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Guardians of Liberty: A Critical Examination of the Constitutional Rights of Detained Persons and the Role of BNSS

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An arrest occurs when a person is deprived of their independence and liberty by a legal authority. When someone is arrested, their ability to exercise their fundamental rights is restricted. An accused individual must be taken into custody to preserve social harmony and peace, as well as to prevent them from committing further crimes in the future. The two types of violations are criminal and civil. When someone gets arrested, they are unable to exercise the fundamental rights outlined in the Indian Constitution. As previously said, in addition to the significance and definition of the offender's arrest, they are also granted a set of rights that will shield and support them during court proceedings. The rights are granted to them so that, with the assistance of attorneys, they can defend themselves. For example, when a criminal is detained, they are not only denied their basic rights but also awarded a variety of rights, such as free legal aid and the right to information. The Rights of an Arrested Person are covered in full in this paper. In this paper, we will cover the constitutional as well as statutory rights (rights given under Bharatiya Nagarik Suraksha Sanhita, 2023) of the arrested persons. We will also examine the effects of non-compliance with the safeguards granted to the arrested persons.

Keywords: guardian, liberty, constitution, rights.

INTRODUCTION

The Justice is the foundation of any civilised society. It is a prime example of the principles of equality, justice and human decency. Fundamentally, justice guarantees that each person must be treated fairly and honourably under the law, irrespective of their history or the charges made against them. Justice is a lived and upheld reality that is shaped and safeguarded by the Constitution and legislative frameworks in a democratic country like India, where the rule of law is supreme. The preservation of the rights of those who are imprisoned or detained is one of the most important components of justice. The safeguard is essential because it demonstrates the resilience of a legal system that upholds individual liberty despite the demands of social order and public safety.

In order to maintain this equilibrium between society's interests and individual liberties, the Indian Constitution is essential. It provides a number of protections for those who are arrested or imprisoned through Articles 20, 21 and 22. These include defence against self-incrimination, the right to legal representation, the right to know why one was arrested, and defence against unjustified detention. Article 21, which expressly states that nobody shall be deprived of their life and liberty of choice other than in conformity with the legal process, is the bedrock of all the rights that pertain to personal freedom.

But the demands of contemporary law enforcement and changing social demands necessitate an efficient and responsive legal framework that is also grounded in constitutional principles. India recognised this need and replaced the colonial era Code of Criminal Procedure (CrPC) with the Bharatiya Nagarik Suraksha Sanhita (BNSS). The BNSS aims to strengthen citizen's fundamental rights while modernising and streamlining criminal justice processes. It tackles persistent problems such as custodial abuse, lack of openness in police processes, delays in investigations and trials. In order to stop authorities from abusing their power, it implements stronger protections, accountability procedures and technological developments.

The BNSS is intended to serve as a protector of individual liberty in addition to ensuring efficient law enforcement and prosecution. It places a strong emphasis on the values of justice, swift inquiry, and compassionate care for people detained. By guaranteeing prompt bail, routine medical examinations for people detained, digital documentation of arrests and detentions, and required video recording of specific procedures, it enhances the rights of

detainees. The idea that the legal system must serve society and the person is reinforced by these actions, which are in line with the constitutional mandate of justice and due process.

This study explores the constitutional rights of individuals in custody and evaluates how the BNSS strengthens and supplements these safeguards. It examines the fine but necessary balance between enabling law enforcement to uphold public order and making sure that people's fundamental rights are protected. To preserve the justice in its purest form- fair, open and inclusive- the Constitution and the BNSS cooperate to act as the real protectors of liberty.

WHAT IS ARREST?

Arrest is nowhere defined in the Bharatiya Nagarik Suraksha Sanhita, 2023 or Bharatiya Nyaya Sanhita, 2023. Arrest is an apprehension or restraint, or deprivation of personal liberty. An arrest occurs when an individual's freedom is fully restrained and their liberty is entirely deprived. There are various reasons for making an arrest, which can stem from either a criminal or civil offence. Following the arrest, the person is typically subjected to interrogation and investigation. Arrest plays a crucial role in maintaining peace and order within society, as it prevents the offender from committing further offences in the future.

The term arrest comes from the French word "*Arreter*", which denotes "*to stop or to say*". It often refers to fear, limitation or degradation of one's freedom. Legally speaking, it refers to a procedure by which the person is placed under arrest by a law enforcement agency. Forcing someone to follow a court's or other legal authority's command is a restriction on their freedom. Arrest does not include all forms of coercion or physical restriction. It would be equivalent to an arrest when there is complete constraint and denial of liberty.

