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ABOUT US

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

“BNSS 2023: A STEP FORWARD OR A HALF MEASURE AGAINST ARBITRARY ARREST?”

AUTHORED BY - MAYANK KUMAWAT

1. ABSTRACT:

This research critically examines the effectiveness of the Bharatiya Nagarik Suraksha Act (BNSS), 2023, in preventing arbitrary arrests in India. Arbitrary arrests remain a grave human rights concern, disproportionately affecting vulnerable populations and undermining trust in the criminal justice system. The BNSS, enacted to replace the colonial-era Code of Criminal Procedure (CrPC), aims to establish a citizen-centric framework with enhanced procedural safeguards, including mandatory prior notice for arrest, explicit recording of grounds, judicial oversight, and technological integration such as electronic filing and video recording.

The study analyses BNSS provisions alongside judicial interpretations, historical context, and international human rights standards, notably the ICCPR's protections under Article 9. While BNSS embodies significant advancements over CrPC by institutionalizing transparency and limiting liberties' infringements, several systemic loopholes persist. These include broad police discretionary powers, inadequate statutory penalties for non-compliance, lack of an independent civilian oversight body, ambiguous definitions of "arbitrary arrest," and gaps in public legal awareness. Further, challenges related to judicial delays, infrastructural deficits, and absence of compensation mechanisms for wrongful arrest victims dilute the safeguards' operational impact.

Comparatively, BNSS aligns well with global human rights benchmarks but requires rigorous enforcement, judicial vigilance, capacity building, and accountability reforms to fulfil its promise. This paper concludes that while BNSS is a pivotal step towards protecting citizens' liberty, its success ultimately hinges on addressing practical and institutional challenges that continue to impede the prevention of arbitrary arrests in India's evolving criminal justice landscape.

Keywords: Bharatiya Nagarik Suraksha Sanhita (BNSS), Arbitrary Arrest, Procedural Safeguards, Judicial Oversight, Human Rights Compliance.

2. INTRODUCTION:

Arbitrary arrests remain a grave human rights concern and a significant legal challenge in India¹. Such arrests violate the fundamental rights to liberty and security guaranteed under the Indian Constitution and international human rights law. They disproportionately affect marginalized groups, including immigrants and economically disadvantaged populations, creating systemic injustice and distrust in the judicial and law enforcement institutions². These unlawful detentions often occur without due process, lack of proper cause, or judicial oversight, leading to serious violations such as custodial torture, denial of legal counsel, and prolonged unlawful detention. Addressing arbitrary arrests is essential for safeguarding the rule of law, ensuring fair administration of justice, and upholding the dignity and freedoms of all citizens³.

The enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS) in 2023 represents a pivotal reform aimed at replacing the decades-old Code of Criminal Procedure (CrPC). BNSS seeks to establish a more citizen-centric framework with clearer procedural safeguards to prevent misuse of police powers. It codifies arrest standards, strengthening accountability through mandatory documentation, timely informing of arrests, and restrictions on the use of restraints such as handcuffs. The legislation also incorporates modern investigative practices, including mandatory forensic examination in serious cases and provisions for electronic trials. This new legal regime reflects India's attempt to harmonize domestic arrest procedures with international human rights benchmarks and to reduce instances of arbitrary arrest and detention.⁴

Despite BNSS's progressive reforms, uncertainties persist regarding its real-world effectiveness in curtailing arbitrary arrests. The law introduces stricter conditions and procedural limits on arrests and custody, yet some provisions—like extended police custody periods authorized in segments and discretionary use of handcuffs—have

¹ <https://www.ohchr.org/sites/default/files/Documents/Publications/training9chapter5en.pdf>

² <https://lokraj.org.in/2020/11/06/arbitrary-arrests-and-preventive-detention-violate-human-rights/>

³ <https://www.ohchr.org/sites/default/files/Documents/Publications/training9chapter5en.pdf>

⁴ <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-second-sanhita-2023>

sparked debates about potential rights infringements⁵. Assessing whether BNSS's safeguards meaningfully improve upon the CrPC and align with human rights principles is crucial to understanding its practical impact on justice delivery and civil liberties protection⁶.

This study aims to critically analyse the arrest-related provisions under the Bharatiya Nagarik Suraksha Sanhita (BNSS) of 2023, focusing on the legal safeguards embedded within the legislation to prevent arbitrary and unlawful arrests. A comparative assessment forms a vital component of the research, evaluating how BNSS provisions measure against those of the predecessor Code of Criminal Procedure (CrPC) and conform to international human rights standards. To guide this inquiry, the central questions addressed are: Has the BNSS effectively enhanced legal protections against arbitrary arrests in India? Moreover, to what extent are the safeguards under BNSS successful in practice at preventing misuse of arrest powers by authorities? This integrated approach will offer a comprehensive understanding of whether BNSS represents a substantial improvement in safeguarding individual liberty and due process.

This study focuses on arrest provisions under BNSS, supported by pertinent case law and comparative legal standards. Given the newness of BNSS, judicial interpretations and implementation experiences are limited, which constrains definitive conclusions on its full efficacy. The study does not extensively explore issues of trial procedures or sentencing reforms outside the scope of arrest law.

