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## **Preface**

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## **Description**

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# **GROUNDS OF ARREST, INDIVIDUALISED SATISFACTION AND JUDICIAL OVERSIGHT UNDER THE BNSS: A CONSTITUTIONAL ANALYSIS**

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## **ABSTRACT**

The power of arrest represents one of the most intrusive exercises of State authority over individual liberty. Under Indian constitutional law, this power is circumscribed by the guarantees contained in Articles 21 and 22(1) of the Constitution, which mandate fairness, reasonableness, and immediate communication of the grounds of arrest. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), introduced as a replacement for the Code of Criminal Procedure, 1973, seeks to modernise procedural law but has simultaneously raised concerns regarding the dilution of arrest safeguards through administrative flexibility and executive discretion.

This paper undertakes a constitutional analysis of the law governing arrest under the BNSS, with particular emphasis on the requirements of communication of grounds of arrest, recording of individualised satisfaction by the arresting officer, and the role of the Magistrate as a constitutional check at the remand stage. Drawing upon recent Supreme Court and High Court jurisprudence, the study highlights emerging doctrinal tensions between courts insisting on strict compliance with arrest safeguards and those applying a prejudice-based test to excuse procedural violations.

The paper argues that arrest must be understood as a constitutional event rather than a routine procedural act, and that any dilution of safeguards undermines the foundational principle that personal liberty is the rule and detention the exception. It concludes by advocating for a harmonised constitutional standard that reinforces judicial oversight and ensures that procedural reforms under the BNSS strengthen, rather than weaken, the culture of rights and accountability in criminal process.

**Keywords:** Arrest, BNSS, Article 21, Article 22, Judicial Oversight, Remand, Personal Liberty

## 1. INTRODUCTION

Arrest constitutes the most immediate and coercive interface between the individual and the State within the criminal justice system. Unlike search or seizure, arrest involves the physical restraint of the body and the symbolic assertion of State authority over personal liberty. For this reason, the Indian constitutional framework has consistently treated arrest not as a matter of administrative convenience but as a legally and constitutionally regulated act.

Articles 21 and 22 of the Constitution together form the bedrock of arrest jurisprudence in India. While Article 21 guarantees that no person shall be deprived of personal liberty except according to procedure established by law, Article 22(1) provides specific procedural protections to an arrested person, including the right to be informed of the grounds of arrest and the right to consult and be defended by a legal practitioner of choice. Judicial interpretation has infused these provisions with substantive due process requirements, ensuring that arrest is not arbitrary, mechanical, or punitive in nature.

The replacement of the Code of Criminal Procedure, 1973 with the Bharatiya Nagarik Suraksha Sanhita, 2023 marks a significant legislative moment. While the BNSS claims to enhance efficiency and incorporate technological advancements, concerns have arisen regarding whether procedural streamlining has come at the cost of constitutional safeguards. In particular, ambiguities surrounding the communication of grounds of arrest, the recording of reasons for arrest, and the scope of judicial scrutiny at the remand stage have prompted renewed judicial engagement.

This paper examines these concerns through a constitutional lens. It analyses the statutory framework governing arrest under the BNSS, situates it within existing constitutional doctrine, and evaluates recent judicial decisions that interpret arrest safeguards in the post-BNSS era. The central inquiry is whether the BNSS reinforces or undermines the constitutional culture of liberty that has been painstakingly developed through judicial precedent.

## 2. CONSTITUTIONAL FOUNDATIONS OF ARREST IN INDIA

The constitutional regulation of arrest in India is anchored primarily in Articles 21 and 22. Article 21, as expansively interpreted since *Maneka Gandhi v. Union of India*, requires that any procedure depriving a person of liberty must be just, fair, and reasonable. Arrest, therefore, cannot be arbitrary, disproportionate, or based on unfettered discretion.

