



COMPARATIVE ANALYSIS OF ARREST PROVISIONS UNDER BNSS AND CRPC 1973: A STUDY OF STATUTORY FRAMEWORK

1Karmjot kaur, 2Sandeep kaur

1Professor , 2Llm student

1Rayat bahra university , mohali,

2Rayat bahra university mohali

ABSTRACT

The provisions relating to arrest under criminal law play a vital role in maintaining a balance between the protection of individual liberty and the authority of the State to enforce law and order. With the enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, replacing the Criminal Procedure Code (CrPC), 1973, important reforms have been introduced in the procedural framework governing arrests in India. This research paper presents a doctrinal and comparative analysis of the arrest-related provisions contained in both legislations. The study is confined to the analysis of the enacted statutory provisions and examines the manner in which the BNSS restructures and modifies the earlier framework under the CrPC. The paper further identifies important developments under the BNSS, including the express provision permitting the use of handcuffs in specific categories of offences and offenders, stricter procedural safeguards concerning the arrest of women and vulnerable persons, and enhanced emphasis on accountability and transparency in arrest practices. In addition, the legislation strengthens the rights of arrested individuals by prescribing clearer timelines for medical examinations and encouraging the integration of technology within criminal procedure. Through a comparative evaluation, the study analyses whether the reforms introduced by the BNSS contribute towards greater procedural fairness and protection of fundamental rights or whether they potentially expand the discretionary powers of law enforcement agencies beyond reasonable limits. The paper ultimately assesses the likely impact of these changes on arrest practices, criminal justice administration, and the broader objective of safeguarding constitutional rights within the evolving framework of Indian criminal law.

KEYWORDS: Arrest, BNSS 2023, Crpc 1973, Criminal procedure, Police power, Constitutional safeguards, rights of Accused, Criminal Justice system.

INTRODUCTION

Arrest is one of the most significant procedures within the criminal justice system, as it directly affects the personal liberty of an individual while also serving the interests of society and the administration of justice. The concept of arrest reflects the need to maintain a balance between the fundamental rights of individuals and the authority of the State to investigate crimes and preserve public order. In India, the right to life and personal liberty is guaranteed under Articles 21 and 22 of the Constitution, which provide important safeguards against arbitrary arrest and detention. At the same time, the criminal justice system requires effective mechanisms to ensure that offenders are brought before the law and that investigations are conducted fairly and efficiently. The process of arrest becomes necessary in various situations where the presence or conduct of the accused may hinder the course of justice. An arrest may be required to prevent a person from escaping legal proceedings, tampering with evidence, influencing witnesses, or creating disturbances to public peace and security. It also enables investigating agencies to conduct interrogation, gather evidence, and ensure the proper administration of criminal proceedings. Therefore, although arrest temporarily restricts individual freedom, it is considered a lawful and

essential measure when exercised in accordance with constitutional principles and procedural safeguards.

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which replaced the Criminal Procedure Code (CrPC), 1973, introduces a revised framework governing criminal procedure in India. The BNSS contains detailed provisions relating to arrest and seeks to modernize criminal procedure while emphasizing transparency, accountability, and protection of rights. Chapter V of the BNSS deals specifically with arrest procedures and classifies arrests into categories such as arrests with warrant and arrests without warrant, depending upon the nature of the offence involved. The legislation also incorporates safeguards relating to the treatment and rights of arrested persons, including procedures to ensure fairness and prevent misuse of police powers.

For several decades, the Criminal Procedure Code, 1973 served as the principal legislation regulating arrest procedures in India. It defined the powers of police officers, circumstances under which arrests could be made, and the procedural requirements to be followed during arrest and detention. However, with changing social conditions and the need for reforms in criminal administration, the BNSS was enacted in 2023 and came into force on 1 July 2024. The new law attempts to streamline criminal procedures, strengthen procedural safeguards, and introduce greater clarity in the operation of arrest-related provisions.

This research paper undertakes a doctrinal and comparative study of the arrest provisions under the CRPC and the BNSS. By examining the statutory framework of both enactments, the study aims to identify the similarities, modifications, and new developments introduced under the BNSS. The paper further evaluates the legal and practical implications of these reforms in the context of constitutional protections, police powers, and the rights of arrested individuals within the Indian criminal justice system.

MEANING AND CONCEPT OF ARREST

The Arrest is a legal process through which a person is taken into custody by lawful authority on suspicion of having committed an offence or for preventing the commission of a crime. It represents a restriction on personal liberty and therefore must be exercised strictly according to law.

