
A JURISPRUDENTIAL STUDY OF ARREST, CUSTODY AND INVESTIGATION UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023.

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ABSTRACT

The very foundations of the Bharatiya Nagarik Suraksha Sanhita, 2023 are based and drafted on the very legal framework laid down by the Code of Criminal Procedure, 1973. The Bharatiya Nagarik Suraksha Sanhita, 2023 tends to modify and restructure the Indian Criminal Justice system with the help of introduction of new provisions such as that of the mandatory forensic investigation for certain type of offences, mandatory Audio – Video graphing of the Processes of investigation, expansion of the police powers by extending the scope of police custody. However, the Bharatiya Nagarik Suraksha Sanhita, at the forefront tries to balance the very arbitrary exercise of powers by the police to that of non-violation of fundamental rights of the individual. This balance is necessary to be maintained in the society in order to avoid a tyrannical situation. With the vast evolution of the society, technology has become an integral part of it, the need to integrate the technology with that of the procedural criminal law of the country has been fulfilled with the enactment of the Bhartiya Nagarik Suraksha Sanhita, 2023. With the newly introduced provisions, the investigation processes have become strengthened and transparent and as such threats of evidence tampering does not subsist anymore at a greater level. Even though the Bharatiya Nagarik Suraksha Sanhita aims at maintaining the equilibrium between the exercise of powers and the individual liberty of the Citizens, the true test of its enforcement would lie in making an effective infrastructure in order to effectuate this pragmatic shift in the paradigm of the Indian Criminal Justice system.

Keywords: BNSS 2023, Criminal Jurisprudence, Expanded and enhanced Police powers, Tussle between Individual Rights and Police Powers, Forensic investigation.

1. INTRODUCTION

“Procedure Is the Handmaid of the Justice and Not its Mistress”

- *Justice Krishna Iyer.*

The shift from the colonial era laws to that of the new modernised laws with respect to the laws forming the very central aspect of the criminal justice system is interesting. With the Code of Criminal procedure, 1973 being revoked and replaced by that of the Bharatiya Nagarik Suraksha Sanhita, 2023¹, the criminal justice system in India marks a significant and pragmatic shift of paradigm from the colonial mindset to that of the victim centric laws. The code of criminal procedure formed an integral part of the India’s criminal justice system, it was primarily drafted to serve the colonial purposes and was merely a book with provisions drafted only in order to administer criminal justice in India, though it served its purpose for decades, there was a firm necessity to frame laws with citizen centric approach². Even though the newly enacted laws are based upon the framework of the colonial era laws, the intent of meeting the ends of justice has been changed. The present article aims to study the provisions of the arrest, custody and investigation in light newly enacted Bharatiya Nagarik Suraksha Sanhita.

2. SCOPE OF THE RESEARCH

The scope of the present research is limited and it primarily focuses on-

1. study of the provisions of the arrest under the Bhartiya Nagarik Suraksha Sanhita, 2023
2. Study of the provisions of custody and remand under the Bhartiya Nagarik Suraksha Sanhita, 2023.

3. OBJECTIVES OF THE RESEARCH

The primary objectives of the present research include –

- A. To study and analyse the provisions of arrest, custody and investigation.

¹ The Bharatiya Nagarik Suraksha Sanhita, 2023, Act No. 46 of 2023, Acts of Parliament, 2023 (India).

² Sameer Singh, *Transforming Criminal Procedure: An Analysis of the Bharatiya Nagarik Suraksha Sanhita, 2023*, 7 Indian J.L. & Legal Res. 3272 (2026).

- B.** To effectuate a jurisprudential study of the provisions of the arrest, custody and Investigation between the Code of criminal procedure and the Bharatiya Nagarik Suraksha Sanhita.

4. SOURCES OF DATA COLLECTION –

The primary sources of data collection include –

- 1.** Bare act and statute of the Code of Criminal Procedure, 1973.
- 2.** Bare act and statute of the Bharatiya Nagarik Suraksha Sanhita, 2023.
- 3.** Constitution of India.

The secondary sources of Data collection Include –

- 1.** Legal commentaries
- 2.** Legal Articles
- 3.** Case laws of the Hon’ble supreme court of India.
- 4.** Online legal databases.

5. JURISPRUDENTIAL ASPECT

Jurisprudence in a layman’s language would mean possessing significant knowledge of law or the subjects of the law, it is derived from a Latin term ‘*jurisprudentia*’. Concerning the present study, Jurisprudence helps us understand whether the law is a command of the supreme or is it considered as a tool to maximise the welfare of the society and the individuals. Concerning the present research, two of most important historical figures and their theories have been evaluated, who are as follows.

