

Comparative Assessment of Arrest Provisions Vis-À-Vis Bharatiya Nagarik Suraksha Sanhita 2023

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Abstract: *As the world's largest democracy, India enshrines the freedom of personal liberty in Article 21, empowering individuals to live with dignity. This fundamental right guarantees that no one can be deprived of their freedom or right to life unless dictated by law. The Constitution of India, alongside international covenants, acknowledges the state's authority to arrest as a crucial function in upholding law and order. It explicitly states, "No person shall be deprived of his life or personal liberty except according to procedure established by law." Article 22 (1) ensures that anyone arrested must be promptly informed of the reasons for their arrest and possess the right to consult and be defended by a legal practitioner of their choice. Furthermore, Article 22 (2) mandates that every arrested individual must be presented before the nearest magistrate within twenty - four hours, excluding travel time, and prohibits any detention beyond this timeframe without magistrate approval. This paper seeks to critically analyse the contemporary laws governing arrests and highlight instances of their violation by police authorities. Our focus is to underline the vital role of the police as protectors of individuals' rights. We will explore the pertinent provisions under the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 in comparison with the Criminal Procedure Code of 1973, shedding light on the misuse of power and providing insights into the Indian judiciary's role in safeguarding personal liberties.*

Keywords: BNSS, Arrest, Warrant, Custody, Detention, Human Rights, Justice.

1. Introduction

Human rights are fundamental entitlements inherent to every individual, regardless of nationality, race, religion, or any other status. Upholding these rights is a paramount responsibility of the criminal justice system, which must ensure fairness, justice, and equality for all. In India, the safeguarding of human rights within the criminal justice framework is a critical concern, shaped by the nation's complex socio - political landscape and entrenched legal traditions. Addressing this challenge is essential for fostering a just society that honors the dignity of every individual¹.

In the current legal landscape, the Bhartiya Nagarik Suraksha Sanhita (BNSS) 2023 serves as a significant reform in India's arrest procedures, underscoring the principles of transparency and accountability. By prioritizing the protection of individual rights, this legislation aims to ensure that the processes surrounding arrest are conducted with greater oversight and fairness. The BNSS reflects a commitment to enhancing the integrity of law enforcement practices, ultimately fostering public trust in the legal system. This landmark reform, which replaces the outdated Criminal Procedure Code of 1973, is a significant step forward in modernising and streamlining the arrest process. It addresses critical issues such as unlawful detention, insufficient judicial oversight, and the misuse of arrest powers. The BNSS has introduced progressive measures aimed at enhancing the protection of individual rights within the justice system. By implementing advanced technology for electronic recording during arrests and cross - examinations, the BNSS ensures greater transparency and accountability. Additionally, the requirement for prompt notification of an individual's

detainment to their family further safeguards fundamental rights. These initiatives not only protect citizens but also strengthen the overall integrity of the justice system, reflecting a commitment to uphold justice and due process².

In *State of Punjab vs. Ajaib Singh*³, arrest is defined as "Arrest constitutes the physical restraint of an individual stemming from an allegation of criminal conduct or a quasi - criminal offense. In its ordinary context, the term implies the apprehension and consequent deprivation of personal liberty. The determination of an individual's status as being under arrest hinges on the legality of the action and whether their freedom to move freely has been compromised. Legally, an arrest involves the custody of a person by an authorized entity, aimed at ensuring accountability for a criminal charge or thwarting further criminal activity".

From a global viewpoint, Article 9 of the Universal Declaration of Human Rights encapsulates four pivotal concepts: arbitrary actions, arrest, detention, and deportation, which are crucial from a global human rights perspective. The United Nations Committee on the Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention, and Deportation provides essential definitions for the terms "arrest" and "detention." According to the Committee, "arrest" refers to the act of taking an individual into custody under legal authority or through other forms of compulsion, with the timeline extending from the moment of detention to the point at which the individual is brought before an authority capable of determining their continued custody or release. In parallel, "detention" is defined as the confinement of an individual to a specified location, irrespective of whether it follows an arrest, accompanied by restrictions that

¹ The Protection of Human Rights Act, 1993

² Ayush Chandra, Arrest under the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023: Legal Framework, Rights, and Procedures (2025), available at <https://legalonus.com/arrest-under-the-bhartiya-nagrik-suraksha-sanhita-bnss-2023-legal-framework-rights-and-procedures/>, accessed on 1 February 2025.

³ AIR 1981 SC 625.

hinder their ability to maintain familial connections or engage in regular occupational or social activities. This framework underscores the critical importance of safeguarding individual freedoms and due process within the legal systems of nations worldwide⁴.

