the colonial-era code of Criminal Procedure, 1973, with the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS), which constitutes a major revamp of the nation's criminal procedure law. The BNSS is critically examined in this essay, along with its main goals, laws, and possible effects on India's criminal justice system. It explores the justification for the legislative modification, emphasizing the changes in emphasis on victim-centric strategies, technology integration, and procedural efficiency. The study also assesses the possible difficulties and arguments related to the BNSS implementation critically, including issues with the proper ratio of the state authority to the individual freedom's readiness of the legal and law enforcement systems, and possible effects on the accused's rights. By examining the salient features and potential implications of this landmark legislation, this research aims to provide a comprehensive understanding of its significance in shaping the future of criminal justice in India.

**Keywords:** Bharatiya Nagrik Suraksha Sanhita (BNSS), Criminal Procedure Code, Criminal Justice Reform, India, Technology in Law, Victim Rights, Procedural Efficiency, Rule of Law, Human Rights.

### 1. Introduction

The Code of Criminal Procedure, 1973 (CrPC) has regulated India's criminal justice system. While serving as the centre of procedural law for decades, the CrPC has been subject to criticisms regarding its colonial origins, perceived inefficiencies, and evolving societal needs. Recognizing the crucial for modernization and reform, the Parliament of India enacted the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS), a comprehensive legislation aimed at replacing the CrPC and ushering in a new era of criminal procedure.

This research paper aims to critically analyze the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS). It will dig deep into the core objectives and key provisions of this new legal framework, examining the rationale behind the legislative changes and their potential impact on various stakeholders within the criminal justice system, including law enforcement agencies, the judiciary, victims of crime, and the accused. Furthermore, the paper will explore the

anticipated benefits and potential challenges associated with the enactment of the BNSS, considering its implications for procedural efficiency, the protection of fundamental rights, and the overall administration of justice in India. By providing a comprehensive overview and critical evaluation, this research seeks to contribute to a deeper understanding of this significant legal reform and its potential to redesign the future of criminal justice in the country.

### 2. Key Provisions and Salient Features of the BNSS, 2023:

The Bharatiya Nagrik Suraksha Sanhita, 2023, outlines the provisions related to arrest in **section 35**. This section, while expressing the structure of **Section 41(1) (a)** of the CrPC, introduces certain remarkable changes and classification.

Some of the key provisions and salient features include: when police may arrest without a warrant.

1. police power to arrest without a warrant:  
A police officer may arrest a person without an order from a magistrate and without a warrant under the following circumstances:

2. Cases where arrest without a warrant is allowed:

(a) cognizable offence in the presence of police:

If a person commits a cognizable offence in the presence of a police officer.

(b) cognizable offence ( < 7 year imprisonment) with condition:

If a reasonable complaint, credible information, or suspicion exists that the person committed a cognizable offence punishable with imprisonment up to 7 years, and:

The police officer believes the person has committed the offence.

An arrest is necessary to:

prevent a future offence.

ensure proper investigation.

prevent tampering with evidence.

prevent threats or inducements to witnesses.

Ensure the accused appears before the court.

The police officer must record the reasons for arrest in writing. If no arrest is made reasons for not arresting must also be recorded.

(c) cognizable offence (> 7 years or death penalty): If credible information exists that the person committed a cognizable offence punishable with more than 7 years imprisonment or death.

(d) proclaimed offender: If the person is a proclaimed offender under the Sahitha or by the order of the state government

( e) possession of the stolen property: If a person is found with stolen property and is reasonably suspected of having committed an offence related to it.

( f) Obstructing police/ escaping custody: if a person obstructs a police officer in a duty or escapes/ attempts to escape from lawful custody.

( g) deserter from armed forces: if the person is suspected of being a deserter from the armed forces.

(h) Offences committed outside India: if a person is reasonably suspected of having committed an offence outside India, which would be punishable under Indian law, and subject to extradition.

(i) released a convict violating rules: if a person who has been released violates the rules made under section 394(5)

(j) Requisition from another police officer: if another police officer requests an arrest, specifying the person to be arrested. The offence or reason for the arrest. The officer requesting the arrest has the power to arrest without a warrant.

3. restriction on arrest for non-cognizable offence: no, arrest for non-cognizable offences without a warrant or a magistrate's order (except as per section 39).

4. Notice instead of arrest for cognizable offence: if the police officer does not deem arrest necessary, they must issue a notice directing the person to appear before them. a person must comply with the notice. If the person fails to comply or refuses to identify themselves, the police may arrest them (subject to court orders).

(5) Special protection for elderly and infirm persons: no arrest without permission from an officer not below the rank of DSP (deputy superintendent of police) if the offence is punishable with imprisonment for less than 3 years.

