

# Rights Of Arrested Person

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**Abstract**—The rights of arrested persons in India are enshrined in the Constitution and Earlier in the Criminal Procedure Code (CrPC), 1973 and now in Bhartiya Nagarik Suraksha Sanhita 2023 (BNSS), grounded in the principle that "No one is guilty until proven so." This research paper examines these legal protections, including constitutional safeguards under Articles 21 and 22, and BNSS provisions such as Sections 47, 53, and 58. Supported by landmark judgments like *D.K. Basu v. State of West Bengal*<sup>1</sup>, the study highlights the legal framework's intent to ensure dignity and fairness during arrests. However, challenges such as custodial violence, arbitrary police actions, and lack of awareness among detainees undermine these rights. The paper proposes reforms to enhance police accountability, improve rights awareness, and strengthen procedural safeguards to uphold justice.

**Index Terms**—Arrested person, Rights, Arrest, Police

## Research Objective

This study aims to identify and analyze the rights of arrested persons under the Constitution of India and the BNSS 2023. It evaluates the effectiveness of these provisions in protecting individuals from arbitrary state action and ensuring procedural justice, with a focus on judicial interpretations and practical challenges.

## Research Methodology

The research adopts a doctrinal, qualitative approach, relying on secondary sources. These include authoritative legal texts, commentaries, statutes (Constitution of India and BNSS), and judicial precedents from the Supreme Court and High Courts. The methodology involves a detailed analysis of legal provisions and case laws to assess the scope and enforcement of arrested persons' rights.

<sup>1</sup> *D.K. Basu v. State of West Bengal* AIR 1997 SC 610.

## I. INTRODUCTION

An arrest, defined as the deprivation of an individual's liberty by legal authority to investigate or prevent a crime, is a critical intervention in personal freedom. The principle that "No one is guilty until proven so" underpins India's criminal justice system, ensuring arrests are procedural rather than punitive. The Constitution of India and the BNSS 2023, provide a robust framework to safeguard arrested persons' rights, including access to legal representation, timely judicial oversight, and protection against abuse. Despite these safeguards, issues like custodial violence and lack of awareness persist. This paper explores the legal protections, their challenges, and the need for systemic reforms to uphold human dignity and the rule of law.

## Legal Framework: Rights of Arrested Persons

A. Constitutional Rights the Constitution of India guarantees fundamental rights to protect arrested individuals from arbitrary state action:

1. Article 21 – Protection of Life and Personal Liberty Article 21 ensures that no person is deprived of life or personal liberty except through a procedure established by law. In *Maneka Gandhi v. Union of India*<sup>2</sup>, the Supreme Court expanded this to require that such procedures be "just, fair, and reasonable," prohibiting arbitrary arrests or excessive force. These right forms the bedrock of arrest-related protections.
2. Article 22(1) – Right to be Informed of Grounds of Arrest and Legal Representation Article 22(1) mandates that an arrested person be promptly informed of the reasons for their arrest and have the right to consult a legal practitioner. In *Suk Das v. UT of Arunachal Pradesh*<sup>3</sup>, the Court held that

<sup>2</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>3</sup> *Suk Das v. UT of Arunachal Pradesh*, AIR 1986 SC 991

denying legal representation violates this fundamental right, emphasizing access to justice.

3. Article 22(2) – Production Before a Magistrate Within 24 Hours Article 22(2) requires that an arrested person be produced before a magistrate within 24 hours, excluding travel time. This provision ensures judicial oversight, preventing prolonged or unlawful detention by police authorities.
4. Right to Free Legal Aid Derived from Article 21, the right to free legal aid guarantees that indigent persons receive legal assistance from their first court appearance. In *Suk Das*<sup>4</sup>, the Supreme Court ruled that failure to provide legal aid renders detention unconstitutional, reinforcing access to justice for all.

## II. RELEVANT CASE LAWS

*Maneka Gandhi v. Union of India*, AIR 1978 SC 597

- Background: This landmark case arose when the petitioner's passport was impounded by the government without providing reasons, prompting a challenge under Article 21 (right to life and personal liberty). The case expanded the scope of Article 21 beyond mere procedural compliance.
- Key Holding: The Supreme Court ruled that any procedure depriving a person of life or liberty under Article 21 must be "just, fair, and reasonable," not merely established by law. This introduced the concept of substantive due process, ensuring that laws and procedures affecting liberty are non-arbitrary.
- Relevance to Arrested Persons: For arrested persons, this case ensures that arrest procedures must be fair and reasonable. Arbitrary arrests, excessive force, or lack of transparency violate Article 21. It set a precedent for subsequent cases to scrutinize arrest practices, protecting detainees from state overreach.

