
RIGHT OF ARRESTED PERSONS UNDER BNSS: A HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is a major change in the Indian criminal justice system because the law replaces the colonial-era Code of Criminal Procedure, 1973. The provisions of arrest are among the most impactful, as it stands as one of the stages where the force of coercion of the State collides the most with the freedom of individual people. Not only is human dignity, personal autonomy and procedural fairness, which are central to constitutional and international human rights law, implicated by arrest but they are suppressed as well. The paper discusses the rights of persons in arrest under the BNSS in the human rights perspective by arguing whether the new system is sufficient to defend constitutional rights in Articles 21 and 22 of the Indian Constitution and falls within the international human rights norms. Through critical evaluation of statutory provisions, judicial interpretations and global norms, the paper aims at determining whether or not the BNSS signifies a substantive improvement in the protection of persons arrested or simply a redesigning of the already existing procedural security provisions. Another important issue contained in the study is the problem of implementation and a rights approach to arrest is suggested, which would reconcile effective prosecution and the need to safeguard human dignity.

Keywords: Arrest, BNSS 2023, Human Rights, Personal Liberty, Due Process, Criminal Procedure.

1. INTRODUCTION

1.1 Replacement between the CrPC, 1973 and the BNSS, 2023.

The criminal procedural system in India has traditionally been regulated by the code of criminal procedure, 1973 (CrPC) which was based to a great extent, in its structure and philosophy, on colonial law administration. Although the CrPC was subject to a regular revision, its principles of policing and arresting and investigating still were rather state-centered, thus focusing not on the rights of people, but on control and order. To address structural critiques about delay, rigidity of the procedures and lack of protection of the rights, Parliament passed the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), whereby the designated aim was to modernise criminal procedure and transform it into a more citizen-focused one.

The BNSS is aimed at rephrasing the procedural law within the constitutional framework, especially in regard to promoting transparency, accountability as well as applying technology in administering criminal justice. The new name is not just changing the name of the CrPC rather it is an effort to re-calibrate the relationship between the individual and the State primarily during the arrest, detention, and remand phases. Since arrest was the initial and frequently the most intrusive State authority authority over an accused individual, the character of the way in which the BNSS covers arrest-associated rights has a special role to play.

1.2 Arrest as a Key Human Rights Issue.

Arrest holds a special niche in the criminal procedure since it consists of imminent withholding of personal freedom without subsequent conviction. Human rights-neutral should not relate to arrest because it is a way of coercion that has a direct impact on the physical liberty of the person, his or her customary respect and psychological integrity. Arbitrary or disproportional use of arrest power: Arbitrary and disproportional use of arrest power is potentially subject to severe human rights violations, such as unlawful arrest, custodial violence and abuse of power.

The International rights for humans understands this weakness and considers an arrest to be an extraordinary action that should be rigorously controlled by the legislature. The universality of instruments including the UDHR and the international covenant on civil and

political rights renders the concept of arbitrary arrest as an illegal act but demands that the procedure of the arrest ought to be reasonable, proportionate, and lawful. The human rights implications of arrest, in an Indian context should not limit itself to legality but insist that said act must be justified in a fair, reasonable and consistent manner with procedural safeguards.¹

1.3 Relevance of the Rights of Arrested Privy to a Constitutional Democracy.

The constitutional governance by the rule of law provides that in a constitutional democracy the validity of the State power lies on its recognition to the constitutional guarantees. Arrested persons entitle is an inseparable part of this system since it serves as a check on an arbitrary exercise of executive power. This commitment is reflected in reports 21 and 22 of the Indian Constitution since they enforce the securing of personal liberty, protection against arbitrary arrest, and the right to legal representation. The judicial interpretation has gone even further to add to these guarantees dignity, fair procedure, and humane treatment at the time of arrest and detention.

The fact that the rights of arrested individuals are fully preserved is not opposed to the successful law upholding; on the contrary, it strengthens the trust of the citizens in the criminal justice system. A process that upholds human dignity and due process increases legitimacy of criminal investigations and ascertains the criminal process is not oppressive in nature. In that regard, the rights of arrested individuals play a checkpoint role in the constitution, and as such, the crime control agenda must not be pushed to the detriment of the principles of liberty, equality, and justice.

1.4 Research Problem and Objectives

Despite extensive constitutional and judicial safeguards, the practice of arrest in India has often been criticised for its arbitrary application and poor implementation of legal protections. The introduction of the BNSS raises an important question as to whether the new procedural framework meaningfully advances the human rights of arrested persons or merely restates existing safeguards without addressing structural deficiencies. The central research problem of this study is to examine whether the BNSS adequately incorporates human rights principles in regulating arrest and whether it strengthens the protection of arrested persons in

¹ Universal Declaration of Human Rights, arts 3 & 9; International Covenant on Civil and Political Rights, art 9.

practice.

Accordingly, the objectives of this paper are:

- (i) to analyse the provisions of the BNSS relating to arrest from a human rights perspective;
- (ii) to examine the constitutional and judicial foundations of arrest-related rights in India;
- (iii) to assess the compatibility of the BNSS with international human rights standards; and
- (iv) to identify gaps and suggest measures for ensuring effective protection of arrested persons' rights.

1.5 Methodology

The research methodology in this study is a doctrinal research study, which is based on analytical analysis of the statutory provisions, constitutional documents, and judicial rulings. The primary sources include the Bharatiya Nagarik Suraksha Sanhita, 2023 besides applicable clauses in the constitution, the most important decisions of the supreme court and high courts with regard to the aims of the SC and high court respectively.. The legal framework has been put into context through consultation of secondary sources, including books, journal articles, reports of law commissions, international human rights weapons, etc, to criticise the laws.

Besides this, the paper also uses a human rights-based analytical methodology evaluating the contents of the arrests in the light of dignity, liberty, the due process and proportionate as articulated with the provisions under the international human rights law. Such an integrated approach to methodology would allow a normative assessment of the BNSS and shift the focus away from the description of the procedure to consider the consequences of the protection of basic human rights effect.

2. Concept of Arrest and Human Rights

2.1 Meaning and purpose of Arrest

Arrest, as a legal term, means taking a person into custody by lawful authority, either to ensure his or her appearance before a competent court or for overcoming a criminal investigation. Although criminal procedure statutes are what give the formal mechanics to arrest, in reality its real meaning is the assertion of State power over the body and movement of the individual. Arrest is not an end in itself and is a means of securing the administration of

justice through prevention of absconding or making investigation or compliance with the judicial process.

