



Arrest, Personal Liberty and Due Process under the BNSS, 2023: A Constitutional Perspective

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ABSTRACT.

Arrest is the moment at which the abstract promise of Article 21 becomes a physical fact: a person is stopped, held and removed from ordinary life by the State, often before any court has heard a word. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), in force since 1 July 2024, replaced the Code of Criminal Procedure, 1973 and re-enacted most of its arrest machinery. This paper asks whether the new Sanhita gives constitutional guarantees of liberty and due process a firmer statutory footing, or merely re-labels a framework the Supreme Court had already been forced to repair through judgments such as *Joginder Kumar, D.K. Basu* and *Armesh Kumar*. It argues that the BNSS codifies several judicial safeguards (notice of appearance, disclosure of grounds, informing a nominated person, an undertrial release ceiling) but leaves the decisive questions of necessity, custody and bail to discretion that the text does not discipline. The paper closes by identifying the provisions where fidelity to Articles 21 and 22 depends less on the statute than on judicial enforcement, and proposes targeted reforms.

Keywords: Bharatiya Nagarik Suraksha Sanhita; arrest; personal liberty; Article 21; Article 22; due process; police custody; bail.

1. Introduction

Every system of criminal procedure has to answer an uncomfortable question: how much can the State do to a person who has not yet been found guilty of anything? Arrest is where that question stops being theoretical. A person taken into custody loses movement, privacy, income and often reputation within hours, and the loss does not wait for a trial. Indian constitutional law has long treated this moment with suspicion. Article 21 protects life and personal liberty against deprivation except by procedure established by law, and Article 22 adds a short but dense set of guarantees for people who are arrested or detained.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) came into force on 1 July 2024 and replaced the Code of Criminal Procedure, 1973 (CrPC). The government presented it as a decolonising and modernising measure. For the student of liberty, the more interesting question is narrower. Chapter V of the Sanhita, which governs arrest, was largely carried over from the CrPC, and much of what looks new is in fact the statutory form of rules that the Supreme Court had imposed on the police over three decades. The text of the Sanhita therefore cannot be read in isolation. It has to be read against Articles 21 and 22 and against the case law that gave those articles practical content.

This paper takes that approach. It is built around one proposition: a statute that regulates arrest is constitutionally adequate only if it does three things. It must limit *when* a person may be arrested, it must guarantee *how* the arrested person is treated and informed, and it must control *how long and on what terms* the person stays in custody. The BNSS is examined against each of these three tests in turn.

The discussion proceeds as follows. Part 2 sets out the research design. Part 3 maps the constitutional framework. Part 4 traces the judicial development of arrest law before 2024. Parts 5 to 10 analyse the BNSS provisions on arrest, safeguards, handcuffing, custody and bail. Part 11 offers a critical appraisal, Part 12 makes recommendations and Part 13 concludes.

2. Research design

The study is doctrinal. It reads the text of the BNSS against constitutional provisions and judicial decisions, and compares the Sanhita with the CrPC where the two differ. It does not rest on empirical data about police practice, although it draws on published judicial observations about how arrest powers have actually been used.

Three questions guide the inquiry.

1. Does the BNSS carry the Supreme Court's constitutional safeguards on arrest into the statute, and with what fidelity?
2. Where the BNSS departs from the CrPC, does the departure expand or contract the space for personal liberty?
3. Which safeguards depend on the text, and which depend only on judicial enforcement after the fact?

The scope is confined to arrest, custody and release from custody (bail). Search, seizure, trial in absentia and the electronic-evidence provisions of the Sanhita are touched on only where they bear on liberty. Section numbers of the BNSS are given as they appear in the enacted text, with the corresponding CrPC section noted where useful. Because the law on written grounds of arrest was still developing at the time of writing (October 2026), the paper identifies the points at which the position may change.