3. CONCEPTUAL FRAMEWORK:

3.1 Meaning of Arbitrary Arrest:

Arbitrary arrest constitutes the deprivation of an individual's liberty without a legitimate legal basis or a breach of established procedural safeguards. Internationally, the Universal Declaration of Human Rights (UDHR) explicitly states in Article 9, "No one shall be subjected to arbitrary arrest, detention or exile," ensuring protection against detention that lacks lawful justification and procedural

⁵ <https://www.lexisnexis.in/blogs/bharatiya-nagarik-suraksha-sanhita-paradigm-shift-from-procedural-code-to-nagarik-suraksha/>

⁶ <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2158411>

fairness.⁷ Similarly, the International Covenant on Civil and Political Rights (ICCPR) guarantees under Article 9(1) that “no one shall be subjected to arbitrary arrest or detention,” requiring all arrests to be effected within the confines of the law and due process.⁸

Under Indian constitutional law, Article 21 safeguards the right to life and personal liberty, stipulating such rights cannot be deprived except according to procedure established by law.⁹ Article 22 complements this protection by mandating that any arrested person must be informed, at the time of arrest, of the grounds for their arrest and must be produced before a magistrate within twenty-four hours, thus establishing critical procedural safeguards against arbitrariness in arrests.¹⁰

It is essential to distinguish between arbitrary and illegal arrest. While illegal arrest refers primarily to a breach of procedural rules—such as arrest without a warrant when one is legally required—arbitrary arrest encompasses a broader violation of fundamental rights. An arrest may be legally procedurally compliant yet arbitrary if undertaken without reasonable suspicion or utilized to intimidate or suppress dissent.¹¹ Action4Justice emphasizes that arbitrary arrest includes not only breaches of domestic legal procedures but also violations of international human rights norms.¹²

In the Indian context, failure to inform an arrested person of the grounds for their arrest violates Article 22(1) of the Indian Constitution and established procedural protections under Section 50 of the Criminal Procedure Code, rendering such detention arbitrary.¹³ The Supreme Court has reiterated in *Joginder Kumar v. State of Uttar Pradesh* that procedures surrounding arrest must be scrupulously followed to uphold constitutional safeguards against abuse of power.¹⁴

⁷ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁸ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁹ <https://www.constitutionofindia.net/articles/article-21-right-to-life-and-personal-liberty>

¹⁰ <https://www.constitutionofindia.net/articles/article-22-protection-against-arrest-and-detention-in-certain-cases/>

¹¹ https://action4justice.org/legal_areas/arrest/what-is-an-unlawful-or-arbitrary-arrest/

¹² <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹³ <https://www.constitutionofindia.net/articles/article-22-protection-against-arrest-and-detention-in-certain-cases/>

¹⁴ <https://www.livelaw.in/top-stories/if-there-is-fraternity-among-citizens-hatred-will-come-down-divisive-social-media-tendencies-must-be-curbed-supreme-court-297463>

3.2 Historical Overview under CrPC:

Arrest powers under the Code of Criminal Procedure (CrPC) have evolved to regulate the authority of police during investigation and law enforcement. Section 41 of the CrPC enumerates circumstances under which a police officer may arrest a person without a warrant. This provision outlines that police can arrest if the person is suspected of committing a cognizable offense, is proclaimed offender, or is likely to abscond or tamper with evidence, among other grounds.¹⁵ Section 41A, introduced to reduce unnecessary arrests, provides for notice of appearance before the police instead of arrest, aimed at promoting procedural compliance and safeguarding liberty unless arrest is necessary. The Supreme Court has reaffirmed the importance of electronic service of notices under Section 41A, emphasizing that arrest should be a last resort.¹⁶ Section 46 of the CrPC governs the use of force during arrest, permitting police to use reasonable force to effectuate an arrest if necessary. However, misuse and excesses have been reported, including cases where police exercise arrest powers arbitrarily or with malafide intent, raising grave concerns regarding custodial violence and violation of fundamental rights.¹⁷

The power of arrest granted under these CrPC provisions has faced criticism and calls for reform due to documented police misuse such as unnecessary arrests, custodial torture, and harassment which undermine civil liberties and weaken public trust in the justice system.¹⁸

Historical developments from customs to codified criminal procedure reflect gradual formalization of arrest powers with embedded safeguards, but implementation challenges persist, as judicial pronouncements and statutory amendments continue to address these issues to balance law enforcement needs and individual rights.¹⁹ The Madurai High Court clarified that certain procedural provisions like Section 464 CrPC are directory and not mandatory in nature,

¹⁵ <https://www.scconline.com/blog/post/2023/05/31/arrest-by-police-under-crpc-sec-41-legal-research/>

¹⁶ <https://cjp.org.in/upholding-procedural-compliance-supreme-court-reaffirms-electronic-service-of-notices-under-section-41a-crpc-section-35-bnss-as-invalid/#:~:text=Section%2041A%20of%20the%20CrPC%20was%20introduced%20to%20prevent%20unnecessary,appearance%20in%20a%20prescribed%20mode.>

¹⁷ <https://cjp.org.in/law-on-arrest-and-detention-know-your-rights/#:~:text=%E2%80%9CIn%20terms%20of%20Section%2041,in%20court%20without%20arresting%20them.%E2%80%9D>

¹⁸ <https://thelawbrigade.com/wp-content/uploads/2020/09/Aaditya-Gore-JLSR.pdf>

¹⁹ <https://theamikusqriae.com/from-customs-to-criminal-procedure-code-the-great-grandeur-evolution-2/#:~:text=Arrest%20under%20CrPC%20%E2%80%93%20The%20term,the%20magistrate%20within%2024%20hours.>

influencing interpretation of arrest and detention processes under BNSS.²⁰ Amendments and judicial scrutiny, especially concerning Section 41A, have been instrumental in curbing arbitrary police arrests and reinforcing procedural safeguards so that arrests are not made on frivolous grounds but grounded in necessity.²¹

