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ARREST UNDER CRPC AND BHARTIYA NAGARIK SURAKSHA SAHITA (BNSS)

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ABSTRACT



The Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) a significant revision of the country's criminal procedure law was adopted by the Indian parliament in place of the colonial-era Code of Criminal Procedure, 1973. This essay critically examines the BNSS including its primary objectives, laws, and potential consequences for the criminal justice system in India. It examines the basis for the legislative change, highlighting a change in focus toward victim-centric tactics, technological integration, and procedural effectiveness. The report also critically examines potential challenges and debates surrounding the implementation of the BNSS, such as concerns over the appropriate balance between state power and individual freedom and the preparation of the legal and law enforcement systems, and potential consequences for the rights of the accused. This study attempts to provide a complete understanding of the relevance of this previous law in influencing the direction of criminal justice in India its key characteristics and possible implications.

INTRODUCTION

An Arrest is the legal procedure by which a police officer or other authorized authority takes a person into custody, usually because they are suspected of committing a crime, is known as an arrest. Typically an arrest warrant must be present in order to make an arrest. An arrest can be made without a warrant at the time of the arrest if there are exigent

circumstances and probable cause. Before making an arrest, a police officer must have reasonable suspicion of the suspect's guilt based on facts and information. This is known as probable cause. For example, if a police officer has a reasonable suspicion that a suspect has committed a crime or is about to commit one, a warrantless arrest may be justified. The suspect may also be held by the

police to prevent them from leaving or to protect evidence. Nevertheless, if the officer failed to provide urgent circumstances and reasonable cause, an arrest made without a warrant can be declared invalid.

The police make the majority of arrests in the Indian criminal justice system. The goal of the BNSS of 2023 is to replace the 1973 CRPC. The arrest, prosecution, and bail procedures are described in the CRPC. According to the Code of Criminal Procedure (CRPC) making an arrest is an essential tool for upholding law and order, but it must be done legally. In addition to having certain legal rights such as the right to representation and the right to appear before a magistrate within twenty-four hours after being arrested the individual must be informed why they are being detained.

The Code of Criminal Procedure (CRPC) 1973, primarily governs the arrest procedure and regulations in India. Since a person's liberty is a fundamental right guaranteed by the Indian Constitution being arrested is seen as a serious offense. Therefore, in order to prevent misuse, it must always be done in accordance with the law.

Keywords: BNSS, Criminal procedure code, Law enforcement, Arrest, Criminal justice reform, Human rights, Rule of law.

ARREST UNDER CODE OF CRIMINAL PROCEDURE

According to the Code of Criminal Procedure (CRPC) an arrest occurs when a police officer or other authorized authority takes a person into custody in order to make sure they show up for court, stop them from committing new crimes or aid in an investigation.

Sections under CRPC related to Arrest:

1. Arrest by police without warrant (Section 41):

In the case where the police have a reasonable suspicion that a person is involved in an offense, they may arrest them without a warrant. Arrest without warrant permits a police officer to hold a person for a crime that needs an arrest without a

warrant. Certain circumstances are listed in Section 41 of the CRPC that allow a police officer to hold someone without a warrant or a magistrate's authorization. According to this section, a law enforcement official may hold a person if they:

- commits a crime that can be punished.
- has the stolen goods in their possession.
- prevents a law enforcement official from doing their responsibilities or from escaping or attempting to escape from a place of lawful custody.
- If thought to have defected from any Indian armed department, a former prisoner breaks a rule is connected to any crime that occurred outside of India, and another police officer who has made a request for their arrest specifies the individual to be detained as well as the cause for the arrest.

2. Arrest on refusal to give name and residence (Section 42):

A distinct circumstance where a police officer can arrest person is specified under Section 42 of the CRPC this is known as "Arrest on refusal to provide name and address" This section states that police have the right to make an arrest if someone supplies false information or refuses to furnish their identity or address when they are suspected of a non-cognizable offense. This also shows that if the person's true identity and address are found they will be released after posting a bond promising to appear in court when required. A person must be presented before the nearest magistrate if their genuine identity and location cannot be ascertained within twenty-four hours, or if they are unable to sign a bond or produce sufficient guarantors.

3. Arrest by private person (Section 43):

It implies that anyone who commits a crime that is both cognizable and non-bailable can

be arrested in front of the person. “Arrest by private person and procedure on such arrest” is covered in Section 43 of the Criminal procedure Code of 1973. In some situations, a private individual has the right to hold another person. Law enforcement should hold the person once more if there is reason to believe that they are inside the bounds of Section 41 of the CRPC. A person suspected of committing a non-cognizable offense is required by Section 43(3) to give their name and address to a police officer upon request. They will be dealt with in accordance with section 42 if they reject or give misleading information. They will be released right away if there isn't enough evidence to suspect that they have committed a crime.