However, the legitimacy of arrest is not derived only from the statutory authorisation but its conformity with constitutional and human rights norms. Modern criminal jurisprudence is increasingly coming to appreciate that arrest should be used as an exceptional measure, and only when alternatives that are less intrusive are not sufficient. The purpose of arrest must therefore be distinguished from punitive detention as punishment can only follow adjudication, not precede it.²

2.2 Arrest as a Restriction on Personal Liberty

Arrest involves one of the most direct limitations on personal liberty allowed by law. Personal liberty, personal liberty sanctioned under art. 21 of Indian Constitution includes freedom of movement, integrity of bodily person, right to live with dignity. Any kind of arrest, legal or unlawful, brings with it the immediate suspension of these freedoms and the submission of the individual person to the physical forces of the State.

It has been held by the Supreme Court of India over and over again that deprivation of liberty must be justified by a procedure which is fair, just and reasonable.⁴ It is thus impossible to consider arrest as a routine administrative step which can be done at will; rather it is a constitutionally sensitive act that needs to be made acceptable by a force of strict scrutiny. In the human rights context, the presumption of innocence adds to this presumption that an arrested human-being will be entitled to all human fundamental rights save for those rights unavoidably limited by the law-holding of human subjects. The very fact of arrest does not turn an individual into a rightless subject of State authority.

2.3 Arrest, Human Dignity & Bodily Autonomy

More crucial than the empirical reality of confinement, arrest carries enormous consequences for the dignity of the person, the autonomy of the body. Human dignity, now well recognised as a fundamental value in the Constitution, requires that every person must be treated as an end in themselves, as opposed to as a means to meet institutional goals.³ Arrest

² *Joginder Kumar v State of Uttar Pradesh*, (1994) 4 SCC 260.

³ *Francis Coralie Mullin v Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

practices that involve humiliating, using unnecessary force, exhibiting in public or degrading treatment directly add to this principle.

Bodily autonomy, which embraces one's control over his physical person, is also compromised at the point of arrest. While a certain element of restraint is inherent within the process, human rights law requires that this restraint be as minimal as possible and that it be strictly necessary. The Supreme Court has underlined that even persons in custody have the right to dignified treatment, the right to be kept from torture and to be treated humanely.⁶ This is an important way of looking at a situation in which the arrest process does not simply constitute as a mere procedural matter, but rather a point of intersection where the State's commitment to constitutional morality and human rights is put to the true test.

2.4.2 Principle of Necessity

The principle of necessity requires use of arrest only where there is a real need to serve some legitimate purpose of criminal justice. Arrest cannot be justified on the existence of statutory power alone but must be necessary in the particular circumstances of the case.⁴

Judicial pronouncements have once again and again repeated warnings against the danger of making arrests mechanically and ordering detentions without allowing them to appear before courts of law as a substitute for investigation or a method of exerting pressure. The necessity principle thus requires law enforcement authorities to bear in mind whether a project such as a notice of appearance or summons would be sufficient, thus diminishing the necessity for deprivation of liberty.

2.4.3 Principle of Proportionality

Proportionality In the case of arrest, it was held that the manner and extent of arrest must be proportional to the nature and gravity of the alleged offence. Excessive force, extended detention or indiscriminate use of the powers of arrest is contrary to this principle because it imposes more than the minimum burden on liberty justified by the circumstances.

From a human rights perspective, proportionality is a balancing mechanism between interest from the society in controlling crime and the right of the individual to freedom. Arrest

⁴ *Arnesh Kumar v State of Bihar*, (2014) 8 SCC 273.

for minor or non-violent offences, without strong justification, raises great suspicions of disproportionality and arbitrariness.

2.5 Principle of Due Process

Due process gives procedural substance to the arrest-related human rights protections. It involves the requirement of arrest is accompanied by safeguards including the timely information of the reason for the arrest, the right to legal representation, production before a judicial authority and protection from ill treatment.

The development of due process jurisprudence in India has made arrest from a strictly executive function to one under constant judicial supervision. This ensures that deprivation of liberty is not only lawful, but also accountable, transparent and humane. Due process, thus, serves as a guarantee of constitution and as a human rights obligation on the State.

3. CONSTITUTIONAL FRAMEWORK GOVERNING ARREST IN INDIA

3.1 Article 21: Right to Life and Personal Liberty

Article 21 of the Indian Constitution occupies a central place in regulating the power of the State to arrest because it provides that no person shall be deprived of his life or personal liberty except according to a procedure established by law. Initially interpreted in a narrow and formalistic way, Article 21 has been subject to a transformative expansion through judicial interpretation which has evolved into a featured repository of substantive and procedural human rights.⁵

The Supreme Court has made it clear that the "procedure" envisaged under Art. 21 must be fair, just and reasonable, thereby ruling out any attendance of mere compliance with the law as a means of justifying deprivation of liberty.² Arrest, being a direct interference with personal liberty, must therefore be on a standard of not only legality, but also constitutionality, inasmuch as it must be fair and non-arbitrary. This interpretation enshrines the dignity of the human person, the rationality of the human act, and the proportionality of the conditioning of the arrest.

⁵ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966).

3.2 Article 22(1) and 22(2): Safeguards against Arbitrary Arrest

Article 22 envisages special constitutional safeguards to persons who are arrested in supplement to the general guarantee of personal liberty contained in Art. 21. Article 22(1) imposes a duty of providing an arrested person the reason of arrest as soon as possible, and not to deny him right to consult and defend by a legal practitioner of his choice. Article 22(2) further prescribes that every person arrested must be brought before the nearest magistrate within twenty-four hours of his arrest excluding the time taken in the journey.

These are safeguards intended to forestall secret or protracted detention and this requirement pertains to subject executive action to judicial scrutiny at the earliest opportunity. Ability to demand timely production preliminary to magistrate's action The requirement of timely production stands as a constitutional checkpoint, in order to ensure that arrest is not transformed into arbitrary detention. By constitutionally recognising the right to legal representation at the stage of arrest, Article 22 affirms the fact that access to justice is not to begin at trial but was once liberty was first curtailed.

3.3 Judicial Expansion of Arrest-Related Rights

Judicial interpretation has played a decisive role to advance the depth of the constitutional content of the rights relating to arrest. Recognising the vulnerability of people at the hands of law enforcement, the courts have constantly broadened the scope of protections offered to the arrested person. In the case of *Joginder Kumar v State of Uttar Pradesh*, the Supreme Court stated that arrest should not be done on the grounds that it is lawful to do so and that it was necessary to justify an arrest on grounds of necessity.⁶

Similarly, in *D.K Basu Vs State of West Bengal*. the Court issued elaborate guidelines regarding arrest and detention such as preparation of arrest memo, medical examination of the person arrested, and intimation of family members.⁵ These were clearly based on article 21 and 22 to underline that constitutional rights do not end with arrest. Judicial intervention has therefore made arrest an area of unfettered police discretion turned instead into an area where police are held accountable to the Constitution.