*Suk Das v. UT of Arunachal Pradesh*, AIR 1986 SC 991

- Background: The petitioner, a poor labourer, was convicted without legal representation, unaware of his right to free legal aid. He challenged his

conviction, arguing it violated his fundamental rights.

- Key Holding: The Supreme Court held that the right to free legal aid, derived from Article 21, is a fundamental right for indigent persons. Failure to provide legal aid at the first court appearance renders detention or conviction unconstitutional. The Court also emphasized Article 22(1)'s right to legal representation.
- Relevance to Arrested Persons: This case reinforces the right of arrested persons to consult a lawyer (Article 22(1)) and access free legal aid if unable to afford one. It ensures that detainees, especially the marginalized, can defend themselves, preventing unjust detention or trials.

B. Rights Under *Bhartiya Nagarik Suraksha Sanhita* 2023, the BNSS operationalizes constitutional protections through specific, enforceable provisions:

1. Section 47 – Right to be Informed of Grounds of Arrest Section 47(1) mandates that police inform the arrested person of the grounds of arrest in a comprehensible language. In *D.K. Basu v. State of West Bengal*, the Supreme Court issued comprehensive guidelines, including this right, to curb custodial abuses and ensure transparency.
2. Section 47(2) – Right to be Released on Bail in Bailable Offences For bailable offences, Section 47(2) grants an automatic right to bail, either at the police station or court, minimizing unnecessary detention and protecting against harassment.
3. Sections 55 & 77– Obligation to Communicate Reasons for Arrest These sections require subordinate officers or those executing arrest warrants to clearly communicate the reasons for arrest, ensuring accountability and clarity in the arrest process.
4. Section 48 – Informing Friend/Relative and Recording the Arrest Section 48, introduced to enhance transparency, obligates police to inform a nominated friend or relative about the arrest and maintain a record in a register, reducing the risk of secret or unrecorded detentions.
5. Sections 57 & 78– Duty to Produce Before a Magistrate Without Delay These sections

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<sup>4</sup> *Suk Das v. UT of Arunachal Pradesh*, AIR 1986 SC 991.

reinforce Article 22(2) by mandating prompt production of the arrested person before a magistrate, ensuring judicial scrutiny and preventing illegal detention.

6. Section 58– No Detention Beyond 24 Hours Without Magistrate’s Permission Section 58 prohibits detention beyond 24 hours without a magistrate’s authorization, aligning with constitutional safeguards to prevent arbitrary confinement.
7. Section 53 – Right to be Medically Examined Section 53 allows an arrested person to request a medical examination to document injuries or health conditions, safeguarding against custodial violence. In *Joginder Kumar v. State of U.P.*<sup>5</sup>, the Court emphasized this right’s role in ensuring police accountability.

#### Supporting Case Laws:

*D.K. Basu v. State of West Bengal*, AIR 1997 SC 610

- Background: This public interest litigation addressed widespread custodial violence and deaths, highlighting police abuses during arrests and detention. The petitioner sought guidelines to protect detainees’ rights.
- Key Holding: The Supreme Court issued 11 guidelines to prevent custodial abuse, including: (1) informing the arrested person of arrest grounds (Section 50(1), CrPC), (2) preparing an arrest memo, (3) notifying a friend/relative (Section 50A), (4) ensuring medical examination (Section 54), and (5) producing the detainee before a magistrate within 24 hours (Sections 56, 57). These guidelines are enforceable as law.
- Relevance to Arrested Persons: This case is pivotal in safeguarding arrested persons’ rights under the CrPC. It ensures transparency, accountability, and protection against torture, directly supporting provisions like Sections 50, 50A, 54, and 57, and reinforcing constitutional safeguards under Articles 21 and 22.

*Joginder Kumar v. State of U.P.*, AIR 1994 SC 1349

- Background: The petitioner was detained by police without formal arrest or justification, prompting a challenge to arbitrary police powers. The case addressed misuse of arrest authority.

- Key Holding: The Supreme Court ruled that arrests must be justified and not routine. Police cannot detain individuals merely on suspicion without evidence. The Court emphasized rights like timely production before a magistrate (Section 57, CrPC), medical examination (Section 54), and protection against unnecessary detention, aligning with Article 21.
- Relevance to Arrested Persons: This case protects against arbitrary arrests, ensuring that police follow CrPC procedures like informing arrest grounds and producing detainees promptly. It reinforces the principle that arrests must respect liberty and dignity, preventing abuse of power.