3.3 International Human Rights Perspective:

Article 9 of the International Covenant on Civil and Political Rights (ICCPR) guarantees protection against arbitrary arrest and detention. It declares that "No one shall be subjected to arbitrary arrest or detention" and provides the right to challenge the legality of detention through judicial review, commonly known as habeas corpus. These provisions require that any deprivation of liberty adhere strictly to the rule of law, including prompt notification of arrest reasons and timely trial or release.²² The UN Human Rights Committee has expanded on this through General Comment No. 35, emphasizing that arbitrariness includes acts that are not only illegal but also unjust, unpredictable, or lacking due process guarantees. The Committee highlights that detention must be lawful, reasonable, and non-discriminatory to protect human dignity and personal liberty.²³ Comparatively, the United Kingdom incorporates these protections through the Police and Criminal Evidence Act, 1984 and the Human Rights Act, 1998, ensuring procedural safeguards that prevent unlawful arrests and provide remedies for violations.²⁴ In the United States, the Fourth Amendment protects against unreasonable searches and seizures, requiring that arrests be based on probable cause. Habeas corpus remains a fundamental procedural mechanism to challenge unlawful detention, ensuring that constitutional safeguards uphold personal liberty.²⁵

²⁰ <https://www.thehindu.com/news/cities/Madurai/section-464-of-crpc-section-435-of-bnss-is-directory-not-mandatory-says-mhc/article69196034.ece>

²¹ <https://sahodar.in/power-of-arrest-by-a-police-officer-under-section-41a/#:~:text=The%20amended%20section%2041%20of,to%20the%20public%20and%20authorities>

²² <https://nhrc.nic.in/sites/default/files/International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf>

²³ <https://docs.un.org/en/CCPR/C/GC/35>

²⁴ <https://www.legislation.gov.uk/ukpga/1998/42/contents>

²⁵ https://www.law.cornell.edu/wex/fourth_amendment

4. BNSS PROVISIONS ON ARREST:

4.1 Relevant Sections of BNSS:

Section 35 of the BNSS authorizes a police officer to arrest without a warrant in specified cases, such as when a person commits a cognizable offence in the presence of the officer, is reasonably suspected of having committed a serious crime punishable with imprisonment exceeding seven years or death, or is proclaimed as an offender. The section also covers arrest in cases involving possession of stolen property suspected to be connected to an offence, obstructing officers during duty, desertion from armed forces, and offences committed outside India under extradition treaties. Importantly, police are required to issue notices for appearance before arrest as a precaution to reduce unnecessary physical arrests.²⁶ Further detailed provisions and examples of circumstances warranting arrest without warrant are outlined in official government documents and analyses, emphasizing the balance between effective law enforcement operations and protection of civil liberties.²⁷

The provision under Section 37 of the BNSS mandates serving a notice of appearance for certain offences, allowing the person to appear voluntarily before the police without being physically arrested. This measure is designed to limit unnecessary detentions, promote procedural compliance, and uphold individual freedom, especially in minor or non-cognizable cases.²⁸

Section 39–43 of the BNSS, these sections regulate post-arrest procedures, detailing duties of police officers such as informing the arrested individual of the grounds for arrest, allowing for medical examination if requested, ensuring legal counsel access, and mandating timely production before a magistrate within applicable timeframes (usually 24 hours). These safeguards aim to minimize custodial abuse and guarantee that arrests adhere to legal and constitutional standards.²⁹

4.2 Safeguards in BNSS Against Arbitrary Arrest:

Section 36 of the BNSS mandates that the police officer arresting a person must record the specific reasons for the arrest. This requirement ensures accountability

²⁶ <https://www.scconline.com/blog/post/2025/07/31/supreme-court-section-35-bnss-notices-physical-service-mandate/>

²⁷ https://bprd.nic.in/uploads/table_c/Section%20of%20BNSS%2036-62,82.pdf

²⁸ https://www.indiacode.nic.in/handle/123456789/20099?view_type=browse

²⁹ <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2042126>

and transparency by documenting the factual basis justifying the detention. The officer must explain these reasons promptly to the arrested individual, thereby reducing the risk of arbitrary or unjust arrests.³⁰

Section 35 requires that, wherever feasible, before effecting a physical arrest without a warrant, police must serve a notice compelling the individual to appear voluntarily. This procedural safeguard aims to uphold personal liberty by preventing unnecessary physical arrest and detention, aligning with the constitutional guarantee against arbitrary deprivation of liberty.³¹

Sections 57 and 58 of the BNSS emphasize the magistrate's role as a crucial judicial check on arbitrary detention. The arrested person must be produced before a magistrate without delay, generally within 24 hours of arrest. The magistrate then examines whether the arrest and continued detention are justified under the law.³² This judicial oversight acts as a safeguard against abuse of the arrest powers, ensuring procedural compliance and protection of fundamental rights.³³

4.3 Procedural Improvements over CrPC:

The Bharatiya Nagarik Suraksha Sanhita (BNSS) represents a significant reform over the former Code of Criminal Procedure (CrPC), particularly in its enhanced procedural safeguards against arbitrary arrest. While CrPC did not explicitly provide for the use of handcuffs, BNSS innovates by conferring discretionary power on police officers to apply handcuffs under specific, serious circumstances such as habitual offenses, organized crime, or offences against the state. This marks a departure aimed at balancing police authority with citizen protection, though it has drawn criticism for expanding discretionary powers to police.³⁴ BNSS mandates procedural improvements such as the requirement to record reasons for arrest explicitly and issues notices before the physical arrest wherever feasible. These provisions were absent or less explicitly framed in CrPC, signalling a clear intent