⁶ *Joginder Kumar v State of Uttar Pradesh*, (1994) 4 SCC 260.

3.4 Arrest as a Constitutional Exception, Not the Rule

One of the constitutional issues that seem to be emerging from the judicial exegesis is that arrest must be treated as an exception rather than an ordinary tool of the criminal process. The presumption of innocence on which the criminal justice system is based, requires that deprivation of liberty before conviction is kept to a minimum.⁶ Arrest therefore has to be justified by compelling reasons such as the risk of absconding, interference with evidence, or threat to public order.

By posing arrest as a constitutional exception, courts have attempted to balance the interests of efficient law enforcement to the needs of individual liberty. This approach is in line with human rights jurisprudence, which sees detention not as a panacea of situations, but as a recourse of last resort. The constitutional structure surrounding arrest is therefore the result of a conscious attempt to limit the exercise of the power of the State in order to ensure the liberty of the criminal process within parameters of dignity, fairness and the rule of law.

4. RIGHTS OF ARRESTED PERSONS UNDER THE BNSS, 2023

4.1 Obligation to Inform the Grounds Of Arrest

One of the most basic protections available to an arrested person is the right to be told why he was arrested. Such obligation is further strengthened under the Bharatiya Nagarik Suraksha Sanhita, 2023 that clearly imposes a statutory duty on the authority holding arrest on the person concerned to communicate the reasons of arrest. This requirement is neither a simply procedural matter but a substantive right which enshrines the arrested person's right to know the legal basis of the deprivation of liberty.

The obligation to advise about the grounds for arrest comes directly from the constitutional requirements of article 22(1) and has been confirmed by judicial interpretation of the law numerous times. The Supreme Court has emphasised that communication of grounds must be real and effective, as opposed to illusory or ritualistic.¹ Under the BNSS, this safeguard gains a new importance as it aims at curbing the arbitrary exercise of the power of arrest and ensuring that arrest does not happen on the basis of subjective satisfaction of the police, but on a legally cognisable ground.

4.1.2 Right To Be Informed in Writing

One of the significant developments brought under the BNSS is the explicit recognition of the right of the arrested person to be informed against in writing of the grounds of arrest. This is a departure from what was previously done under the CrPC where sometimes oral communication was sufficient and there was often dispute about adherence to it. Written communication is tangible evidence of meeting the constitutional and statutory requirement and allows for subsequent judicial review of their compliance.

From a rights perspective, the written intimation has the benefit of increasing procedural accountability by reducing ambiguity and scope for abuse. It also gives power to the arrested person to effectively exercise allied rights such as right to take legal advice, challenge the legality of arrest or apply for bail. The introduction of this requirement is one manifestation of a move to give criminal procedure with the principles of transparency and traceability that are a key part of modern rights based governance.⁷

4.1.3 The Importance of Human Rights: Transparency in Liberty

The obligation to notify the grounds of arrest, and especially in writing, has serious human rights implications. Arrest, by its very nature, places an individual in a position of the most extreme vulnerability, beset with uncertainty, fear and imbalance of power. Transparency in this stage serves as a mechanism of protection to ensure that such individual is not exposed to secretive detention or arbitrary detention.

Informed liberty is an integral feature of personal freedom as this has been recognised by both constitutional jurisprudence and international human rights law. The right to be informed as to why one is being deprived of liberty is part of the dignity, decency and operational principles inherent in due process of the Administration. By requiring that the reasons of arrest be clearly conveyed, the BNSS affirms the principle that even when liberty is lawfully restricted, it cannot be done in such a way that it removes the free exercise of agency and awareness from the individual.

This safeguard is a crucial safeguard in the human rights perspective because it turns arrest from a unilateral claim of the power of the State to a regulated legal process subject to

⁷ Law Commission of India, 177th Report on Law Relating to Arrest (2001).

explanation, justification and review.. It reaffirms the idea that criminal procedures should not be conducted under the darkness of secrecy, but under the light of accountability and helps reinforce the trust in the justice system, as well as the constitutional commitment to the strong principles of liberty and dignity.

4.2 Right to a Counsel and Aid of Counsel.

The fact that everyone is given a right to seek counseling is one of the fundamental protections that the criminal justice system provides, leaving one without feeling herself overwhelmed by the State. Such right is not only a procedural artifice but also a substantive safeguard of the personal liberty, human dignity and due process in the moments of arrest and investigation.

4.2.1 Access to Advocate during Arrest and Interrogation

This right of access to a legal practitioner during arrest and interrogation is very critical in avoiding arbitrary arrests as well as custodial abuse and forced confessions. The early access to legal representation allows the individual being arrested to know his or her arrest reasons, claim procedural rights, and request protection against unlawful Police conduct.

Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) restate constitutional binding of the right of an arrested individual to represent counsel of his / her choice, so it is a move to comply with Article 22(1). Although the right to have the lawyer continuously available during the interrogation is not provided in the law, the role of legal consultation has been noted as an essential requirement to ensure the absence of the involuntary self-incrimination and custodial excesses.

Courts have continually broadened the above-mentioned right. In *Nandini Satpathy v. P.L. Dani*, the Supreme Court stated the right against self-incrimination, as a right, evolves into the right of listening to the lawyer during the interrogation procedures by the police.⁸ Likewise, in *D.K. Basu v. The Court, which is State of West Bengal*, Hadd armed the right to have legal counsel as a special safeguard against custodial violence, and as an indispensable limitation of the police power.⁹

⁸ *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424.

⁹ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

Human rights and right of access to legal services at the arrest stage, such a refusal deprives the individual dignity and predisposes the possibility of torture or other cruel treatment against the constitutional principles and rules of international human rights conventions.

4.2.2 Link with Fair Trial and Equality before Law

The right to fair trial has been read into the Article 21 of the constitution of India and is inseparable with the right to legal representation. The right of a fair trial assumes that the accused has a real and practical opportunity to defend him or herself- which again cannot be organizational without the aid of legal assistance especially in an adversarial criminal system of justice.

This right is further supported by equality before the law as provided in Article 14. Without legal aid, the economically disadvantaged and socially marginalized people are at a rudimentary disadvantage, which automatically leads to the inequitable access to justice. The Supreme Court has repeatedly stated that one cannot be conditioned to be justifiable onto the capability to input cash to acquire legal assistance.