1. SIR JEREMY BENTHAM –

Sir Jeremy Bentham is centre figure considering the study of law, he is also considered as the father of codification of laws. Sir Bentham proposed for the laws that should be clear, unambiguous, uniform and to be enforced with the primary intent being to minimize the pain

the society and to maximise the pleasure in the society³.

Bentham prioritised his ideas to frame the laws concerning the citizen centric approach, the very approach on which the Bharatiya Nagarik Suraksha Sanhita has been formulated. Bentham was a staunch believer and prioritised meeting the ends of justice over stricter interpretation of laws.

Bentham Proposed for his theory of Utility or the theory of utilitarianism that focuses on diminishing the pain from the society and maximising the happiness in the society. The code of criminal procedure, 1973, was a piece of legislation that mandated stricter administration of laws over the individuals, however, with the enforcement of the Bharatiya Nagarik Suraksha Sanhita, the intent seems very clear that the criminal justice system now seeks accountability, transparency and a citizen centric approach towards meeting the ends of justice.

Bentham's jurisprudence terms the Code of criminal procedure as an adjective cum clumsy law, whereas the Bharatiya Nagarik Suraksha Sanhita is a uniform, rationalised law ensuring ends of justice.

2. SIR JOHN AUSTIN –

Sir John Austin happened to be a student of sir Jeremy Bentham, John Austin proposed his classic theory known as the command theory of law. As per the version of the Austin, the laws are nothing but the command of the supreme that are backed by the sanctions or punishments upon disobeying of the command⁴.

Austin proposed for studying the law as it is and not what it means to be, through the Austinian perspective the code of criminal procedure and the Bharatiya Nagarik Suraksha Sanhita are the commands of the supreme directed to the citizens or the society necessary for maintaining of public order.

Applying the Austinian theory in the present research, the provision of the remand has been more stringent in the Bharatiya Nagarik Suraksha Sanhita to that of the Code of Criminal Procedure. Thus, considering it as a command of the supreme backed by the remand for

³ V.D. MAHAJAN, JURISPRUDENCE AND LEGAL THEORY 123 (V.B. Coutinho ed., 6th ed. 2022).

⁴ V.D. MAHAJAN, JURISPRUDENCE AND LEGAL THEORY 123 (V.B. Coutinho ed., 6th ed. 2022).

disobeying the command.

6. CONSTITUTIONAL PROVISIONS

The constitution of India acts as the rule of law in India, it governs all the other subjects based upon which the laws in India are framed. The articles 14, 20, 21, and 22 provides for governing of the provisions of arrest, custody and investigation which forms a central aspect for the present study.

The constitution of India, primarily through these provisions provides for the fair exercise of powers by the police machinery so as to balance the exercise of powers to that of the individual liberty of the citizens when it comes to centralising the provisions of arrest and custody which are always in a tussle with the fundamental rights of the individuals.

Article 14 of the Indian constitution⁵ speaks about every person being equal in the eyes of law and every person treating the law as equal, Article 20⁶ gives the accused persons protection in a form against conviction from revoked laws, double jeopardy and his self-incrimination. Whereas, Article 21⁷ speaks about every individual having a right to live their lives with dignity and protection⁸.

In consonance of these constitutional provisions Article 22⁹ speaks about the rights to accused persons with respect to unlawful arrests and detention, in such cases, the constitution of India provides for furnishing of grounds of arrest to the arrested individual and for the arrested individual to be defended by a lawyer of his choice¹⁰. The constitutional provisions protect the human being or the accused persons from arbitrary exercise of powers by the police in the form of custodial violence¹¹, and extra judicial confessions¹².

With the BNSS being enforced, the custody of the accused persons during the course of investigation has been enhanced from first 15 days, a provision which existed in the Code of criminal procedure to extended 60 days by the BNSS, thus tussling directly with the Article 21

⁵ INDIA CONST.art.14.

⁶ INDIA CONST.art.20.

⁷ INDIA CONST.art.21.

⁸ NARENDRA KUMAR, CONSTITUTIONAL LAW OF INDIA 123 (10th ed. 2018).

⁹ INDIA.CONST.art.22.

¹⁰ INDIA CONST. art. 20, cl.1.

¹¹ INDIA CONST.art.21.

¹² INDIA CONST. art. 20, cl.3.

of the constitution of India¹³.

The constitution of India mandates for a balance between the arbitrary exercise of power to that of the hampering of individual liberty of individuals.