The Supreme Court rendered a decision that an arrest requires both the purpose to make an arrest under the law and the confinement of the subject in a way that is permitted by law. The court decided that the Magistrate has the authority to take an accused person into custody and handle him by the law, whether the accused person shows up in person or voluntarily surrenders.

To be placed under arrest, a person must first be arrested¹. Also, in the case of *State of Haryana v Dinesh Kumar*,² the Supreme Court rendered another similar decision that, legally speaking, an arrest is when someone is taken into custody by a legally authorised authority. Custody and arrest are not interchangeable phrases, the court said. Custody occurs with every arrest, but not the other way around. In some situations, although not always, custody might be equivalent to an arrest. Custody is the combination of the accused's physical presence or control in court and their obedience to the court's authority. When someone surrenders in front of the court or is arrested by the police, they may be under custody.

There are two different kinds of arrest: those made with a Magistrate's warrant and those made without one. The police³, a private individual⁴ or a Magistrate⁵ May arrest without a warrant. Members of the Armed Forces are exempt from Arrest.⁶

DIFFERENCE BETWEEN ARREST AND CUSTODY

Arrest and custody are two different terminologies. Arrest is the act of initially finding the accused and putting him in custody, whereas when the accused is presented before a judicial Magistrate, then permission for custody is granted. In every arrest, there will be custody, but in every custody, there can't be an arrest. A clear distinction between Arrest and Custody is made in the case of the *Directorate of Enforcement v Deepak Mahajan*⁷, where it was held that: 'An individual's arrest is a prerequisite to placing him in court custody. In other words, the person is placed in judicial custody following the Magistrate's arrest of the individual upon their appearance or surrender. It will be appropriate, at this stage, to note that in every arrest, there is custody but not vice versa and that both the words custody and arrest are not synonymous terms. While one custody may be equivalent to an arrest in some situations, it is not always the case'.⁸

¹ *Directorate of Enforcement v Deepak Mahajan* (1994) 3 SCC 440

² *State of Haryana v Dinesh Kumar* (2008) 3 SCC 222

³ Bharatiya Nagarik Suraksha Sanhita 2023, s 35

⁴ Bharatiya Nagarik Suraksha Sanhita 2023, s 40

⁵ Bharatiya Nagarik Suraksha Sanhita 2023, s 41

⁶ Bharatiya Nagarik Suraksha Sanhita 2023, s 42

⁷ *Directorate of Enforcement v Deepak Mahajan* (1994) 3 SCC 440

⁸ *Ibid*

CONSTITUTIONAL RIGHTS OF DETAINED PERSONS

Indian law guarantees specific rights to prisoners, suspects and accused individuals while they are in custody. These rights are so essential that they cannot be lawfully violated under any circumstances. However, certain fundamental rights outlined in Part III of the Constitution are also granted to them. The human-rights aware Indian Supreme Court, in several cases, has not only recognised the above-mentioned rights but also has broadened their scope through judicial activism, offering new and more liberal interpretations. The rights are:

1. Protection in respect of the Conviction of an offence -

Article 20 of the Indian Constitution safeguards Indian citizens from arbitrary and unjust treatment by the state. As a fundamental right, this article ensures individuals are granted specific protections against convictions and punishments for crimes. The principles laid down in Article 20 are vital for upholding the rule of law and safeguarding individual rights in a democratic society. They also play a key role in preventing abuse of power by the state, while ensuring a balance between individuals' freedom and the broader interest of society.

Doctrine of Ex Post Facto Law: An ex post facto law refers to legislation that imposes a penalty retrospectively, criminalises acts that were lawful at the time they were committed or increases the punishment for past actions. Article 20(1) of the constitution restricts the legislative power to enact criminal laws with retrospective effect.