4.2.3 BNSS Provisions vis-à-vis Article 22(1)

Article 22 (1) of the constitution directly provides that no arrested individual will be denied the right to access and be represented by a legal practitioner of his or her choice. This clause is a manifestation of the constitutional obligation to defend people against unjustified arrest and illegal imprisonment.

By ensuring the right of dialogue with legal counsel appearing in the BNSS, 2023, respectively, and by linking procedural protection in the protection of individual liberty, the assessment of the BNSS, 2023, supports this constitutional guarantee. The BNSS supplements the laws that govern arrest and detention by ensuring compliance between the statutory law and the constitutional requirements.

The practical implementation of this right is, however, skewed. Late counsel access, ignorance by the arrested individuals, and structural limitations still hinder proper application especially on the indigent and vulnerable groups.

Thus, although the BNSS includes a constituency with its constitutional values, the real

meaning of its human rights is pegged on the success of human rights enforcement. Seemingly meaningful access to legal counsel cannot merely be the promise on paper but a manifestation of reality, which liberty, dignity, and equality are upheld throughout the entire criminal process.

In *Hussainara Khatoon v. State of Bihar*, The court made known the inclusion of free legal aid as a part and parcel of a fair and just process by stating it a constitutional duty of the State.¹⁰ *State of Bihar*, under which the Court made a finding that the right to free legal assistance is established as of the time that an accused person is presented to a magistrate.

Therefore, legal aid can be defined as a corrective process because it will turn formal equality into substantive equality in the process of criminal justice.

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¹⁰ *Khatri (II) v. State of Bihar*, (1981) 1 SCC 627.

4.3 Right to Communicate with a Friend or Relative.

The right of the arrested individual to notify a friend, relative, or any other individual of his or her arrest is an important procedural protection with the intention of safeguarding individual liberty and warding off a misuse of custodial authority. This right acts as a shield between the suspect and the outside world as it makes the arrest process transparent and it will act as a check to unlawful or clandestine arrest.

4.3.1 Mandatory Communication of Arrest:

The need to provide arrest notification to an acquaintance or a family member is mandatory and is essential to make sure that arrest and detention are not conducted in secret. The information about arrest will be delivered in time so that the relatives or well-wishers of the arrested individual could take the required legal action such as enlisting legal services and checking jail conditions.

The endorsement of this protection under judicial rulings was strongly secured in *D.K. Basu v. In the case of the state of West Bengal 1* in which the Supreme Court related as the police ought to notify a friend, relative, or other nominated person of the arrested individual as soon as practicable. This was necessary because the legislative act was construed as fundamental protection out of Article 21 of the Constitution.¹¹

This mandate is included in the *Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)* through which the police is mandated to assure the immediate reporting of arrest and place of detention³. This right should be provided statutorily, which enhances transparency of the procedures and minimizes the level of arbitrary power exercise by the police.

4.3.2 Protection against Enforced Disappearance

The right to inform a friend or a relative happens to be an essential means of finding protection against enforced disappearance, an extreme violation of human rights, which consists in secret arrest and refusal to provide information about the fate of the imprisoned individual. Enforced disappearance does not only amount to infringement of individual liberty

¹¹ Constitution of India, art. 21

but it causes terrible psychological pain to members of the family of the disappearant.

The law provides an external record of detention through requiring communication of arrest, thus reducing the chances of secrecy of custody. The Supreme Court has highlighted how inability to satisfy arrest-related protections sets the stage of power abuse and infringement of human dignity.

Protection against enforced disappearance is considered a right that according to global human rights instruments is non-derogable. Domestic rights in the context of communication during arrest are hence vital in balancing the human rights provisions in the constitution and the international provisions in the human rights.

4.3.3 Custodial Accountability

Information disclosure also serves to strengthen custodial responsibility as it exposes the police action to external control, including informing a friend or family member about them. When someone notices the message of arrest, all the law enforcement will feel less inclined to involve in unlawful holding, torture or coercive powers since the police will realize that the safety of the person is now publicized.

In *Joginder Kumar v. State of U.P.*¹², the Supreme Court warned about the routine and unnecessary arrests stating that the arrest has to be reasonable and open. The Court noted that to support the public confidences in the criminal justice system, procedural protections, such as making an announcement of arrest, are needed.

The BNSS also strengthens the custodial accountability through the codification of responsibilities of the police when doing arrest and detention¹³. These protective measures, nevertheless, require severe adherence to punitive and organizational responsibility procedures. Vague statutory acknowledgment cannot be relied on, unless the wrongs should be subjected to immediate corrective and punitive measures.

Therefore, the right to notify a friend or a relative is no longer a formality procedure but an actual human rights protection that enhances transparency, avoids abuse and enforces

¹² *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260.

¹³ Bharatiya Nagarik Suraksha Sanhita, 2023, duties of police officers during arrest.

the rule of law.

4.4 Arrest Memo, Documentation and Safeguards

4.4.1 Preparation of Arrest Memo

An arrest memo is a very mandatory procedural protection that is meant to record the process, time and place of arrest. The security interest of deniable arrest under the Bharatiya Nagarik Suraksha Sanhita, 2023, entails the expectation of an arrest memo, which is an affirmation of traceability of arrest, verifiability power in arrest and celebrate ability in reference to subsequent judicial examination¹. Arrest memo is an official documentation that creates awareness of the identity of the arrested individual, the arrest date and venue and the identity of the arresting officer, can therefore eliminate ambiguity and secret of custodial arrest.

The constitutional importance of the arrest memo is that it is a protection of the unjustified and unlawful retention. There is experience in the judiciary that illegal arrests tend to cause infringement of individual freedom, such as long arrest and imprisonment abuse. Obligating a formalization of the processes will contribute to the reinforcement of accountability mechanisms within the policing practice and will allow clarifying that the process of arrest is not devalued to an informal exercise of power that is maintained outside of law. The arrest memo therefore establishes as a procedural form of exercise of the right to personal liberty as stipulated in Article 21.

4.4.2 Presence of Witnesses

The fact that the arrest memo should be signed by the witnesses is also an important part of the process. Having an independent or family witness present during the arrest serves as an external control of police force and increases the reliability of arrest reports. Attestation of witnesses helps in minimizing the chances of falsification of the period or mode of arrest, and it safeguards the arrested individual against subsequent tampering and alteration of the custodial records.

Human rights-wise, introducing the element of transparency into the case at the point where the power of the State and the person are maximum, the presence of witnesses adds a touch of transparency into the case. It confirms the fact prisoners are not arrested in secrecy as

it is a process that is regulated by law and is accountable to the society¹⁴. This protection that the BNSS perpetuates and even extends into the modern day recognises the vulnerability of those arrested and the importance of cocooning them against coerced behaviour that prospers in the dark. The presence of witnesses hence serves as an interim between procedural legality as well as substantive rights protection.