Article 22(1) supplements this protection by imposing specific obligations on the arresting authority. The requirement that the arrested person be informed “as soon as may be” of the grounds of arrest is not merely informational; it enables the exercise of the right to legal counsel and the right to challenge the legality of arrest. Courts have repeatedly held that communication of grounds must be meaningful and intelligible, not a ritualistic recitation of statutory provisions.

Judicial precedent has further clarified that arrest should not be the default response to the registration of an offence. In *Joginder Kumar v. State of U.P.*, the Supreme Court emphasised that the power to arrest must be exercised sparingly and only when necessary. This principle was reaffirmed and elaborated in *Arnesh Kumar v. State of Bihar*, where the Court introduced a structured framework requiring the police to record reasons justifying arrest, particularly in offences punishable with imprisonment up to seven years.

These constitutional foundations underscore a critical idea: arrest is an exception justified by necessity, not a routine administrative act. Any statutory framework governing arrest must therefore be tested against this constitutional benchmark.

## 3. STATUTORY FRAMEWORK UNDER THE BNSS

The BNSS largely carries forward the structure of arrest provisions from the CrPC, while introducing certain modifications in language and procedure. Provisions corresponding to Sections 41, 41A, and 50 of the CrPC now find place in Sections 35, 47, and allied provisions of the BNSS. On paper, these provisions appear to preserve the requirement of recording reasons for arrest and communicating the grounds of arrest to the accused.

However, the practical application of these provisions reveals areas of concern. The BNSS permits greater reliance on notices of appearance and electronic communication, raising questions about the adequacy of safeguards when arrest is deferred or formalised at a later stage. Additionally, the absence of explicit statutory consequences for non-compliance with arrest safeguards has allowed room for judicial discretion in determining the effect of violations.

A significant issue under the BNSS is the interpretation of “grounds of arrest.” Courts have grappled with whether mere mention of the offence sections suffices, or whether the factual basis of accusation must be disclosed. The constitutional requirement, rooted in Article 22(1), demands the latter. Any statutory interpretation that permits vague or skeletal communication risks constitutional infirmity.

#### **4. COMMUNICATION OF GROUNDS OF ARREST: SUBSTANCE OVER FORM**

The constitutional mandate under Article 22(1) that an arrested person be informed of the grounds of arrest “as soon as may be” has consistently been interpreted as a substantive safeguard rather than a procedural formality. The purpose of this requirement is twofold: first, to enable the arrested person to understand the factual basis of the State’s coercive action; and second, to facilitate the effective exercise of the right to consult legal counsel and challenge the legality of the arrest.

Judicial interpretation has clarified that mere communication of the statutory provisions allegedly violated does not satisfy this constitutional obligation. In *Harikisan v. State of Maharashtra*, the Supreme Court held that the grounds of arrest must be communicated in a language understood by the arrested person and must convey the basic factual allegations. This principle has been reaffirmed in subsequent jurisprudence, emphasising that intelligibility and immediacy are core components of the right.

Post-BNSS judicial decisions have reinforced this constitutional position. Several High Courts have held that supplying grounds of arrest hours before remand or through vague written notices amounts to illusory compliance. The requirement of immediacy cannot be diluted by

administrative convenience or logistical constraints. Courts have also clarified that the expression “forthwith” implies contemporaneous communication, not delayed disclosure prior to judicial production.

A troubling trend, however, has emerged in certain decisions where courts have applied a prejudice-based test to assess violations of Article 22(1). Under this approach, failure to properly communicate grounds of arrest is treated as a curable irregularity unless the accused demonstrates actual prejudice. This reasoning risks inverting the constitutional burden by shifting responsibility from the State to the individual, thereby weakening the normative force of arrest safeguards.

The constitutional position demands strict compliance. Communication of grounds of arrest must be immediate, factual, and meaningful. Any interpretation of the BNSS that permits skeletal or delayed disclosure would be incompatible with the constitutional scheme.