No person shall be convicted of an offence unless the act in question violates a law that was in force at the time it was committed.⁹ This means you cannot be convicted for an act that was not considered a criminal offence when it occurred. It is important to note that Article 20(1) prohibits only the conviction or imposition of a sentence under a retrospective criminal law; it does not bar the conduct of a trial.¹⁰ In *Union of India v Sukumar*,¹¹ it was clarified that Article 20(1) does not confer a vested right to any particular course of legal procedure. Therefore, a law that retrospectively alters the venue of a trial for the offence is not considered to violate Article 20(1). The Supreme Court has also clarified that the term law in force refers

⁹ The Constitution of India 1950, art 20(1)

¹⁰ *Mohan Lal v State of Rajasthan* (2015) 6 SCC 222

¹¹ *Union of India v Sukumar* (1996) 2 SCR 34

to laws that are actually in effect at the time the offence is committed.¹² Article 20 is subject to reasonable limitations and is not absolute. For instance, article 20(1) doesn't prevent the legislature from enacting retrospective legislation if it is in the public interest or serves a legitimate purpose.

2. Protection Against Double Jeopardy -

Clause (2) of Article 20 protects against double jeopardy. It declares that an individual cannot be subjected to multiple prosecutions or penalties for the same offence.¹³ This provision ensures that an individual cannot face trial and punishment twice for the same crime. However, if different offences arise from the same act, each offence may be prosecuted and punished separately.

Nemo debet bis vexari pro una et eadem causa, the judicial doctrine that provides that nobody should be penalised twice for the same offence, is the foundation clause. Once an individual has been convicted and punished by a competent court, that conviction acts as a bar to any further criminal proceedings for the same offence against the same person. This principle is reflected in Section 337¹⁴.

The bar under Article 20(2) does not apply when there are two separate offences consisting of different essential elements, even if the offences share some overlapping aspects.¹⁵ In *Bhagwan Swaroop v State of Maharashtra*,¹⁶ the Supreme Court held that when a single act gives rise to two distinct offences, punishment for one does not preclude prosecution and punishment for the other. The key test to determine whether two offences are the same is not based on the similarity of allegations, but on whether the essential ingredients of the offences are identical.¹⁷

3. Protection against Self-Incrimination -

Article 20(3) shields people from being forced to testify against themselves, i.e., self-incrimination. It ensures that no person suspected of a crime can be compelled to testify

¹² *Shiv Bahadur v Vindhya Pradesh* (1953) 1 SCR 1188

¹³ The Constitution of India, 1950, art 20(2)

¹⁴ *Bharatiya Nagarik Suraksha Sanhita* 2023, s 337

¹⁵ *State (NCT of Delhi) v Navjot Sandhu* (2005) 11 SCC 600

¹⁶ *Bhagwan Swaroop v State of Maharashtra* (1965) AIR 1965 SC 682

¹⁷ *Sangeetaben Mahendrabhai Patel v State of Gujarat* (2012) AIR 2012 SC 2844

against themselves.¹⁸ This provision is grounded in the principle that it is the prosecution's responsibility to prove the guilt of the accused, not their innocence. This provision is rooted in the legal maxim *nemo tenetur prodere accusare seipsum*, meaning no one is obliged to incriminate themselves. The accused is under no obligation to make any admission or provide evidence against themselves involuntarily.

There are three key elements of Article 20(3):

1. The individual must be formally accused of an offence;
2. The provision protects against being compelled to testify.
3. The protection specially safeguards against being forced to provide evidence that is self-incriminating.¹⁹

Only those who have been charged with a crime are eligible for this privilege. A person is considered an accused when a formal allegation of committing an offence has been made, which could lead to prosecution and possible conviction.²⁰ Additionally, a person must already be facing criminal charges at the time of the statement to be eligible for protection under Article 20 (3).²¹

The Supreme Court ruled in *M.P. Sharma v Satish Chandra*²² that an individual mentioned as an accused in the FIR is eligible to assert protection under this Article. The court also clarified that this privilege is not limited to individuals- it extends to incorporated bodies as well. It is also important to note that Article 20(3) is not violated when an accused voluntarily provides evidence against himself.²³ And if an accused gives self-incriminating information without any coercion or threat, such a statement is admissible as evidence and does not fall within the prohibition of Article 20(3).²⁴

The right to remain silent is a legal safeguard granted to individuals during police interrogation or trial. However, Article 20(3) doesn't prohibit the State from compelling

¹⁸ The Constitution of India 1950, art 20(3)

¹⁹ *M.P. Sharma v Satish Chandra* (1954) AIR 1954 SC 300

²⁰ *R.K. Dalmia v Delhi Administration* (1962) AIR 1962 SC 1821

²¹ *State of Bombay v Kathi Kalu Oghad* (1961) AIR 1961 SC 1808

²² *M. P. Sharma and Ors v Satish Chandra* (1954) 1 SCR 1077

²³ *Laxmipat Choraria v State of Maharashtra* (1967) 2 SCR 624

²⁴ *State of U.P. v Deoman Upadhyay* (1960) 1 SCR 14

individuals to testify in specific situations, such as when a public official is being investigated for corruption or when public safety is threatened.