4.4.3 BNSS Digital and Procedural Safeguards.

Another peculiarity of the BNSS is the focus on digital and procedural protection that should be done to modernise arrest-related paperwork. Electronic recordings, computerised registers and use of technology can be viewed as an effort to reduce the discretionary maltreatment and make arrests trackable in real-time¹⁵. Electronic records not only make it easy to keep records efficiently, but also increase the accountability of the institutions, by establishing auditable records that can be sorted by supervisory and judicial bodies.

These protections gain specific importance in the area of protection of human rights because technology may serve as a dispassionate limit on random power abuse. Properly kept electronic documentation will inhibit the chances of post facto corrections and assist in delivering effective court action in case of law enforcement being lawbreaking or in instances of any procedural breach. The success of these protections however, all depends on how they are implemented and to what degree the digital infrastructure adopted is harmed.

The documentation requirements of the BNSS are, in a sense, a move toward the procedural style of governance that is based on the culture of transparency and right-conscious governance. Arrest memo, witness attestation and digital protections combined are aimed at redefining arrest as a discretionary police procedure into a more organized legal procedure with constitutional responsibility. These actions confirm once again that even lawful deprivation of **liberty should always be visible, justified and monitored continually.**

4.5 Production before Magistrate and Remand

4.5.1 The 24-Hour Rule

The need of bringing before a nearest magistrate an arrested individual within twenty-

¹⁴ Upendra Baxi, *Human Rights in a Posthuman World* (Oxford University Press, 2007).

¹⁵ Ministry of Home Affairs, Government of India, *Criminal Law Reforms: Explanatory Notes on BNSS, 2023*.

four hours of his arrest is one of the most crucial rights to prevent illegal and arbitrary arrest. This constitutional requirement as embodied in Article 22(2) of Indian Constitution and reiterated through statutory process under the Bharatiya Nagarik Suraksha Sanhita, 2023, is a clear attempt to curb executive abuse at a very initial level of denial of liberty¹⁶. The fact that computing this period excludes travel time also highlights how urgently this intervention of a court is necessary instead of a lengthy police occupation.

In terms of human rights, the twenty-four hour rule is a time constraint on custodial arbitrary actions. It acknowledges that the first days after arrest are characterised by increased vulnerability, and at this phase the chances of coercion, ill-treatment, or custodial violence are the greatest. The notion of requiring production in the presence of a court of justice to hear the case changes the arrest into an act that is not entirely executive but directly subject to judicial examination, which ensures increased accountability under the constitution.

4.5.2 Judicial Oversight: A Human Rights Protection.

Court control at the remand level plays a vital role in striking the right balance between the rights of criminal investigation and the right of individual freedom. The role of the magistrate is not restricted to the mechanical approval of the detention but he/she also questions the legality of the arrest, the need to keep a person in custody and the conformity with procedural safeguards¹⁷. This judicial review of a detention functions as a filter of human rights, whereby detention is not punitive and arbitrary.

The Supreme Court has repeatedly expressed that remand orders should concern judicial use of mind and cannot be disposed of as a matter-of-course authorization to approve police requests. By subjecting the arrested individual to an independent judicial institution, the legal system recognizes the power imbalance which exist between the State and the individual and creates an institutional check and balance that is aimed at safeguarding dignity and due process. Judicial accountability is therefore a constitutional provision that deprivation of liberty is not beyond the reasonable justification and legal boundaries.

4.5.3 BNSS Alterations in Remand Processes.

The BNSS presents the procedural improvements of remand practices that would result

¹⁶ Constitution of India, art 22(2); Bharatiya Nagarik Suraksha Sanhita, 2023.

¹⁷ Ratanlal & Dhirajlal, *The Code of Criminal Procedure* (LexisNexis, 21st edn, 2022).

in the efficiency increase without the downgrade of protection of the rights. The BNSS aims at minimising ambiguity by setting out statutory explanation of the process of police and judicial custody in order to improve uniformity in remand procedures¹⁸. These modifications should be carried out to see that custody is only granted in cases where necessary and when it can be done legally i.e. to facilitate investigating or to ensure that evidence is not tampered with.

To a rights-based extent, the remand procedures recalibration provided by the BNSS helps to support the notion that the further detention should be justified on each level. The legislative system underlines that remand is not an extension of arrest but it is a different court verdict that needs to be critically evaluated. This difference is critical to the prevention of the normalisation of the prolonged detention and maintaining custody as a conception instead of a default investigative instrument¹⁹.

Combined along with the inclusive clause dealing with pre-magistrate and remand through BNSS provides a restatement of the centrality of judicial control over human rights protection. The BNSS is trying to position deprivation of liberty not only as lawful but also as controlled by a means of the constant and purposeful judicial control, by introducing constitutional values of liberty, dignity, and accountability into the procedural law.

4.6 Rights of Vulnerable Arrested Persons

4.6.1 Women, children, aged, persons with disabilities.

Vulnerable arrested persons²⁰ are those who are at a higher risk of abuse or discrimination throughout the process of arrest and detention because of virtue of gender, age, physical condition and disability. The law acknowledges that women, children, elderly persons and persons with disabilities have special procedural rights which are necessary to achieve equality, dignity and substantive justice.

4.6.2 When, where, and how the man was arrested.

Time, place, and manner of arrest²¹ refer to the circumstances involved in the moment

¹⁸ Ministry of Home Affairs, Government of India, Explanatory Notes on the Bharatiya Nagarik Suraksha Sanhita, 2023.

¹⁹ *State of Rajasthan v Balchand*, (1977) 4 SCC 308.

²⁰ Vulnerable arrested persons – UNODC, *Handbook on Police Accountability* (2011).

²¹ Time, place, and manner of arrest – *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

of arrest such as time of arrest, location, force, and safeguards. These are the factors that define compliance of an arrest to the provisions of reasonableness and proportionality, especially where the involved individuals are vulnerable.

4.6.3 Gender-sensitive and dignity-based approach

. An approach to arrest with gender sensitivity and dignity approach²² necessitates a respect of the body autonomy and privacy together with the dignity by the law enforcing authorities, particularly to women and the marginalised individuals. It does not see dignity as a formality but believes in its constitutional due process as a fundamental human right value.

5. Judicial Interpretation of Arrest Rights

Judicial interpretation has been influential in making over arrest no longer a power of the police in centralized force, as it is but in a legalized way of rights regulation. The Supreme Court of India has always managed to imbue the act of arrest procedures with human rights orientations, through constitutional adjudication, and statutory powers are to perform their role within the context of personal freedoms and dignity as well as a just trial process²³.