³⁰ <https://lawarticle.in/circumstances-under-which-police-may-arrest-a-person-without-a-warrant/>

³¹ https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00049_202346_1719552320687&orderno=35#d

³² <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2158411>

³³ <https://cjp.org.in/police-custody-under-crpc-bnss-a-paradigm-shift-in-balancing-liberty-and-investigation/#:~:text=The%20role%20of%20the%20judiciary,above%20remains%20to%20be%20seen>

³⁴ <https://www.lexisnexis.in/blogs/bharatiya-nagarik-suraksha-sanhita-paradigm-shift-from-procedural-code-to-nagarik-suraksha/#:~:text=The%20Code%20of%20Criminal%20Procedure%20as%20such%20had%20no%20provision,on%20the%20usage%20of%20handcuffs.>

to limit unnecessary detention and reinforce personal liberty protections.³⁵

Judicial pronouncements alongside BNSS provisions have sought to curb police arbitrariness by insisting on strict compliance with these new mandates, thereby narrowing police discretion in arbitrary arrests. The Act's emphasis on technological integration, such as electronic recording of arrest and investigation procedures, further enhances transparency absent in previous frameworks.³⁶ Official government documents note that BNSS introduces measurable time frames and procedural timelines, including preliminary inquiries and mandatory judicial scrutiny, which differ significantly from CrPC's broader discretionary regime. These reforms aim to expedite proceedings and reduce undue delays and abuses of police powers.³⁷

5. **JUDICIAL INTERPRETATION & CASE LAW:**

5.1 Pre-BNSS Judicial Safeguards:

In *D.K. Basu v. State of West Bengal*, the Supreme Court of India laid down comprehensive guidelines to prevent arbitrary arrests and custodial violence. These include requirements such as recording the reasons for arrest, informing the relatives of the arrested person, immediate medical examination, and producing the arrested person before a magistrate within 24 hours. The judgment significantly influenced procedural reforms by emphasizing adherence to these safeguards to protect the fundamental rights of individuals under arrest.³⁸

Similarly, in *Joginder Kumar v. State of U.P.*, the Court underscored the necessity of providing clear and valid reasons for any arrest. The ruling mandates that arrests must be founded on a rational basis and not be used for harassment or intimidation. Police are required to document and communicate cogent grounds for arrest, reinforcing accountability and protecting citizens from misuse of arrest powers.³⁹ These landmark rulings shaped the pre-BNSS procedural framework and continue to be pivotal in ensuring constitutional protections against arbitrary arrest and detention in India.

³⁵ <https://www.scribd.com/document/849682170/Comparative-study-of-CRPC-and-BNSS>

³⁶ <https://www.scconline.com/blog/post/2025/05/09/omissions-and-contradictions-assessing-their-effect-on-the-evidence/>

³⁷ <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2024/may/doc2024522337501.pdf>

³⁸ <https://indiankanoon.org/doc/501198/>

³⁹ <https://indiankanoon.org/doc/768175/>

5.2 Early Application of BNSS in Courts:

The Supreme Court recently ruled that notices under Section 35 of the BNSS Act, 2023—which correspond to arrest-related procedural notices typically found under Section 41A CrPC—must be served physically by the police. The Court explicitly held that electronic modes of service, including WhatsApp messages, emails, or other electronic platforms, are not valid for these notices. This is to ensure protection of liberty and due process under Article 21, as the legislature omitted electronic service from Section 35 deliberately. The Court ordered all States and UTs to instruct police forces through Standing Orders to strictly adhere to physical service for Section 35 notices, failing which departmental actions and contempt proceedings could follow.

This landmark decision reiterates precedents from cases like *Rakesh Kumar v. Vijayanta Arya and others*, underscoring the need for strict procedural safeguards when liberty interests are involved.⁴⁰

In a parallel ruling, the Supreme Court reaffirmed the invalidity of electronic service of notices under Section 41A CrPC (also mirrored in Section 35 BNSS). The Court emphasized that while electronic service is authorized for certain procedural provisions under the BNSS, it is explicitly not permitted for arrest-related notices where physical appearance is mandated. Procedural compliance must be upheld to safeguard fundamental rights. The judgment highlighted that allowing electronic service for Section 35 notices would disrupt the statutory scheme designed to prevent arbitrary arrest and ensure fair opportunity to respond to notice.

Electronic service of these notices was held not only procedurally improper but also constitutionally untenable.⁴¹

6. PRACTICAL CHALLENGES IN PREVENTING ARBITRARY ARRESTS:

Lack of Awareness Among Police and Public: One fundamental challenge in preventing arbitrary arrests lies in the insufficient awareness amongst police personnel and the general public. Despite the presence of well-defined legal safeguards under BNSS and earlier laws, many police officers lack comprehensive training or

⁴⁰ <https://www.scconline.com/blog/post/2025/07/31/supreme-court-section-35-bnss-notices-physical-service-mandate/>

⁴¹ <https://cjp.org.in/upholding-procedural-compliance-supreme-court-reaffirms-electronic-service-of-notices-under-section-41a-crpc-section-35-bnss-as-invalid/>

understanding of these provisions, leading to procedural lapses. Equally, the public often remains unaware of their rights regarding arrest and detention, limiting their ability to demand protection or seek redress effectively.⁴² The Government of India's Legal Literacy and Legal Awareness Programme (LLLP) has been introduced to bridge this gap by promoting awareness, but the reach and impact of such initiatives in rural or marginalized areas remain limited.⁴³