## **5. INDIVIDUALISED SATISFACTION AND THE LIMITS OF POLICE DISCRETION**

The requirement of recording reasons for arrest reflects the constitutional demand that coercive State action be justified through rational and individualised decision-making. In *Arnesh Kumar v. State of Bihar*, the Supreme Court laid down clear guidelines mandating that arrest should not be automatic upon registration of an offence and that reasons for arrest must be recorded in writing. This doctrine of individualised satisfaction has acquired renewed relevance under the BNSS. Courts have emphasised that arrest must be based on specific facts relating to the accused, such as the likelihood of absconding, tampering with evidence, or influencing witnesses. Generalised assertions or mechanical reproduction of statutory language fail to meet this constitutional standard.

Recent High Court decisions have invalidated arrests where the arresting officer failed to demonstrate application of mind to the necessity of arrest. These judgments underscore that discretion must be structured and reviewable. The absence of recorded reasons not only violates statutory requirements but also renders the arrest constitutionally suspect.

A related concern arises in cases involving formal arrest of persons already in custody. The Supreme Court has cautioned against unnecessary formal arrests that serve no investigative purpose and merely subject the individual to humiliation and procedural hardship. Such practices are incompatible with the constitutional value of dignity, which forms an integral part of Article 21.

## **6. GENDER-SENSITIVE AND DIGNITY-BASED SAFEGUARDS**

The constitutional regulation of arrest extends beyond legality to encompass dignity and humane treatment. Provisions restricting the arrest of women during night hours and mandating the presence of female police officers are grounded in constitutional commitments to equality and dignity.

Judicial enforcement of these safeguards has been robust in recent years. Courts have held that violations of gender-specific arrest protections cannot be trivialised as procedural lapses. The absence of exigent circumstances renders such arrests unconstitutional, regardless of subsequent compliance.

The dignity-centric approach to arrest jurisprudence recognises that procedural fairness is inseparable from humane treatment. Arrest practices that disregard dignity undermine public confidence in the justice system and erode constitutional values.

## **7. THE MAGISTRATE'S ROLE: REMAND AS A CONSTITUTIONAL CHECKPOINT**

The production of an arrested person before a Magistrate within twenty-four hours is not a procedural ritual but a constitutional safeguard embedded in Articles 21 and 22(2). The Magistrate's function at the remand stage is to act as an independent judicial authority interposed between the individual and the executive, ensuring that the deprivation of liberty is lawful, justified, and necessary.

Judicial precedent has consistently held that remand cannot be granted mechanically. In *Madhu Limaye v. Sub-Divisional Magistrate*, the Supreme Court cautioned that judicial oversight must be real and effective, not illusory. This principle has been reiterated in recent decisions where courts have invalidated remand orders passed without examining the legality of arrest or the necessity of continued detention.

Under the BNSS, the Magistrate's responsibility has assumed heightened significance. With expanded reliance on police discretion and procedural flexibility, judicial scrutiny at the remand stage becomes the final constitutional firewall. Magistrates are required to examine whether the arresting officer has complied with statutory requirements, including communication of grounds of arrest and recording of reasons justifying arrest.

Several High Courts have emphasised that failure to apply judicial mind at the remand stage vitiates detention. Orders granting remand without reference to arrest compliance have been characterised as unconstitutional, rendering subsequent detention illegal. These decisions reaffirm that judicial oversight is not subordinate to investigative efficiency.

## **8. MECHANICAL REMAND AND ITS CONSTITUTIONAL CONSEQUENCES**

Mechanical remand orders pose a serious threat to constitutional liberty. When Magistrates merely endorse police requests without scrutiny, they abdicate their constitutional role and facilitate arbitrary detention. Such practices undermine the separation of powers and erode public confidence in judicial institutions.

Courts have increasingly scrutinised remand orders to ensure that they reflect independent judicial application of mind. In cases where remand has been granted without examining arrest legality, courts have held detention to be unlawful ab initio. This approach underscores that remand cannot cure an illegal arrest; rather, it compounds the constitutional violation.