3. The constitutional framework

Article 21. Early in the Republic the Supreme Court read "procedure established by law" narrowly, as any procedure that a legislature had enacted (*A.K. Gopalan v. State of Madras*, AIR 1950 SC 27). That reading collapsed in *Maneka Gandhi v. Union of India* (1978) 1 SCC 248, where the Court held that the procedure must be fair, just and reasonable, and that Articles 14, 19 and 21 form a single, interlocking guarantee. The consequence for arrest is direct. A procedure that permits arbitrary or unexplained deprivation of liberty is not saved merely because a statute authorises it. Later decisions added the right to privacy and dignity (*K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1), which now frames how the body of an arrested person may be handled and displayed.

Article 22. Article 22(1) gives an arrested person two rights: to be informed, as soon as may be, of the grounds of arrest, and to consult and be defended by a legal practitioner of choice. Article 22(2) requires production before the nearest Magistrate within twenty-four hours, excluding travel time, and bars detention beyond that period without the Magistrate's authority. Articles 22(3) to 22(7) then carve out preventive detention, to which these safeguards largely do not apply. That carve-out matters here because it shows how limited the textual protection in Article 22 is. Most of what the ordinary arrestee can rely on today was built by the courts on top of Articles 21 and 22(1)-(2).

Articles 14 and 19. Arbitrary exercise of arrest power engages the equality guarantee, since an unstructured discretion invites unequal treatment. Arrest also burdens freedom of movement and of expression in practice, particularly where arrests follow speech or protest. Courts rarely decide arrest cases under these articles, but they supply the reasonableness standard that *Maneka Gandhi* imports into Article 21.

Article 20(3). The privilege against self-incrimination is relevant because custody is the setting in which pressure to confess is greatest. The Court has treated the right to silence and the presence of counsel at interrogation as part of fair procedure (*Nandini Satpathy v. P.L. Dani* (1978) 2 SCC 424).

Article 39A. Though a directive principle, free legal aid has been read into Article 21 for the arrested and the undertrial (*Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 81; *Khatir v. State of Bihar* (1981) 1 SCC 627). It explains why information about the right to a lawyer, and not only the right itself, has constitutional weight.

Taken together, these provisions yield a working test for any arrest statute: is the arrest necessary and reasoned, is the person told why and able to reach family and counsel, and is the resulting custody brief, supervised by a judge and open to release on reasonable terms? The rest of the paper applies that test.

4. How the Court built arrest law before the BNSS

The CrPC of 1973 gave police a wide power to arrest without warrant for cognizable offences, and for decades the main limit on it was the officer's own "reasonable suspicion". The Supreme Court spent the next fifty years narrowing that discretion from the outside.

Joginder Kumar v. State of U.P. (1994) 4 SCC 260. The Court separated the *existence* of the power to arrest from the *justification* for using it. Arrest, it said, should not be routine; the officer must be able to explain why custody is needed, and the arrested person has a right to have a relative or friend told and to know of the arrest. The decision is the root of the later statutory idea of necessity.

D.K. Basu v. State of West Bengal (1997) 1 SCC 416. Responding to deaths in custody, the Court issued a set of binding requirements: police personnel making arrest to carry visible identification, a memo of arrest attested by a witness and countersigned by the arrestee, notification to a relative, medical examination at intervals, and display of information at control rooms. These guidelines were later reflected in sections 41B to 41D of the CrPC and now appear in sections 36 to 38 of the BNSS.

Arnesh Kumar v. State of Bihar (2014) 8 SCC 273. Concerned about automatic arrests in dowry-harassment cases, the Court directed police to apply the checklist in section 41(1)(b) of the CrPC before arrest, and Magistrates to refuse remand where the reasons for arrest were not recorded. The case is the clearest statement that arrest is an exception to be justified, and not the default response to a complaint.

Satender Kumar Antil v. CBI (2022) 10 SCC 51. The Court catalogued offences into categories for bail purposes, urged compliance with *Arnesh Kumar*, and called for a dedicated bail law. Its concern was the population of undertrials held for offences that carry modest punishment.

