



# Balancing National Security and Individual Liberties: A Constitutional Analysis of Expanded Arrest Powers under the Bhartiya Nyaya Sanhita (BNS)

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## Abstract

The Bhartiya Nyaya Sanhita (2023) introduces significant structural reforms to India's criminal justice system, including expanded police powers of arrest aimed at strengthening national security, combating organised crime, terrorism, mob violence, and cyber-enabled offences. While these reforms embody the State's duty to protect public order, they simultaneously raise constitutional concerns related to personal liberty, due process, and protection against arbitrary detention under Articles 14, 19, 21 and 22 of the Constitution of India. This paper conducts a constitutional and jurisprudential analysis of the new arrest provisions, comparing pre-existing mechanisms under the Indian Penal Code (IPC) and Code of Criminal Procedure (CrPC). It evaluates the compatibility of the BNS with Supreme Court precedents, international human rights norms, and principles of proportionality. The study argues that effective criminal justice reform must establish a calibrated balance between security imperatives and fundamental rights, supported by transparency, accountability, and institutional safeguards.

## Keywords

Bhartiya Nyaya Sanhita, arrest powers, national security, constitutional rights, Article 21, civil liberties, criminal justice reforms, due process, police discretion.

## Introduction

Security and liberty form two fundamental pillars of any constitutional democracy. Criminal law functions as the State's most coercive mechanism, and the power to arrest remains its most intrusive tool. The transition from the colonial IPC (1860) to the Bhartiya Nyaya Sanhita (2023) marks a transformative moment in Indian legal history, particularly in terms of redefining police authority. Provisions that expand arrest powers are justified by the need to counter modern threats—organised crime syndicates, terrorism networks, cyber fraud, financial crimes, and crimes against women and children. However, such expansion must not dilute constitutional protections against arbitrary State action.

## 2. Literature Review

### 2.1 National Security and Criminal Law

Existing literature on national security emphasizes that contemporary crime landscapes demand **proactive and preventive intervention by the State**, rather than merely reactive law enforcement. Scholars argue that conventional criminal law mechanisms—primarily built around post-offence investigation and prosecution—

are insufficient to counter **terror networks, organised crime syndicates, cyber-financial crime modules, and radicalisation**. According to security law theorists, the rapid expansion of technology and transnational criminal activities has created a crime ecosystem where threats can emerge rapidly and cause irreversible harm before traditional policing can respond. Therefore, the State's ability to **detain and investigate preventively** is viewed as a critical intervention to preserve internal stability and national integrity.

In the Indian context, studies note that the rise of **digital fraud, cyberstalking, trafficking, narco-terrorism, money laundering and cross-border extremism** has prompted the government to re-evaluate the sufficiency of colonial-era provisions. The Bhartiya Nyaya Sanhita (BNS) aligns with global trends where **pre-emptive arrest powers** are seen as an essential pillar to avert large-scale harm. However, scholars simultaneously caution that the justification of security must be **balanced with proportional safeguards**, as security policies have historically been prone to overreach.

## 2.2 Civil Liberties and Due Process

Literature on civil liberties highlights the inherent risk that **expanded police powers of arrest will be misused** if adequate accountability mechanisms are not embedded. Historical and empirical studies across democracies demonstrate that broader discretion to arrest tends to correlate with **higher rates of wrongful detention, extended remand, custodial torture, and coerced confessions**. Such practices undermine the foundational principles of **dignity, personal liberty and procedural fairness**, which are central to the rule of law.

Legal scholarship points to past Indian experiences under special legislation such as **TADA, POTA and UAPA**, where preventive detention powers and presumption clauses were criticised for disproportionately affecting marginalised communities, political dissenters and minorities. Scholars argue that when arrest becomes a **tool of convenience rather than necessity**, it threatens to normalise the criminalisation of dissent and non-violent opposition. The academic consensus is that **unchecked arrest powers can transform a security-oriented law into an instrument of repression**, unless judicial oversight and transparency mechanisms are strong, impartial and consistent.

## 2.3 Criminal Procedure Reforms and Technological Accountability

Literature on modern policing asserts that criminal procedure reform must evolve alongside advances in **forensic science, digital evidence, cyber intelligence and surveillance technologies**. However, several studies highlight that the integration of technology into policing increases the need for **robust transparency standards**, as digital investigations may introduce new vulnerabilities—data tampering, evidence contamination, selective disclosure, and privacy violations.