Relevant case laws:

Arnesh kumar v. State of Bihar, ( 2014) 8 SCC 273 is a landmark judgement by the Supreme Court of India that significantly removed arrest procedures under section 498A of the Indian

Penal Code (IPC), which pertains to cruelty against married women by their husbands or relatives.

Background of the base:

His wife accused Avinash Kumar of demanding dowry and threatening her, leading to his arrest under section 498A of the IPC and section 4 of the Dowry Prohibition Act 1961. His application for anticipatory bail was rejected by both the sessions court and the Patna High Court. Subsequently, he approached the Supreme Court through a special leave petition.

Supreme Court's observations:

The Supreme Court noted the widespread misuse of section 498A, observing that arrests were often made without proper investigation, infringing upon individual rights and liabilities. The court emphasized that an arrest should not be automatic or mechanical, especially in cases where the offense is punishable with imprisonment for less than seven years. The police officer must be sure that an arrest is necessary to prevent further offences, ensure proper investigation, or prevent tampering with evidence.

Guidelines in this case

The SC laid down specific guidelines:

. Necessity of arrest: Police must arrest whether arrest is necessary under the parameters laid down in section 41 of the Criminal Procedure Code (CRPC).

. Checklist for arrest: Officers should prepare a checklist containing a reason for arrest, which must be forwarded to the magistrate.

Magistrate's role: Before authorizing detention, magistrates must peruse the report and record their satisfaction regarding the necessity of detention.

Notice of appearance: In this case, where it is not necessary, the accused should be served with a notice to appear before the police before the police under section 41A of

the CRPC.

Consequences of non-compliance: failure to comply with these directions may lead to departmental action against police officers and magistrates, and they may also be held liable in a competent court.

Significance of the judgement: This judgement aims to balance the need to protect women from dowry harassment with the protection of the individual from arbitrary arrest. It underscores the importance of safeguarding personal liberty and ensuring that arrests are made only when necessary, thereby preventing misuse of the legal provisions.

Joginder kumar v. State of U.P. (1994) 4 SCC 260 is a landmark judgment by the Supreme Court of India that significantly redefined the parameters of police arrest power, emphasizing the protection of individual liberties under Article 21 of the Indian Constitution.

Background of the case: In January 1994, Joginder kumar, a young lawyer, was detained by the Uttar Pradesh police without being produced before a magistrate within the stipulated time. He was held in custody for nearly five days, raising serious concerns about the arbitrary use of police power and infringement of personal liberty. This prompted him to challenge the legality of his detention before the Supreme Court of India.

Supreme Court's observations:

The Supreme Court, through a bench comprising justices M.N. Venkatachaliah, K. Jayachandra Reddy, and N.P. Singh made the following key observations:

Arrest should not be routine: the court emphasized that the power to arrest must not be exercised in a routine or mechanical manner.

Necessity of justification: It was held that the existence of the power to arrest is one thing; the justification for the exercise of it is quite another. The arrest must be based on reasonable justification.

Protection under Article 21: the right to life and personal liberty under Article 21 is a substantive guarantee, and arbitrary detention without due process is unconstitutional.

Guidelines issued by the court

To prevent misuse of the arrest power, the Supreme Court laid down specific guidelines:

**Avoid unnecessary arrest:** arrest should not be made routinely on allegations of an offence. Except in heinous offences, arrest must be avoided if the police officer issues a notice to the person to attend the police station.

**Informing relatives or friends :** An arrest person is entitled to have one friend, relative, or other person informed of their arrest and detention location. the police officer must inform the arrested person of this right when brought to the police station. An entry should be made in diary as to the who was informed. **Judicial oversight:** it is duty of the magistrate, before whom the arrested person is produced, to satisfy themselves that the requirements have been compiled with.

**Judgment of this case:** This judgment serves as a cornerstone in safeguarding individual liberties against arbitrary state action. it underscores the necessity for law enforcement agencies to exercise their powers within the bounds of the Constitution, ensuring that personal liberty is not compromised without due process.

**Changes in Arrest and Custody:** The BNSS introduces some modifications related to arrest and custody, including:

### 3. Potential Benefits and Anticipated Outcomes

The enactment of the Bharatiya Nagrik Suraksha Sanhita holds the potential for several significant benefits and positive outcomes for the criminal justice system in India:

**Enhanced Efficiency and Reduced Delays:** The integration of technology and the emphasis on timelines for investigation and case management are expected to significantly reduce procedural delays, leading to faster

dispensation of justice and reduced case pendency.

**Improved Transparency and Accountability:** The mandatory audio-visual recording of statements and the electronic filing of FIRs can enhance transparency in the investigation process and promote greater accountability of law enforcement agencies.