The BNSS does not alter this constitutional position. Any statutory interpretation suggesting that procedural defects in arrest can be retrospectively cured through remand would be inconsistent with Articles 21 and 22. Judicial oversight must precede and inform detention, not legitimise it after the fact.

## **9. STRICT COMPLIANCE VERSUS THE PREJUDICE TEST**

A significant doctrinal divergence has emerged in arrest jurisprudence concerning the consequences of non-compliance with arrest safeguards. Some courts have adopted a strict compliance approach, holding that violations of Articles 21 and 22(1) automatically vitiate arrest and detention. Others have applied a prejudice-based test, requiring the accused to demonstrate actual harm arising from the violation.

The strict compliance approach is constitutionally grounded. Arrest safeguards are preventive in nature, designed to restrain arbitrary State action at the threshold. Requiring proof of prejudice defeats this purpose by normalising violations and shifting the constitutional burden onto the individual.

The prejudice test, while ostensibly pragmatic, risks hollowing out constitutional protections. In the context of arrest, prejudice is inherent in the deprivation of liberty. The Constitution does not condition fundamental rights on demonstrable harm; it guarantees them as a matter of principle.

A harmonised constitutional standard must therefore reject the prejudice test in arrest jurisprudence and reaffirm strict compliance as the governing norm.

## **10. DOCTRINAL CONFLICTS AND EMERGING JUDICIAL TRENDS**

Recent judicial decisions reveal a fragmented landscape. While some High Courts have adopted a rights-centric interpretation of the BNSS, others have prioritised procedural efficiency. This divergence has resulted in uncertainty regarding the enforceability of arrest safeguards.

The Supreme Court has an opportunity to resolve this conflict by clarifying that procedural reforms cannot dilute constitutional guarantees. A clear affirmation of strict compliance would restore doctrinal coherence and reinforce the centrality of liberty in criminal process.

## 11. FINDINGS

The constitutional analysis undertaken in this paper leads to several clear findings. First, arrest in Indian criminal jurisprudence is not a routine procedural act but a constitutionally regulated exercise of State power. Articles 21 and 22(1) together impose substantive obligations on the State to justify any deprivation of personal liberty through fair, reasonable, and transparent procedure. Second, the BNSS, despite introducing procedural modernisation, does not create a new constitutional framework for arrest. Its provisions must be interpreted in continuity with existing constitutional doctrine developed under the CrPC. Any reading of the BNSS that permits dilution of arrest safeguards would be constitutionally impermissible.

Third, judicial insistence on meaningful communication of grounds of arrest reflects the core purpose of Article 22(1). Vague, delayed, or symbolic disclosure fails to meet constitutional standards. The growing tendency in some decisions to treat violations as curable defects subject to a prejudice test undermines the preventive function of arrest safeguards.

Fourth, the requirement of recording individualised satisfaction operates as a structural restraint on police discretion. Arrests unsupported by case-specific reasons reveal mechanical decision-making and violate the constitutional mandate of non-arbitrariness. The continued judicial emphasis on this requirement reaffirms that discretion must be reasoned, reviewable, and proportionate.

Fifth, the Magistrate's role at the remand stage is central to the constitutional architecture of arrest. Mechanical remand orders not only negate judicial oversight but also transform the Magistracy into an extension of executive power. Judicial scrutiny at this stage must encompass both procedural compliance and substantive necessity of arrest.

## 12. NORMATIVE RECOMMENDATIONS

In light of the above findings, this paper proposes the following normative recommendations.

First, courts must uniformly adopt a strict compliance standard for arrest safeguards. Constitutional rights under Articles 21 and 22(1) should not be subjected to a prejudice-based test, as prejudice is inherent in unlawful deprivation of liberty.

Second, Magistrates should be required to record brief but reasoned orders at the remand stage, explicitly addressing compliance with arrest safeguards. Such recording would institutionalise constitutional oversight and reduce mechanical detention.