7. Challenges and Observations Despite a robust legal framework, the implementation of arrested persons’ rights faces significant obstacles:

- Arbitrary Use of Police Power: Police frequently make arrests without sufficient evidence or legal grounds, as highlighted in *Joginder Kumar*. Such practices erode public trust in the justice system and violate constitutional protections.
- Custodial Violence and Extortion: Incidents of torture, physical abuse, and extortion in custody remain prevalent. The Supreme Court’s guidelines in *D.K. Basu* aim to address this, but non-compliance by police persists, undermining human rights.
- Lack of Awareness Among Arrested Persons: Many detainees, particularly from marginalized communities, are unaware of their rights to bail, legal aid, or medical examination. This lack of awareness leaves them vulnerable to exploitation and injustice.
- Violations of Safeguards: Common violations include delays in producing detainees before magistrates, failure to inform arrest grounds, and denial of medical examinations, all of which contravene constitutional and statutory mandates.

These challenges reflect a significant gap between legal provisions and their practical enforcement, necessitating urgent reforms.

Major Changes in BNSS, 2023 (compared to CrPC, 1973)

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<sup>5</sup> *Joginder Kumar v. State of U.P.*, AIR 1994 SC 1349.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has replaced the Code of Criminal Procedure, 1973 (CrPC) as part of India's new criminal law reforms. While BNSS largely retains the structure of the CrPC, it introduces significant reforms aimed at digitalization, efficiency, and protection of rights. The major changes are

#### 1. Digitalization of Procedures

- BNSS makes electronic communication legally valid for FIRs, summons, warrants, and appearance through video conferencing.
- Recording of search, seizure, and evidence can be done electronically.
- In contrast, CrPC relied mainly on physical/paper procedures.

Impact: This modernizes criminal procedure, ensuring speed and reducing paperwork.

#### 2. Filing of FIR – E-FIR and Zero FIR

- BNSS allows E-FIR (online registration) and Zero FIR (FIR at any police station, later transferred).
- CrPC required FIR to be filed only at the police station with jurisdiction.

Impact: Easier access to justice, especially for victims of serious crimes.

#### 3. Rights of Arrested Persons

- BNSS retains all CrPC rights (right to know reasons, lawyer, bail, medical check-up, family intimation).
- Adds mandatory medical examination and immediate intimation (“forthwith”) of relatives/friends.
- Permits video-conference production before Magistrate.

Impact: Strengthens safeguards against arbitrary arrests.

#### 4. Timelines for Investigation

- BNSS mandates completion of investigation and filing of chargesheet within 90 days (extendable to 180 days for grave offences).
- CrPC did not strictly enforce timelines, often leading to delays.

Impact: Encourages faster trial process and reduces case pendency.

#### 5. Forensic and Scientific Evidence

- BNSS makes forensic investigation mandatory for offences punishable with 7 years or more.
- CrPC only permitted forensic evidence but did not make it compulsory.

Impact: Enhances reliability and scientific basis of investigations.

#### 6. Handcuffing Provisions

- BNSS allows handcuffing in cases of heinous crimes (terrorism, rape, organized crime, etc.).
- CrPC generally discouraged handcuffing except in rare cases.

Impact: Balances individual dignity with public safety.

#### 7. Summons and Notices

- BNSS allows service of summons electronically (SMS, email, etc.).
- CrPC recognized only physical service of summons.

Impact: Reduces delays and improves efficiency in court processes.

#### 8. Witness Protection and Victim Rights

- BNSS strengthens protection of women and child victims; their identity cannot be disclosed.
- CrPC had weaker victim and witness protection mechanisms.

Impact: Ensures dignity and security of vulnerable victims.

#### 9. Use of Technology in Trials

- BNSS explicitly allows digital trials, electronic recording of depositions, and use of audiovisual means.
- CrPC did not provide such digital integration.

Impact: Modernizes justice delivery and reduces delay. BNSS simplifies language and updates outdated terms for better clarity.

- Example: clearer provisions on jurisdiction, arrest procedures, and timelines.

Impact: Makes the law more citizen-friendly and accessible.

### III. CONCLUSION

India's legal framework, encompassing the Constitution and CrPC, provides comprehensive protections for arrested persons, ensuring fairness, dignity, and access to justice. However, systemic issues like custodial violence, arbitrary arrests, and lack of rights awareness undermine these safeguards. Strengthening police accountability, enhancing public awareness, and enforcing procedural safeguards are essential to align practice with legal ideals. Reforming the criminal justice system is critical to ensure that

arrests serve the cause of justice while respecting human rights and the rule of law.

Suggestions To address the identified challenges, the following reforms are proposed:

- **Training of Police Officers:** Implement mandatory, regular training on human rights and legal procedures to ensure police compliance with constitutional and BNSS provisions.
- **Awareness Campaigns:** Launch nationwide campaigns to educate citizens, especially marginalized groups, about their rights during arrests, using accessible media like radio, posters, and community workshops.
- **Legal Aid Desks:** Establish dedicated legal aid desks in police stations and jails to provide immediate legal assistance to detainees, ensuring access to justice.
- **Judicial Scrutiny:** Strengthen judicial oversight of arrests through regular reviews of detention records and stricter penalties for procedural violations.

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