Legal Provisions Related to Arrest under BNSS, 2023

Law of arrest under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeks to balance the power of the police to investigate offences with the fundamental rights of individuals guaranteed under Articles 21 and 22 of the Constitution of India.

1. Arrest Without Warrant (Section 35 BNSS)

A police officer may arrest a person without a warrant if:

- * The person commits a cognizable offence in the officer's presence.
- * There is reasonable suspicion that the person has committed a cognizable offence.
- * The person is a proclaimed offender.
- * The person possesses suspected stolen property.
- * The person obstructs a police officer in the discharge of duty.

2. Procedure of Arrest (Section 36 BNSS)

- * The police officer must clearly identify himself/herself.
- * The person arrested must be informed of the grounds of arrest
- * An arrest memo containing the date and time of arrest must be prepared.
- * The memo should be attested by a witness and signed by the arrested person.

3. Right to Inform Relative or Friend (Section 37 BNSS)

The arrested person has the right to have a relative, friend, or another person informed about the arrest and place of detention.

4. Right to Meet an Advocate (Section 38 BNSS)

An arrested person is entitled to meet and consult a lawyer during interrogation, though not necessarily throughout the entire interrogation.. **Arrest for Refusal to Give Name and Residence (Section 39 BNSS)**

A person who refuses to disclose identity after committing a non-cognizable offence may be arrested to ascertain their name and address.

6. Arrest by Private Person (Section 43 BNSS)

A private individual may arrest a person who commits a non-bailable and cognizable offence in their presence and must promptly hand the person over to the police.

7. Search of Arrested Person (Section 47 BNSS)

The police may search the arrested person and seize articles relevant to the investigation, providing a receipt for seized items.

8. Medical Examination (Sections 51–53 BNSS)

Medical examination of the accused may be conducted when necessary for investigation or evidence collection, subject to legal safeguards.

9. Production Before Magistrate (Section 57 BNSS)

No arrested person can be detained by the police for more than 24 hours without being produced before a Magistrate, excluding travel time.

10. Arrest of Women

* Women should ordinarily not be arrested after sunset and before sunrise except in exceptional circumstances with prior permission of a Magistrate.

* Female police officers should carry out the arrest and search of women.

11. Use of Handcuffs

BNSS expressly permits handcuffing in specified serious offences such as terrorism, organized crime, rape, murder, acid attacks, and for habitual or repeat offenders.

Importance of Arrest in Criminal Justice Administration

Arrest plays a crucial role in maintaining law and order, securing the presence of the accused, preventing destruction of evidence, protecting witnesses, and ensuring proper investigation of offences.

Constitutional Safeguards against Arbitrary Arrest

The Constitution of India guarantees protection against unlawful arrest under Articles 21 and 22. These provisions ensure procedural fairness, the right to legal counsel, and protection against arbitrary detention.

Need for Reform in Criminal Procedure Laws

The growing concerns regarding delays, misuse of police powers, custodial violence, and changing societal conditions created the need for comprehensive reforms, leading to the enactment of the BNSS, 2023.

COMPARATIVE ANALYSIS OF ARREST PROVISIONS UNDER THE CRPC AND BNSS

Similarities between the CrPC and BNSS

Although the Bharatiya Nagarik Suraksha Sanhita, 2023 replaced the Criminal Procedure Code, 1973, the overall framework governing arrest has largely been retained. The BNSS continues many of the procedural principles and safeguards that existed under the CrPC, thereby maintaining continuity within the criminal justice system while introducing selective reforms. Both legislations recognize arrest as an important tool for investigation and maintenance of public order, but they also attempt to balance police powers with constitutional protections of personal liberty.

One of the major similarities between the two enactments is the classification of offences into cognizable and non-cognizable categories. Under both the CrPC and the BNSS, police officers are empowered to arrest without warrant in cognizable offences, whereas arrest in non-cognizable offences generally requires prior permission from the Magistrate. This distinction remains central to the operation of criminal procedure in India.

Another important similarity is the preservation of constitutional safeguards guaranteed under Articles 21 and 22 of the Constitution of India. Both laws require that an arrested person be informed of the grounds of arrest, be produced before a Magistrate within twenty-four hours, and be allowed access to legal representation. These protections aim to prevent arbitrary detention and ensure procedural fairness during criminal investigations.

Further, both statutes contain provisions relating to arrest warrants, arrest by private persons, medical examination of accused persons, search and seizure during arrest, and the rights of arrested individuals. The procedure concerning bail, detention, and remand also remains substantially similar. Judicial precedents developed under the CrPC, especially regarding protection against custodial violence and unlawful detention, continue to influence the interpretation and implementation of corresponding provisions under the BNSS.