Theoretical models of procedural justice indicate that **citizen trust in the criminal justice system depends not only on convictions but on fairness, objectivity, and the ethical use of power**. Scholars emphasise that technology cannot replace accountability; rather, it requires **parallel safeguards such as audit trails, publicly accessible arrest registers, time-stamped digital documentation, and independent monitoring mechanisms**. Literature also observes that an overreliance on technology without adequate training may widen institutional inequalities: some jurisdictions may apply reforms effectively while others struggle due to lack of infrastructure.

## 2.4 Constitutional Jurisprudence and the Boundary of State Authority

Indian constitutional scholarship consistently reinforces that **Articles 14, 19, 21 and 22 collectively operate as a shield against arbitrary arrest and detention**. The Supreme Court of India has developed a progressive jurisprudence that prioritises **substantive fairness, proportionality and non-arbitrariness** in policing. Landmark rulings—such as *Maneka Gandhi*, *DK Basu*, *Joginder Kumar*, *Arnesh Kumar*, and *Kartar Singh*—establish that **arrest is not a routine power but a last resort**, and detention must be justified on the basis of necessity rather than mere suspicion.

Legal theorists highlight that criminal law reforms must not enable the State to **weaponize public order concerns to curb political opposition or civil liberties**. Constitutional jurisprudence requires that even the

most security-driven legislation preserves **access to legal representation, immediate presentation before a magistrate, communication of arrest grounds, and prohibition of torture or inhuman treatment**. Literature across democratic legal systems also converges on a recurring principle: **national security cannot legally or ethically override fundamental liberties; it must operate within the boundaries of constitutionalism**.

### 3. Expansion of Arrest Powers Under the Bhartiya Nyaya Sanhita (BNS)

The Bhartiya Nyaya Sanhita (2023) restructures key provisions regarding arrest and detention in an attempt to modernise India's criminal justice system. Unlike the colonial-era framework that prioritised punitive action post-offence, the BNS takes a **preventive and proactive security-centred approach**, enabling police authorities to intervene before grave harm occurs. The following are the major areas in which arrest powers have been significantly expanded.

#### 3.1 Wider Grounds for Preventive Arrests

The BNS broadens the scope of preventive arrests beyond traditional categories such as habitual criminals and individuals posing imminent threats to law and order. Police officers are now empowered to detain individuals **based on credible intelligence, digital footprints, and behavioural risk indicators** that suggest potential involvement in serious offences. Preventive arrests can now apply in circumstances where a crime **has not yet been committed but is anticipated**, placing significant reliance on the officer's assessment of threat perception.

This approach reflects a shift from **reactive policing to anticipatory law enforcement**, driven by the belief that early intervention may avert large-scale criminal incidents. However, scholars warn that such wide discretion requires **clear operational standards and consistent judicial oversight** to prevent misuse or arbitrary deprivation of liberty.

#### 3.2 Detention Powers in Cases of Organised Crime, Mob Lynching, and Cyber-Enabled Financial Crimes

The BNS explicitly recognises **organised crime, mob lynching, cyber-fraud, crime syndicates, and coordinated financial offences** as high-risk categories that pose substantial systemic threats. To disrupt such networks, the law authorises enhanced arrest and detention powers that allow police to immediately restrain suspects associated with crime rings, irrespective of whether their individual role is primary or accessory.

The rationale is that modern crime is **network-driven and decentralised**, making traditional arrest procedures ill-equipped for dismantling criminal enterprises. Expanded detention authority enables investigators to break **hierarchical and transnational chains of command** by isolating key operatives early in the investigative process. Yet, critics argue that this provision may blur the line between *guilt by association* and *guilt by evidence*, necessitating rigorous evidentiary standards.

#### 3.3 Increased Police Discretion in Arresting Without a Warrant

Another major shift under the BNS is the **increase in discretionary police powers to arrest without a warrant**. Previously, warrantless arrests were restricted to specific categories of cognizable offences. Under the BNS, police officers can act autonomously if they believe that:

- a) failure to arrest may result in escape of the suspect,
- b) evidence might be destroyed,
- c) witness intimidation is likely,
- d) public safety is at risk.