4. Protection of Life and Personal Liberty -

The right to life enshrined in Article 21 of the Indian Constitution is one of the most fundamental and essential for prisoners, suspects, and accused individuals. It serves as a foundation for all human rights and is a core principle of the constitutional framework. The existence of all other rights would be pointless without the right to life. Before the enactment of the 44th Amendment Act of 1978, the right to life, like other fundamental rights, was justifiable.

In *ADM Jabalpur v S. Shukla*²⁵ Case, the Supreme Court held that if the president declared a state of emergency and suspended the right to approach the court for enforcement of any right, the right to life under Article 21 could also be suspended. However, the 44th Amendment Act introduced an exception, stating that such a declaration suspending the right to move the court for the enforcement of fundamental rights would now apply to articles 20 and 21 of the Indian Constitution. Consequently, the right to life has been declared an inalienable right.

According to Article 21, no one may be deprived of their life or personal freedom unless a legally mandated process is followed. The meaning of life is explained multiple times by the Apex court. Justice PN Bhagwati held in the case of *Maneka Gandhi v Union of India*.²⁶ That life is not confined to breathing, connecting to God or physical movement, but something more. It means to live with human dignity.

Application of Article 21 -

Fair Investigation: The Supreme Court ruled that a fair trial involves a fair investigation in *Nirmal Singh Khalon v State of Punjab*²⁷. Article 21 of the Constitution states that a fair inquiry and trial are necessary to protect fundamental rights.

²⁵ *ADM Jabalpur v S. Shukla* (1976) 2 SCC 521

²⁶ *Maneka Gandhi v Union of India* (1978) 1 SCC 248

²⁷ *Nirmal Singh Khalon v State of Punjab* (2009) AIR 2009 SC 984

Fair Trial: The Supreme Court ruled in *Rattiram v State of MP*²⁸ that a fair trial is essential to criminal law and, in a way, to a democratic society where the rule of law is upheld. The goal of every fair trial is to give the accused the best chance to prove his innocence.²⁹

Free Legal Aid: The Supreme Court ruled in *M.H. Hoskot v State of Maharashtra* right to personal liberty and life are inseparable from the right to free legal aid. For a prisoner seeking this relief through a legal system, a lawyer's services are an essential component of a fair procedure. A method cannot be considered reasonable, just or fair if it does not provide legal services to an accused person who cannot afford counsel. Article 39A also directs the state to provide free legal aid. It was added in the Constitution of India by the 42nd Amendment Act, 1976. Therefore, if an accused person is impoverished or unable to obtain legal assistance, the state should offer them free legal aid.

Speedy Trial: The Supreme Court ruled in *Hussanaira Khatoon v State of Bihar*³⁰ that Article 21 protects the right to a speedy trial as an unalienable right. The entitlement encompasses not only the court proceedings themselves but also the time leading up to the police investigations. Article 21 of the constitution guarantees a reasonable, fair and just process, which includes a speedy trial. The right to a speedy trial starts with the arrest and lasts through the investigation, trial, appeal and revision phases.³¹

Keeping the Under-trials with Convicts: The Supreme Court ruled in *Sunil Batra v Delhi Administration*,³² it is against Article 21 to keep under-trials in jail alongside convicted individuals. According to the Court, a process cannot be considered fair if it results in a significant number of persons being imprisoned for an extended period without being given a chance to defend themselves.

Right Against Handcuffing: The Supreme Court has held that handcuffing is inherently cruel, capricious, and irrational³³. When there is an obvious and immediate risk of escape, handcuffing should be used. According to the court, it is against the Constitution to regularly handcuff or fetter inmates for the comfort of the guardian or the legal system.