4. Arrest by Magistrate (Section 44):

Both judicial and executive magistrates are referred to as “arrest by magistrate” under Section 44 of the Criminal Procedure Code, 1973. According to its first section a magistrate whether an executive or judicial magistrate in their jurisdiction has the power to arrest the accused or order another person to do so if a crime is committed in front of them. The offender may then be detained in accordance with bail laws. According to clause (2) every magistrate has the power to detain or order someone under their local jurisdiction to make an arrest in the presence of court.

5. Protects Armed force members (Section 45):

Members of the armed forces are protected from being arrested while performing their official responsibilities under Section 45 of the CRPC if the Central Government fails to provide permission.

PROCEDURE OF ARREST :

The process of making an arrest is described in Section 46 of the CRPC, 1973. The arresting officer or person is required by Section 46(1) of the CRPC to physically touch or restrain the person in charge of the arrest. Additionally, it

states that unless the circumstances indicate otherwise it is presumed that a woman's cooperation with a verbal notice of arrest is adequate if she is going to be detained. Furthermore, unless absolutely required or if the officer is a woman, the woman should not be physically touched by the police officer when she is being arrested.

CASE LAW: 1. ¹¹¹⁰DK BASU VS. STATE OF WEST BENGAL (1997)

This landmark decision upheld the protection of basic human rights throughout the arrest and detention procedures. It placed stringent procedural restrictions on police officers in order to stop them from abusing their arrest authority. ensured the reporting and tracking of casualties and torture in custody made law enforcement organizations more accountable. It acts as a guideline for all Indian police officers when they make arrests and deal with detainees, ensuring that their fundamental rights and human dignity are respected. Some of them are enumerated as follows:

- Every police officer needs to adhere to specific rules when making an arrest, as stated in Section 41B of the CRPC.
- Put his name on display in a clear, legible, and accurate manner.
- One witness confirmation and the arrested person consent document the arrest in writing.
- Notify the person who has been arrested of their right to notify a family member.
- According to Section 41C of the CRPC, police control rooms would be established in every district and at the state level.
- According to Section 57 of the CRPC, an arrested person has to be presented before the magistrate within 24 hours of the arrest.
- Whenever an arrest is made without a warrant, the officer in charge is required to notify the district magistrate.

¹¹¹⁰ <https://blog.ipleaders.in>

In the case of **2. ¹¹¹¹Arnesh Kumar vs. State of Bihar (2014)**: The Supreme Court stated that magistrates should not permit detention in such cases and that police officers should not arrest the accused without a sufficient reason.

ARREST UNDER BHARTIYA NAGARIK SURAKSHA SAHITA

Section 35 of the BNSS, which combines Sections 41 and 41A of the CRPC, now governs the new regulation related to the detention of elderly or sick people without a warrant. In addition to the existing provisions in the CRPC a new provision has been inserted for the old and disabled. People who are elderly or infirm and whose offense carries a sentence of less than three years in jail are prohibited from being arrested without a deputy superintendent of police permission, as stated in Section 35(7) of the BNSS. Information regarding an arrest is permitted to be shared with a broader range of people. The CRPC stated that only the police officer could notify a person's friend or family about their arrest. Under the BNSS a person can now share information with their particular friend, relative, or other authorized person.

The additional requirement with regard to arrest-related information: According to Section 82(2) of the BNSS, if a person is arrested with a warrant, the arresting officer must notify the designated police officer and a police officer in the district where the arrested person typically resides of the arrest as well as the specifics of the arrest and the location where the person is being held. Additionally, Section 48 of the BNSS now mandates that the designated local police officer be notified of the detainee detention and whereabouts.

Keeping and displaying arrest records: According to Section 41C of the CRPC, the State Government is required to make sure

that the names and addresses of those who have been arrested, along with the identities and positions of the arresting police officers, are displayed on notice boards outside of each district's control rooms. The specifics of such need are described in Section 37 of the BNSS. Each district and police station shall have a police officer, at the very least an Assistant Sub-Inspector of Police, assigned by the State Government to maintain records of the names, addresses, and charges of those who have been arrested. This needs to be clearly posted at police stations and district offices, in part using technology.

Arrest for providing false information or failing to provide a name and address: In these situations a person may be released by signing a bond, with or without sureties, in accordance with Section 42 of the CRPC. A person who is arrested in these situations may be released with a bond or bail bond, as defined by the codified "bail bond" in accordance with Section 39 of the BNSS.