Third, statutory clarification or judicial guidelines may be issued to define the minimum content of “grounds of arrest,” ensuring that factual allegations are disclosed in a language understood by the arrested person.

Fourth, training and sensitisation of police officers and Magistrates should emphasise arrest as a constitutional event rather than an investigative convenience. Procedural efficiency must be subordinated to constitutional fidelity.

### 13. CONCLUSION

Arrest is not a mere procedural step in the criminal justice process; it is a **constitutional event** that directly implicates the core guarantees of Articles 21 and 22(1) of the Constitution. The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023, while presented as a modernising reform, does not and cannot dilute these substantive constitutional protections. The requirement of communicating the grounds of arrest, recording individualised satisfaction, and subjecting police action to meaningful judicial scrutiny are not technical formalities but essential safeguards against arbitrary State power.

Judicial developments under both the CrPC and the BNSS demonstrate an evolving but fragmented jurisprudence. While several High Courts have insisted on strict and contemporaneous compliance with arrest safeguards, others have adopted a prejudice-based approach, treating violations as curable irregularities unless demonstrable harm is shown. This divergence risks undermining the constitutional promise of personal liberty by shifting the burden onto the arrestee to prove prejudice, rather than placing a strict obligation on the State to justify its coercive action.

The Magistrate’s role at the remand stage emerges as the most critical constitutional checkpoint in this framework. Mechanical remand orders, issued without examining the legality of arrest, negate

the very purpose of judicial oversight and convert the Magistracy into a rubber stamp for executive action. Judicial scrutiny must extend beyond procedural compliance to a substantive evaluation of whether the arrest itself was necessary, proportionate, and supported by recorded reasons.

Ultimately, a harmonised constitutional standard is required—one that affirms strict compliance with arrest safeguards as the norm, not the exception. Any dilution of these requirements risks normalising unconstitutional arrests and eroding the foundational principle that liberty is the rule and detention the exception. The BNSS must therefore be interpreted and applied in a manner that strengthens, rather than weakens, the constitutional culture of rights, accountability, and judicial vigilance.

## FOOTNOTES

1. **Constitution of India**, art. 21.
2. **Constitution of India**, art. 22(1), (2).
3. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
4. *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260.
5. *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.
6. *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.
7. *Madhu Limaye v. Sub-Divisional Magistrate*, (1971) 2 SCC 293.
8. *Harikisan v. State of Maharashtra*, AIR 1962 SC 911.
9. *Kasireddy Upender Reddy v. State of Andhra Pradesh*, (2023) SCC OnLine SC 1449.
10. *Dhanraj Aswani v. State of Maharashtra*, (2024) SCC OnLine SC 531.
11. *Mihir Rajesh Shah v. State of Maharashtra*, (2023) SCC OnLine SC 1267.
12. *Karan Singh v. State (NCT of Delhi)*, 2024 SCC OnLine Del 1342.
13. *Shashanka Maiti v. State of West Bengal*, 2024 SCC OnLine Cal 987.
14. *Vishnu N.P. v. State of Kerala*, 2024 SCC OnLine Ker 2110.
15. *Sakib Choudhury v. State of Assam*, 2024 SCC OnLine Gau 1567.
16. *Dr. Sangeeta Dutta v. State of Assam*, 2023 SCC OnLine Gau 2234.
17. *Marfing Tamang v. State (NCT of Delhi)*, 2024 SCC OnLine Del 1988.
18. **Code of Criminal Procedure, 1973**, ss. 41, 41A, 50, 57, 167.

19. **Bharatiya Nagarik Suraksha Sanhita, 2023**, ss. 35, 47, 48, 57, 187.
20. **Law Commission of India**, 177th Report on Arrest (2001).
21. Upendra Baxi, *The Crisis of the Indian Legal System* (Oxford University Press, 1982).
22. Justice V.R. Krishna Iyer, *Human Rights and the Criminal Process* (Eastern Book Company, 1989).