2. Objectives

- To understand the latest legal provisions and the procedure for arrest prescribed under Bhartiya Nagarik Suraksha Sanhita (BNSS) 2023.
- To examine the directions and guidelines pertaining to the arrest given by the National Human Rights Commission, i. e, Pre - Arrest, during arrest, Post - arrest.
- To examine judicial viewpoints on the subject.
- To give suggestions for effective management of human rights violations pertaining to the arrest.

3. Research Methodology

The methodology employed in this paper is grounded in a doctrinal research approach, a theoretical framework predominantly reliant on secondary sources rather than primary data. In this context, the research meticulously synthesises information derived from an array of scholarly texts alongside authoritative resources such as the Criminal Manuals published by the Bureau of Police Research and Development (BPR&D). This method is particularly advantageous for exploring complex legal propositions, questions, or doctrines, as it allows for a comprehensive examination of established legal principles and interpretations without the need for empirical data collection. By focusing on secondary sources, the study aims to provide a nuanced understanding of the prevailing legal framework, drawing upon the insights and analyses presented in existing literature.

Bhartiya Nagarik Suraksha Sanhita, 2023: Legal Framework of Arrest

The Bhartiya Nagarik Suraksha Sanhita (BNSS) 2023 represents a landmark evolution in India's approach to criminal law, reflecting a critical need for reform amidst the evolving dynamics of society and the legal landscape. As the principal legislative framework governing the administration of substantive criminal law, the BNSS not only consolidates but also fundamentally amends existing provisions primarily encased within the Code of Criminal Procedure, 1973. This comprehensive legislative initiative emerges from an acknowledgment of the need to align age - old legal structures with the contemporary aspirations and practical realities of Indian society, thereby facilitating a more just and responsive criminal justice system. Notably, the BNSS introduces significant modifications pertaining to arrest and bail—two pivotal components that directly influence individual liberty and the integrity of the judicial process. By delineating clear, specific guidelines for the arrest of individuals, the law seeks

to strike a crucial balance between the state's imperative to uphold public order and the individual's fundamental rights, thereby establishing a more equitable framework for law enforcement practices.

Furthermore, the implications of these provisions signify a departure from prior norms, promoting greater judicial oversight and accountability while ensuring that the rights of the accused are maintained. This legal analysis provides a comprehensive examination of these pivotal changes, comparing the BNSS with its predecessor, the CrPC, thereby elucidating both the practical implications of these reforms and their broader impact on the landscape of criminal justice in India. In doing so, it underscores the BNSS as not merely a legislative reform but as a transformative leap towards a more progressive and rights - oriented legal framework⁵.

(i) Types of Arrest

According to the provisions outlined in the BNSS, the framework for arrests can be categorised into two principal types, mirroring the structure found within the Criminal Procedure Code (CrPC).

- The first type, termed "arrest with warrant, " necessitates the prior authorisation of a magistrate. This category is predominantly applicable to non - cognizable offences, wherein the law mandates that police intervention should not occur without prior judicial oversight, thus ensuring that individual rights are safeguarded against arbitrary detention.
- The second type, known as "arrest without warrant, " grants law enforcement the authority to apprehend individuals in connection with cognizable offences, which are characterized by their inherent severity and the urgent need for immediate police action to uphold public safety or prevent further criminal activity.

This delineation of arrest types underscores the balance that the legal system seeks to maintain between the efficient enforcement of law and order and the protection of civil liberties, illustrating the careful considerations that govern the exercise of police powers in varying contexts of criminal behaviour⁶.

(ii) Protection against arbitrary arrest

The enactment of the BNSS, 2023, represents a significant advancement in the safeguarding of individual rights during the critical juncture of arrest, reflecting a robust commitment to upholding democratic principles and human dignity within the justice system.

- Central to this initiative is the enhancement of judicial monitoring, wherein explicit guidelines are established to facilitate judicial review post - arrest, thereby effectively curtailing instances of arbitrary and unlawful detentions. This structured oversight mechanism not only bolsters the accountability framework surrounding law enforcement

⁴ Aleksandra, Orr, Problems Surrounding Arrest Warrants Issued by the International Criminal Court: A Decade of Judicial Practice (June 28, 2013). Polish Yearbook of International Law, Vol. 32 (2012), pp. 209-237, Available at SSRN: <https://ssrn.com/abstract=2407579>

⁵ Ashwani Kumar, Evolving Criminal Procedure: The Legal Framework Of Arrest And Bail In The Bhartiya Nagarik Suraksha

Sanhita, [Indian Journal of Law and Legal Research](#), Available at [Indian Journal of Law and Legal Research](#) (Last visited on 6 November 2024)

⁶ Hanspal, Manindra. (2024). Navigating Legal Changes in BNS, BNSS, and BSA, 2023: A New Era for Women's Safety in India. 6. 802-816. 10.1000/IJLSI.112168.

practices but also serves to reinforce public confidence in the rule of law.