Written grounds: from Pankaj Bansal to Mihir Rajesh Shah. In *Pankaj Bansal v. Union of India* (2024) 7 SCC 576, decided under the money-laundering statute, the Court held that merely reading out the grounds of arrest is insufficient and that they must be furnished in writing. *Prabir Purkayastha v. State (NCT of Delhi)* (2024) 8 SCC 254 applied the same logic to the UAPA. *Vihaan Kumar v. State of Haryana* (2025) treated communication of grounds as an indispensable safeguard under Article 22(1) and set aside an arrest where it had not been properly made, while leaving room on whether written communication is practicable in every case. In *Mihir Rajesh Shah v. State of Maharashtra*, decided on 6 November 2025, the Court went further and held that grounds must be given in writing in all cases, including ordinary offences under the Bharatiya Nyaya Sanhita, with only a narrow exception where an offence is committed in the officer's presence and writing is genuinely impractical.

The position is not yet settled. A later bench decision in April 2026 (*Dr. Rajinder Rajan v. Union of India*) again upheld the need to furnish grounds, but as reported in July 2026 the Supreme Court indicated that it might refer the question whether written grounds are mandatory in every case to a larger bench, because of the divergence between *Vihaan Kumar* and *Mihir Rajesh Shah*. Any reader relying on this point should check the current status of that reference.

Two patterns emerge from this line of cases. First, almost every major safeguard began as judicial direction and only afterwards entered the statute book. Second, the Court has repeatedly had to return to the same problem, which suggests that statutory text alone has not changed police behaviour.

5. The BNSS arrest architecture

Chapter V of the BNSS (sections 35 to 62) is the core of the arrest regime. Most of it mirrors Chapter V of the CrPC. The table below maps the provisions that matter most for liberty.

BNSS provision	Subject	CrPC counterpart	Liberty significance
s. 35	Arrest without warrant; notice of appearance	s. 41, 41A	Necessity test; notice as alternative to arrest; senior approval for infirm or elderly persons
s. 36	Procedure of arrest; memo of arrest	s. 41B	Identification of arresting officer; witnessed memo; right to inform a family member
s. 37	Designated police officer	s. 41C	Information about arrested persons kept at district and station level
s. 38	Meeting an advocate during interrogation	s. 41D	Counsel access, though not throughout interrogation
s. 43	How arrest is made; handcuffs; women	s. 46	Statutory permission for handcuffs in listed offences; night-time arrest of women
s. 46	No unnecessary restraint	s. 49	Restraint limited to what prevents escape
s. 47	Grounds of arrest and right to bail	s. 50	Constitutional Article 22(1) duty
s. 48	Informing a nominated person	s. 50A	Family or friend notified; entry in a register
ss. 51, 52	Medical examination of arrested person	ss. 53, 54	Evidence of injury and safeguard against custodial violence
s. 57, 58	Production before Magistrate; 24-hour limit	s. 56, 57	Article 22(2)
s. 187	Procedure when investigation cannot be completed in 24 hours	s. 167	Police custody, judicial custody, 60/90-day limits
s. 479	Maximum period for which undertrial can be detained	s. 436A	Release after one-half or one-third of maximum sentence
ss. 480, 482, 483	Bail; anticipatory bail; powers of High Court and Sessions Court	ss. 437, 438, 439	Release from custody

The table shows how little of the architecture is new. The genuinely new elements, taken up below, are the clearer statutory form of the notice-of-appearance scheme, an express list of offences in which handcuffs may be used, the redrafted custody scheme in section 187, and the expanded undertrial release provision in section 479. Section numbers should be checked against the official text before citation in formal work, since commentary editions sometimes differ on sub-section numbering.

6. Necessity, notice of appearance and the section 35 filters

Section 35 is the gateway. It allows a police officer to arrest without a warrant, or without a Magistrate's order, in defined circumstances: where a cognizable offence is committed in the officer's presence; where credible information exists that a person has committed a cognizable offence punishable with imprisonment of up to seven years and the officer is satisfied, for recorded reasons, that arrest is necessary; and in several other listed situations such as proclaimed offenders and persons obstructing police.

