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Arrested but Protected: Rights of an Arrested Person under the Bharatiya Nagarik Suraksha Sanhita, 2023 and The Indian Constitution

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This research focuses on the basic rights of arrested persons and, in turn, highlights the transformative amendments brought by the Bharatiya Nagarik Suraksha Sanhita, 2023. This act was brought in replacement of the Code of Criminal Procedure, 1973, and aims at bringing the Indian criminal justice system up to date while maintaining the essence of the Constitution. This act ensures, among other rights, the right to inform an arrested individual of the reason for his arrest, the right to have legal counsel, and the individual's requirement to be produced before a judicial magistrate within twenty-four hours of his arrest. This act also ensures stronger protection against the threat of arbitrary arrest, thus reaffirming the "innocent until proven guilty" clause. Based on statutory, constitutional, and judicial interpretations of Articles 21 and 22, among other factors, this research contributes to the discussion on how the BNSS helps maintain the need for accountability and procedural fairness in Indian criminal procedure. This research also emphasises the hurdles in the way of implementing the BNSS, thus acknowledging it as a much-needed development in the Indian criminal justice system.

Keywords: *arrest, rights, custodial safeguards.*

INTRODUCTION

Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it, so do the police. There is a battle between the lawmakers and the police, and it seems that the police have not learnt their lesson; the lesson implicit and embodied in the CRPC. It has not come out of its colonial image despite six decades of independence; it is largely considered a tool of harassment, oppression and surely not considered a friend of the public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by Courts, but has not yielded the desired result. Power to arrest greatly contributes to its arrogance, so also does the failure of the Magistracy to check it. Not only this, but the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool for the police officers who lack sensitivity or act with an oblique motive[1]

Arrest is the most potent weapon that the State can employ. It deprives a person of their liberty, causes disruptions to their life, separates them from their family, and puts them at the mercy of law enforcement. With the seriousness of such an act, any modern criminal justice system has to balance the power to arrest with strong safeguards. The Bharatiya Nagarik Suraksha Sanhita, 2023[2], replacing the Code of Criminal Procedure[3], attempts to strengthen such safeguards in a more structured, modern, and constitutionally aligned manner.

Over the decades, the Supreme Court has clarified that procedural fairness is not a luxury, but a requirement stemming directly from Articles 21[4] and 22 of the Constitution.[5] The BNSS[6] picks up this constitutional thread and embeds within the statutory text several protections for individuals who find themselves under arrest. These rights do not exist to weaken police power, but to ensure that the rule of law remains the guiding force behind every action taken by the State. At the time of detention, protection of their rights becomes even more sanctified, for it is during this period that the propensity for abuse becomes most pronounced. These

[1] *Arnesh Kumar v State of Bihar & Anr* (2014) 8 SCC 273
[2] The Bharatiya Nagarik Suraksha Sanhita 2023
[3] Code of Criminal Procedure 1973
[4] Constitution of India 1950, art 21
[5] Constitution of India 1950, art 22
[6] The Bharatiya Nagarik Suraksha Sanhita 2023

provisions together create a system whereby there is transparency, accountability, and humane treatment at the very moment of arrest and throughout detention.

Below are the key sections that protect arrested persons, reproduced in full and followed directly by interpretative analysis in a smooth, uninterrupted narrative.

Right to be Informed of the Grounds of Arrest: Section 47(1) of Bharatiya Nagarik Suraksha Sanhita states that "(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest."[7] Once the statutory text is read, its meaning unfolds in a very direct way. The requirement of "forthwith" communication ensures there is no gap between the act of arrest and the flow of information. This requirement removes the possibility of police delaying or withholding the reasons. When the arrested person hears the "full particulars" of the offence, he is not left to guess or trapped in uncertainty. The necessity of telling the person the "grounds for arrest" goes deeper than naming an offence. It demands a factual basis. By embedding the right to information at the very start of custody, Section 47[8] acts as the first safeguard of personal liberty.