5.1. Landmark Supreme Court judgements.

5.1.1 D.K. Basu v. State of West Bengal

The decision in *D.K. Basu v. State of West Bengal*²⁴ is the watershed case in the history of arrest jurisprudence in India. The Court being aware of the common existence of custodial violence and abuse of power established a comprehensive package of mandatory arrest protection, such as preparation of arrest memo, notifying relatives of the arrest, and medical examination of the arrested individual.

The judgment conceptualised the notion of arrest more as an event of human rights than a legal act, the responsibility of the State in such cases being best. The Court made the compliance with the procedures constitutional, making the violation of the latter a justiciable matter since it bases the rights against arrest on Article 21.

²² Gender-sensitive and dignity-based approach – NHRC Guidelines on Arrest of Women.

²³ Personal liberty, dignity, and due process – *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

²⁴ *D.K. Basu v. State of West Bengal* – (1997) 1 SCC 416.

5.1.2 Joginder Kumar v. State of Uttar Pradesh

In *Joginder Kumar v. State of U.P.*²⁵, The Supreme Court explained that the authority to arrest does not mean the need to arrest. The Court stated that the necessity of arrest needs to be justified, e.g., preventing continuance of offence or carrying out investigations.

This ruling ushered in the principle of reasoned arrest, which presents the law enforcers with balancing the investigative requirements with the delivered right to liberty. In the ruling, the principle of the incompatibility of arbitrary arrest with constitutional democracy was reinforced and proportionality was introduced into arrest practice.

5.1.3 Manubhai Ratilal Patel v. State of Gujarat

The decision in *Manubhai Ratilal Patel v. State of Gujarat*²⁶ emphasised on the importance of judicial review at the remand phase. The Court ruled that Magistrates should exercise independent judicial mind when they grant authority to the detention and cannot be mere signatories to the police requests.

This ruling enhanced the position of the Magistracy as the protector of individual freedom, and the deprivation of liberty will not occur in an automatic manner. It reinstated that remand proceedings form part of substantive due process, but not a procedural formality.

5.2 Integrity and Inclusion of Judicial protective measures within BNSS.

This may be seen in *Bharatiya Nagarik Suraksha Sanhita, 2023* in incontrovertible continuity of judicially formulated protections²⁷, which are discussed in constitutional jurisprudence.. The numerous principles stated in landmark decisions like mandatory information of arrest, documentation requirements and controlled remand have nowadays been internalised as a statutory part of BNSS.

This introduction indicates the recognition of the legislature of the use of judicial precedents as normative sources of human rights protection. With the codification of these protections, BNSS minimizes abuses of discretion and implements control over accountability

²⁵ *Joginder Kumar v. State of U.P.* – (1994) 4 SCC 260.

²⁶ *Manubhai Ratilal Patel v. State of Gujarat* – (2013) 1 SCC 314.

²⁷ *Continuity of safeguards – Bharatiya Nagarik Suraksha Sanhita, 2023.*

in the process of arrest.

5.3 Courts as Protectors of Human Rights at the Arrest Stage

Indian Courts have played an institutional role of guardians of human rights²⁸ during the stage of arrest when executive action is put into question. Administration of justice through judiciary prevents the rogue use of arrest powers as they are enshrined under legality, necessity and proportionality.

By applying interpretative activism, the judiciary has revolutionized the rights-based discourse of the arrest jurisprudence to be libertarian-based in their jurisprudence, i.e. liberty is the rule, detention is the exception. This position is particularly important in protecting marginalised and vulnerable persons, redistributing the courts as the protectors of constitutional morality and the rule of law.

6. International Human Rights Standards on Arrest

Personal liberty has a primary place in the world of the human right, and one of the most direct and coercive ways to interfere with liberty is one of the arrests. The international human rights law does not outlaw arrest per se but aims at civilising the power of arrest by placing it under substantive and procedural restrictions based on human dignity. The international convention that the world has come up with with the help of international instruments reiterates the idea that aggragation of arresting someone must never be haphazard, covert, or imbalanced and must always be degrading.

6.1 Universal Declaration of Human Rights (UDHR)

The moral and normative basis of the safeguards associated with arrest took place in the Universal Declaration of Human Rights, 1948. The UDHR, even though legally non-binding, has gained the status of the customary international law²⁹ and by far has had a significant impact on constitutional and statutory developments in jurisdictions including India.

Article 3 of the UDHR acknowledges the right to life, liberty and security of person

²⁸ Institutional protectors of human rights – *People's Union for Civil Liberties v. Union of India*, (1997) 3 SCC 433.

²⁹ Hurst Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law' (1995) 25 *Georgia Journal of International and Comparative Law* 287.

that recognises liberty as a natural part of human existence and not something that the State can offer in concession. Arrest as a literal suspension of freedom, hence, has to meet a rigid set of requirements. Article 9 expressly outlaws arbitrary arrest, detention or exile⁵, ushering in arbitrariness as a substantive restriction on the power of the State. This does not mean that arrest can not be lawful, reasonable and according to objective criteria but not as a result of mere suspicion or convenient.

Moreover, the right to a fair and public trial by an independent and unbiased tribunal, which stands to be enforced as soon as right after arrest, as a means of judicial control is necessary to avoid prosecution³⁰. Taken together, these provisions theorise the conceptualisation of arrest not as being a procedural step in the process of criminal justice, but as a moment of human right that necessitates transparency, openness, and moderation.

6.1.3 UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

UN Body of Principles, 1988³¹ is a soft law tool, specially designed with reference to the practices of arrest and detention. Although non-binding, it has great persuasive power and provides more specific operational guidelines to States.

The Principles stress that everyone arrested must receive humanity and respect of the dignity of human person¹⁴. Principle 10 recommends immediate disclosure of arrest, Principle 11 stipulates about the rights and existing remedies, and Principle 15 declares the prohibition of torture or cruel, inhuman or degrading treatment. Notably, Principle 16 acknowledges the right of the arrested individual to notify a family member or a friend, specifically dealing with the danger of forced disappearance and arbitrary imprisonment³².

The particularity of this instrument is its dignity-focused approach because procedural safeguards are viewed not as technicalities but the fundamental statements of respect towards the value of human lives. The focus on paperwork, counsel provision, examination and complaint system make arrest protocols in line with global human rights ethics.

³⁰ ICCPR, Art 9(2)

³¹ UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988).

³² *Ibid*, Principle 16.