The necessity requirement is the heart of the matter. The officer must be satisfied that arrest is needed to prevent further offending, to ensure proper investigation, to prevent disappearance or tampering of evidence, to prevent inducement or threats to witnesses, or to ensure the person's presence in court, and must record the reasons. This is the checklist that *Arnesh Kumar* required Magistrates to enforce, and its inclusion in the statute gives it a firmer base. In theory it converts arrest from a power into a decision that has to be defended.

Notice of appearance. Where arrest is not required, the officer must issue a notice directing the person to appear. A person who complies with the notice is not to be arrested unless the officer records reasons for believing arrest is necessary. Non-compliance permits arrest, subject to any court order. The scheme is a sensible one: it separates the investigative need to question someone from the coercive step of detaining them.

Elderly and infirm persons. Section 35(7) is the principal departure from the CrPC. For offences punishable with imprisonment of less than three years, a person who is infirm or above sixty years of age may be arrested only with prior permission from an officer not below the rank of Deputy Superintendent of Police. This is a welcome protection for a vulnerable group, although it leaves the large category of offences with a punishment of three to seven years to the general necessity test.

Where the statute remains soft. Three weaknesses stand out.

- The necessity grounds are phrased broadly. "Proper investigation" can be stretched to cover almost any case, since an investigating officer can usually assert that custodial interrogation will yield more than questioning at the station.
- The recorded reasons are internal to the police. Unless they are produced to the Magistrate and tested at the first hearing, they function as a formality.

- The related preliminary-enquiry provision in section 173(3), which allows a short inquiry before registering an FIR for offences carrying three to seven years with permission of a senior officer, operates mostly in the police's own hands.

The constitutional question here is whether a discretion that is disciplined by purposes but not by evidence meets the *Maneka Gandhi* standard. The better view is that it does, but only if Magistrates treat the recorded reasons as a substantive precondition of remand and not as boilerplate. The Court said as much in *Arnesh Kumar*; the evidence from later cases suggests it needs to keep saying it.

7. Safeguards at the point of arrest

Once the decision to arrest has been taken, the BNSS prescribes how the arrest must be carried out. These provisions are the most direct statutory descendants of *Joginder Kumar* and *D.K. Basu*.

Identification and the memo of arrest (section 36). The officer making the arrest must bear an accurate, visible and clear identification of name, and must prepare a memorandum of arrest attested by at least one witness, who may be a family member or a respectable member of the locality, and countersigned by the arrested person. The arrested person must be told that they have the right to have a relative or friend informed. The aim is to stop unrecorded detention, which is the precondition of most custodial abuse.

Information for the family (sections 36 and 48). A person arrested is entitled to have a nominated person told of the arrest and the place of detention, and the police must record the entry. Section 37 requires the State to designate a police officer in every district and at the headquarters to maintain information about arrested persons and to make it available. This is a small bureaucratic provision with large practical value, because families that cannot locate a detained relative cannot instruct a lawyer or file a habeas corpus petition.

Grounds of arrest (section 47). The arrested person must be told the full particulars of the offence or the other grounds of arrest, and, if the offence is bailable, that they are entitled to be released on bail and may arrange sureties. Section 47 is the statutory twin of Article 22(1). Its text is silent on whether the grounds must be written, which is why the line of cases from *Pankaj Bansal* to *Mihir Rajesh Shah* has mattered so much. If written grounds are mandatory, as *Mihir Rajesh Shah* holds, then an arrest without them is open to challenge and a remand order that follows may fall with it. The reported move towards a larger bench means the answer may still shift, but the weight of the Court's reasoning is that Article 22(1) is meant to equip the arrestee to seek counsel and bail, and an oral recital the person may not understand or remember rarely does that.

Counsel (section 38). The arrested person may meet an advocate of choice during interrogation, though not throughout it. This was inherited from section 41D CrPC. It falls short of what Article 22(1) and *Nandini Satpathy* imply, because the person's access to counsel during questioning is allowed but not guaranteed to be continuous. In practice police can structure interrogation so that counsel is present for only a small part of it.

Medical examination (sections 51 and 52). The arrested person can be medically examined, and the examination at arrest and at later intervals is the main documentary check against custodial violence. The provisions work only if the examining doctor is independent of the police and the Magistrate actually inspects the record at first production.