INTRODUCTION TO THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

The code of criminal procedure continued to dominate the criminal justice system for decades, the Code of Criminal procedure, 1973 is a replacement to the colonial era code of criminal procedure 1898, which was drafted on the colonial foundations. The Bharatiya Nagarik Suraksha Sanhita even though tends to modernise the criminal justice system, its legal base and roots are vested in the code of criminal procedure, 1973¹⁴.

The code of criminal procedure during the time of its existence had over 484 sections which were bifurcated in almost 37 chapters, whereas the Bharatiya Nagarik Suraksha Sanhita has over 531 sections which have been bifurcated in over 39 chapters. This significant increase in the provisions marks not only the heavy weight of the Bharatiya Nagarik Suraksha Sanhita, instead it tends to modernise the criminal justice system.

In difference to the Code of criminal procedure, the Bharatiya Nagarik Suraksha Sanhita now recognises and specifically mandates for the concept of Zero F.I.R, forensic investigation of the evidence and the digitisation of the investigation process.

PROVISIONS OF ARREST AND CUSTODY

The term arrest means deprivation of a Human's personal liberty through lawful means and measures¹⁵, the primary purpose of effectuating an arrest is to hold the accused accountable for the crime committed¹⁶ whereas the term custody implies having physical custody of the accused or the criminal by the police machinery or the judiciary. The accused person is arrested in order to secure his presence during trial when the accused person possess a significant flight risk or

¹³ Tauheed Alam & Afkar Ahmad, *Comparative Analysis of Remand Provisions Under the CrPC and the BNSS: Legal Implications and Challenges*, 1 J.L. & A.I. 1 (2025).

¹⁴ Sameer Singh, *Transforming Criminal Procedure: An Analysis of the Bharatiya Nagarik Suraksha Sanhita, 2023*, 7 Indian J.L. & Legal Res. 3272 (2026).

¹⁵ Black's law Dictionary, 5th., vol. II, para 99.

¹⁶ Gurudev Sahil, Shraddha Yadav & Ravi Kumar Yadav, *A Comparative Study on the Law of Arrest and Rights of Arrested Persons*, 10 J. EMERGING TECHS. & INNOVATIVE RSCH. f10 (2023).

the police officers often avoid the tampering of the evidence by the accused.

The provisions of the arrest and the custody are always in a tussle with the fundamental rights enshrined by the Indian constitution, these are the provisions through which the police officers can misuse or arbitrarily exercise these powers conferred upon them thereby, causing any unlawful detention or arrest may hamper the individual liberty of the accused or the person.

The primary intent to revoke the code of criminal procedure and to enact the Bharatiya Nagarik Suraksha was to balance the arbitrary exercise of power with that of the individual liberty of the citizens¹⁷. To study these provisions, we might have to study the provisions under the code of Criminal procedure first and then of the Bharatiya Nagarik Suraksha Sanhita.

PROVISIONS OF ARREST AND CUSTODY UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023.

The Bharatiya Nagarik Suraksha Sanhita provides for a structured framework with respect to the provisions of arrest and custody as compared to that of the code of criminal procedure, 1973. However, the Bharatiya Nagarik Suraksha Sanhita is based on the very foundations of the Code of criminal procedure, it has somewhat introduced new provisions of arrest and custody.

The Bharatiya Nagarik Suraksha Sanhita provides for arrest of Accused persons without warrant upon commission of a cognisable offence¹⁸. The Bharatiya Nagarik Suraksha Sanhita, now mandates the police machinery to issue a notice to the accused person so as form him to appear¹⁹ before the police machinery instead of directly arresting the accused person who is accused of committing a crime punishable with imprisonment less than 7 years.

The Hon'ble Supreme court of India, through a Judicial Lens have given various guidelines to the police machinery while arresting an individual, these guidelines stand at the very forefront where upon violation of which, the entire procedure might come into question. The Hon'ble supreme court of India in "D.K. Basu v. State Of West Bengal²⁰, have provided exhaustive guidelines which include mandatory visible identity tags of the police officials while arresting the accused, mandatorily preparation of arrest memorandum which is supposed to be attested

¹⁷ *BNSS That is to Replace CrPC Explained with Key Highlights*, SCC ONLINE BLOG (May 5, 2024), <https://www.scconline.com/blog/post/2024/05/05/bnss-that-is-to-replace-crpc-explained-with-key-highlights/>.

¹⁸ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 35.

¹⁹ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 35(3).

²⁰ (1997) 1 S.C.C. 416 (India).

by two independent witnesses, a friend or relative of the accused is supposed to be informed about his arrest, the arrested accused has got a right to consult his lawyer. These guidelines tend to protect the very fundamental rights²¹ of the accused persons enshrined under the Indian constitution.