Weak Enforcement of Safeguards: Although BNSS incorporates explicit procedural safeguards aimed at curbing arbitrary arrest, enforcement remains problematic. Structural weaknesses such as inadequate monitoring systems, institutional inertia, and lack of accountability mechanisms in many police departments contribute to poor adherence to these safeguards. As a result, violations occur without sufficient corrective action or consequences for responsible personnel, thus undermining the law's spirit and intent.⁴⁴

Pressure to Arrest Due to Public and Media Influence: Law enforcement agencies often operate under considerable pressure from the public and media to make arrests quickly, especially in high-profile cases. Media sensationalism and public outcry can create an environment where police feel compelled to act precipitously, increasing the risk of arbitrary or unjustified arrests. Such external pressure distorts the process, prioritizing expediency over legal propriety and due process.⁴⁵

Corruption and Political Influence: Deep-rooted corruption and undue political influence in local police structures further complicate the scenario. Arbitrary arrests can be wielded as tools for political vendetta or personal gain rather than lawful enforcement. This compromises the impartiality and fairness essential to upholding constitutional rights, leading to an erosion of public confidence in law enforcement agencies.⁴⁶

⁴² <https://lrfvoice.com/indias-arrest-procedures-a-critical-examination/>

⁴³ <https://doj.gov.in/legal-literacy-and-legal-awareness-programme-lllp/#:~:text=Since%202012%2C%20A2J%20Division%20of,period%20of%202021%20to%202026>

⁴⁴ https://www.commoncause.in/wotadmin/upload/SPIR_2025.pdf

⁴⁵ <https://www.theindiaforum.in/society/contours-media-control-india>

⁴⁶ <https://www.drishitias.com/to-the-points/paper4/corruption-in-india>

Infrastructural and Resource Constraints: The implementation of BNSS provisions, which include technological integration and procedural timelines, is challenged by infrastructural deficits. Many police stations especially in rural and remote areas lack internet connectivity, adequate forensic facilities, and digital equipment essential for the new regime's functioning. Courts too face challenges with inadequate digital infrastructure crucial for electronic hearings and evidence management. This technological shortfall slows adherence to BNSS mandates and impacts the efficacy of safeguards against arbitrary arrests.⁴⁷

Training and Capacity Building: A significant hurdle identified is the need for specialized, continuous training for police officers, judiciary members, and legal practitioners to familiarize them with BNSS provisions and new procedural requirements. Reports indicate that such training programs have been unevenly implemented across states, with advocates often receiving insufficient orientation. Effective training is vital for translating legislative intent into judicial and enforcement practice.⁴⁸

7. COMPARATIVE ANALYSIS:

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) represents a significant procedural reform from the previous Code of Criminal Procedure (CrPC), especially concerning safeguards against arbitrary arrest.

- **Explicit Procedural Safeguards (Sections 35, 36, 43 BNSS):** BNSS Section 35 mandates issuing notice before arrest wherever possible, reducing unnecessary physical custody and upholding the right to liberty. Section 36 requires recording explicit reasons for arrest, ensuring police accountability. Section 43 limits handcuffing to specific serious offences and repeat offenders, adding legal constraints absent in CrPC, where such provisions were vague or implicit.⁴⁹
- **Technology Integration Enhancing Transparency (Sections 173, 185, 530 BNSS):** Unlike the CrPC, BNSS integrates mandatory audio-video recording

⁴⁷ <https://indianexpress.com/article/opinion/columns/one-year-of-new-criminal-laws-the-challenges-of-implementation-10097366/>

⁴⁸ <https://indianexpress.com/article/opinion/columns/one-year-of-new-criminal-laws-the-challenges-of-implementation-10097366/>

⁴⁹ <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2024/may/doc2024522337501.pdf>

during searches and evidence collection (Section 185) and electronic recording of FIRs (Section 173). Section 530 empowers courts to conduct trials and hearings electronically, facilitating faster and transparent criminal proceedings.

- **Timelines and Efficiency (Sections 173(3), 184, 258 BNSS):** BNSS prescribes stringent timeframes for preliminary inquiry (14 days), medical report forwarding (7 days), and judgment delivery (within 30 to 45 days under Section 258). CrPC's timelines were either absent or inconsistently followed, often leading to prolonged arbitrary detentions.
- **Protection of Vulnerable Individuals (Section 35(7) BNSS):** A remarkable BNSS addition prohibits arrest of persons above 60 years or infirm persons for offences punishable up to three years without higher officer permissions, strengthening humanitarian safeguards beyond the CrPC framework.⁵⁰
- **Judicial Oversight and Enforcement:** BNSS clarifies magistrate roles in scrutinizing arrest legality and custody continuation, aiming to stem police discretion abuses that were prevalent under CrPC. However, the discretion granted for handcuffing and certain procedural flexibilities continue to attract calls for vigilant judicial oversight to prevent misuse.⁵¹

BNSS vs International Human Rights Standards: Progress and Gaps:

- **Alignment with ICCPR Article 9:** BNSS's detailed requirements for prior notice, grounds recording, judicial oversight, and protection of personal liberty correspond closely with Article 9 of the ICCPR, which prohibits arbitrary arrest and demands timely judicial review.
- **Judicial Safeguards:** Timely presentation before magistrates and mechanisms enabling challenge to legality of detention under BNSS align with international mandates promoting fair trial rights and liberty safeguards.⁵²
- **Use of Technology:** BNSS's adoption of electronic means in investigation and trial processes mirrors global trends aimed at enhancing transparency and minimizing rights violations during arrests and detention.⁵³