Women arrestees. Section 43 preserves the rule that, save in exceptional circumstances, a woman is not to be arrested between sunset and sunrise, and where exceptional circumstances do exist, a woman police officer must obtain prior written permission from the Judicial Magistrate of the first class. The safeguard is real, but only as strong as the Magistrate's willingness to examine the claim of exceptional circumstances.

An assessment. Taken as a set, these provisions pass the *how* test far better than the *when* test. They create paperwork that, if properly kept, makes concealed arrest harder. What they cannot do is change behaviour on their own: each of them depends on a Magistrate who reads the memo, asks the arrested person whether they were told the grounds, and refuses remand where the formalities were skipped.

8. Handcuffing, dignity and custodial violence

The use of restraints during arrest is an old constitutional flashpoint. In *Prem Shankar Shukla v. Delhi Administration* (1980) 3 SCC 526 the Court held that handcuffing is *prima facie* inhuman and unreasonable, and may be used only in exceptional cases where there is a clear and present danger of escape, with reasons recorded. *Sunil Batra v. Delhi Administration* (1978) 4 SCC 494 and *Citizens for Democracy v. State of Assam* (1995) 3 SCC 743 reinforced the point. The principle is that restraint must be proportionate to a real risk and not a badge of accusation.

The CrPC said nothing about handcuffs. The BNSS does. Section 46 repeats that an arrested person is not to be subjected to more restraint than is necessary to prevent escape, and section 43(3) permits a police officer, taking into account the nature and gravity of the offence, to use handcuffs when making an arrest or producing the person in court, in the case of a habitual or repeat offender, a person who has escaped from custody, or a person accused of an offence in a listed category. The list includes organised crime, terrorist acts, drug-related offences, illegal possession of arms, murder, rape, acid attack, counterfeiting, human trafficking, sexual offences against children and offences against the State.

Two difficulties arise.

First, the list is defined by the *offence charged*, not by the individual risk of flight or violence. That runs against the logic of *Prem Shankar Shukla*, which required an individualised assessment. A first-time arrestee accused of an offence in the list can now be handcuffed without any finding about danger or escape. The proviso that the officer must have regard to the gravity of the offence softens this only slightly, because gravity is exactly the criterion the list already applies.

Second, enacting a permission is not neutral. A statute that expressly says handcuffs may be used in specified cases will be read by officers as authority. The earlier position, in which the default was prohibition and the exception had to be justified in each case, put the burden on the police. The BNSS shifts that burden to the arrestee, who must show afterwards that restraint was not needed.

The better reading, and the one consistent with Articles 14 and 21, is that section 43(3) is a permission that remains subject to the constitutional rule in *Prem Shankar Shukla*: handcuffs must be justified for the particular person, with reasons recorded, even where the offence is in the list. Courts should read it that way until Parliament amends the text.

Dignity extends beyond restraints. Parading arrested persons before cameras and releasing their photographs implicates the right to privacy and dignity affirmed in *Puttaswamy*, and the presumption of innocence that underlies Article 21. The BNSS does not regulate this, and the omission is a gap. Custodial violence itself is addressed by constitutional remedies, not by the Sanhita: compensation under Articles 32 and 226 (*Rudul Sah v. State of Bihar* (1983) 4 SCC 141; *Nilabati Behera v. State of Orissa* (1993) 2 SCC 746) and the *D.K. Basu* requirements. The BNSS does not add a new accountability mechanism for deaths and injuries in custody, even though the chapter on arrest is where one would most naturally sit.

9. Custody, remand and the section 187 scheme

The twenty-four hour rule. Sections 57 and 58 give effect to Article 22(2): an arrested person must be produced before a Magistrate without unnecessary delay and in any case within twenty-four hours, excluding travel time. The Supreme Court has treated this as a hard check, not a formality (*Manubhai Ratilal Patel v. State of Gujarat* (2013) 1 SCC 314), because production is the first moment at which an independent officer sees the arrested person and can ask whether the arrest was lawful and whether the person has been ill-treated. A remand order made mechanically, without applying mind to the reasons for arrest, defeats that purpose.