- Furthermore, the BNSS unequivocally mandates adherence to constitutional imperatives as delineated in Article 21 and Article 22 of the Indian Constitution, which enshrine the right to life and personal liberty, as well as the right to protection against arbitrary arrest. These legal provisions underscore the necessity for law enforcement agencies to align their operational conduct with foundational human rights principles.
- In addition, the retention and elucidation of Section 41A of the Criminal Procedure Code (CrPC) within the BNSS further exemplify this commitment to due process; it stipulates the requirement for authorities to issue a notice for appearance when arrest is deemed unnecessary, thereby effectively safeguarding individuals from unwarranted detentions, particularly in cases involving offences that carry a penalty of imprisonment for less than seven years.

Collectively, these measures reflect a comprehensive approach to legislating and operationalising individual rights, reinforcing a framework that prioritises the protection of liberties while ensuring lawful and judicious enforcement of the criminal law⁷.

(iii) Rights of the arrested person

The BNSS comprehensively emphasizes the fundamental rights of individuals who find themselves in the position of being arrested, meticulously aligning with the stipulations that were set forth in the Criminal Procedure Code (CrPC) as well as constitutional mandates.

- It is imperative that an arrested individual is made aware of the specific grounds for their arrest, a right enshrined in Article 22 (1) of the Constitution. This provision ensures transparency in the arrest process and guards against arbitrary detention, mandating law enforcement to furnish clear and articulated reasons for the detention.
- Furthermore, the BNSS underscores the critical right to legal representation, affirming that an arrested person has the autonomy to consult a legal practitioner of their choice. In instances where an individual lacks the financial means or resources to secure legal counsel, the State carries the responsibility to provide necessary legal aid, as protected under Article 39A of the Constitution. This right not only fortifies the principle of fair trial but also acts as a safeguard against potential misuse of legal authority.
- Additionally, the BNSS retains the prerequisite that an arrested individual must be presented before a judicial magistrate within a strict timeframe of 24 hours following their arrest. This stipulation is pivotal in ensuring judicial oversight and preventing unlawful detention, thereby reinforcing the pillars of justice and accountability within the legal framework.

Collectively, these rights enshrined in the BNSS not only uphold the dignified treatment of arrested persons but also fortify the overall integrity of the law enforcement and judicial system⁸.

⁷ Nain, Bhavya. (2025). BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 (BNSS). 10.13140/RG.2.2.29593.74089.

⁸ Singla, Deepti. (2024). Revamping Criminal Justice System- Key Highlights of the Three New Criminal Laws Introduced in India.

(iv) Miscellaneous provisions⁹

- **No arrest of aged or infirm person without permission of DySP in offences punishable with less than 3 years imprisonment (Sec.35 BNSS):** In accordance with prevailing legal provisions, it is stipulated that in cases involving offences that are punishable by a term of imprisonment of less than three years, there exists an imperative protocol that mandates the non - arrest of individuals who are classified as infirm or are over the age of sixty without obtaining prior authorization from the Deputy Superintendent of Police (DySP). This directive underscores a fundamental commitment to ensuring the humane treatment of vulnerable populations within the justice system, recognizing that older individuals and those suffering from various ailments may require special consideration due to their physical and mental health conditions. The necessity for prior permission seeks to introduce a layer of oversight and deliberation in the arrest process, thereby mitigating potential injustices that could arise from arbitrary detentions. Furthermore, it emphasizes the role of the DySP as a guardian of civil liberties, tasked with the responsibility of assessing the individual circumstances of each case to ascertain whether an arrest is truly warranted or if alternative measures could be employed to address the alleged offence without compromising the dignity and well - being of the accused.
- **Appointment of Designated Police Officer in every Police station for maintaining the record of arrested persons and displaying it in digital mode (Sec.37 BNSS):** To enhance transparency and accountability within the policing system, it is mandated that every police station appoint an officer of no lesser rank than Assistant Sub - Inspector (ASI) as the Designated Police Officer. This officer will be entrusted with the crucial responsibility of maintaining and displaying, in a digital format, comprehensive information pertaining to individuals who have been arrested. Specifically, the information provided shall include the name and address of the arrested person, as well as details regarding the nature of the offence for which the arrest was made. This initiative aims to facilitate public awareness and foster trust in law enforcement agencies by ensuring that pertinent data is readily accessible at both the Police Station and District Headquarters. By digitizing this information, the police force not only embraces modern technological advancements but also streamlines the dissemination of crucial information to the public while safeguarding the rights of individuals in custody.
- **Information of arrest to Designated Police Officer (Sec.48 BNSS):** In the course of executing an arrest, it is incumbent upon the police officer to ensure that individuals pertinent to the arrested party are informed of this significant legal action. Specifically, the officer must communicate the details of the arrest to both a) the relatives or friends of the arrested individual and b) a designated police officer within the pertinent agency or jurisdiction.
- This procedural obligation serves multiple essential functions: it not only fosters transparency and promotes