Those who make an arrest are required by the modified Section 40(1) of the BNSS to take the apprehended individual to the nearest police station or to appear before a police officer within six hours. The requirement to produce the individual without undue delay was formerly stated in Section 43(1) of the CRPC and this deadline has since been clarified.

Regardless of the magistrate's authority people who are arrested without a warrant shouldn't be detained for more than 24 hours. According to Section 57 of the CRPC unless a magistrate orders otherwise, a police officer cannot hold someone in custody for more than 24 hours (not including the time required to travel from the scene of the arrest to the magistrate). The phrase "whether having jurisdiction or not" has been added to the conclusion of Section 58 of the BNSS requiring the arresting officer to bring the detainee before

¹¹¹¹ <https://www.drishhtjudiciary.com>

the nearest magistrate as soon as possible, regardless of the magistrate's jurisdiction.

Changes have been made to bail provisions and detention periods for under-trial prisoners in the BNSS:

New offenders are given an additional chance under the new law which permits them to request release on bond after completing one-third of the maximum sentence for their offense. For undertrial offenders who have served either half or one-third of the allotted time, the jail administrator can now ask for bail. Prisoners awaiting trial who have committed several crimes or charges are subject to tougher circumstances. The court cannot give bail to someone who is involved in many offenses or cases. As a result, the probability of receiving bail declines when a complainant files several charges against an individual. In any event during the judicial proceedings the person cannot be detained for a longer period than the maximum prison sentence allowed by law for that offense.

- **Designated police officer:** Section 37 of the BNSS provides for the appointment of a designated police officer in each police station who holds a position at least as high as assistant sub-inspector. He will keep records of each person that is arrested, including their name, residence, and the offense for which they are charged. At the police station and district police headquarters, the data will be shown either digitally or visually.
- According to section 48 of the BNSS, the police officer or private individual making the arrest is required to notify the designated police officer of the district police station where the relative, friend, or designated person resides. The designated police officers of each police station should be informed in the event that a case is filed at one, an arrest is made at another, and a friend

or relative lives within the jurisdiction of another police station.

- **Production of the arrested individual in cases where a private individual makes the arrest:** According to section 40 BNSS, if a private person is apprehended, they must be turned over or cause to be turned over to the nearest police officer or police station within six hours. Prior to section 43 CRPC there was no time limit. Section 127 of the BNS 2023 may be utilized to prosecute a private individual who intentionally delayed turning over the arrested person within the time permitted.
- **Use of Handcuffs:** Earlier, section 46 of the CRPC made no mention of using handcuffs. Section 43(3) of the BNSS now outlines the situations in which handcuffs may be applied. Cases of repeat or habitual offenders, escapees, organized crime, terrorist attacks, drug-related crimes, unlawful possession of weapons and ammunition, murder, rape, acid attacks, coin and currency note counterfeiting, human trafficking, sexual offenses against minors, and offenses against the state are all included. Nevertheless, the clause gives the arresting officer a choice and is not necessarily mandatory.
- **Medical examination of the arrested individual:** According to sections 53, 53A, and 54 of the CRPC a medical examination was previously required to be performed upon request from a police officer not lower than the rank of sub-inspector. Section 51, 52, and 53 of the BNSS have lifted this prohibition, allowing police officers of any rank to obtain a medical examination.
- **Arrest of women and vulnerable groups:** Special measures are included in the BNSS to safeguard women, children, and people with impairments while they are being arrested- Unless

there are special circumstances and a magistrate has given his previous authority, women cannot be arrested after sunset or before daybreak. The arrest must be executed by female police officers.

CONCLUSION

Police officers need to be up-to-date on arrest laws and procedures in order for the law of arrest to be effective. Supreme Court decisions pertaining to the fear. granted equal rights during the court proceedings. given access to all the rights recognized and guaranteed by the law. The policeman needs to be cautious, especially when taking the women and kids into custody. It's been stated that justice should not only be done but should also seem to be done. Achieving balance and caring for both individuals and society are essential components of justice. Given the detailed nature of the undertaking, it is frequently observed that in order to safeguard the welfare of the community, individual freedom may have to be sacrificed, particularly in view of rising rates of domestic and international violence and criminal activity. However, taking note of the most recent NHRC inquiry. The rules that the police must follow frequently limit their ability to do their jobs. In cities strict protocols are followed.

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IMPORTANT STATUTES:

- The Code of Criminal Procedure (1973)
- Bhartiya Nagarik Suraksha Sahita (2023)