Section 187 and the structure of police custody. Section 187 replaces section 167 CrPC. When an investigation cannot be finished within twenty-four hours, the Magistrate may authorise further detention, of which no more than fifteen days in total may be police custody and the rest judicial custody; the overall ceiling remains sixty days for ordinary offences and ninety days where the offence is punishable with death, life imprisonment or imprisonment of not less than ten years. After that the accused acquires a right to bail if the investigation is not complete.

The contested change concerns police custody. Under the CrPC the settled position, from *CBI v. Anupam J. Kulkarni* (1992) 3 SCC 141, was that police custody could be granted only within the first fifteen days after arrest, and judicial custody thereafter. The BNSS text instead allows the fifteen days of police custody to be authorised in whole or in parts, at any time during the first forty days (in a sixty-day case) or the first sixty days (in a ninety-day case). Supporters say this prevents an accused from frustrating investigation by feigning illness or by obtaining bail on a technicality in the first fortnight. Critics say it exposes a person to repeated bouts of police custody across a period of weeks, with the corresponding risk of coercion, and opens the door to custody being sought as leverage whenever the investigation stalls.

The constitutional test is proportionality. Police custody is the setting in which *D.K. Basu* and *Nandini Satpathy* were decided, and where Article 20(3) is most at risk. A scheme that spreads the fifteen days across many weeks is not unconstitutional on its face, since the overall cap is unchanged. Its compatibility with Article 21 depends on Magistrates demanding fresh reasons each time police custody is sought, rather than treating the remaining days as an entitlement.

Default bail. The statutory bail on failure to complete investigation within the sixty- or ninety-day window remains. The Court has described it as an indefeasible right that flows from Article 21 and accrues once the period expires and the accused applies for it before the chargesheet is filed (*Rakesh Kumar Paul v. State of Assam* (2017) 15 SCC 67; *Bikramjit Singh v. State of Punjab* (2020) 10 SCC 616). The BNSS retains this right. Its practical value is limited in the cases where the ninety-day window applies, since a person may spend three months in custody before it arises.

10. Bail, default bail and undertrial release

Bail is the last line of the liberty argument. If arrest is lawful and custody is properly authorised, the question that remains is how long a person who has not been convicted must stay in jail. The constitutional answer, set out in *Gurbaksh Singh Sibbia v. State of Punjab* (1980) 2 SCC 565 and repeated many times since, is that bail is the rule and jail the exception, and that the rule is not suspended simply because an offence is serious.

Section 479: the undertrial ceiling. Section 479 replaces section 436A CrPC. An undertrial who has been detained for up to one-half of the maximum sentence for the offence is to be released on bail. A first-time offender, one with no previous conviction, becomes eligible after one-third. The section does not apply to offences punishable with death or life imprisonment. Sub-section (3) casts an obligation on the superintendent of the jail to apply to the court once the person becomes eligible. This is a significant improvement because it places the burden of identifying eligible prisoners on the State and not on poor, uninformed prisoners.

In *In re: Inhuman Conditions in 1382 Prisons*, the Supreme Court held on 23 August 2024 that section 479 applies to all undertrials in pending cases, whether the case was registered before or after 1 July 2024. It directed jail superintendents to process applications promptly. The Court has since pressed jails to identify eligible prisoners, with particular attention to women undertrials. The retrospective reading gave the provision immediate effect on a population that had been waiting for it for years.

There are two limits. Section 479(2) denies the benefit to a person against whom investigation or trial is pending in more than one case. Commentators have criticised this because multiple FIRs are often registered against the same person for the same incident, so a technical multiplicity of cases can defeat a release the person would otherwise earn. The comparison with section 480, under which courts may grant bail in non-bailable offences with special consideration for women, the sick and the infirm, shows the inconsistency: the more discretionary provision is more humane than the mandatory one.