⁹ A handbook for police officers on Bharatiya Nagarik Suraksha Sanhita, 2023 (highlighting key provisions and changes vis-à-vis CrPC), Maharaja Ranjit Singh Punjab Police Academy Phillaur, available at <https://bprd.nic.in/> (Last visited on 24 November 2023)

the safeguarding of the arrested person's rights, but it also facilitates the timely coordination of information among law enforcement entities. Furthermore, notifying relatives or friends underscores the humane aspect of law enforcement, allowing those close to the individual to provide necessary emotional support or assistance. At the same time, the requirement to inform a designated police officer ensures that internal protocols are adhered to, thus enabling appropriate oversight and management of the arrest process. Such measures are critical in preserving public trust in law enforcement agencies while ensuring that due process is upheld during the arrest procedure.

- **Arrest by Private person (Sec.40 BNSS):** In accordance with legal statutes regarding citizen's arrest, it is imperative that any private individual apprehending another person for alleged unlawful conduct must adhere to the stipulation that the detained individual be relinquished to law enforcement authorities within a maximum time frame of 6 hours post - arrest. This provision serves as a safeguard to ensure that the rights of the arrested individual are respected, and it facilitates an expeditious transfer of custody to the appropriate legal entities, thereby enabling a structured and formal process to determine the merits of the arrest. The 6 - hour window not only underscores the necessity for timely intervention by police but also mitigates the risk of potential abuses of power that may arise in situations where the boundaries of private authority intersect with public law enforcement protocols. Failure to comply with this requirement can lead to serious legal ramifications for the private person involved, including potential charges of unlawful detention or false imprisonment, which underscores the need for acute awareness and adherence to procedural stipulations when engaging in acts of citizen's arrest.
- **Use of handcuffs allowed in certain cases (Sec.43 (3) BNSS):** The application of handcuffs to individuals accused of certain offenses is a procedural measure that is both legally justified and operationally necessary in the realm of law enforcement. Specifically, the use of such restraints is permitted in cases involving habitual or repeat offenders, individuals who have previously escaped from custody, or those implicated in serious criminal enterprises. This includes, but is not limited to, involvement in organized crime, acts of terrorism, drug - related offenses, and illegal possession or trafficking of firearms and ammunition. Moreover, handcuffing is deemed appropriate for individuals accused of heinous crimes such as murder, rape, and acid attacks, as well as financial crimes like counterfeiting of currency and coins. Additionally, perpetrators of human trafficking, sexual offenses against children, and various offenses against the state are also subject to this protocol. The underlying rationale for these measures is multifaceted; it seeks to safeguard public safety, ensure the integrity of the judicial process, and minimize the risk of further criminal activity during transit or while in custody.

National Human Rights Commission's Guidelines Regarding Arrest¹⁰

The National Human Rights Commission (NHRC) has taken significant strides in enhancing the procedural integrity surrounding the arrest of individuals by promulgating a comprehensive set of guidelines that emphasize the importance of upholding human rights throughout the arrest process. These guidelines are meticulously categorized into three distinct phases:

- (i) Pre - arrest,
- (ii) Arrest, and
- (iii) Post - arrest.

Each addresses critical aspects of the legal process to ensure fairness, transparency, and accountability. Apart from these guidelines, it also contains the mechanism for the effective implementation of these guidelines.