Along with BNSS, Article 22[9] of the Indian Constitution mentions the same right. Article 22(1) of the Constitution of India 1950 is one of the most basic constitutional protections available to an arrested person, wherein it is stated that "no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest.[10]" This provision recognises the principle that liberty cannot be curtailed without due process and transparency. The right to be informed of the reasons for arrest is not a mere formality but a substantive constitutional guarantee ensuring that the individual can effectively exercise their right to legal defence. Failure to communicate the grounds of arrest deprives the person of any ability to seek legal remedy, challenge the legality of the arrest, or apply for bail. In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily

[7] Bharatiya Nagarik Suraksha Sanhita 2023, s 47 (1)
[8] The Bharatiya Nagarik Suraksha Sanhita 2023, s 47
[9] Constitution of India 1950, art 22
[10] Constitution of India 1950, 22(1)

be meaningful to serve the intended purpose. [11]Neither of the constitutional provisions requires that the "grounds" of "arrest" or "detention", as the case may be, must be communicated in writing.

The constitutional safeguard has been reinforced through many judicial interpretations, most notably in the landmark case of Joginder Kumar v State of Uttar Pradesh, wherein a young lawyer named Joginder Kumar was picked up by the UP Police for interrogation. The whereabouts of Joginder Kumar were not known to his family, and he was not produced before the magistrate. A habeas corpus petition was filed before the Supreme Court challenging the legality of detention. The case arose from concern over arbitrary arrests made solely for interrogation purposes. The court issued certain requirements for effective enforcement of these fundamental rights, such as an arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained. The police officer shall inform the arrested person when he is brought to the police station of this right. An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) [12]and enforced strictly. It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.[13]

Right to have Someone Informed of the Arrest: Section 36 (c), BNSS states that "inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest."[14] The importance of this statutory requirement becomes immediately visible as soon as it is stated. It is not sufficient that the police inform the arrested person's relative or friend; they must also state the exact place of detention. This ensures that no secret or unrecorded custody takes place, which has historically been the fertile ground for custodial torture or disappearance. The law ensures that the arrested person is not isolated. Someone outside the system knows where he is, why he is there, and what is happening. The

[11] *Pankaj Bansal v Union of India* (2024) 7 SCC 576
[12] Constitution of India 1950, art 22(1)
[13] *Joginder Kumar v State of Uttar Pradesh* (1994) 4 SCC 260
[14] Bharatiya Nagarik Suraksha Sanhita 2023, s 36(c)

requirement of making an entry in the case diary creates a written trail. This documentary record becomes a shield against later denial or manipulation. If the police fail to make that entry, the omission itself can become grounds for questioning the legality of custody. In practice, this section gives emotional and legal support to the arrested person. Family can arrange legal help, bring essential items, and monitor the situation. The presence of an informed outsider reduces the risk of ill-treatment inside the police station.

As held in the case of D.K. Basu v state of West Bengal,[15] a person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee. Expanding the scope of Article 22[16] of the Constitution of India, the court in the case of Vihan Kumar v State of Haryana[17] observed that the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal.

Right to a Lawyer during Interrogation: Right to consult a lawyer is embedded in Section 38, BNSS, which states that "When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.[18]" The text protects one of the core elements of a fair criminal process. Access to a lawyer transforms the arrested person from a vulnerable individual into a rights-bearing participant in the legal process. Once the police detain someone, the imbalance of power becomes extreme. The presence or advice of a lawyer is the most effective counterweight to that imbalance. This is to ensure that the police do not keep the person cut off until after interrogation. Consultation with a lawyer at the earliest stage shapes the entire defence, prevents coercion and ensures that the arrested person understands every right

[15] *Shri D.K. Basu, Ashok K. Johri v State of West Bengal, State of UP* (1997) 1 SCC 416
[16] Constitution of India 1950, art 22
[17] *Vihaan Kumar v State of Haryana* (2025) 5 SCC 799
[18] Bharatiya Nagarik Suraksha Sanhita 2023, s 38

available. When understood together, this provision ensures that the criminal justice process cannot proceed in the dark.