⁵⁰ <https://bprd.nic.in/uploads/pdf/Comparison%20summary%20BNSS%20to%20CrPC.pdf>

⁵¹ <https://www.alec.co.in/show-blog-page/httpswwwaleccoincomparative-study-of-crpc-bnss-2023>

⁵² <https://vinaykumargattu.com/comparative-search-tool-for-ipc-evidence-act-and-crpc-with-bns-bsa-bnss-2023/>

⁵³ <https://bprd.nic.in/uploads/pdf/Comparison%20summary%20BNSS%20to%20CrPC.pdf>

- **Implementation Challenges and Accountability Deficits:** Despite laws in place, BNSS lacks certain independent oversight and complaint redressal institutions explicitly mandated by international human rights bodies to curb arbitrary arrests effectively. Without robust enforcement and continuous training, gaps between standards and realities persist.⁵⁴
- **Privacy and Data Integrity Concerns:** The use of audio-video and electronic recording requires strict regulation to safeguard data privacy and preserve the integrity of evidence, areas where BNSS legal provisions remain nascent and require future refinement to meet best international practices.⁵⁵

8. LOOPHOLES IN BNSS REGARDING PREVENTION OF ARBITRARY ARRESTS:

Despite BNSS's comprehensive procedural reforms, several legal and practical loopholes continue to challenge the effective prevention of arbitrary arrests in India. This section analyses those gaps with reference to specific BNSS provisions and related judicial observations.

- i. Discretionary Powers Still Broad (Section 35 BNSS):** Although BNSS Section 35 consolidates arrest powers and attempts to regulate police authority by introducing prior notice requirements and procedural safeguards, it still permits arrest on the basis of "reasonable suspicion" or "credible information" without requiring stricter thresholds of proof.⁵⁶ This vague standard can potentially be misused, as it affords wide discretionary powers to police officers in deciding when to arrest, failing to eliminate the arbitrariness intrinsic to subjective assessments.
- ii. Weak Enforcement of Safeguards:** While BNSS institutes several safeguards, such as recording the reasons for arrest (Section 36) and notice before arrest (Section 35), the legislation does not prescribe explicit penalties or disciplinary actions for police non-compliance.⁵⁷ This weak enforcement framework limits the deterrent effect and allows procedural lapses to persist without meaningful accountability.

⁵⁴ <https://www.alec.co.in/show-blog-page/httpswwwaleccoincomparative-study-of-crpc-bnss-2023>

⁵⁵ <https://bprd.nic.in/uploads/pdf/Comparison%20summary%20BNSS%20to%20CrPC.pdf>

⁵⁶ <https://www.scconline.com/blog/post/2025/07/31/supreme-court-section-35-bnss-notices-physical-service-mandate/>

⁵⁷ <https://lawarticle.in/circumstances-under-which-police-may-arrest-a-person-without-a-warrant/>

- iii. **Retention of CrPC-like Language (Mirroring Sections 41 & 41A CrPC):** BNSS merges CrPC Sections 41 and 41A into BNSS Section 35 and related provisions but retains much of the original wording and procedural approach, preserving old practices that had been vulnerable to misuse.⁵⁸ Judicial commentary has noted that this continuity risks perpetuating existing patterns of arbitrary arrest despite the new legislative framework.⁵⁹
- iv. **Lack of Independent Oversight Mechanisms:** The BNSS relies predominantly on magistrate review and internal police procedures to check arbitrary arrests but does not establish a neutral, independent civilian oversight body mandated for receipt of complaints, investigations, or disciplinary authority over police misconduct during arrests.⁶⁰ Independent oversight is a recognized international best practice critical for enforcing procedures and safeguarding against systemic abuse.
- v. **Absence of Clear Definition of ‘Arbitrary’ Arrest:** The BNSS does not provide a statutory or exhaustive definition of what constitutes “arbitrary” arrest beyond general constitutional safeguards. This lack of precision leads to inconsistent interpretation and enforcement, diminishing the effectiveness of protective provisions and complicating judicial review.⁶¹
- vi. **Poor Public Awareness of Rights:** Despite legal advances, knowledge gaps about arrest rights persist among the public, especially marginalized communities. Without comprehensive legal literacy and rights awareness, many individuals remain unable to challenge unlawful detention or assert safeguards effectively, undermining the BNSS’s citizen-centric vision.⁶²
- vii. **No Statutory Compensation or Redress for Wrongful Arrest:** BNSS lacks a statutory mechanism for compensation, rehabilitation, or other remedies to victims of wrongful arrests or arbitrary detention, which international human rights standards often require. The absence of such a provision limits access to justice and fails to deter rights violations effectively.⁶³

⁵⁸ <https://bprd.nic.in/uploads/pdf/Comparison%20summary%20BNSS%20to%20CrPC.pdf>

⁵⁹ <https://sabrangindia.in/strengthening-safeguards-against-arbitrary-arrests-supreme-court-bars-whatsapp-email-notices-under-section-41a-crpc-section-35-bnss/>

⁶⁰ <https://www.ijmr.net.in/current/2025/Mar/JoSfwWyYmzcVdAd.pdf>

⁶¹ <https://www.sconline.com/blog/post/2024/05/05/bnss-that-is-to-replace-crpc-explained-with-key-highlights/>

⁶² <https://doj.gov.in/legal-literacy-and-legal-awareness-programme-llp/#:~:text=Since%202012%2C%20A2J%20Division%20of,period%20of%202021%20to%202026>

