



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ARREST WITHOUT WARRANT

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SEMESTER: V

ROLL NO.: 34

Subject: Bhartiya Nagrik Suraksha Sanhita, 2023

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ABSTRACT

The power to arrest without a warrant is most important yet debated areas of criminal law¹. On the other hand, it directly affects the rights if misused, can lead to harassment or wrongful arrest. Under the Bhartiya Nagrik Suraksha Sanhita, 2023(BNSS), the police can arrest without permission in cases, where urgent action is needed to prevent further crime, protect evidence, or stop an accused person from escaping. However, such wide powers also raise concerns about misuse and violation of basic rights².

To prevent such misuse, the law provides several safeguards for personal liberty. These include informing the reason of arrest presenting them before a magistrate within 24 hours, allowing access to a lawyer, and ensuring no unnecessary restraint is used.³

This research looks at the powers of arrest without warrant, their purpose, and the safeguards meant to protect individuals. The paper argues that while the power to arrest without warrant is necessary for effective policing, it must always be exercised with due process, accountability, and judicial oversight. Only then can the law ensure a fair balance between public safety and the rights of individuals.

Keywords: Cognizable offences, Arrest without warrant, Police powers, Public safety, Personal liberty, Fundamental rights, BNSS 2023, Safeguards, Supreme Court guidelines, Due process, Police Power Misuse, D.K. Basu case, Joginder Kumar case, Accountability, Judicial oversight, Article 21 and Article 22 of the Indian Constitution.

INTRODUCTION

The criminal justice system relies on two key principles: maintaining public order and protecting individual liberty. Arrests are among the most important ways the state restricts people's freedom. The police's authority to arrest without a warrant raises important issues. This power enables swift action against offenders but also poses risks of misuse and rights violations if not properly managed. The BNSS is replaced CrPC1973, and still allows arrests without a warrant under Section 35. This provision applies to cognizable offences, where delays can lead to lost evidence or fleeing offenders.

¹ <https://www.criminalattorneyfortworth.com/can-police-officer-make-arrest-without-warrant/>

² Bhartiya Nagrik Suraksha Sanhita, 2023, § 35.

³ Id., read with Constitution of India, art. 22.

It emphasized that police arrest powers must adhere to constitutional safeguards. This research looks into whether Section 35 of the BNSS and the protection of fundamental rights. It reviews the law, individual safeguards, and the role of judicial oversight, while highlighting the need for accountability and compliance with constitutional principles in using this power.

Historical Background

The idea of without permission arrest in India began in Criminal Procedure Code (CrPC) of 1898, framed during British rule. It gave police very wide powers to arrest without much accountability, mainly to maintain law and order under colonial control. After independence, the CrPC of 1973 replaced the old law, but the same provision continued in Section 41, which allowed arrest without warrant in cognizable offences.

To modernize criminal law, the government introduced the BNSS 2023, where Section 35 replaced Section 41 of CrPC⁴. While it still allows arrest without warrant in cognizable offences, it adds stricter safeguards. Police officers are now required to record written reasons for arrest or for not making an arrest, and magistrates are empowered to review these reasons. This change shows a move from a colonial model of wide police power towards a citizen-centric system that balances public safety with protection of individual rights.

Cognizable Offence under BNSS (2023)

As per Section 2(g) of BNSS 2023, A cognizable offence means a serious crime where the police can detained a person without permission from court and can start investigation on their own, without needing permission from a Magistrate⁵

☞ Example: Murder, Rape, Kidnapping, Robbery, Dowry Death, etc

REVIEW OF LITRATURE

1. Scholars' Views:

The scholar's emphasize that arrest without warrant is required for immediate police action in more serious offenses.

K.N. Chandrasekharan Pillai emphasizes that such power should have clear boundaries

⁴ <https://ijirl.com/wp-content/uploads/2024/11/POWERS-OF-POLICE-A-CONTEXT-OF-INDIA-ACCORDING-TO-BHARATIYA-NAGARIK-SURAKSHA-SANHITA.pdf>

⁵ <https://www.casemine.com/commentary/in/preservation-of-police-investigative-powers:-emperor-v.-khwaja-nazir-ahmad/view>

to prevent abuse.

2. Committee Reports:

The National Police Commission (1979–81) identified that the majority of arrests made in India were unnecessary.

It further observed that these types of arrests result in overcrowded the prison and misuses the police power.

3. Judicial Stand:

In *Joginder Kumar v. State of U.P.* (1994), the Supreme Court ruled that arrest must not be made casually but only when truly needed.