6.1.4 Compatibility of BNSS, 2023 with International Norms

As compared to these international standards, the Bharatiya Nagarik Suraksha Sanhita, 2023 has proved to have a partial but nonetheless, substantial agreement with international human rights standards. Articles regarding communication of grounds of arrest, production before a Magistrate within twenty-four hours, access to legal counsel and to intimations to relatives are obvious correlates to Articles 9 and 14 of the ICCPR³³.

The integration of documentation needs, arrest memos, and online protection can be compared to the UN Body of Principles and aims at decreasing the lack of transparency in the arrest procedure. Nonetheless, there is still a worry about the extent of the police discretion, the possible watering down of the arrest levels, and unequal application, which can jeopardize the principle of proportionality highlighted in the realm of international law.

In this way, evolving towards the international human rights standards in form BNSS will ultimately relinquish its adherence to them to the jurisprudence, enforcement and institutional culture. International standards make us understand that it is not its frequency, also not its efficiency but its fairness, necessity, and adherence to human dignity, that makes arrest a legitimate act.

7. BNSS: Progressive Shift or Procedural Continuity?

The adoption of Bharatiya Nagarik Suraksha Sanhita, 2023³⁴ has been made out to be a radical departure out of the colonialism of the Code of Criminal Procedure, 1973. Against the background of arrest-related rights, the following question arises: will the BNSS be a radical human rights reform, or will the procedure philosophy of its predecessor be secured insignificantly changed in structure?

7.1 Comparative Perspective: CrPC and BNSS.

On textual level, some of the safeguards contained in the BNSS seem not very new in concept since they largely reflect what was already contained in the CrPC. The rights concerning information of grounds of arrest, production before a Magistrate within twenty-four hours, and rights to access a legal counsel proceed with revised wording as opposed to altered content.

³³ Bharatiya Nagarik Suraksha Sanhita, 2023 (relevant arrest provisions).

³⁴ Bharatiya Nagarik Suraksha Sanhita, 2023.

This carries on the venerable judicial doctrine that the powers of arrest should be used sparingly, and that this doctrine has been repeatedly restated by the Supreme Court.

Nevertheless, the BNSS has some refinements of procedure, especially more use of documentation, use of digital records and formal communication of arrest⁴. This is meant to increase both transparency and traceability and hence solve the old issues of custodial obscurity. However, the impact of these measures is not determined by whether or not they are in statute but with respect to the internalisation within policing practices.

7.1.3 Human Dignity and Arrest Process.

According to the human rights point of view, the greatest reform test is to see whether BNSS will reinforce human dignity protection during the arrest moment³⁵. Arrest is not only a legal process but it is a very personal experience that in most times is accompanied by humiliation in front of the crowd, fear, and psychological weaknesses. Although the BNSS implicitly recognises dignity, by providing a means of doing this, like limitations on conducting arrests at night on women and requiring procedures, it fails to go a step further to explicitly identify dignity as a guide to arrest.

On the contrary, internationally human rights law puts dignity as a normative premise of all the procedural protection. The fact that an express-dignity-based system is not present in the BNSS indicates that the law is still a matter of procedure and not that of person, which restricts its potential to transform.

7.1.3 Procedural Fairness and Due Process.

The BNSS is indicative of a safe approach to strengthen procedural fairness especially with more articulate arrest reports and organized communication stipulations. The purpose of these mechanisms is to minimize the arbitrariness by ensuring that police authorities need to explain and document their actions. With the constitutional interpretation of due process under Article 21³⁶, this clarity creates such a procedure.

However, there are reservations to the fact that the concept of police discretion continues to be expansive in deciding the need to arrest. The established judicial precedents have always stated

³⁵ Justice K.S. Puttaswamy (Retd) v Union of India (2017) 10 SCC 1

³⁶ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

that arrest should be an exception and not the rule automatic, but the language on the statute as provided within the BNSS does not materially restrict the threshold at which the arrest powers should be invoked. The consequence of this is that procedural fairness is put at risk of being an after-the-fact sham, instead of a substantive measure that helps keep the wrongful seizure of liberty at bay.

7.1.4 Police Authorities Accountability.

The commentary of an enhanced accountability of law enforcement agencies is among the mentioned goals of the BNSS¹⁰. Rules to have arrest memos and the presence of witnesses and digital documents are hypothetically stronger control and limited the possibility of abuse. These actions are echoed in the provisions of *D.K. Basu v. State of West Bengal*³⁷ akin to *ois*, which aimed to restrain excessive use of custodial procedures by procedural norms.

Nonetheless, responsibility within the context of the BNSS is also more in-house and less focused on the external control and effective redresses in cases of violations. It is the lack of effective penalties against failure to comply to ensure safety that may weaken the protection ensuring leader-servant relationships against an empty promise. This makes accountability recognised, though not institutionalised.

7.1.5 Gaps, Ambiguities and Continuing Concerns.

Although there are progressive gains, the BNSS still has a number of normative and pragmatic loopholes that have not been filled. There are still some ambiguities on the extent of police discretion, enforceability of the protections of the arrest, and the remedies that may be taken to the arrested individuals after the violation³⁸. In addition, the fundamental problem of structural injustice like custodial violence, unlawful imprisonment and socio-economic susceptibility persist in reaching the fulfilment of erudition of arrest-related rights regardless of the statutory change³⁹.

Therefore, the BNSS is associated with a change in the form of the procedure, but is not yet a paradigm shift of the arrest jurisprudence. The legislation is a continuum, rather than a

³⁷ *D.K. Basu v State of West Bengal* (1997) 1 SCC 416.

³⁸ Law Commission of India, *Report on Arrest and Custodial Violence*.

³⁹ National Human Rights Commission, *Annual Report* (latest available).

discontinuity, it is moderation, not transformation.

7.1.6 Assessment

The BNSS can be considered a progressive step in the right direction through the prism of human rights, although a leap is not happening. It streamlines procedures, strengthens paperwork and goes partially in line with constitutional and international standards. However, even in an era where policing is increasingly becoming dignity-based, limited arrest standards, and efficient accountability systems, this culture of reform will be missing.

Finally, the BNSS shows that humanising arrest cannot only happen through change in the law but it must be followed through by deep-seated judicial vigilance, rights-oriented policing, and a change in cultural disposition of criminal justice organisations.

8. Challenges in the Realisation of Arrest Rights under BNSS

Regardless of the detailed regulatory protections added to Bharatiya Nagarik Suraksha Sanhita, 2023, the concept of actualising the rights of arrested individuals still has grave structural and practical challenges. The broad discretionary police powers of the police⁴⁰ during the arrests stage is often one of the most critical issues as they tend to create discrimination in enforcement and arbitrariness of deprivation of personal liberty. Despite a reiteration by BNSS of the principle that arrest cannot be mechanical, there are no strictly enforced accountability mechanisms, and discretion can override the necessity rule, which makes the law more human rights oriented.