²⁸ *Rattiram v State of M.P.* (2012) AIR 2012 SC 1485

²⁹ *P. Sanjeeva Rao v State of A.P.* (2012) 7 SCC 56

³⁰ *Hussanaira Khatoon v State of Bihar* (1979) 3 SCR 532

³¹ *Kartar Singh v State of Punjab* (1994) 3 SCC 569

³² *Sunil Batra v Delhi Administration* (1980) AIR 1980 SC 1579

³³ *Prem Shankar v Delhi Administration* (1980) 3 SCC 526

Protection Against Police Torture: It was held in *Kishore Singh v State of Rajasthan* that the use of third-degree by police violates Article 21. The death in detention, torture, and assault raises grave concerns about the legitimacy of the criminal justice system and the rule of law.³⁴ The police torture is gravely detrimental to our constitutional order and human rights consciousness.³⁵

Delay in Execution of Death Sentence: In *Triveniben v State of Gujarat*³⁶, Supreme Court ruled that following the issuance of the final court decision, an excessive delay in carrying out the death sentence, along with any ensuing circumstances, may be deemed sufficient to determine that the execution of the death sentence will not be just and proper. The Supreme Court has decided that the condemned individual may petition the Supreme Court under Article 32 if there is an unnecessary delay in the execution of the death sentence.

5. Protection Against Arrest and Detention in Certain Cases -

Article 22 of the Indian Constitution deals with the protection of an individual's right to personal liberty and provides safeguards against arrest and detention without proper legal procedure. It is regarded as one of the fundamental rights that Indian citizens are entitled to.

It provides procedural safeguards against arrest and detention to prevent any potential miscarriage of justice. These safeguards serve as a check on the power of police officers making arrests and authorities authorised to detain individuals. The article also outlines specific rights that must be granted to a person who has been arrested or detained.

These safeguards are available to all individuals, regardless of the fact that they are Indian citizens or not, as the right to equality is guaranteed to everyone. However, these protections do not apply to:

1. Enemy aliens,
2. Individuals arrested under preventive detention laws.

³⁴ *Munshi Singh Gautam v State of M.P.* (2005) 9 SCC 631

³⁵ *Raghubir Singh v State of Haryana* (1980) 4 SCC 580

³⁶ *Triveniben v State of Gujrat* (1989) AIR 1989 SC 1335

These protections are relevant to all arrests, except those made under a court-issued warrant. Article 22, under clauses (1) and (2), outlines several rights available to a person at the time of arrest. These include:

The Entitlement to know why they were arrested: The grounds for arrest must be disclosed to the accused. This rule's primary goal is to give the accused time to prepare his defence and petition the court for the proper remedies. In *State of Maharashtra v Shobharam*³⁷, the Supreme Court ruled that an arrest cannot restrict someone's freedom without disclosing the reason for the detention. If the information is delayed, there must be a valid explanation.³⁸

The Right to Speak with a Lawyer: The accused has the right to hire an attorney of his choosing. The Supreme Court ruled in *Joginder Kumar v State of U.P.*³⁹ Then, an arrested individual has the right to request information from someone and to speak with any attorney of his choosing. The right to legal counsel starts on the day of the arrest. According to the Supreme Court's ruling, the legislature cannot restrict this privilege, and it remains intact even after a person is released on bail.⁴⁰

The Right to Appear in Court within twenty-four hours of being taken into Custody: Within twenty-four hours following his arrest, the arrested individual must appear before a Magistrate. To determine whether the arrest of the individual brought before him was lawful, routine and compliant with the law, the Magistrate must use his judicial judgement. The Supreme Court firmly emphasised that the constitutional need to present an apprehended person before a Magistrate within 24 hours after arrest be rigorously and scrupulously adhered to in *Khatri v State of Bihar*⁴¹.

Protection from Detention beyond the 24 hours unless ordered by the Magistrate: If the accused must be held for more than twenty-four hours, the Magistrate must approve the detention. The apex court ruled in *CBI v Anupam Kulkarni* that when the accused is brought before a Magistrate, the Magistrate has the power to order that the accused be placed in

³⁷ *State of Maharashtra v Shobharam* (1960) 2 SCJ 33

³⁸ *Tarapada De v State of West Bengal* (1951) AIR 1951 SC 174

³⁹ *Joginder Kumar v State of U.P* (1994) 4 SCC 260

⁴⁰ *State of Madhya Pradesh v Shobharam* (1966) AIR 1966 SC 1910

⁴¹ *Khatri v State of Bihar* (1982) 2 SCR 408

judicial or police custody. Detention cannot last longer than 15 days in total. Only judicial custody, not police custody, may be used after the first 15 days have passed.

RIGHTS OF ARRESTED PERSONS IN BNSS

Right to Know the Ground of Arrest: The Constitution of India has conferred the right to know the grounds of arrest, the status of Fundamental Rights. According to Article 22(1) of the Indian Constitution, no one who is arrested may be held in prison without being promptly informed of the reason for the arrest.