The court, while recognising this right in the case of DK Basu, observed that the arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.[19] Further, in Nandini Satpathy v P.L. Dani[20], a three-Judge Bench of the Supreme Court, while interpreting the scope of Article 20(3) of the Indian Constitution[21] i.e. right against self-incrimination expanded the scope of the right to a lawyer during interrogation and held that right against self-incrimination is not only available during trial before the courts but also at the stage of the investigation. The Court observed that this right against compelled testimony may be violated not just by obtaining evidence by violence or threat of violence but also "by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods." The Court was wary of the police applying these pressure tactics in the "antagonistic antechambers of a police station." The Court viewed the presence of a lawyer at the police station as a form of vital safeguard of the said right to somewhat balance an otherwise coercive atmosphere of a police station. Later, the court, while balancing the right of an arrested person and minimal intervention of lawyers in police station in the Samra case, held that having regard to the special facts and circumstances of the case, it is deemed appropriate to direct that the interrogation of the respondent may be held within the sight of his advocate or any other person duly authorized by him. The advocate or the person authorised by the respondent may watch the proceedings from a distance or from beyond a glass partition, but he will not be within the hearing distance, and it will not be open to the respondent to have consultations with him in the course of the interrogation.[22]

Right to Medical Examination: While the right to medical examination is with the victim, it has been granted to the accused or arrested person under Section 53[23], BNSS, which states that

[19] *Shri D.K. Basu, Ashok K. Johri v State of West Bengal, State of UP* (1997) 1 SCC 416
[20] *Nandini Satpathy v Dani (P.L.) & Anr* AIR 1978 SC 1025
[21] Constitution of India 1950, art 20(3)
[22] *Senior Intelligence Officer, Directorate of Revenue Intelligence v Jugal Kishore Samra* (2011) 12 SCC 362
[23] Bharatiya Nagarik Suraksha Sanhita 2023, s 53

"(1) When any person is arrested, he shall be examined by a medical officer in the service of the Central Government or a State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made: Provided that if the medical officer or the registered medical practitioner thinks that one more examination of such person is necessary, he may do so:

Provided further that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

(2) The medical officer or a registered medical practitioner, so examining the arrested person, shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person."[24]

The stronger effect of this provision becomes clear when it is read. Medical examination soon after arrest seals the physical condition of the arrested person in a neutral document. This protects the individual from later allegations that injuries were sustained during custody. It also prevents the police from claiming that injuries inflicted in custody existed earlier. The requirement of periodic examination at intervals creates continuous oversight. The medical report, the latter signed by both the arrested person and the officer in charge of custody, serves as a dual-acknowledged record. It compels transparency from both sides. If some bruises and swellings later appear or increase, the record becomes quite vocal itself, and accountability can be demanded. The provision creates an evidentiary shield around the arrested person, not allowing the body itself to become a silent site of abuse.

The D.K. Basu case also highlighted that the arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director, Health Services of the State or

[24] Bharatiya Nagarik Suraksha Sanhita 2023, s 38

Union Territory concerned. The Director, Health Services, should prepare such a panel for all tehsils and districts as well.[25] In Sheela Barse v State of Maharashtra,[26] custodial abuse of women prisoners was placed under the spotlight. That judgment emphasised the need for safeguarding the dignity and physical integrity of arrested females. Women cannot be detained in police lockups that lack proper supervision and should be detained separately from male prisoners. Regular medical checkups were ordered to identify any possible mistreatment or abuse. This judicial demand reaffirmed that procedures adopted should be gender-sensitive within custodial settings. This case became a touchstone for institutional reforms directed at the protection of vulnerable individuals in detention.

Right to be Produced before a Magistrate within 24 hours: Section 58, BNSS states that "Officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise."[27] Reading this section shows that judicial oversight acts as the heartbeat of fair arrest procedure. The police cannot hold someone beyond 24 hours because custody is not to be used as a police-controlled zone. The Magistrate must intervene as the impartial authority who verifies whether the arrest was justified, whether detention is necessary, and whether rights were accorded. Limiting police power to a defined time span, the law ensures that detention never veers into illegality. Once produced before the Magistrate, the arrested person can speak, complain, request legal aid, apply for bail, or draw attention to any misconduct. This provision makes the Magistrate the constitutional sentry of liberty to ensure that nobody disappears in custody.