#### 3.4 Emphasis on Digital and Forensic Evidence Collection Post-Arrest

The BNS mainstreams the use of **forensic science, digital evidence, cyber intelligence, and electronic surveillance** in criminal investigation. After arrest, officers are required to gather **time-sensitive digital and**



**scientific materials**, including mobile metadata, GPS history, CCTV footage, financial logs, and encrypted communication records. The intention is to reduce dependence on **oral testimony and custodial confession**, replacing them with verifiable, scientific evidence to support prosecution.

This reform strengthens admissibility standards and aligns with global trends where scientific investigation improves conviction rates. However, scholars caution that post-arrest forensic reliance could lead to **extended detention under the pretext of evidence retrieval**, underscoring the need for transparent rules regarding retention timelines and digital privacy safeguards.

### 3.5 Introduction of ‘Repeat Offender’ Provisions Enabling Stricter Detention

The BNS introduces **repeat-offender enhancements**, which authorise stringent arrest and pre-trial detention for individuals with a history of serious offences. The underlying premise is that repeat offenders present a **statistically higher risk of recidivism**, particularly in organised crime, sexual violence, habitual assault, and serial fraud.

Stricter arrest policies for such individuals support **public safety and deterrence**, while also reducing investigative time required to build risk profiles. Nonetheless, human rights scholars argue that automated or profile-based detention policies may risk **prejudicial assumptions** and must be proportionately balanced with **presumption of innocence and judicial authorisation** to avoid discriminatory impact.

#### Rationale Behind the Reform

The expanded arrest powers under the BNS are grounded in three overarching premises:

##### a. National security threats demand proactive law enforcement

India’s internal security landscape has evolved dramatically, with rising challenges such as terrorism, narco-funding, digital extremism, and politically motivated mob violence. Preventive arrest powers are therefore intended to **interrupt threats before materialisation**, safeguarding public order and national sovereignty.

##### b. Modern criminals exploit legal loopholes and technology

Traditional arrest frameworks were not designed to counter **anonymous cybercrime actors, global financial fraud cartels, pseudonymous communication channels, and encrypted criminal networks**. The BNS prioritises speed and flexibility in policing to ensure that law enforcement does not remain technologically outpaced.

##### c. Preventive detention is perceived as necessary for social peace

Legislative reform reflects growing public sentiment that **law and order must be preserved even at the earliest indication of danger**. Preventive detention is thus framed not merely as a punitive mechanism but as an instrument of **social stability, crime deterrence, and community safety**.

## 4. Constitutional Analysis

### 4.1 Article 21 – Protection of Life and Personal Liberty

Article 21 of the Constitution of India guarantees that “**No person shall be deprived of his life or personal liberty except according to procedure established by law.**”

Over five decades of constitutional evolution—from *A.K. Gopalan* to *Maneka Gandhi*—have transformed Article 21 from a narrow procedural guarantee to a **substantive rights doctrine** requiring fairness, non-arbitrariness, proportionality, and due process in every State action, including arrest.

The Supreme Court has repeatedly held that **arrest cannot be treated as a routine administrative function**; it must meet the strict standards laid down in constitutional jurisprudence. Three landmark precedents—

*Maneka Gandhi v. Union of India* (1978), *D.K. Basu v. State of West Bengal* (1997), and *Arnesh Kumar v. State of Bihar* (2014)—together establish the “Triple Test” for lawful arrest.

### A. The Triple Test of Constitutional Validity of Arrest

Element	Judicial Meaning	Requirement for Police	Constitutional Objective
<b>Necessity</b>	Arrest must be essential to prevent imminent harm, ensure presence of accused during trial, stop destruction of evidence, or protect society	Police must justify in writing why arrest was necessary, not merely lawful	Prevent arbitrary arrests and ensure arrest is <i>last resort</i>
<b>Proportionality</b>	The degree of interference with liberty must be proportionate to the gravity of the offence and risk posed	Police must assess threat level, criminal history, and likelihood of reoffending before arrest	Prevent excessive State action and maintain balance between liberty and security
<b>Reasonableness</b>	The decision to arrest must be based on objective material, credible information, and rational inference—not suspicion alone	Police actions must withstand judicial review based on logic, fairness and evidence	Uphold due process and guarantee fairness under Article 21