A second ongoing matter of concern is the ongoing rate of custodial violence and unjust imprisonment⁴¹, as it displays a profound loss of contact between normative and legal norms and grassroots activities. Physical abuse reports, coercion in the form of psychological torture, and extended imprisonment without observance of the procedures, suggests that the provisions of the law are often left to be limited to the pages of the law. Such practices do not only controvert right to life and dignity as contained in Article 21⁴² but they also hurt the trust of the society over the criminal justice system. Digital protection introduced as part of BNSS, though well-meaning, cannot alone stop the excesses of custody unless coupled with

⁴⁰ Joginder Kumar v. State of U.P., (1994) 4 SCC 260.

⁴¹ National Human Rights Commission, *Custodial Violence in India* (NHRC, New Delhi, 2022).

⁴² Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314.

independent interrogation and this early intervention by a court.

Another challenge is due to the ignorance of the law by the arrested individuals, especially those that are socio-economically marginalised. Most people are not aware of their right to have an attorney, the right to notify a friend or a relative as well as the need to be brought before a magistrate within twenty four hours. The asymmetry of information puts arrested individuals in a great disadvantage where no violations will be noticed or stood up to be done. Without the available legal literacy and efficient legal assistance systems, the future of BNSS may turn to be just an illusion to the most disadvantaged in the society.

Last, the issue of the lack of implementation deficit persists in the shadow of arrest-related protection even with judicial guidelines and statutory codification. The disparity between legal writing and legal doing is worsened by inappropriate training of the police staff, institutional contravention of the right-oriented policing, and the few repercussions of non-observation. The absence of a culture of accountability and constant monitoring may lead to failure in conversion of even well-intended reforms under BNSS to actual embrace of human rights protection during the stage of arrest.

9. Way Forward and Recommendations

To achieve substantive meaning in the rights of the arrested persons by the Bharatibarik Nagarik Suraksha Sanhita, 2023, a change in outlook of a practitioner towards a more rights-systemic policing is essential. The arrest should not be regarded as the method of investigation work but as the extraordinary action that directly concerns the human dignity and individual freedom. To incorporate the values of human rights into policing, an institutional recognition that adherence to arrest-protection helps to enforce, and not diminish, the legitimacy of law enforcement is necessary.

A crucial move in this respect is the systematic training and sensitisation of the law enforcement agencies⁴³. The police staff should also be periodically oriented about the constitutional requirements, statutory protection under BNSS as well as the international human rights provisions as applied to arrest and detention. This form of training ought to extend beyond teachings and should strive to bring about empathy, restraint and accountability. Legal reforms without attitudinal change on the enforcement level are at a risk of being more of a

⁴³ National Police Commission, *Eighth Report on Police Accountability* (Government of India, 1981).

symbol than a transformation process.

It is also critical to have the judiciary involved in that of providing a high level of judicial supervision over the arrest process⁴⁴. The exercise of remand powers by magistrates should be done with greater care and attention, as compliance in relation to arrest should be considered by magistrates as part and parcel of the constitution and not a mere process that needs to be taken. Demand of judicial personnel in arrest memos, compliance reports, and causes of arrest can serve as a powerful deterrent to absence of arbitration of deprivation of liberty. This restates human rights by the judiciary as the first protector of human rights during the pre-trial period.

The prospects of technological protection that is controlled by human rights also should be expanded with attention. Police actions may be better traced and made more transparent with the use of digital arrest records, body-worn cameras, and electronic intimation systems. Nevertheless, technology should serve as this means of responsibility and not surveillance. The key to avoiding such misuse and also making sure that technology is used to benefit the cause of liberty is to have independent access by the courts and other oversight bodies to such records.

Lastly, harmonisation of BNSS with international human rights law⁴⁵ needs to be done urgently. Although the statute adopts many of the international norms, the normative pillars of necessity, proportionality and minimum intervention should be directly incorporated into the statute to enhance its normativity. A domestic arrest would also be in line with India obligation under the international commitment signed with the instruments, such as the ICCPR, which would restore the worth given on human dignity and the rule of law.

10. Conclusion:

To achieve substantive meaning of the rights of the arrested persons under the Bharatiya Nagarik Suraksha Sanhita, 2023, a paradigm shift must be made in the line of approach where a procedural approach is substituted with rights-based policing paradigm. Arrest should not be considered as a normal instrument of investigation but it is a special action that interferes directly with the human dignity and personal freedom. Performing the embedding operation of human rights values into the policing life presupposes institutional acceptance of the fact that the adherence to the safeguards of arrest makes the legitimacy of the law enforcement practices

⁴⁴ Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314.

⁴⁵ International Covenant on Civil and Political Rights, 1966, arts. 9 & 14.

stronger, not weaker.

One such important move in this direction is tactical training and sensitisation of agencies of law enforcement⁴⁶. The police staff should be kept informed regarding the training of constitutional requirements, lawful protection of the BNSS statute, and international human rights standards on arrest and imprisonment. This training must not end at formal training and must set out to develop empathy, restraint and responsibility. Law changes will be futile without the attitudinal change on the enforcement level, since they might turn to be more of a symbolic change, rather than a transformation.

Also key to note is the role played by the judiciary to give proper judicial oversight over arrest exercises. The magistrates should be more careful with their remand authority and they have to consider compliance associated with arrest as a constitutional requirement and not a procedural ritual. The requirements by the judiciary that police provide arrest memos, compliance reports, and reasons of arrest may serve as an effective check to random denying of liberty. This strengthens the judiciary with its main role as a key protector of human rights during pre-trial stage.

They should also exercise close expansion on the potential of technological safeguard with human rights control⁴⁷. Transparency and traceability of the police action can be improved with the help of digital arrest records, body-worn cameras, and electronic intimation systems. Nevertheless technology has to act as an accuser and not a watchman. Courts and other oversight organizations must have an independent access to such records so that they can keep off any misuse as well as so that technology can be used to promote the cause of liberty.

Last but not least, BNSS harmonisation under the international human rights law is urgently required. Although the statute articulates a number of global standards, the explicit integration of principles of necessity, proportionality, minimum intervention would create a stronger normative foundation to the statute. The integration of far-domestic arrest practices with India international obligations toward other forms of international conventions such as the ICCPR would help to reiterate the importance of human dignity and rule of law in India.

⁴⁶ Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

⁴⁷ Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314.