Furthermore, Article 22(2) of the Constitution of India requires an arrested person to be produced before a magistrate within twenty-four hours and prohibits detention beyond that period without judicial authorisation. These provisions ensure procedural fairness by subjecting the coercive power of the State to constitutional discipline. The court reaffirmed this mandate in Vishal Manohar Mandrekar v The State of Telangana, represented by its Public Prosecutor, and stated that "Article 22 (2) of the Constitution of India mandates that every person who is arrested and detained in police custody shall be produced before the

[25] *Shri D.K. Basu, Ashok K. Johri v State of West Bengal, State of UP* (1997) 1 SCC 416
[26] *Sheela Barse v State of Maharashtra* AIR 1983 SC 483
[27] Bharatiya Nagarik Suraksha Sanhita 2023, s 58

nearest magistrate within a period of 24 hours, excluding the time necessary for the journey from the place of the arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate". In order to prevent confusion in the timeline of 24 hours, the court in the case of Smt. T. Ramadevi, W/o.T. Srinivas Goud v The State of Telangana, rep. by its Principal Secretary and Others Smt. that 24 hours is not to be calculated from the time of the official arrest being shown by the police personnel in the arrest memo, but from the time he was initially apprehended or taken into custody.[28]

Courts have carefully considered how the word "shall" is used in the statute when determining whether the requirement to present an arrested individual before a magistrate within 24 hours is mandatory or directory. Determining whether non-compliance makes the detention illegal or is viewed as a procedural irregularity has been greatly aided by this interpretation. The courts have taken a view that where the expression "shall" has been used, it would not necessarily mean that it is mandatory. It will always depend upon the facts of a given case, the conjunctive reading of the relevant provisions along with other provisions of the Rules, the purpose sought to be achieved and the object behind implementation of such a provision.[29] The Court took the view that whether the word "may" should be read as "shall" would depend upon the intention of the legislature, and it is not to be taken that once the word "may" is used, it per se would be directory. In other words, it is not merely the use of a particular expression that would render a provision directory or mandatory. It would have to be interpreted in the light of the settled principles, and while ensuring that the intent of the Rule is not frustrated.[30] Therefore, one can state that the circumstances of each case, the legislative intent, and the goal sought will ultimately determine whether the requirement to present an arrested person before a magistrate within 24 hours is regarded as mandatory or directory.

Right not to be Handcuffed except in Specific Situations: Section 43(3), BNSS states "The police officer may, keeping in view the nature and gravity of the offence, use handcuff while making the arrest of a person or while producing such person before the court who is a habitual or repeat offender, or who escaped from custody, or who has committed offence of

[28] *T Ramadevi v State of Telangana* (2024) WP No 21912/2024
[29] *Dinesh Chandra Pandey v High Court of Madhya Pradesh & Anr* AIR 2010 SC 3055
[30] *Sarla Goel & Ors v Kishan Chand* (2009) 7 SCC 658

organised crime, terrorist act, drug related crime, or illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency-notes, human trafficking, sexual offence against children, or offence against the State."[31] The statutory text narrows the situations where handcuffing is allowed. A clear departure from routine or mechanical handcuffing thereby arises. The law then makes handcuffs an exception and not the rule or a default position. In insisting on specific grounds such as repeat offending, dangerousness, or risk of escape, the law simply aligns itself with the idea that dignity does not disappear at the moment of arrest. If the police use handcuffs in an unwarranted manner, the justification can be scrutinised in courts of law.

Handcuffing of the undertrial prisoner is not a rule but an exception. Handcuffing of the petitioner and parading him is violative of Article 21[32] of the Constitution of India, as also violative of the principles. In Indian law, handcuffing is imbued with symbolic meaning that predicates guilt before trial and makes a spectacle of the arrested individual.[33] This provision stops such degradation unless the strict conditions are met. As laid down by the Hon'ble Supreme Court, violent, disorderly behavior and antecedents of the prisoner are the relevant factors, apart from the post arrest incidents of violent and disorderly behavior; the antecedents, the violent conduct, behavior or scheming actions of the accused while committing the offence and the motive for the crime, shall also be a requisite considerations for justification or otherwise for handcuffing, which the Magistrate or Sessions Court may take into consideration while passing the orders on handcuffing of the Undertrial Prisoners.[34] An accused who is arrested can normally not be handcuffed. It is only under extreme circumstances that the handcuffing of an accused can be resorted to. When such handcuffing is made, the Arresting Officer is required to record the reasons for handcuffing, which would have to sustain the scrutiny of the Court. Whenever an accused is produced before the Court of law, it would be required of the Court to enquire if the accused had been handcuffed or not and if handcuffed, to ascertain the reasons recorded by the Arresting Officer for the same.[35]