Anticipatory bail (section 482). Anticipatory bail survives in the BNSS, which matters because it is the main protection available before arrest. The Court's leading authorities (*Sibbia*, *Siddharam Satlingappa Mhetre v. State of Maharashtra* (2011) 1 SCC 694 and *Sushila Aggarwal v. State (NCT of Delhi)* (2020) 5 SCC 1) hold that it is a facet of Article 21 and that it should not be time-limited as a matter of course. Pre-arrest protection is the practical antidote to the pressure arrest creates, since a person who can approach a court before arrest is less exposed to the leverage that custody provides.

Bail in non-bailable offences (sections 480 and 483). Section 480 corresponds to section 437 CrPC and section 483 to section 439. The statutes still leave the principal decision to judges, and the debate that *Satender Kumar Antil* left open is whether a separate bail statute is needed. The BNSS did not enact one. The result is that bail outcomes still depend on the court and the judge before whom the application is heard.

Summary. Section 479 is the genuinely liberty-expanding provision of the Sanhita. Its effect, though, depends on administration: unless prison departments, legal-aid authorities and courts work through eligible cases systematically, a statutory right becomes an unclaimed one.

11. Critical appraisal

Measured against the three tests set out in the introduction, the BNSS produces a mixed result.

Test	Where the BNSS helps	Where doubt remains
<i>When</i> may a person be arrested?	Recorded necessity grounds; notice of appearance; senior approval for the infirm and over-sixty	Broad "proper investigation" ground; no external check on recorded reasons
<i>How</i> is the person treated and informed?	Statutory memo of arrest, nominated person, designated officer, grounds and right to bail	Counsel not guaranteed throughout interrogation; handcuffs authorised by offence list; no rule against public display
<i>How long and on what terms</i> is custody continued?	Section 479 ceiling, retroactive; default bail kept; anticipatory bail kept	Fifteen days of police custody spread across 40 or 60 days; section 479(2) multiplicity exclusion; no separate bail law

Three broader observations follow.

First, the Sanhita codifies the floor and not the ceiling. The rules on notice, memo, nominated person and designated officer are the minimum that *Joginder Kumar* and *D.K. Basu* required in the 1990s. Codifying them is useful, since a right in a statute is easier to plead than a right in a judgment, but it does not by itself add protection that Indian law had not already recognised. Where the Sanhita goes further (section 479) the gain is real; where it goes in the other direction (the offence-based handcuff list and the spread of police custody) the gain is arguable at best.

Second, discretion remains the pressure point. The words that decide whether a person goes to jail are "necessary", "proper investigation", "exceptional circumstances" and "gravity of the offence". Each is a legitimate standard, but each leaves the final call to a police officer at the moment of arrest and to a Magistrate at the first hearing. In a system where Magistrates handle large lists, the temptation to treat these as boxes to be ticked is considerable. The recurring return of the Supreme Court to *Arnesh Kumar* shows that the problem is one of enforcement and not drafting.

Third, the grounds-of-arrest controversy shows the system's fault line. If written grounds are required in every case, as *Mihir Rajesh Shah* holds, a non-compliant arrest is vulnerable and the Magistrate has a concrete document to examine at remand. If, as the reported larger-bench reference may conclude, written grounds are required only where practicable, the safeguard becomes more contingent. The constitutional text of Article 22(1) speaks of informing the person "as soon as may be", and the Court's approach has been that the information must be effective, in a form the person can understand and use. A writing requirement is the easiest way to make that effect checkable.

Do the provisions survive constitutional scrutiny? On their face, yes. Nothing in Chapter V is plainly arbitrary, and the Court has historically preferred to read safeguards into statutes before striking them down. The vulnerable provisions are those that can be applied unreasonably: section 43(3) (handcuffs by offence category), section 187's flexible police custody, and section 479(2). Each is more likely to be read down than invalidated, and the interpretive route is the one to expect.

A word of caution about method. Statutory design cannot be separated from implementation, and the present study is doctrinal. Claims about how arrest powers are used in practice since July 2024 would need empirical support, such as police data, Magistrate-level studies and prison statistics. The conclusions here are about what the text and the case law permit and require.