The Supreme Court ruled in *re Madhu Limaye*.⁴² Article 22(1) of the Constitution enshrines a principle that has long been recognised as essential and fundamental to preserving individual rights. Legislative manifestation of this fundamental right has been provided under Sections 47, 55 and 77 of the Sanhita.

Any police officer or anyone else who arrests without a warrant must immediately inform the person of the specific offence for which they are being held, as well as any additional reasons for their detention.⁴³ When a senior police officer assigns a subordinate officer to arrest under Section 55, the subordinate officer must inform the subject of the written order from the senior officer before making the arrest.⁴⁴ The individual being arrested must be informed of the contents of the arrest by the police officer or other person carrying it out.⁴⁵

Informing an accused person of the grounds of their arrest is a constitutional mandate, and failure to do so renders the arrest unlawful. In *Ajit Kumar v State of Assam* court held that when an individual arrested without a warrant submits an affidavit claiming that they were not informed of the full particulars of the offence leading to their arrest, the police cannot rely on the case diary to support their assertion that such details were orally communicated. In this case, no counter-affidavit was filed to dispute the petitioner's claim.

As a result, even if oral communication did occur, it remained uncertain whether it conveyed full particulars of the offence or merely the relevant legal provisions. Therefore, the arrest

⁴² *Madhu Limaye and Ors v Unknown* (1969) 1 SCC 292

⁴³ Bharatiya Nagarik Suraksha Sanhita 2023, s 47(1)

⁴⁴ Bharatiya Nagarik Suraksha Sanhita 2023, s 55(1)

⁴⁵ Bharatiya Nagarik Suraksha Sanhita 2023, s 77

and subsequent detention were deemed illegal. In one such case, it was held that the right to information is a precious right of the arrested person.⁴⁶

Right to Inform Relatives of the Accused: Section 48⁴⁷ provides the right to inform the relatives of the accused. It states that any police officer or individual arresting this Sanhita must immediately inform the arrested person's relatives, friends, or any other nominated persons, as well as the designated police officer in the district, about the arrest and the location where the person is being held.⁴⁸ As soon as the arrested individual is taken to the police station, they must also be made aware of their rights.⁴⁹ A record of the individuals who have been notified of the arrest must be kept in a book at the police station, in a format prescribed by the State Government's rules.⁵⁰ Additionally, it is the duty of the Magistrate before whom the arrested person is presented to ensure that the requirements regarding notification and record-keeping are fully complied with.⁵¹

Right to be Taken to the Magistrate without delay: Additionally, the right enjoys constitutional protection under Article 22(2) of the Constitution as a basic right. According to this provision, anybody who has been arrested and placed in custody must appear before the closest Magistrate within 24 hours of the arrest, and no one may be held in custody for longer than that without the Magistrate's consent. The time required to travel from the location of the arrest to the Magistrate's court, however, will not be included in the 24 hours. Both arrests with and without a warrant are covered by Article 22(2).

Sections 57 and 58 are legislative manifestations of the constitutional rights. Both sections apply to an arrest made without a warrant. According to Section 57, a police officer who arrests without a warrant must bring or transfer the arrested person to the Magistrate with case jurisdiction or the police officer in charge of the police station as soon as possible, subject to bail restrictions.

Section 58 provides that a police officer shall not detain a person arrested without a warrant for longer than is reasonable under the circumstances of the case. In the absence of a special

⁴⁶ *Udaybhan Shuki v State of UP* (1999) Cri LJ 274

⁴⁷ Bharatiya Nagarik Suraksha Sanhita 2023, s 48

⁴⁸ Bharatiya Nagarik Suraksha Sanhita 2023, s 48(1)

⁴⁹ Bharatiya Nagarik Suraksha Sanhita 2023, s 48(2)

⁵⁰ Bharatiya Nagarik Suraksha Sanhita 2023, s 48(3)

⁵¹ Bharatiya Nagarik Suraksha Sanhita 2023, s 48(4)

order from the Magistrate under Section 187, the detention period shall not exceed twenty-four hours, excluding the time required for travel from the place of arrest to the Magistrate's court, irrespective of the court's jurisdiction.