### B. Supreme Court Precedents and Constitutional Standards

Case	Key Constitutional Principle	Relevance to Arrest
<b>Maneka Gandhi (1978)</b>	“Procedure established by law must be fair, just, and not arbitrary” — expanding Article 21 to include due process and proportionality	Arrest must satisfy <i>substantive fairness</i> and not rely on administrative convenience
<b>D.K. Basu (1997)</b>	Laid down mandatory arrest safeguards — written justification, medical check-up, relatives’ intimation, arrest memo, custody transparency	Arrest requires procedural accountability to prevent custodial abuse
<b>Arnesh Kumar (2014)</b>	Police must avoid automatic arrest in offences punishable with less than 7 years; must record reasons for arrest and non-arrest	Empowers courts to discipline arbitrary policing and protect individual liberty

### C. Compliance Challenges Under the Bhartiya Nyaya Sanhita (BNS)

The BNS expands arrest powers to facilitate national security and preventive policing. However, **broader discretion may undermine Article 21’s safeguards** if not accompanied by judicial oversight. The constitutional tension can be mapped as follows:

BNS Reform	Intended Purpose	Constitutional Risk	Article 21 Safeguard Required
Wider preventive arrest powers	Pre-empt serious crimes	Subjective suspicion → arbitrary detention	Written “necessity justification” for every arrest
Power to arrest in organised crime & cyber offences	Break criminal networks	Collective suspicion → guilt by association	Proof of individual involvement before detention
Greater discretion in warrantless arrest	Rapid police response	Politically/ socially motivated arrests	Strict judicial review of justification note
Post-arrest forensic evidence model	Shift to scientific policing	Extended detention in name of evidence	Time-bound limits on detention for investigation
Repeat-offender detention provisions	Reduce recidivism	Presumption of guilt based on past conduct	Arrest only after fresh offence risk is proven

### D. Constitutional Position

Under Article 21, the **legality of arrest is not sufficient; the necessity of arrest is mandatory**. Therefore:

Even if an arrest is lawful under the *Bhartiya Nyaya Sanhita*, it is unconstitutional if it fails the tests of necessity, proportionality, and reasonableness.

This means **police discretion cannot override fundamental liberty**, and every arrest must withstand **judicial scrutiny**. The success of the BNS will depend on the **real-world enforcement of Article 21 safeguards**, not the text of the statute alone.

#### 4.2 Article 22 – Protection Against Arbitrary Arrest

Article 22 of the Constitution of India constitutes the **core procedural safeguard** against arbitrary arrest and detention. It establishes the legal framework ensuring that the State's power to arrest—though necessary for maintaining security and order—does not compromise the fundamental rights of the accused. The expansion of arrest powers under the *Bhartiya Nyaya Sanhita (BNS)* heightens the need for strict conformity with Article 22 mandates.

#### Constitutional Mandates vs BNS Operational Powers – Detailed Analysis

Constitutional Requirement under Article 22	Judicial Interpretation / Landmark Judgments	Relevant Provisions in BNS Expansion of Arrest Powers	Potential Constitutional Issues / Risks	Suggested Safeguards for Compliance
<b>Accused must be informed of the grounds of arrest immediately</b>	<i>Joginder Kumar v. State of UP</i> (1994): Failure to communicate grounds invalidates arrest	Enhanced police discretion to arrest without warrant in preventive and organised crime categories	Grounds may be communicated through vague or broad categories rather than specific allegations	Mandatory written communication in vernacular language; digital record entry accessible to the court
<b>Right to consult and be defended by legal counsel of choice</b>	<i>Nandini Satpathy v. P.L. Dani</i> (1978): Presence of lawyer during interrogation protects dignity	Post-arrest forensic/interrogation stage prioritised before courts' intervention	Risk of delayed access to counsel may compromise due process, especially in cyber and organised crime	Counselling access within a fixed time (e.g., 2–3 hours post-arrest) and audio-video recorded interrogation
<b>Mandatory production before magistrate within 24 hours</b>	<i>Hussa Inara Khatoon v. State of Bihar</i> (1979): Swift judicial supervision is essential to curb prolonged police custody	BNS permits extended detention in exceptional cases such as national security, mob lynching & repeat offenders	Extended detention may dilute the 24-hour judicial oversight rule, enabling over-reach	Time-bound judicial review for extension (ex parte extensions barred); reasons must be recorded
<b>No detention beyond judicially authorised period</b>	<i>Kartar Singh v. State of Punjab</i> (1994): Extended custody permissible only under strict statutory safeguards	Detention length can be increased when dealing with habitual offenders or organised crime networks	Longer detention risks creating a preventive-detention-like system without judicial proportionality	Periodic judicial review at fixed intervals (every 7/10/15 days) to evaluate necessity
<b>Protection from coercion,</b>	<i>DK Basu v. State of West Bengal</i>	Digital forensic evidence encouraged, but not	In absence of compulsory	Mandatory audio-video recording of