In *D.K. Basu v. State of West Bengal* (1997), the Court issued guidelines to prevent custodial abuse and safeguard rights.

4. New Law (BNSS, 2023):

The BNSS Section 35 continues the arrest without warrant provision⁶

Scholars and experts continue to argue whether it effectively balances public safety and individual freedom.

RESEARCH METHODOLOGY

Data collection method:

I have used doctrinal method in my research. It is based on the study of legal provisions, constitutional safeguards, judicial decisions, and commentaries rather than field surveys.

Source of Data Collection:

1. Primary Source

The *Bhartiya Nagrik Suraksha Sanhita, 2023* (BNSS), especially Section 35.

And 21 & 22 articles and Judicial Landmark rulings.

Landmark judicial decisions such as *Joginder Kumar v. State of U.P.* (1994) and *D.K. Basu v. State of West Bengal* (1997).

2. Secondary Sources:

I have also used secondary data collection method for my research from various Articles, Books, Journals, Commentaries on BNSS, Reports and various authentic websites.

⁶ https://bprd.nic.in/uploads/table_c/Section%2520of%2520BNSS%252036-62,82.pdf

Research Objectives:

1. To study the Grounds for arrest without a warrant under the BNSS.
2. To analyze the constitutional safeguards available to protect personal liberty if a person got arrested without warrant.
3. To analyze how the judiciary controls police powers and upholds individual rights.
4. To study the Misuse of power by police

Section 35: When Police may Arrest Without Warrant

Section 35 (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—⁷

- a. If someone is found doing offence in attendance of police authorities.
- b. If there is reliable information, a complaint, or there is a suspicion of doing the crime the will be jailed for seven years and can be fined also or both;
 - i. The authorities should have enough information to prove that this person has committed the offence.
 - ii. Police must confirm that the arrest is necessary in the given situation.
- a. To stopping the person from doing another crime.
- b. Also ensure a fair and proper examination should be done.
- c. To prevent from tampering with, hiding, or destroying evidence related to the offence.
- d. To stop the accused person from bribing the witnesses to stay silent.
- e. To ensure the accused appears in court when their presence cannot be guaranteed otherwise.
- f. c. If there is credible information that proved the said person has committed the crime then he/she will be jailed for more than seven years' imprisonment, life imprisonment, or death penalty, and the officer has enough grounds to believe this information.
- g. d. If the individual has been declared an offender under this law or by a State Government order.
- h. If property linked to a theft is found in the possession of an individual, or if there are reasons to suspect that the possession is related to an offence.
- i. If an individual obstructs a police officer on duty, or tries to flee away from prison.
- j. If a person is doubted for deserting by the Armed Forces.

⁷ <https://lawfyi.io/the-bharatiya-nagarik-suraksha-sanhita-2023-bnss-section-35/>

- k. If there is a credible complaint and acted out of the country the it will be considered that the act been done in India, and it may be liable for custody, extradition, or detention under Indian law.
- l. If a released convict violates the rules laid out in section 394(5).
- m. If a police officer receives a written or verbal request for arrest from another police officer, including the name of the individual and the reason for the arrest.⁸

Constitutional Safeguards To Protect Personal Liberty

Article 21: Right to Life & Personal Liberty

Article 21: Says “No person shall be deprived of his life or personal liberty except according to procedure established by law.”⁹

Safeguards in BNSS like recording reasons for arrest/non-arrest, notice of appearance, informing right of arrested & 24 – hour presenting before the court flow directly from Article 21.

Article 22, Protection from Arrest and Detention

According to Article 22 (1), the detained person have right to be told the reason of arrest and seek help from an lawyer to defend himself in court.

It requires that:

1. The person should not be arrested without being told the reason of their arrest.
2. The arrested person have full right to consult and choose their choice of lawyer to defend him in the court.
3. The arrested person should be presented before the court in 24 hours after his arrest.
4. Detention beyond 24 hours requires judicial approval.
5. Special rules apply to preventive detention, but even there, constitutional limitations exist to prevent abuse.

⁸ https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00049_202346_1719552320687&orderno=35#:~:text=India%20Code:%20Section%20Details,evidence%20in%20any%20manner;%20or

⁹ <https://indiankanoon.org/doc/1199182/>

Judicial Interpretation (Landmark Judgements)

Joginder Kumar v. State of Uttar Pradesh (1994)

Joginder Kumar a lawyer was taken into custody by U.P police authorities without valid reasons and his relatives or friends were not told about his arrest. He was kept in detention unlawfully, raising concerns about the arbitrary use of police authority.