12. Recommendations

The recommendations below are directed at three audiences: Parliament, courts and executive authorities.

For Parliament

1. Amend section 47 to say expressly that grounds of arrest must be communicated in writing, in a language the person understands, at the time of arrest or within a short fixed period, with a narrow and defined exception for arrests in the course of an offence. This would end the uncertainty created by the divergence between *Vihaan Kumar* and *Mihir Rajesh Shah*.
2. Amend section 43(3) so that handcuffs may be used only where the officer records a reason based on the particular person's risk of escape or violence, whatever the offence charged.
3. Provide that police custody under section 187 must be sought on stated grounds each time, and that no further police custody may be authorised without a Magistrate recording why the earlier custody was insufficient.
4. Revisit section 479(2) so that multiple cases arising out of one transaction do not defeat the undertrial ceiling.
5. Enact the bail statute that *Satender Kumar Antil* called for, setting categories, presumptions and time limits.

For courts

6. Magistrates should require the arresting officer's recorded reasons and the grounds of arrest to be placed on file at the first production, and should record that the arrested person was asked whether grounds were communicated and whether any ill-treatment occurred.
7. Courts should read section 43(3) subject to *Prem Shankar Shukla* until it is amended.
8. High Courts should monitor compliance with section 479(3), with periodic reports from jail superintendents and legal-services authorities.

For the executive

9. State governments should notify and staff the designated police officer under section 37 and make the information accessible to families through a public portal.

10. Police training should treat the arrest chapter as a rights document and not a procedural checklist, and body-worn cameras should be used during arrest and custody where resources permit.
11. Prison and legal-aid authorities should use electronic prison records to flag every undertrial who reaches the section 479 threshold, not only those who apply.

13. Conclusion

The BNSS did not reinvent the law of arrest, and it would be a mistake to judge it as though it had. Its arrest chapter is, for the most part, the CrPC with the Supreme Court's safeguards written into it. That is a modest achievement, but a real one, since statutory rights are easier to invoke than judicial directions that officers may never have read.

The Sanhita does move the law in two directions. Section 479 expands liberty by giving undertrials a defined release ceiling and placing the duty to identify them on the jail, and the Supreme Court's decision to apply it retrospectively has given it immediate force. Against that, the offence-based handcuff list and the flexible scheme of police custody in section 187 widen the space for coercion, and both will need a narrow reading if they are to remain consistent with Articles 14 and 21.

The central lesson of the case law, from *Joginder Kumar* to *Mihir Rajesh Shah*, is that an arrest statute protects liberty only to the extent that those who apply it are required to explain themselves. The test of the BNSS will therefore be less its text than the behaviour of the Magistrate at the first remand hearing: whether grounds are examined, reasons are read, injuries are noted and release is ordered where custody is unjustified. If that discipline holds, the Sanhita can be said to have honoured the promise of Articles 21 and 22. If it does not, Parliament will have re-enacted the same problem under a new name.

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Nandini Satpathy v. P.L. Dani	(1978) 2 SCC 424	Self-incrimination and interrogation
Sunil Batra v. Delhi Administration	(1978) 4 SCC 494	Dignity of prisoners
Hussainara Khatoon v. State of Bihar	(1980) 1 SCC 81	Speedy trial, undertrials
Gurbaksh Singh Sibbia v. State of Punjab	(1980) 2 SCC 565	Anticipatory bail
Prem Shankar Shukla v. Delhi Administration	(1980) 3 SCC 526	Handcuffing
Khatri v. State of Bihar	(1981) 1 SCC 627	Legal aid at first production
Rudul Sah v. State of Bihar	(1983) 4 SCC 141	Compensation for unlawful detention
CBI v. Anupam J. Kulkarni	(1992) 3 SCC 141	Police custody within first fifteen days
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Note on verification. Statutory sub-section numbers and law-report citations in this paper were assembled from the author's working knowledge and a limited set of secondary sources. Before submission, check each against the official gazette text of the BNSS and the official or SCC reports, and confirm the current status of the larger-bench reference on written grounds of arrest.