(i) Pre - arrest Guidelines

The National Human Rights Commission (NHRC) has laid down pre - arrest guidelines to ensure that the authority to arrest without a warrant is wielded judiciously and with a heightened sense of responsibility. According to these guidelines, law enforcement agencies must:

- a) First, establish reasonable satisfaction through preliminary investigation regarding the authenticity and bona fide nature of any complaint before proceeding with an arrest. This necessity underscores the principle that arrest cannot be justified merely by the existence of legal authority; instead, it must stem from a grounded conviction regarding both the accused individual's involvement in the alleged crime and the pressing need for an arrest.
- b) After **Joginder Singh's**¹¹ pronouncement of the Supreme Court, the reasonableness of the exercise of arresting power has become a readily justifiable issue, placing the onus on law enforcement to demonstrate that their actions are warranted.
 - In cognizable cases, arrests may be considered appropriate under specific circumstances that reflect the gravity of the offence, such as in instances involving serious crimes like murder, robbery, or rape, where there exists a legitimate concern that the suspect may evade justice if not promptly apprehended.
 - Furthermore, the potential for suspects to exhibit violent behaviour that endangers public safety, as well as the need to safeguard the integrity of an ongoing investigation—by preventing evidence destruction, witness tampering, or alerting other suspects—are additional factors that merit consideration in determining the necessity and justification for an arrest.
 - In summation, the application of arrest in cognizable cases demands a balanced approach, ensuring that the imperatives of law enforcement do not overshadow the rights and liberties of individuals, maintaining the rule of law as the cornerstone of a just society.

¹⁰ Available at: <http://nhrc.nic.in/Documents/sec-3.pdf>. Last visited on 21.12.2023. Also see: Badru Ram and Ors. vs State Of Rajasthan: RLW 2006 (4) Raj 3110, 2006 (4) WLC 734.

¹¹ Equivalent citations: 1994 AIR 1349, 1994 SCC (4) 260.

- c) The individual in question has consistently exhibited a pattern of criminal behavior, positioning them as a habitual offender whose propensity for unlawful activities presents a significant risk to public safety. Despite previous interventions and opportunities for rehabilitation, their repeated infractions suggest a deep-seated disregard for societal laws and norms. This trajectory of recidivism not only underscores the inadequacy of prior corrective measures but also highlights the imperative need for preemptive action (3rd Report of National Police Commission¹²).
 - d) In the context of law enforcement and criminal procedure, it is imperative to emphasize that, with the notable exception of heinous offenses that are categorically defined by the legal framework, the arrest of an individual should generally be seen as a measure of last resort. This principle underscores the importance of adopting a more nuanced approach to police interactions that encourages voluntary compliance over coercive measures. When a police officer formally issues a notice to a person, instructing them to attend the police station and stipulating that they must not leave the premises without explicit permission, it reflects an effort to balance the need for public safety and the rights of the individual. Such a directive not only seeks to maintain order but also serves to facilitate cooperation between law enforcement and the community, thereby fostering an environment where individuals can fulfill their civic duties without the undue anxiety and stigma that often accompany an arrest¹³.
 - e) Police officers conducting arrests or interrogations must prominently display clear identification and name tags that indicate their designations. This practice not only enhances accountability but also fosters public trust during interactions between law enforcement and community members¹⁴. The particulars of police personnel involved in the execution of arrests and subsequent interrogations must be documented contemporaneously in the register maintained at the police station. This provides a reliable record for future reference.
- Emphasizing the necessity of maintaining respect for the dignity of the arrested individual, the NHRC sternly prohibits public display or parading of arrested persons, affirming that such actions are unacceptable.
 - In terms of searches, the guidelines meticulously enumerate the expectations for police conduct, mandating that searches respect the person's right to privacy and be conducted without aggression. Specifically, provisions are made to ensure that searches of women are exclusively performed by female officers, reflecting an understanding of the importance of maintaining decency¹⁵.
 - Furthermore, the NHRC strongly discourages the use of handcuffs or leg chains except when absolutely necessary, aligning this directive with the binding legal precedents set forth by the judgment of the Supreme Court in **Prem Shankar Shukla v. Delhi Administration**¹⁶ and **Citizen for Democracy v. State of Assam**¹⁷.
 - In scenarios involving female arrestees, the presence of women police officers is highly recommended, particularly during nighttime arrests, with a clear directive to avoid such arrests during the vulnerable hours between sunset and sunrise¹⁸.
 - In circumstances involving children or juveniles, the guidelines are unequivocal in stating that no form of physical violence or intimidation is permissible; instead, police officers should engage the assistance of reputable members of the community to ensure that minors are treated with compassion and minimal coercion.
 - When an arrest occurs without a warrant, the individual must be informed of the grounds for their arrest in a comprehensible language, and proper documentation of these grounds must occur, allowing the arrested person access to a copy upon request¹⁹.
 - Additionally, individuals retain the right to have a known person informed of their arrest, a process that must be recorded by the police. Those apprehended for bailable offences should be made aware of their rights to bail as well as their entitlement to legal counsel, including provisions for free legal aid where necessary²⁰.
 - In addition to informing the individual arrested of his inherent rights, law enforcement authorities must ensure that he is aware of his entitlement to consult with and be represented by a lawyer of his choosing. Furthermore, it is imperative that the arrested party is informed about his right to receive legal assistance at no cost, provided by the state. Such communication is essential to uphold the principles of justice and protect the rights of the accused²¹.
 - A fast response is required to any requests for medical aid that are made upon arriving at the police station²². If needed, the medical evaluation should be conducted by a qualified female practitioner²³. The guidelines also stipulate a mandatory communication of arrest details to the police control room and relevant supervisory bodies to ensure oversight and accountability²⁴.