Constitutional Requirement under Article 22	Judicial Interpretation / Landmark Judgments	Relevant Provisions in BNS Expansion of Arrest Powers	Potential Constitutional Issues / Risks	Suggested Safeguards for Compliance
torture, and custodial violence	(1997): Police accountability and transparency standardised	mandated for interrogation documentation	recording, custodial violence risk persists	all interrogations & independent medico-legal examination

### Analytical Summary

The **BNS attempts to strengthen law enforcement powers** particularly in areas involving **national security, organised crime, cybercrime and repeat offenders**. However, this **expansion of police discretion**—when not paired with strong oversight—may trigger conflict with **Article 22 procedural guarantees**.

Balance Challenge	Outcome Risk
Increased arrest powers + reduced judicial supervision	Arbitrary detention and human rights violations
Rise in preventive arrest justifications	Dilution of presumed innocence
Cyber-crime & forensic urgency vs. counsel access	Excessive executive dominance over liberty
Exceptional detention powers without safeguards	Normalisation of “extraordinary state powers”

### Doctrinal Conclusion

For the BNS to remain constitutionally harmonious with Article 22, **arrest reform and accountability reform must move together**. Expanding powers without procedural safeguards risks shifting the system from “**due process-oriented policing**” to “**power-centric policing**.” Therefore, **effective implementation requires robust oversight mechanisms**, ensuring that the enhanced efficiency sought by BNS does not erode **constitutional guarantees of personal liberty and fairness**.

### 4.3 Article 14 & 19 – Equality and Freedom

The expansion of arrest powers under the *Bhartiya Nyaya Sanhita (BNS)* must remain consistent with the constitutional guarantees of **equality before law (Article 14)** and **freedom of speech and expression (Article 19)**. While the State is empowered to protect national security and public order, such authority must not be exercised in a manner that creates **arbitrary, discriminatory, or repressive outcomes**.

#### A. Article 14 – Equality Before Law & Non-Arbitrariness

Article 14 prohibits **arbitrary state action**, requiring that any restriction imposed must meet the **twin test of reasonableness and intelligible differentia**. The Supreme Court has repeatedly clarified that *arbitrariness is the antithesis of equality* (*E.P. Royappa v. State of Tamil Nadu, 1974*).

#### Implications for Expanded Arrest Powers

Risk in Implementation	Likely Legal Conflict	Constitutional Requirement
Preferential targeting of specific communities, minorities, activists or economic groups	Violation of equality & discriminatory policing	Equal treatment, uniform application of arrest powers
Arrests based on vague categories like “threat to public harmony”	Overbreadth gives room for selective enforcement	Narrow tailoring, precise statutory interpretation
Institutional bias or misuse in politically sensitive contexts	Violation of fairness and neutrality	Objective criteria + judicial oversight

The BNS cannot be interpreted to create **policing patterns that disproportionately affect one population segment**. Any arrest framework that results in selective enforcement opens the possibility of **constitutional invalidation on grounds of arbitrariness**.

### B. Article 19 – Protection of Freedom

Article 19 guarantees freedom of speech, association, and peaceful movement. These freedoms may be restricted in the interest of **sovereignty, integrity and public order**; however, the State cannot suppress **lawful dissent or expression** under the pretext of national security.

#### Implications for Expanded Arrest Powers

Protected Conduct under Article 19	Potential Threat under Broad BNS Arrest Powers	Permissible Constitutional Restrictions
Peaceful protests	Arrests on grounds of “public disorder” or “public alarm”	Only when protests become violent or threaten public order
Criticism of government policies	Arrests using “anti-national activities” labels	Criticism cannot be equated with sedition or disloyalty
Online expression and social media debates	Police discretion to act against “digital provocation”	Restrictions must be reasonable and narrowly tailored
Participation in civil rights movements	Misinterpretation as “provoking disaffection”	Freedom of association cannot be curbed without measurable threats to security

If the exercise of arrest powers **creates a chilling effect on dissent**, the BNS risks violating Article 19 protections.