The purpose of Sec 57 is to ensure that an arrested individual is presented before a Magistrate with appropriate jurisdiction without undue delay.⁵² In the absence of a special order from a Magistrate, such a person cannot be held in police custody for more than twenty-four hours.⁵³

Right to Consult the Advocate: Article 22(1) of the Constitution, which states that an arrested person cannot be denied the opportunity to confer with the attorney of his choice, is enacted in Sections 38 and 340. The right to free legal help is strongly linked to this one. The Supreme Court in *Suk Das v UT of Arunachal Pradesh*⁵⁴ has even held that if this constitutional right is denied, then it would vitiate the trial.

Section 38 provides that when a person is arrested and questioned by police, they have the right to consult with a lawyer of their choice during the interrogation, although not necessarily throughout the entire process. Section 340 also provides that any person charged with an offence in a Criminal Court, or against whom proceedings are initiated under this code, has the right to be defended by an advocate of their choice.

Right to Medical Examination: According to Section 53, the accused person has the right to a medical examination so that he can protect himself. It was held in *D.J. Vaghela v Kantibhai Jethabhai*⁵⁵ and *Sheela Barse v State of Maharashtra*⁵⁶, that the Magistrate owes a duty to inform the arrested person about his right to get himself examined in case he has complaints of physical torture or maltreatment in police custody. The Supreme Court has also cautioned the lower courts not to adopt a casual approach to custodial torture.⁵⁷

In *Mukesh Kumar v State*,⁵⁸ it was held that the Magistrate's act of personally examining the accused's body and subsequently diminishing the application based on his observation that the accused appeared to be in a normal posture was entirely inappropriate and incorrect.

⁵² *Mst. Bhagan v State of Pepsu* (1965) AIR 1965 Pepsu 33

⁵³ *Gulam Mohammad v State of M.P.* (1959) AIR 1959 MP 147

⁵⁴ *Suk Das v UT of Arunachal Pradesh* (1986) 2 SCC 401

⁵⁵ *D.J. Vaghela v Kantibhai Jethabhai* (1985) Cr LJ 974 (Gui)

⁵⁶ *Sheela Barse v State of Maharashtra* (1983) 2 SCC 96

⁵⁷ *Sheela Barse v State of Maharashtra* (1983) Cr LJ 642 (SC)

⁵⁸ *Mukesh Kumar v State* (1990) Cr LJ 1923 (Delhi)

Right to be Released on Bail: Section 47(2) states that when a police officer arrests a person without a warrant, other than someone accused of a non-bailable offence, the officer is required to inform the arrested individual of their right to be released on bail and that they may arrange for sureties on their behalf. Section 478 also grants this right to an individual accused of a bailable offence. It states that a person accused of a bailable offence is entitled to be granted bail. The primary purpose of granting bail is to ensure that the accused has a fair opportunity to prove their innocence.

The Sanhita also provides provisions of Anticipatory bail, which works as a safeguard for the accused person or the person apprehending to be arrested. Only the court of session and the high court have the power to award anticipatory bail. Only in situations involving offences that are not subject to bail is this relief offered.

According to section 482, a person has the right to request anticipatory bail from the High Court or the court of session if they have cause to think they could be arrested for a crime for which there is no bond. If the court deems it appropriate, it may direct the person to be released on bail in the event of such arrest.

The Sanhita also provides the right of default bail to the accused under Section 187(3). It mandates that if the investigation is not completed within 60 days or 90 days, depending on the nature of the offence, the accused must be released on bail, as long as they are prepared to and do provide the necessary bail.

The case of *Uday Mohanlal Acharya v State of Maharashtra*⁵⁹ proved that the accused is considered to have exercised his privilege under Section 187(3) of the BNSS if he applies for bail. Once the 60 or 90-day period is over, depending on the nature of the offence, the charged person procures an indefeasible right to be discharged on safeguards as a repercussion of the prosecution's unable to complete the inquiry within the designated time. If the accused is willing to furnish bail as directed by the Magistrate, he is entitled to be released.

Right to Protection against Arrest and Detention: Section 46 provides that no more restraint must be used than what is reasonably necessary to prevent the accused from escaping, meaning only reasonable force should be applied, if required. Article 22(4) of the

⁵⁹ *Uday Mohanlal Acharya v State of Maharashtra* (2001) 5 SCC 453

Constitution states that no person shall be detained for more than three months unless advised otherwise by an Advisory Board. The force used to detain an arrested person should not exceed what is strictly necessary to restrict them from exercising their fundamental rights.