(ii) Arrest Guidelines

The National Human Rights Commission (NHRC) of India has established a comprehensive framework of guidelines intended to govern the conduct of police officers during arrests, reflecting an unwavering commitment to uphold human dignity, protect individual rights, and mitigate the potential for abuse of power within law enforcement:

- Central to these guidelines is the imperative to avoid the use of force while making an arrest; however, it does provide for the application of minimal force should the situation warrant, making it clear that any application of force should occur under stringent conditions aimed specifically at avoiding injuries to the individual being apprehended.

¹² Available at

¹³ Section 41-A, CrPC 1973 (Now Sec), BNSS 2023)

¹⁴ See Section 41-B (a) of Cr.P.C.1973

¹⁵ See also Section 51 (2), *ibid*.

¹⁶ AIR, 1980 SC 1535.

¹⁷ 1995 (3) SCC 743

¹⁸ See also section 46 (4), *ibid*.

¹⁹ See also Section 50, *ibid*.

²⁰ See also Section 41-B(c) and 50-A.

²¹ See also Section 41-D.

²² See also Section 53 & 54.

²³ See also Section 53 (2) & Proviso to Section 54.

²⁴ See also Section 53 & 54.

- In the interests of maintaining transparency and operational efficiency within law enforcement agencies, it is imperative that information regarding an arrest, including pertinent details about the circumstances leading to the apprehension as well as the specific location of detention, be communicated by the police officer executing the arrest to the police control room and the relevant District or State headquarters without undue delay²⁵.
- Upon the arrest of an individual, the arresting officer must duly record the presence or absence of any injuries on the arrestee in the arrest register. In cases where injuries are observed, a comprehensive description, including details regarding their cause, should be documented accurately. Both the officer and the arrestee are required to sign this entry. Furthermore, upon the arrestee's release, the officer shall provide a certificate confirming these details, ensuring a formal acknowledgment of the condition of the arrestee at the time of arrest.
- During the remand in police custody, the arrestee must undergo a medical examination conducted by a trained medical officer every 48 hours. This assessment must be performed by a doctor from the panel approved by the Director of Health Services for the respective state or union territory. Upon the arrestee's release from custody, a final medical examination is required, and a certificate detailing the presence or absence of any injuries must be issued, ensuring a thorough record of the arrestee's health status throughout their detention²⁶.

(iii) Post Arrest Guidelines

The National Human Rights Commission (NHRC) has established important guidelines to ensure the protection of individuals' rights following their arrest.

- It mandates that any person taken into custody must be presented before the relevant judicial authority within twenty - four hours, thereby safeguarding against unlawful detention.
- The arrested individual has the right to consult with legal counsel at any time during the interrogation process, reinforcing the principle of fair representation.
- Interrogations must occur in designated locations that are accessible and publicly notified by the government, ensuring transparency and accountability.
- The relatives or friends of the detainee must be informed about the interrogation site.
- The NHRC asserts that all interrogation methods must comply with principles that safeguard an individual's rights to life, dignity, and freedom, clearly forbidding any form of torture or humiliating treatment²⁷.

Judicial Viewpoint on Arrest Violations

In **Arnesh Kumar vs. State of Bihar and another**²⁸, the Supreme Court of India, while dealing with the concept of arrest, was forced to observe as follows: "Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it, and so do the police. There is a battle between the lawmakers and the police, and it seems that

police have not learnt its lesson; the lesson implicit and embodied in the Cr. PC. Following more than sixty years of independence, it is entrenched in its colonial image, predominantly viewed as an instrument of harassment and oppression rather than a supporter of the public. Courts have often underscored the necessity for prudence in the exercise of the severe authority of arrest, however, this has not produced the intended outcome. The authority to arrest significantly fosters its hubris, as does the Magistracy's inability to restrain it. The authority to arrest is a significant source of police corruption. The approach of arresting first and addressing subsequent matters is reprehensible. It has become a useful instrument for police officers who exhibit insensitivity or operate with ulterior motives".

