
POLICE POWERS AND PROCEDURAL SAFEGUARDS UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

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ABSTRACT

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) marks a significant reform in India's criminal procedural framework by replacing the Code of Criminal Procedure, 1973. One of the most critical aspects of this reform concerns the scope and exercise of police powers and the procedural safeguards intended to regulate them. While police powers such as arrest, search, seizure, and investigation are essential for effective law enforcement, their misuse has historically resulted in arbitrary arrests, custodial abuse, and violation of the fundamental right to personal liberty under Article 21 of the Constitution of India.

This article undertakes a doctrinal and analytical examination of police powers under the BNSS, 2023, with particular emphasis on the procedural safeguards designed to prevent abuse of authority. It traces the evolution of police powers from the CrPC regime to the BNSS, analyses the statutory safeguards incorporated under the new Sanhita, and evaluates their compatibility with constitutional principles of due process, fairness, and proportionality. The article further engages with landmark judicial pronouncements of the Supreme Court to assess how established jurisprudence on arrest and fair investigation continues to shape the interpretation of police powers under the BNSS.

The study argues that although the BNSS strengthens procedural accountability and judicial oversight, significant challenges remain in its implementation at the ground level. It concludes that effective regulation of police powers under the BNSS depends not only on statutory reform but also on institutional training, judicial vigilance, and a sustained commitment to the protection of personal liberty.

Keywords: Police Powers; Procedural Safeguards; BNSS 2023; Criminal Procedure; Article 21; Personal Liberty

1. INTRODUCTION

Police powers constitute the operational backbone of the criminal justice system. The authority to arrest, search, seize, interrogate, and investigate enables the State to detect crime, maintain public order, and ensure effective administration of justice. However, these powers are inherently coercive. When exercised without adequate procedural restraints, they pose a serious threat to individual liberty and human dignity.

In India, concerns relating to arbitrary arrests, custodial violence, and abuse of investigative authority have been persistent. Statistical data, judicial observations, and reports of human rights commissions consistently indicate that misuse of police powers is not an isolated phenomenon but a structural problem rooted in excessive discretion, institutional pressures, and weak accountability mechanisms. Under the Code of Criminal Procedure, 1973 (CrPC), police powers were broadly defined, and although procedural safeguards existed, their enforcement often remained ineffective in practice.

The Supreme Court of India has repeatedly intervened to protect personal liberty by placing constitutional limitations on police powers. Landmark decisions such as *Joginder Kumar v. State of U.P.*, *D.K. Basu v. State of West Bengal*, and *Arnesh Kumar v. State of Bihar* sought to transform arrest from a routine police action into an exceptional measure justified by necessity. Despite these judicial efforts, ground-level policing practices continued to reflect a culture of mechanical arrests and procedural non-compliance.

The enactment of the *Bharatiya Nagarik Suraksha Sanhita, 2023* represents a legislative attempt to modernise criminal procedure and recalibrate the balance between effective law enforcement and the protection of personal liberty. This article critically examines whether the BNSS meaningfully reforms police powers and strengthens procedural safeguards or whether it merely codifies existing judicial principles without ensuring substantive change.

2. THEORETICAL FRAMEWORK: POLICE POWERS AND THE RULE OF LAW

In a constitutional democracy governed by the rule of law, police powers cannot be absolute. The legitimacy of police action depends upon legality, necessity, and proportionality. The rule of law requires that coercive State power be exercised only in accordance with law and subject to effective oversight.

Police discretion occupies a central position in criminal procedure. While discretion is indispensable for effective policing, unregulated discretion often degenerates into arbitrariness. The Supreme Court has consistently held that arbitrariness is antithetical to equality under Article 14 and incompatible with the guarantee of personal liberty under Article 21.

The doctrine of due process, though not explicitly mentioned in the Indian Constitution, has been read into Article 21 through judicial interpretation. The phrase “procedure established by law” has been interpreted to mean a procedure that is fair, just, and reasonable. Consequently, any exercise of police power resulting in deprivation of liberty must satisfy constitutional standards of fairness and reasonableness.

3. EVOLUTION OF POLICE POWERS: FROM CrPC TO BNSS

Under the CrPC regime, police powers relating to arrest, search, and investigation were extensive. Although safeguards existed, arrest was frequently treated as a routine consequence of the registration of an FIR. Judicial criticism of this approach centred on the mechanical use of arrest and the lack of accountability.

In *Arnesh Kumar v. State of Bihar*, the Supreme Court explicitly observed that arrest should not be automatic and directed police officers to justify the necessity of arrest. Similarly, *Joginder Kumar* emphasised that arrest cannot be made merely because it is lawful to do so.

The BNSS reflects legislative acknowledgment of these judicial concerns. While many provisions resemble those of the CrPC, the BNSS reinforces procedural accountability and attempts to align statutory law with constitutional jurisprudence developed over decades.

4. POLICE POWERS UNDER THE BNSS, 2023

4.1 Power of Arrest

Arrest remains one of the most intrusive police powers under the BNSS. The Sanhita recognises that arrest should not be routine or mechanical. Police officers are required to assess the necessity of arrest based on factors such as the seriousness of the offence, the likelihood of the accused absconding, and the possibility of tampering with evidence.