In addition, both legislations emphasize the responsibility of police officers to exercise arrest powers cautiously and only when necessary. The principle that arrest should not be mechanical or arbitrary continues to remain an important feature of Indian criminal procedure law under both frameworks.

Major Changes Introduced under the BNSS

While the BNSS retains much of the structure of the CrPC, it also introduces several significant reforms intended to modernize criminal procedure and improve efficiency in the administration of. One of the most noticeable changes is the reorganization and consolidation of justice provisions relating to arrest. The BNSS attempts to simplify procedural language and place related safeguards together in a more systematic manner, thereby improving clarity and accessibility.

A major reform introduced under the BNSS is the express incorporation of procedural safeguards that had previously evolved primarily through judicial interpretation. The new legislation expressly recognizes safeguards such as the preparation of an arrest memorandum, informing relatives or friends regarding the arrest, medical examination of arrested persons, and maintenance of arrest records. By codifying these safeguards within the statutory framework itself, the BNSS attempts to strengthen accountability in police procedures. Another important development is the increased use of technology in criminal procedure.

The BNSS encourages electronic communication, digital records, audio-video recording of certain procedures, and technological integration within investigation and arrest processes. This modernization seeks to improve transparency, reduce procedural delays, and enhance the efficiency of law enforcement agencies.

The BNSS also introduces specific provisions regarding the use of handcuffs. Under the earlier CrPC framework, the use of handcuffs was mainly governed through judicial guidelines and was generally discouraged except in exceptional circumstances. However, the BNSS expressly permits the use of handcuffs for certain categories of offenders, including habitual offenders, persons accused of organized crime, terrorism, drug-related offences, and offences involving serious violence. This change has generated debate regarding its compatibility with human dignity and constitutional protections.

Another area of reform relates to the arrest of women and vulnerable persons. The BNSS strengthens safeguards concerning women by emphasizing restrictions on arrest during nighttime except in exceptional circumstances and by requiring the presence of women police officers during such procedures. The legislation also places greater emphasis on humane treatment and procedural protection of vulnerable persons during arrest and detention.

The BNSS further attempts to improve coordination between police authorities and judicial institutions through structured procedures and designated responsibilities of investigating officers. The inclusion of clearer timelines and procedural duties reflects an effort to reduce ambiguity and enhance administrative efficiency.

Despite these reforms, critics argue that certain provisions may expand police discretion and increase the possibility of misuse of arrest powers. Concerns have been raised regarding broader authority in the use of handcuffs, preventive detention practices, and increased surveillance through technological means. Therefore, while the BNSS seeks to modernize criminal procedure, the effectiveness of these reforms ultimately depends upon fair implementation, judicial oversight, and strict adherence to constitutional values.

COMPARATIVE TABLE BETWEEN THE CRPC AND BNSS

BASIC OF COMPARISON	CRIMINAL PROCEDURE CODE	BHARATIYA NAGRIK SURAKSHA SANHITA 2023
Nature of legislation	Traditional procedural law governing criminal justice administration	Modernized procedural framework replacing the crpc
Objective	Regulation of investigation, arrest, trial, and criminal procedure	Streamlining criminal procedure with technological and procedural reforms
Arrest without warrant	Permitted in cognizable offences under specified conditions	Retained with additional procedural safeguards
Arrest safeguards	Based partly on statutory provisions and judicial guidelines	Safeguards expressly incorporated within the legislation
Information to relatives	Recognized through	More explicitly structured

	judicial interpretation and provisions	and emphasized
Arrest memo	Introduced mainly through judicial directions	Specifically recognized under statutory procedure
Medical examination	Permitted and regulated	Strengthened with procedural clarity and timelines
Use of handcuffs	Restricted mainly through judicial precedents	Specifically permitted for certain categories of offenders
Protection of women	Existing safeguards regarding arrest procedures	Additional emphasis on dignity and protection
Technological integration	Limited technological use	Greater use of electronic communication and digital procedures
Constitutional protection	Based on Articles 21 and 22 and judicial interpretation	Continues constitutional protections with statutory reinforcement
Police Accountability	Dependent largely on judicial supervision	Increased procedural documentation and record maintenance
Rights of arrested persons	Recognized through statutory and judicial safeguards	More detailed and systematically incorporated
Procedural Structure	Spread across multiple provisions	More consolidated and simplified arrangement

IMPACT OF THE BNSS ON INDIVIDUAL LIBERTY

The reforms introduced under the BNSS significantly affect the relationship between Legal Provisions Related to Arrest under BNSS, 2023

The law of arrest under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeks to balance the power of the police to investigate offences with the fundamental rights of individuals guaranteed under Articles 21 and 22 of the Constitution of India.