The Hon'ble supreme court of India has from time and again rooted for the individual liberty of the citizens of the country, while the citizens may criticise the Supreme court for its decisions or may not appreciate the Hon'ble supreme court for its decisions. The hon'ble supreme court has held that, only in rarest of rare cases where handcuffing is necessary, the accused should be handcuffed or his face should be covered²².

The Police machinery has to mandatorily inform the arrested accused person the grounds and the reason upon which he is being arrested²³ and the police machinery shall also inform of the arrest of the accused person to his friend, relative or family and the place where the accused is detained²⁴.

After the arrest of the accused person is made, the accused person has to be medically examined by a Medical officer²⁵ or a registered medical practitioner at the local government hospital²⁶, thereafter, within the first 24 hours of the arrest of the accused person²⁷, the arrested accused has to be produced before the magistrate for remand purposes, thereafter, the magistrate shall order the custody of the arrested individual to be either with the police or in the Judicial custody²⁸.

The Bharatiya Nagarik Suraksha Sanhita now mandates for extended police custody as compared to the Code of criminal procedure; the Bharatiya Nagarik Suraksha Sanhita provides for the police custody of the accused extending to over 60 days under special circumstances²⁹.

The Hon'ble supreme court of India through a Judicial lens has criticised the police machinery at times, the Hon'ble supreme court of India in "Rudul Shah v. State of Bihar & anr."³⁰ let go

²¹ INDIA. CONST. arts. 21,22.

²² Prem Shankar Shukla v. Delhi Administration AIR 1980 SC 1535 (INDIA).

²³ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 47.

²⁴ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 48.

²⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 53.

²⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 54.

²⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 57.

²⁸ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 187.

²⁹ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 187.

³⁰ AIR 1983 SC 1086 (INDIA)

the accused scott free after he was kept in prison for 14 years even after his acquittal, thus making it a classic case where the arbitrary exercise of power hampered and tampered the individual liberty of the citizen.

The very recent trend that was observed was not providing the grounds of the arrest to the accused which lead to serious discrepancy in the entire procedure, the Hon'ble Supreme court of India recently in its significant ruling of "Vihaan Kumar v. state of Haryana"³¹. The grounds of arrest have to be specifically explained and stated to the accused himself and not to any other person, these constitute a fundamental aspect of the Indian constitution³², and of the code of Criminal Procedure, 1971³³.

PROVISIONS OF INVESTIGATION UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023.

Investigation is the central aspect of criminal justice system, investigation refers to the process of extracting the truth and collection of evidence³⁴, recording of statement of witnesses, it is an important stage. Improper investigation may lead to the offender walking Scott free and the purpose of meeting ends of justice would be difficult³⁵.

The provisions of Investigation differ in Bharatiya Nagarik Suraksha Sanhita to that of the Code of Criminal Procedure, 1973. While the code of criminal procedure, 1973 provides for comprehensive and strict guidelines for the investigation whereas the Bharatiya Nagarik Suraksha Sanhita introduces a newer technologically integrated process for investigation, with the introduction of newer provisions such as that for zero – F.I.R, Forensic investigation, Videography of crime scene and etc³⁶.

While any cognisable offence is being committed, the Police machinery is bound to record the First information given by the victim or the complainant and register the F.I.R³⁷. The Hon'ble Supreme court of India has mandated through a judicial lens in it's landmark Judgement of

³¹ 2025 INSC 162 (India).

³² INDIA. CONST. art. 21, cl.1.

³³ CODE CRIM. PROC. § 50.

³⁴ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 2(1)(j).

³⁵ *Ineffective Probes Allow Criminals to Go Scot-Free*, THE HINDU (Dec. 3, 2011), <https://www.thehindu.com/news/national/Ineffective-probes-allow-criminals-to-go-scot-free/article16043519.ece>.

³⁶ Arshad Alam, *Technological Transformation in Criminal Investigation: Navigating Progress and Privacy Under the Bharatiya Nagarik Suraksha Sanhita, 2023*, 7 INDIAN J.L. & LEGAL RES. 4296 (2025).

³⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 173.

“*Lalita Kumari v. Govt. Of Uttar Pradesh & Ors.*”³⁸ that the Police Machinery is bound to register the F.I.R if upon the first information given by the victim or the complainant it appears that the cognisable offence is prima facie committed by the accused.

The Bharatiya Nagarik Suraksha Sanhita, 2023, now introduces conduct of preliminary inquiry within 14 days of receiving of the first information by the police officer if the prescribed punishment for the offence committed is more than 3 years but less than 7 years and does not exceed 7 years³⁹. The primary foundation is that with the aid of preliminary inquiry the police officer or the investigating officer tests whether any prima facie offence is made out as alleged.