Right to Free Legal Aid: The right is intended for individuals who lack the financial means to pursue a case or legal proceedings in a court of law. It ensures the delivery of justice by providing free legal aid or legal representation to those who have been accused and are unable to afford legal services due to economic hardships. Section 341 provides that if an accused does not have sufficient means to hire a lawyer, they are entitled to receive legal aid at the expense of the state. The state cannot avoid its constitutional obligation to provide free legal services to indigent persons by pleading financial or administrative inability.⁶⁰.

In *Suk Das v Union Territory of Arunachal Pradesh*⁶¹, the Supreme Court held that a conviction in a trial where the accused was not provided legal aid is liable to be set aside.

RIGHTS OF VULNERABLE SECTION: WOMEN

Article 15(3) of the Constitution of India empowers both the Union and state governments to create special provisions aimed at safeguarding and promoting the interests of women. In 1976, a constitutional amendment introduced Article 51A(e), making it a fundamental duty of every citizen to reject practices that are derogatory to the dignity of women. Additionally, criminal law includes specific provisions that offer women protection from custodial torture.

Some of which are as follows:

1. When a woman is to be arrested, it shall be presumed that she has submitted to custody upon being verbally informed of her arrest, unless the situation suggests otherwise. Except in circumstances that necessitate it or when the arresting officer is a woman, a police officer shall not physically touch the woman while making the arrest.⁶²
2. Except in exceptional circumstances, no woman shall be arrested between sunset and sunrise. In case such exceptional circumstances arise, a woman police officer must

⁶⁰ *Khatri (II) v State of Bihar* (1981) 1 SCC 627

⁶¹ *Suk Das v Union Territory of Arunachal Pradesh* (1986) AIR 1986 SC 911

⁶² *Bharatiya Nagarik Suraksha Sanhita* 2023, s 43(1)

prepare a written report and obtain prior permission from a Magistrate of the first class who has jurisdiction over the area where the offence occurred or the arrest is to take place.⁶³

3. Whenever it becomes necessary to search a female arrestee, the search must be conducted by another woman, with utmost respect for decency and dignity.⁶⁴
4. Whenever a female is to be examined by a medical practitioner at the request of a police officer, the examination must be conducted only by a female registered medical practitioner or under her supervision.⁶⁵

EFFECTS OF NON-COMPLIANCE OF SAFEGUARDS OF ARREST

Section 62 mandates that any arrest must be carried out strictly by the code or any other applicable law in force. Non-compliance with the prescribed procedure for arrest can lead to the following consequences:

1. If a police officer or any public servant authorised to arrest knowingly violates the law and makes an unlawful arrest, they may be prosecuted under Section 258 of the Bharatiya Nyaya Sanhita, 2023.
2. Anyone who makes an illegal arrest may also be held liable under Section 127 of the Bharatiya Nyaya Sanhita for wrongful confinement.
3. An illegal arrest amounts to false imprisonment, and the affected person may file a civil suit to claim damages.
4. However, the validity of the trial is not affected solely due to non-compliance with the arrest procedure.

The legal framework surrounding arrest is clearly outlined in the landmark case of *D.K. Basu v State of West Bengal*.⁶⁶ This judgement outlines, in detail, the precautions police must observe during arrest, emphasising the protection of human rights.

⁶³ Bharatiya Nagarik Suraksha Sanhita 2023, s 43(5)

⁶⁴ Bharatiya Nagarik Suraksha Sanhita 2023, s 49(2)

⁶⁵ Bharatiya Nagarik Suraksha Sanhita 2023

⁶⁶ *D.K. Basu v State of West Bengal* (1997) 1 SCC 416

CONCLUSION

To conclude, the rights of arrested persons form a crucial component of the Indian Constitution. This right plays an essential role in ensuring a balanced and respectful relationship between law enforcement authorities and individuals taken into custody. They support justice and equity by acting as a protection against wrongful arrest and incarceration.

These legal protections are especially important as they offer the accused a fair chance to prove their innocence with the support of legal counsel. Given that wrongful arrest can occur, all the rights of the arrestee become vital in preventing misuse of power and in protecting the integrity of the justice system. If any of the above-mentioned rights are denied, the individual has the right to seek redress from the courts.

The guiding principle behind these safeguards is that even if a thousand guilty people go free, not a single innocent person should be wrongfully punished. Every safeguard ensures that every accused individual is given a fair opportunity to defend themselves and that no one is penalised without due process or without being heard.