1. Arrest Without Warrant (Section 35 BNSS)

A police officer may arrest a person without a warrant if:

- * The person commits a cognizable offence in the officer's presence.
- * There is reasonable suspicion that the person has committed a cognizable offence.
- * The person is a proclaimed offender.
- * The person possesses suspected stolen property.
- * The person obstructs a police officer in the discharge of duty.

2. Procedure of Arrest (Section 36 BNSS)

- * The police officer must clearly identify himself/herself.
- * The person arrested must be informed of the grounds of arrest.
- * An arrest memo containing the date and time of arrest must be prepared.
- * The memo should be attested by a witness and signed by the arrested person.

3. Right to Inform Relative or Friend (Section 37 BNSS)

The arrested person has the right to have a relative, friend, or another person informed about the arrest and place of detention.

4. Right to Meet an Advocate (Section 38 BNSS)

An arrested person is entitled to meet and consult a lawyer during interrogation, though not necessarily throughout the entire interrogation.

5. Arrest for Refusal to Give Name and Residence (Section 39 BNSS)

A person who refuses to disclose identity after committing a non-cognizable offence may be arrested to ascertain their name and address.

6. Arrest by Private Person (Section 43 BNSS)

A private individual may arrest a person who commits a non-bailable and cognizable offence in their presence and must promptly hand the person over to the police.

7. Search of Arrested Person (Section 47 BNSS)

The police may search the arrested person and seize articles relevant to the investigation, providing a receipt for seized items.

8. Medical Examination (Sections 51–53 BNSS)

Medical examination of the accused may be conducted when necessary for investigation or evidence collection, subject to legal safeguards.

9. Production Before Magistrate (Section 57 BNSS)

No arrested person can be detained by the police for more than 24 hours without being produced before a Magistrate, excluding travel time.

10. Arrest of Women

- * Women should ordinarily not be arrested after sunset and before sunrise except in exceptional circumstances with prior permission of a Magistrate.
- * Female police officers should carry out the arrest and search of women.

11. Use of Handcuffs

BNSS expressly permits handcuffing in specified serious offences such as terrorism, organized crime, rape, murder, acid attacks, and for habitual or repeat offenders. Legal Provisions Related to Arrest under BNSS, 2023

The law of arrest under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeks to balance the power of the police to investigate offences with the fundamental rights of individuals guaranteed under Articles 21 and 22 of the Constitution of India.

1. Arrest Without Warrant (Section 35 BNSS)

A police officer may arrest a person without a warrant if:

- * The person commits a cognizable offence in the officer's presence.
- * There is reasonable suspicion that the person has committed a cognizable offence.
- * The person is a proclaimed offender.
- * The person possesses suspected stolen property.
- * The person obstructs a police officer in the discharge of duty.

2. Procedure of Arrest (Section 36 BNSS)

- * The police officer must clearly identify himself/herself.
- * The person arrested must be informed of the grounds of arrest.
- * An arrest memo containing the date and time of arrest must be prepared.
- * The memo should be attested by a witness and signed by the arrested person.

3. Right to Inform Relative or Friend (Section 37 BNSS)

The arrested person has the right to have a relative, friend, or another person informed about the arrest and place of detention.

4. Right to Meet an Advocate (Section 38 BNSS)

An arrested person is entitled to meet and consult a lawyer during interrogation, though not necessarily throughout the entire interrogation.

5. Arrest for Refusal to Give Name and Residence (Section 39 BNSS)

A person who refuses to disclose identity after committing a non-cognizable offence may be arrested to ascertain their name and address.

6. Arrest by Private Person (Section 43 BNSS)

A private individual may arrest a person who commits a non-bailable and cognizable offence in their presence and must promptly hand the person over to the police.

7. Search of Arrested Person (Section 47 BNSS)

The police may search the arrested person and seize articles relevant to the investigation, providing a receipt for seized items.

8. Medical Examination (Sections 51–53 BNSS)

Medical examination of the accused may be conducted when necessary for investigation or evidence collection, subject to legal safeguards.

9. Production Before Magistrate (Section 57 BNSS)

No arrested person can be detained by the police for more than 24 hours without being produced before a Magistrate, excluding travel time.

10. Arrest of Women

- * Women should ordinarily not be arrested after sunset and before sunrise except in exceptional circumstances with prior permission of a Magistrate.
- * Female police officers should carry out the arrest and search of women.