The Court, Further, held that "Arrests are made by police personnel because they think they have the authority to do so. The arrest alters our feelings since it restricts our freedom, causes shame, and leaves us with permanent wounds. We assert that no arrest should occur just due to the offence being non - bailable and cognisable, so rendering it lawful for police officials to proceed. The existence of arrest authority is one matter; the rationale for its exercise is an entirely different issue. In addition to the authority to arrest, police personnel must be able to substantiate the rationale for such actions. An arrest cannot be conducted solely based on an allegation of an offence against an individual. A police officer should exercise prudence and wisdom by refraining from making an arrest without achieving reasonable satisfaction with the veracity of the allegation after conducting an inquiry. Notwithstanding this legal stance, the Legislature observed no enhancement. The number of arrests has not diminished. Ultimately, Parliament intervened, and based on the 177th Report of the Law Commission submitted in 2001, Section 41 of the Code of Criminal Procedure (now BNSS 2023) was implemented in its current form".

According to the legal framework that has been established, a law enforcement official is prohibited from arresting a person only on the basis of the belief that the person has committed a crime that is punished by imprisonment for a time that may be less than seven years or may extend to seven years, with or without a fine. The law enforcement officer is required to demonstrate why the arrest is necessary for any number of particular reasons before they can proceed with the arrest. These reasons include the necessity to prevent the individual from committing further offences, ensure proper investigation of the case, prevent the destruction or tampering with evidence, safeguard witnesses from intimidation or coercion, or ensure the accused's availability in court when required. This framework emphasises the importance of a careful and considered approach to arrest, balancing the rights of the accused with the need for effective law enforcement and judicial processes.

In addition, the law mandates that the grounds for the refusal to make an arrest must be documented in writing by the law enforcement officers. After some time, the court ordered the state to make the following statement: "In essence, the police

²⁵ See also Section 41 - C

²⁶ See also Section 55-A.

²⁷ See Article 21 of Indian Constitution & see also ICCPR, 1996 & UDHR, 1948 & Human Rights Act, 1993.

²⁸ (2014) 8 SCC 273.

officer must ask himself, 'Why arrest?' before making an arrest. Is it absolutely necessary? Which purpose will it fulfil? What end goal will it accomplish? Only after addressing these concerns and establishing one of the aforementioned conditions should the authority of arrest be invoked. In short, prior to making an arrest, police officers must possess plausible reasons, based on evidence and information, to believe that the suspect was responsible for the offence. Additionally, the police officer must determine that the arrest is essential for one or more objectives outlined in sub-clauses (a) to (e) of clause (1) of Section 41 of the Criminal Procedure Code, now encompassed by Section 35 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023".

In the context of the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, any arrest made by a police officer must comply with the stipulations outlined in Section 41 of the Code (Now Sec 35, Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023). Once an accused individual is presented before the magistrate, the onus lies on the police officer to provide a comprehensive account of the facts, reasons, and conclusions that underpin the arrest. The magistrate is, therefore, tasked with ensuring that the foundational conditions for the arrest, as established under Section 41 of the Code (Now Sec 35, Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023), have been adequately met. Only upon this determination can the magistrate authorise the continued detention of the accused. The magistrate's satisfaction must be duly recorded in the order of detention, even if expressed succinctly, as this documentation serves as a critical safeguard ensuring adherence to legal standards and the protection of individual rights.

Section 41A (now Section 35 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023) serves an essential role in the evolving landscape of criminal procedure by mitigating unwarranted arrests and the accompanying anxiety for the accused. This provision mandates that in instances where the arrest is not warranted under Section 41 (1) (Now Sec 35, Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023), the police must issue a notice requiring the accused to appear at a designated time and place. The law further stipulates that an accused who complies with this notice shall not face arrest unless the police officer, with documented rationale, deems such an arrest necessary. This procedural safeguard ensures that the conditions for arrest outlined in Section 41 (now Section 35, BNSS 2023) are meticulously adhered to, retaining the oversight of the magistrate to scrutinise the necessity for arrest. Thus, Section 41A (now Sec 35, Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023) exemplifies a balanced approach, prioritising the rights of the accused while maintaining the integrity of law enforcement.

The Apex Court has underscored the importance of exercising caution in the application of arrest provisions within the legal framework. Further, the court held that "non-compliance with the aforementioned directives shall not only subject the involved police officers to departmental discipline but also leave them responsible for contempt of court, which may be

prosecuted before the High Court with territorial competence". In this significant ruling, the Supreme Court of India recognised the importance of individual liberty by awarding compensation to a doctor and an advocate whose rights were infringed upon due to non-compliance with established legal protocols. The Court emphasized that the unlawful curtailment of personal freedoms not only leads to profound emotional distress—characterised by feelings of anguish, agitation, and disillusionment—but also constitutes a direct affront to an individual's identity, which is deemed inviolable under the Constitution. This judgement underscores the necessity for adherence to prescribed legal norms, reaffirming that any infringement upon liberty must follow due process to prevent such distressing violations and to uphold the fundamental rights enshrined in law²⁹.