The Court clarified that simply having the power to arrest does not mean it should be used indiscriminately. An arrest must be based on necessity and justification, not as a routine practice. Court said unnecessary arrests violate the fundamental right to life of a person¹⁰.

Supreme Court Guidelines:

1. Arrest should be carried out only when required for preventing crime, ensuring presence in court, or aiding investigation.
2. Police must not misuse arrest as a tool of harassment.
3. The person arrested has the right to be told about his arrest to his friends or relative.
4. Reasons for arrest and detention must be properly recorded by the police.

Significance: The decision placed significant restrictions on arbitrary arrests and highlighted that personal freedom is to be protected unless strong legal grounds justify its curtailment.

D.K. Basu v. State of West Bengal (1997)

D.K. Basu, was a chairperson of L.A.S. from West Bengal, filed a Public Interest Litigation highlighting the rapid growth of violence under the custody, and death of the persons by misusing power of Police. He argued that such practices violated the rights of arrested person.

The main concern before the Court was whether the inadequacy of proper reason to arrest & detention encouraged such violations.

Court ruled that custody torture and death are grave human rights abuses and directly violate Article 21. It further held that until Parliament enacted a proper law, guidelines would be mandatory for police officers during arrest and detention.

¹⁰ <https://www.scobserver.in/journal/the-right-to-life-and-personal-liberty-under-article-21-a-timeline/>

Guidelines Issued by Supreme Court:

1. Police officials must wear clear information.
2. A written memo should be prepared, signed by eyewitness and the person who is arrested.
3. The arrested person has the right to inform a friend or relative about the arrest¹¹
4. A medical examination must be conducted during arrest and must repeat with the of 2 day till the custody.
5. Details the arrest must recorded in the police register.
6. Relevant documents should be sent to the Magistrate.

Misuse of Power of Police to Arrest a Person and Violation of Rights

1. Illegal Arrests:

Section 35 allows police to arrest without authority but wide discretionary power sometimes leads to arbitrary or unnecessary arrests.

2. Arbitrary Detention:

Arrests without proper reasons often result in illegal or prolonged detention, contrary to the principle of due process.

3. Custodial Violence and Harassment:

Misuse of arrest powers sometimes leads to custodial torture, humiliation, and abuse, which undermines human dignity.

4. Political and Personal Motives:

Police powers are occasionally misused to target individuals for political vendetta or personal gain, rather than for maintaining law and order.

5. Judicial Warnings:

Courts have highlighted how routine arrests violate rights and have issued strict guidelines.

FINDING AND SUGGESTIONS

Findings

1. The bnss has wide powers can be misused, leading to wrongful arrests, harassment, or custodial abuse.]

¹¹ <https://humanrightsinitiative.org/publications/police/arrest.pdf>

2. Articles 21 and 22 of the Constitution give protection against illegal detention, though violations are still common.
3. The Supreme Court in above given cases ruled that arrests should be done only when necessary.
4. BNSS 2023 adds accountability by requiring police to record reasons for arrest or non-arrest, which magistrates can review.

Suggestions

1. Restrict misuse: Clear guidelines to ensure arrests happen only when absolutely necessary.
2. Stronger accountability: Independent monitoring and strict action against unlawful arrests.
3. Awareness: Educate citizens about their rights under Articles 21, 22, and BNSS safeguards.
4. Judicial Review: Courts must actively oversee compliance with arrest procedures.
5. Police training: Sensitize officers on human rights and proper application of arrest powers.

CONCLUSION

The power of the police to arrest without a warrant under Section 35 of the BNSS, 2023 is important for maintaining law and order, but it also carries risks of misuse. While it helps the police act quickly in serious crimes, it can easily lead to wrongful arrests, custodial violence, and violation of fundamental rights if not applied carefully.

The Constitution, through Articles 21 and 22, provides strong protections for personal liberty, and the Supreme Court has repeatedly stressed that arrests must not be routine but only when truly necessary.

BNSS 2023 has tried to bring more accountability by requiring written reasons for arrests and allowing magistrates to review them, but challenges like weak implementation, lack of awareness, and political influence remain.

Therefore, a balance is needed between public safety and individual rights. This can be

achieved through strict guidelines, better police training, strong judicial oversight, and greater public awareness. Only then can the law prevent misuse of power and protect both justice and liberty.

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