11. Use of Handcuffs

BNSS expressly permits handcuffing in specified serious offences such as terrorism, organized crime, rape, murder, acid attacks, and for habitual or repeat offenders. Between state authority and personal liberty. On one hand, the inclusion of express procedural safeguards strengthens protection against arbitrary arrest and custodial abuse. Clearer procedures relating to arrest memoranda, medical examination, and communication with relatives contribute toward transparency and accountability within police administration. On the other hand, certain provisions expanding police powers have raised concerns regarding the protection of civil liberties. The express authorization of handcuffs and wider

procedural powers in serious offences may create risks of misuse if not carefully monitored. Therefore, while the BNSS attempts to balance efficiency and rights protection, its practical impact on liberty will largely depend upon implementation by police authorities and oversight by courts.

IMPACT ON LAW ENFORCEMENT AND CRIMINAL JUSTICE ADMINISTRATION

The BNSS seeks to improve the efficiency of criminal investigations by simplifying procedures and encouraging technological modernization. Digital documentation, electronic communication, and structured procedural duties may help reduce delays and improve coordination within the criminal justice system.

The legislation also aims to strengthen accountability mechanisms by requiring proper maintenance of records and compliance with procedural safeguards. Such reforms may improve public confidence in law enforcement institutions. However, successful implementation will require adequate training of police personnel, technological infrastructure, and awareness regarding constitutional limitations on arrest powers.

Overall, the BNSS represents an attempt to modernize India's criminal procedure framework while preserving the foundational principles established under the CrPC. Its long-term success will depend upon balancing effective law enforcement with the constitutional commitment to personal liberty and human dignity.

CONCLUSION

The law relating to arrest occupies a central position within the criminal justice system because it directly concerns the balance between individual liberty and the authority of the State to maintain law and order. The comparative analysis of the arrest provisions under the Criminal Procedure Code, 1973 and the Bharatiya Nagarik Suraksha Sanhita, 2023 demonstrates that while the BNSS substantially preserves the foundational structure of the earlier procedural framework, it also introduces several reforms intended to modernize criminal procedure and strengthen procedural accountability.

The study reveals that many core principles governing arrest, such as the distinction between cognizable and non-cognizable offences, production of the arrested person before a Magistrate within twenty-four hours, protection against arbitrary detention, and the right to legal representation, continue under the BNSS. These safeguards reflect the continuing importance of constitutional protections guaranteed under Articles 21 and 22 of the Constitution of India. The BNSS therefore does not completely depart from the CrPC framework but rather builds upon it through consolidation and procedural refinement. At the same time, the BNSS introduces important modifications aimed at improving transparency and efficiency within the criminal justice process. The legislation expressly incorporates safeguards relating to arrest memoranda, communication of arrest information to relatives or friends, medical examination of arrested persons, and maintenance of proper records. The use of digital technology and electronic communication further reflects the intention to modernize criminal administration and reduce procedural delays. One of the significant changes introduced by the BNSS is the express recognition of the use of handcuffs in specified categories of offences and offenders. While this provision may assist law enforcement agencies in dealing with serious and organized crimes, it has also generated concerns regarding possible misuse and its impact on human dignity and personal liberty. Similarly, the expansion of procedural powers available to police authorities under certain circumstances highlights the continuing tension between effective law enforcement and protection of individual rights.

The research further indicates that the BNSS places greater emphasis on the protection of women and vulnerable persons during arrest and detention. The strengthened safeguards relating to arrests of women and the requirement of procedural accountability reflect a more rights-oriented approach within criminal procedure law. However, the practical success of these reforms depends not merely on legislative drafting but also on proper implementation by investigating agencies and strict judicial supervision.

In conclusion, the Bharatiya Nagarik Suraksha Sanhita, 2023 represents an important stage in the evolution of criminal procedure law in India. The legislation attempts to combine procedural efficiency with constitutional safeguards by modernizing arrest procedures while retaining the essential principles of fairness and legality established under the CrPC. Nevertheless, the effectiveness of these reforms will ultimately depend upon balanced interpretation, responsible exercise of police powers, judicial oversight, and continued commitment to the protection of fundamental rights within the criminal justice system.

REFERENCE

1. Bharatiya Nagarik Suraksha Sanhita, 2023.
2. Criminal Procedure Code, 1973.
3. Constitution of India.
4. D.K. Basu v. State of West Bengal.
5. Joginder Kumar v. State of Uttar Pradesh.
6. Legal commentaries on Criminal Procedure Law.