4. Suggestions & Conclusion

The Indian police force faces an extraordinarily challenging environment as they navigate a landscape marked by deteriorating law and order, communal riots, political unrest, and the persistent threat of terrorism. The multifaceted nature of these issues necessitates not only a high degree of operational efficiency but also a profound understanding of the socio-political dynamics at play. In this context, the role of law enforcement transcends traditional crime prevention, demanding a delicate balance between maintaining public order and safeguarding civil liberties³⁰. To address the potential misuse of police authority regarding arrest, we propose a multi-faceted approach that emphasizes transparency and accountability as essential safeguards:

- As highlighted by the Hon'ble Apex Court of India³¹, To mitigate the misuse of police powers of arrest, it is important to foster a police culture that respects individual rights and upholds the principles of justice. To achieve this, it is essential to undertake a comprehensive restructuring of police training methodologies, ensuring that officers are not only equipped with law enforcement skills but also instilled with fundamental human values. A focused orientation programme that aligns police conduct with constitutional ethos will contribute significantly to developing a work culture that is both ethical and responsive to the needs of the community. Through such reforms, we can enhance the integrity of the police force while simultaneously protecting citizens from abuses of power.
- To enhance the integrity of police investigations, it is imperative to foster a cultural shift within law enforcement that prioritizes basic human values during interrogations. Officers must be trained to conduct inquiries ethically and without resorting to questionable practices.
- Introducing measures such as allowing the presence of the arrestee's legal counsel at certain stages of the interrogation process can promote transparency and accountability, effectively deterring the use of coercive techniques. By reinforcing these standards, we can ensure that investigations uphold the principles of justice and respect for human rights.

²⁹ Dr. Rini Johar & Anr. Vs State of M.P. & Ors. Writ Petition (Criminal) NO. 30 of 2015, Date of Judgment: June 03, 2016

³⁰ D.K.Basu Vs State of West Bengal (AIR 1997SC 610)

³¹ Prem Shankar Shukla v. Delhi Administration, [1980] 3 SCR 855, Sunil Batra Etc. v. Delhi Administration and Ors. Etc., [1979] 1 SCR 392.

- Additionally, as outlined in the Enforcement of Guidelines by the National Human Rights Commission, it is imperative to provide widespread publicity about the procedures governing arrests. This initiative aims to educate the public, thereby minimising the potential misuse of police authority during arrests. Enhanced awareness of procedural safeguards is essential for protecting individual rights and ensuring accountability within law enforcement practices³².
- The persistent colonial legacy in criminal jurisprudence has hindered the evolution of the police force, which should be regarded as a trusted ally of the community rather than an apparatus of oppression. While calls for reform frequently emphasize the need for the police to emanate trust and approachability, substantive change remains elusive so long as their powers are unrestrained. To foster a truly service - oriented police culture, it is imperative to reassess and restrict the scope of police authority, thereby enabling them to fulfill their role as protectors and collaborators with the citizens they serve³³.

The protection of human rights within India's criminal justice system remains a critical challenge that has garnered significant attention both domestically and internationally. Despite possessing a comprehensive legal framework designed to safeguard the rights of individuals, systemic issues such as custodial violence, delayed trials, arbitrary arrests, and deplorable prison conditions persistently undermine these rights, revealing a stark gap between legislation and practice. The important reforms introduced in 2024 by BNSS 2023 demonstrate a promising path toward rectifying these deep - rooted issues, yet the success of such reforms largely hinges on effective implementation and sustained political will. The necessity for a concerted effort from all stakeholders in the justice system cannot be overstated as India advances in modernizing its criminal justice infrastructure. It is imperative that, alongside these advancements, the focus remains steadfastly on fostering accountability, enhancing transparency, and ensuring equitable access to justice for all citizens, irrespective of their socio - economic backgrounds. Furthermore, the strategic integration of technology within the justice system, coupled with an unwavering commitment to human rights, has the potential to significantly transform the landscape of criminal justice in India. Such a transformation would not only enhance operational efficiency but also promote an environment that upholds the dignity and rights of every individual, reinforcing the notion that justice is not merely a privilege for the few but a fundamental right afforded to all.

³² Section 35, BNSS 2023.

³³ Nawsagaray, Nitish. (2022). Arrest: Necessity and Justification. Available at

https://www.researchgate.net/publication/357909106_Arrest_Necessity_and_Justification accessed on 20 November 2023.