⁶³ https://www.commoncause.in/wotadmin/upload/SPIR_2025.pdf

viii. Judicial Backlog and Delayed Remedies: Although BNSS mandates judicial oversight, slow court procedures and case backlogs hinder timely relief against arbitrary arrests. Prolonged detentions pending legal challenges contribute significantly to continued rights violations despite formal legal safeguards under BNSS.⁶⁴

9. SUGGESTED REFORMS TO ADDRESS LOOPHOLES:

- i. Narrowing Police Discretion in Arrest Powers:** Given the overly broad discretionary power under Section 35 BNSS regarding arrest on “reasonable suspicion,” it is vital to introduce clearer, more objective standards that police must meet before effectuating arrests. This could include mandatory thresholds of evidence to establish reasonable suspicion, better defined in subordinate legislation or police manuals, and periodic judicial review of police arrest statistics to identify misuse trends.⁶⁵
- ii. Strengthening Enforcement with Penal Provisions:** BNSS should incorporate explicit penalties—both disciplinary and criminal—for officers who fail to comply with procedural safeguards such as recording arrest reasons or serving prior notices. Mandatory internal complaint mechanisms coupled with independent oversight agencies can create stronger deterrent effects and improve compliance.⁶⁶
- iii. Reassessing Terminology to Break from CrPC Legacy:** To avoid retaining misuse patterns and ambiguous provisions, BNSS drafters should consider revising and updating language carried over from CrPC Sections 41 and 41A. Clear definitions of critical terms like “credible information,” “reasonable suspicion,” and “arbitrary arrest” must be enshrined in the statute to provide unequivocal guidance to police and judiciary.⁶⁷
- iv. Establishing Independent Oversight Bodies:** The creation of truly independent civilian oversight bodies empowered to review complaints of arbitrary arrest and recommend disciplinary or legal action is crucial. Judicial

⁶⁴ <https://indianexpress.com/article/opinion/columns/one-year-of-new-criminal-laws-the-challenges-of-implementation-10097366/>

⁶⁵ <https://www.scconline.com/blog/post/2025/07/31/supreme-court-section-35-bnss-notices-physical-service-mandate/>

⁶⁶ <https://lawarticle.in/circumstances-under-which-police-may-arrest-a-person-without-a-warrant/>

⁶⁷ <https://bprd.nic.in/uploads/pdf/Comparison%20summary%20BNSS%20to%20CrPC.pdf>

oversight alone cannot compensate for lack of independent monitors who can proactively investigate systemic patterns of misconduct and assure public trust.⁶⁸

- v. **Statutory Definition of 'Arbitrariness' in Arrest:** A precise statutory definition of “arbitrary arrest” should specify prohibited grounds and characteristics of unlawful arrest, reflecting constitutional principles and international human rights standards. This clarity will enhance judicial clarity and provide citizens with better tools for legal challenge and advocacy.⁶⁹
- vi. **Enhancing Public Legal Literacy and Awareness** Comprehensive community-based outreach and education campaigns must be institutionalized to improve public understanding of arrest rights and procedural safeguards under BNSS. Expanded funding and coverage of government initiatives like the Legal Literacy and Legal Awareness Programme (LLLP) are imperative to reach marginalized and rural populations effectively.⁷⁰
- vii. **Instituting Compensation and Redress Mechanisms:** Legislation should mandate minimum compensation schemes and legal assistance for victims of wrongful or arbitrary arrests. Such provisions will not only provide relief to victims but also incentivize police accountability and diligence.⁷¹
- viii. **Addressing Judicial Delays Through Infrastructure and Process Reform:** Judicial infrastructure must be upgraded, especially in lower courts, to ensure that judicial review and remedies against arbitrary arrests are timely. Digital case management systems, increased court staffing, and performance monitoring can help reduce pendency and expedite arrest-related hearings.⁷²

These reforms are grounded in current scholarly critique and practical observations and aim to strengthen the BNSS’s intention of protecting citizens’ liberty while maintaining effective law enforcement.

⁶⁸ <https://www.ijmr.net.in/current/2025/Mar/JoSfwWyYmzcVdAd.pdf>

⁶⁹ <https://www.sconline.com/blog/post/2024/05/05/bnss-that-is-to-replace-crpc-explained-with-key-highlights/>
⁷⁰ <https://doj.gov.in/legal-literacy-and-legal-awareness-programme-lllp/#:~:text=Since%202012%2C%20A2J%20Division%20of,period%20of%202021%20to%202026>

⁷¹ https://www.commoncause.in/wotadmin/upload/SPIR_2025.pdf

⁷² <https://indianexpress.com/article/opinion/columns/one-year-of-new-criminal-laws-the-challenges-of-implementation-10097366/>

10. FINDINGS & DISCUSSION:

The enactment of Bharatiya Nagarik Suraksha Sanhita (BNSS) marks a significant legislative leap from the older Code of Criminal Procedure (CrPC), primarily aiming to safeguard against arbitrary arrests through clearer procedural mandates. Key provisions such as Section 35, requiring notice prior to arrest, Section 36 mandating recording of reasons for arrest, and limitations on handcuffing under Section 43(3) establish an enhanced framework focusing on transparency, accountability, and dignity.⁷³ The integration of technological requirements — including audio-video recording of searches (Section 185), electronic filing of FIRs (Section 173) and permitting digital trials (Section 530) — represent forward-looking reforms aimed at reducing procedural opacity characteristic of the CrPC era.