The requirement to record reasons for arrest introduces transparency and enables judicial

scrutiny. This safeguard reflects the constitutional mandate that deprivation of liberty must be justified by fair procedure.

4.2 Search and Seizure

The BNSS retains police powers of search and seizure while emphasising procedural compliance. Searches must be conducted in accordance with prescribed safeguards, including documentation and the presence of witnesses. These safeguards assume particular importance in light of the right to privacy recognised as an integral component of Article 21.

4.3 Investigative Powers

Police investigative authority under the BNSS includes examination of witnesses, collection of evidence, and use of coercive measures within statutory limits. Modern investigation increasingly involves digital evidence, requiring technical competence and procedural precision.

4.4 Preventive Police Powers and Use of Discretion

In addition to investigative powers, police authorities also exercise preventive powers aimed at maintaining public order and preventing the commission of offences. Such powers, though necessary, are particularly susceptible to misuse due to their anticipatory nature and reliance on subjective satisfaction.

The BNSS does not entirely eliminate the risk of arbitrariness inherent in preventive authority. The principle of proportionality therefore assumes critical importance. Preventive action involving deprivation of liberty must be proportionate to the perceived threat and subject to procedural safeguards that enable judicial oversight.

5. PROCEDURAL SAFEGUARDS UNDER THE BNSS

5.1 Recording of Reasons

The obligation to record reasons for arrest is a cornerstone of procedural fairness. It restrains arbitrary action and facilitates judicial review. Failure to record reasons may render the arrest legally vulnerable.

5.2 Information of Grounds of Arrest

The BNSS reiterates the requirement that an arrested person must be informed of the grounds of arrest. This safeguard ensures transparency and enables the accused to exercise the right to legal representation and seek bail.

5.3 Production before Magistrate

Prompt production before a magistrate reinforces judicial oversight and acts as a check on police excesses. The BNSS strengthens this safeguard by emphasising strict compliance with procedural timelines.

6. CONSTITUTIONAL PERSPECTIVE: ARTICLE 21 AND PERSONAL LIBERTY

Article 21 has evolved into a comprehensive guarantee of personal liberty encompassing human dignity, privacy, and procedural fairness. Any exercise of police power under the BNSS must therefore conform to constitutional standards.

Procedural safeguards under the BNSS acquire constitutional significance when viewed through the lens of Article 21. Non-compliance not only violates statutory law but also invites constitutional scrutiny.

7. JUDICIAL SAFEGUARDS AND SUPREME COURT JURISPRUDENCE

7.1 Joginder Kumar v. State of U.P.

The Court held that arrest cannot be made merely because it is lawful and that necessity must be established.

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

The Court laid down detailed guidelines to prevent custodial abuse and protect the rights of arrested persons. These guidelines continue to inform police procedure under the BNSS.

7.3 Arnesh Kumar v. State of Bihar

The Court emphasised that arrest should be the last resort and directed strict compliance with procedural safeguards. The principles laid down in this case are reflected in the BNSS's

approach.

8. PRACTICAL CHALLENGES IN IMPLEMENTATION

Despite a strengthened statutory framework, implementation remains a major challenge. Institutional culture, lack of training, pressure to demonstrate efficiency, and absence of independent oversight often undermine procedural safeguards. Without systemic reform, statutory protections risk becoming symbolic rather than substantive.

9. CRITICAL EVALUATION: DOES THE BNSS GO FAR ENOUGH?

The BNSS represents a progressive step towards rights-oriented criminal procedure. However, it largely codifies judicial guidelines rather than introducing radical accountability mechanisms. Without independent oversight and institutional reform, procedural safeguards may fail to achieve their intended impact.

10. WAY FORWARD

Effective regulation of police powers under the BNSS requires:

Specialised training of police personnel

Strengthening judicial oversight

Independent accountability mechanisms

Continuous sensitisation to constitutional values

11. CONCLUSION

Police powers are indispensable for maintaining law and order, yet they must be exercised within constitutional and procedural limits. The Bharatiya Nagarik Suraksha Sanhita, 2023 represents a conscious legislative effort to recalibrate the balance between effective law enforcement and protection of personal liberty. By reinforcing procedural safeguards and emphasising accountability, the BNSS seeks to align criminal procedure with constitutional values shaped by decades of judicial intervention.

However, statutory reform alone cannot transform policing practices. The effectiveness of the

BNSS depends on its implementation in spirit as well as in letter. Persistent issues such as mechanical arrests, custodial excesses, and procedural non-compliance underscore the need for institutional reform beyond legislative change.

The success of the BNSS therefore hinges on a multi-dimensional approach involving robust police training, vigilant judicial enforcement of safeguards, and effective accountability mechanisms. Only through sustained institutional commitment can the objectives of the BNSS be realised.

In conclusion, the BNSS should be viewed not as the culmination of criminal procedural reform but as a foundational step towards a more just, rights-oriented criminal justice system. Its true significance lies in its potential to transform police power from an instrument of coercion into a constitutionally regulated tool of justice in a democratic society.

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