**Strengthened Victims' Rights:** The specific provisions focusing on victims' rights, such as the right to information and the introduction of victim impact statements, can empower victims and ensure their voices are heard in the justice system.

**Better Admissibility of Digital Evidence:** Recognizing digital evidence as primary evidence will streamline the process of proving technology-related crimes and keep pace with the evolving nature of criminal activity.

**Modernization of Legal Processes:** The overall emphasis on technology and updated procedures will modernize the criminal justice system, making it more efficient and aligned with contemporary practices.

**Potential for Restorative Justice:** The introduction of community service as a form of punishment offers a more restorative approach for certain minor offenses, potentially promoting rehabilitation and reducing the burden on the prison system.

**Clarity and Consistency:** The consolidation and updating of the criminal procedure law can lead to greater clarity and consistency in legal interpretation and application.

By addressing the shortcomings of the previous legal framework, the BNSS has the potential to create a more effective, equitable, and responsive criminal justice system that better serves the needs of all stakeholders.

### 4. Potential Challenges and Areas of Concern

Despite its progressive aims, the implementation of the Bharatiya Nagrik Suraksha Sanhita is likely to encounter several challenges and has raised certain areas of

concern:

**Infrastructure and Technological Preparedness:** The successful integration of technology requires significant investment in infrastructure, training of personnel, and ensuring equitable access to technological resources across the country, particularly in rural and remote areas.

**Data Security and Privacy Concerns:** The increased reliance on digital evidence and electronic records necessitates robust data security measures to prevent misuse, tampering, and breaches of privacy.

**Potential Impact on Individual Liberties:** Concerns have been raised regarding certain provisions, such as the mandatory preliminary inquiry, and their potential to cause delays in the registration of FIRs and potentially infringe upon the rights of complainants. The definition of terrorism also warrants careful scrutiny to prevent its misuse.

**Judicial Capacity and Training:** The judiciary will need adequate training and resources to effectively handle the new procedures and technological tools introduced by the BNSS.

**Awareness and Legal Literacy:** Ensuring that all stakeholders, including law enforcement, lawyers, and the public, are adequately aware of the new provisions and their implications is crucial for effective implementation.

**Balance Between Efficiency and Due Process:** While efficiency is a key objective, it is essential to ensure that the pursuit of speed does not compromise the principles of due process and fair trial.

**Interpretation and Implementation Challenges:** The interpretation and uniform implementation of the new provisions across different states and jurisdictions may present challenges.

**Financial Implications:** The technological upgrades, training programs, and infrastructure development required for the BNSS will have significant financial implications for the government.

Addressing these potential challenges

proactively through careful planning, resource allocation, and continuous monitoring will be crucial for realizing the intended benefits of the Bharatiya Nagrik Suraksha Sanhita.

5. Comparative Analysis with the Code of Criminal Procedure, 1973

The Bharatiya Nagrik Suraksha Sanhita represents a departure from the Code of Criminal Procedure, 1973, in several key aspects. While the CrPC served as the foundational law for criminal procedure for decades, the BNSS introduces significant changes driven by the need for modernization, efficiency, and a greater focus on victims' rights.

The BNSS places a much stronger emphasis on the integration of technology compared to the CrPC, which was enacted in a pre-digital era. Provisions for electronic FIRs, digital evidence, and virtual trials are largely absent in the older code. Similarly, the BNSS demonstrates a more pronounced victim-centric approach with specific provisions for victim information and impact statements, which were less explicitly articulated in the CrPC. While both legislations aim for procedural fairness, the BNSS explicitly seeks to enhance efficiency through timelines and technology, aspects that were often criticized as shortcomings of the CrPC. The redefinition of certain offenses and the introduction of new forms of punishment like community service also mark a departure from the traditional framework of the CrPC. In essence, the BNSS seeks to build upon the foundations of the CrPC while adapting to the evolving needs and technological advancements of the 21st century.

6. Conclusion

The Bharatiya Nagrik Suraksha Sanhita, 2023, marks a watershed moment in the evolution of criminal justice in India. By replacing the long-standing Code of Criminal Procedure, 1973, it seeks to modernize the legal framework, enhance procedural efficiency, and place a greater emphasis on the rights of victims. The integration of technology across various stages

of the criminal justice process, from FIR registration to trial proceedings, holds the promise of greater transparency and speed. However, the successful implementation of the BNSS will depend on addressing potential challenges related to infrastructure, data security, judicial capacity, and ensuring a balance between efficiency and the fundamental rights of all individuals. Careful planning, adequate resource allocation, and continuous evaluation will be crucial to realizing the full potential of this landmark legislation in shaping a more just and effective criminal justice system for India.

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