Furthermore, explicit protections for vulnerable groups such as the elderly and infirm in arrest situations (Section 35(7)) enhance the humanitarian aspect of the law, which was inadequately addressed under the older system.⁷⁴ Judicial engagement post-BNSS enactment and emerging case law underscore a cautious but positive reception, validating the new safeguards while also insisting on strict compliance to prevent police overreach.⁷⁵

Despite BNSS's advancements, considerable loopholes remain that could undermine its protective goals.

- a. The permissive discretion conferred by Section 35 on arrest based on “reasonable suspicion” or “credible information” continues to offer broad police latitude, risking arbitrary application.⁷⁶
- b. Procedural safeguards, while legislated, lack explicit penalties for non-compliance by law enforcement, attenuating their deterrent effect.⁷⁷
- c. BNSS's linguistic and structural continuities with CrPC articles such as 41 and 41A suggest the retention of legacy ambiguities, which courts and police may exploit.⁷⁸

⁷³ <https://www.scconline.com/blog/post/2024/05/05/bnss-that-is-to-replace-crpc-explained-with-key-highlights/>

⁷⁴ <https://bprd.nic.in/uploads/pdf/Comparison%20summary%20BNSS%20to%20CrPC.pdf>

⁷⁵ <https://indiankanoon.org/doc/768175/>

⁷⁶ <https://www.scconline.com/blog/post/2025/07/31/supreme-court-section-35-bnss-notices-physical-service-mandate/>

⁷⁷ <https://lawarticle.in/circumstances-under-which-police-may-arrest-a-person-without-a-warrant/>

⁷⁸ <https://bprd.nic.in/uploads/pdf/Comparison%20summary%20BNSS%20to%20CrPC.pdf>

- d.** The absence of a dedicated independent oversight body sharply contrasts international best practices requiring civilian review, leaving the law largely reliant on magistrate review and internal police mechanisms.⁷⁹
- e.** BNSS does not explicitly define “arbitrariness,” leading to interpretative variability and enforcement challenges.⁸⁰
- f.** Persistent public unawareness of arrest rights, particularly in marginalized communities, weakens practical application of safeguards.⁸¹
- g.** The law lacks a statutory mechanism for compensation or redress for victims of wrongful arrests, an omission that reduces accountability and victim protection.⁸²
- h.** Finally, judicial backlog and delays impair timely relief, enabling prolonged arbitrary detention despite procedural guarantees.⁸³

BNSS aligns well with key international human rights instruments, particularly the ICCPR’s Article 9 protections against arbitrary arrest, by incorporating prior notice, timely judicial scrutiny, and requirements for recording arrest reasons.⁸⁴ The statute’s technological integration adheres to growing global norms promoting transparency and evidence authenticity. Its humane provisions for vulnerable persons meet international calls for specialized treatment in criminal procedure. However, BNSS falls short of best international practices by not establishing independent civilian oversight with enforcement powers over arrest-related misconduct. The lack of statutory compensation schemes for wrongful arrests and the absence of a clear definition of arbitrariness diverge from globally accepted standards.⁸⁵

Moreover, enforcement and awareness gaps impede realization of these norms on ground, emphasizing the need for complementary institutional reforms beyond statutory enactments. This nuanced evaluation highlights BNSS’s important progress while candidly acknowledging ongoing challenges and areas requiring reform to meet

⁷⁹ <https://www.ijmr.net.in/current/2025/Mar/JoSfwWyYmzcVdAd.pdf>

⁸⁰ <https://www.scconline.com/blog/post/2024/05/05/bnss-that-is-to-replace-crpc-explained-with-key-highlights/>

⁸¹ <https://lrfvoice.com/indias-arrest-procedures-a-critical-examination/>

⁸² https://www.commoncause.in/wotadmin/upload/SPIR_2025.pdf

⁸³ <https://indianexpress.com/article/opinion/columns/one-year-of-new-criminal-laws-the-challenges-of-implementation-10097366/>

⁸⁴ <https://docs.un.org/en/CCPR/C/GC/35>

⁸⁵ <https://www.ijmr.net.in/current/2025/Mar/JoSfwWyYmzcVdAd.pdf>

the goal of effectively preventing arbitrary arrests in India.

11. CONCLUSION:

The enactment of the Bharatiya Nagarik Suraksha (BNSS) Act, 2023 marks a significant legislative milestone aimed at strengthening safeguards against arbitrary arrests in India. By replacing the decades-old Code of Criminal Procedure (CrPC), BNSS introduces clearer procedural requirements such as mandatory notice before arrest, documentation of arrest reasons, time-bound judicial oversight, and provisions for technological integration to enhance transparency. These reforms reflect a genuine step forward toward fostering a more citizen-centric and rights-respecting criminal justice framework.

However, despite these advancements, inherent loopholes persist that temper the law's overall effectiveness. The broad discretionary powers granted to police, the absence of statutory penalties for procedural violations, lack of an independent oversight mechanism, and vague definitions of "arbitrariness" create vulnerabilities to continued misuse. Additionally, practical challenges such as limited public awareness, infrastructural deficits, and judicial delays further hinder the law's impact on curbing arbitrary detention.

Relative to international human rights standards, BNSS aligns commendably with core principles enshrined in instruments like the ICCPR, especially in emphasizing procedural safeguards and judicial review. Yet, the absence of robust external oversight and explicit victim compensation mechanisms distinguishes it from global best practices.

In conclusion, while BNSS embodies substantial progress and establishes a stronger legal foundation against arbitrary arrests, its success ultimately hinges on effective implementation, enhanced accountability, public legal literacy, and continued judicial vigilance. Without addressing the identified gaps and practical challenges, the noble objectives of the BNSS risk being undermined, prolonging the struggle for upholding individual liberty and human dignity in India's criminal justice system.