The police machinery after the registration of the F.I.R, can search and collect the evidence at the place of crime and record statements of the witnesses without any prior sanction or permission from the magistrate⁴⁰. The police officer can examine and record the statements of the witnesses in order to effectuate the investigation⁴¹.

The Bharatiya Nagarik Suraksha Sanhita, 2023, in order to strengthen the investigation processes and the criminal justice system in entirety, now introduces a specific provision forensic investigation of and the collected evidences, for offences for which the prescribed punishment exceeds 7 years of Imprisonment, such forensic investigation is supposed to be conducted by an forensic expert by visiting the crime scene and the entire investigation has to be mandatorily audio-video graphed⁴².

A wide variety of Forensic evidences are admissible while conducting of trials in Indian courts, variety of these include in the form of DNA evidence, Ballistic evidences, toxicology, evidence with respect to finger prints and printed materials⁴³. The newly incorporated provision for forensic investigation strengthens the investigation process by the Police so as to avoid shoddy investigations.

The video graphing of the forensic investigation minimises the fallacy of tampering of the evidence and makes the entire process transparent⁴⁴, thus making it a credible piece of evidence

³⁸ AIR 2014 SC 187 (India).

³⁹ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 173(3).

⁴⁰ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 175.

⁴¹ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 180.

⁴² The Bharatiya Nagarik Suraksha Sanhita, 2023, § 176(3).

⁴³ Samridhi Mittal, *Role of Forensic Evidence under BNSS 2023: Enhancing Credibility in Criminal Investigations*, 8 INT'L J.L. MGMT. & HUMAN. 547 (2025).

⁴⁴ *Delhi Forensic Lab Prepares for Surge in Crime Scene Investigations Under New BNSS Laws*, ECON.

enough to corroborate for the commission of the offence by the accused thus thereby securing his conviction in the courts of law.

The Police machinery can, search and seize the credible evidence of sterling quality in order to effectuate and assist the prosecution for securing the conviction of the accused⁴⁵, while conducting such search and seizure, the Bharatiya Nagarik Suraksha Sanhita now makes a specific provision for audio – video recording of the search and seizure^{46,47}. While the entire procedure of investigation is being carried out, the police officers or the officer investigating the crime has to mandatorily maintain a diary which shall include the details and progress of the investigation⁴⁸.

The police cannot investigate the commission of a non-cognisable offence until and unless the magistrate gives permission to⁴⁹. Upon conclusion of the Investigation process, the police officer or the investigating officer has to file the final report cum chargesheet as a compilation of the investigation completed by him in the court of law for as to the trial to be proceeded against the accused⁵⁰.

SUGGESTIONS AND RECOMMENDATIONS

We propose for the following suggestions and the recommendations. -

1. Issuing of Guidelines by the Parent High courts to each and every magistrate to record reasons for extension of police custody beyond 15 days.
2. Setting up of Forensic Investigation units within the local jurisdiction of the Chief Judicial Magistrates so as to strengthen the infrastructure with respect to the forensic investigation.
3. First time offenders accused of committing of offence where prescribed punishment is less than 7 years to be shown leniency by way of not handcuffing, and bail to be made a rule.

TIMES (July 4, 2024), <https://economictimes.indiatimes.com/news/india/delhi-forensic-lab-prepares-for-surge-in-crime-scene-investigations-under-new-bnss-laws/articleshow/111482676.cms>.

⁴⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 185.

⁴⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 105.

⁴⁷ Director General of Police, Manipur, *Standing Order No. 197: Standard Operating Procedure (SOP) on Audio-Visual Recording* (Mar. 2, 2025).

⁴⁸ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 192.

⁴⁹ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 174.

⁵⁰ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 193.

CONCLUSION

The Bharatiya Nagarik Suraksha Sanhita, 2023 tends to break the colonial shackles of the Indian criminal justice system. The very foundations of the Indian Criminal justice were laden on the code of criminal procedure for the longest time in India. The code of criminal procedure which was drafted with the colonial mindset consisted irregularities. With the enactment and enforcement of the Bharatiya Nagarik Suraksha Sanhita, 2023, we have not merely come out of that colonial mindset, but with its enforcement, the Indian criminal Justice system has been strengthened. With the changing needs of the society and a rapid fast technological advancement, the Bhartiya Nagarik Suraksha Sanhita with the incorporation of new provisions tends to adapt and integrate the technological advancements. However, the very test of effectiveness of these newly incorporated would lie with the administrators as considering the current Situation, even though we have the laws to meet the ends of Justice, we lack infrastructure in order to meet the ends of justice.