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[31] Bharatiya Nagarik Suraksha Sanhita 2023, s 43(3)
[32] Constitution of India 1950, art 21
[33] *Shri Suprit Ishwar Divate v State of Karnataka* WP No 115362/2015
[34] *Jaswinder Singh & Ors v State of Karnataka* ILR 2002 Kar 2213
[35] *Shri Suprit Ishwar Divate v State of Karnataka* WP No 115362/2015

Right to Humane Treatment: Section 56 further strengthens the right of an arrested person. It states that "It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.[36]" The prohibition against ill-treatment thus places a positive obligation on the police and prison authorities to ensure that the accused is not harmed or subjected to neglect or unsafe conditions of detention. This provision recognises that deprivation of liberty does not mean deprivation of humane treatment. This language resonates with constitutional values and international human rights law. It builds a humane environment within a procedure that often carries the risk of brutality.

The courts have emphasised the broader obligation of custodial authorities to ensure dignity and fairness along with Article 21. Article 21 of the Constitution of India clearly provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. The expression "life and personal liberty" includes the right to live with human dignity and further includes within itself a guarantee against torture and assault by the enforcing agencies.[37] Any form of torture or cruel, inhuman or degrading treatment would fall within the ambit of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become lawbreakers, it is bound to breed contempt for the law and would encourage lawlessness, and every man would have the tendency to become law unto himself, thereby leading to anarchy. No civilised nation can permit that to happen, for a citizen does not shed off his fundamental rights to life, the moment a policeman arrests him. The right to life of a citizen cannot be put in abeyance on his arrest. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law, by placing such reasonable restrictions as are permitted by law.[38]

The judiciary expands the principle of humane treatment and fair trial rights into the realm of modern investigative methods in the Selvi case. The legal questions in the case of Selvi V State of Karnataka relate to the involuntary administration of certain scientific techniques, namely narcoanalysis, polygraph examination and the Brain Electrical Activation Profile

[36] Bharatiya Nagarik Suraksha Sanhita 2023, s 56
[37] *Ninad Deulkar v The Goa Human Rights Commission Thru its Member Secretary & Ors* WP No 234/2016
[38] *Dr. Mehmood Nayyar Azam v State of Chattisgarh & Ors* AIR 2012 SC 257

(BEAP) test for the purpose of improving investigation efforts in criminal cases the court held that if we were to permit the forcible administration of these techniques, it could be the first step on a very slippery-slope as far as the standards of police behavior are concerned. In some of the impugned judgments, it has been suggested that the promotion of these techniques could reduce the regrettably high incidence of `third degree methods' that are being used by policemen all over the country. This is a circular line of reasoning since one form of improper behaviour is sought to be replaced by another. What this will result in is that investigators will increasingly seek reliance on the impugned techniques rather than engaging in a thorough investigation. The widespread use of `third-degree' interrogation methods, so to speak, is a separate problem and needs to be tackled through long-term solutions such as more emphasis on the protection of human rights during police training, providing adequate resources for investigators and stronger accountability measures when such abuses do take place.[39]

CONCLUSION

The passing of the BNSS is a progressive development in the criminal procedure of India because it not only ensures the rights of arrested persons but also statutorily makes arrestees aware of them. BNSS enhances protection against police arbitrariness by compelling the police to clearly communicate the grounds of arrest, by guaranteeing legal representation, and by making judicial review obligatory without delay. These provisions are consonant with constitutional guarantees under Articles 21 and 22 and, therefore, reiterate due process and human dignity commitments of India. Nevertheless, the problems of effective implementation of BNSS, such as ensuring legal aid and curbing custodial abuse, remain there. BNSS offers a stronger statutory framework for responding to these concerns. The rights provided under BNSS constitute a bulwark of democratic governance, the rule of law, and assurance that justice will be fair and humane. The Bharatiya Nagarik Suraksha Sanhita, therefore, spells a radical departure from the procedural nature of criminal law to a rights-based orientation, with the arrested person being at the apex of a just delivery of criminal justice. While issues with practical implementation, legal aid delivery, and jail manuals remain, BNSS offers a sound legal framework to remediate these gaps through various internal checks and judicial accountability. In a nutshell, with BNSS, rights accruable to

[39] *Selvi & Ors v State of Karnataka & Anr* AIR 2010 SC 1974

arrested persons embody ideals of fairness, proportionality, and human dignity, thereby translating into action the commitment of India to a rights-based delivery of a just and fair criminal justice system through a legal framework of governance of a legal state, and not an absolute state.