### C. The Proportionality Doctrine as Constitutional Safeguard

The Supreme Court has evolved the **four-pronged proportionality test**, especially post the *Puttaswamy Judgment (2017)*:

1. **Legitimate State Purpose**
2. **Rational Connection between Means and Purpose**
3. **Necessity — No less-restrictive alternative available**
4. **Balancing of State interest and individual rights**

An arrest under the BNS must satisfy each step. If expanded policing powers **overshoot necessity**, the restriction fails constitutional scrutiny.

### D. Analytical Inference

The BNS reforms seek to modernise policing and strengthen national security enforcement. However, without judicial oversight and strong accountability frameworks:

1. **Equality under Article 14 may erode due to discriminatory/ selective targeting**
2. **Freedom under Article 19 may erode due to suppression of dissent and expression**

Thus, **constitutional compliance requires that arrest powers remain security-enhancing without becoming liberty-compromising**.

## 5. National Security vs. Civil Liberties — The Core Dilemma

The *Bhartiya Nyaya Sanhita (BNS)* represents an assertive shift in India’s criminal justice philosophy, positioning **national security and pre-emptive policing** as central priorities in combating evolving threats such as organised crime, digital financial fraud, terrorism networks, and mob-based violence. However, the



expansion of arrest powers and enhanced investigative discretion intensifies a perennial constitutional dilemma:

### How can a democratic State protect collective security without compromising individual liberties?

This dilemma is rooted in the inherent tension between **executive efficiency** and **constitutional protections guaranteed under Part III** of the Indian Constitution.

#### A. Contrasting State Interests and Individual Rights — Analytical Table

National Security Need (Justification for Expanded Powers)	Civil Liberties Concern (Democratic Risks)	Underlying Constitutional Conflict
Pre-empting organised crime before execution	Arbitrary preventive detention without standard of proof	Article 21 – Right to liberty vs. pre-emptive state control
Disrupting terrorism and radicalisation networks	Potential criminalisation of lawful dissent, activism or security-related criticism	Article 19 – Freedom of expression and association
Rapid law enforcement action to neutralise threats	Reduced judicial oversight on arrest and custody	Articles 22 and 32 – Procedural safeguards and judicial review
Protection of financial systems through digital monitoring	Erosion of privacy rights due to unrestricted surveillance and data collection	Article 21 – Puttaswamy privacy doctrine
Stronger policing discretion and mobility	Fear-driven compliance and chilling effect on resistance or protest movements	Article 14 – Equality and non-arbitrariness

The clash is not theoretical, but structural — where **security-driven exceptional powers** risk becoming normalised in everyday policing unless institutional safeguards are codified and enforced.

#### B. The “Paradox of Democratic Protection”

A central warning in global criminal law scholarship is:

*A democracy can collapse not only when crime overwhelms the State — but also when the State overwhelms individual freedom in the name of fighting crime.*

If security objectives are prioritised disproportionately:

1. **Citizens experience liberty not as a right but as a conditional privilege**
2. **Public trust in law enforcement diminishes**
3. **Dissent and civic engagement decline due to fear of reprisal**
4. **Marginalised communities bear disproportionate surveillance and custodial burden**

Thus, the real challenge is not creating powerful laws but ensuring that **those powers are not misused in a manner that weakens the democratic fabric they aim to protect.**

#### C. Achieving the Constitutional Balance

A balanced criminal justice system must ensure **neither extreme prevails**:

Extreme 1	Extreme 2
Under-powered enforcement → Crime threatens the State	Over-powered enforcement → State threatens liberty

Constitutional criminal jurisprudence insists that the **State does not lose legitimacy while gaining capability.**

The correct approach is **security with accountability**, not **security versus accountability**.

#### D. Interpretation for BNS Implementation

To avoid the structural paradox of “*protecting democracy by weakening democratic freedoms*”, BNS implementation must prioritise:

1. **Judicial oversight of preventive detention and extended custody**
2. **Strict scrutiny of arrests during political or dissent movements**
3. **Mandatory recording and transparency in interrogation and forensic collection**
4. **Non-discriminatory enforcement across demographics**
5. **Legislative review of arrest patterns and custodial outcomes**

Thus, the **goal is not to dilute the BNS reforms** but to **institutionalise constitutional guardrails** ensuring that the pursuit of national security does not evolve into an **unconstitutional concentration of power**.

#### 6. Comparative Perspective (Global)

Below is a detailed, thesis-ready comparative analysis of arrest powers and safeguards in four jurisdictions — **USA, UK, China, and India (BNS vision)** — with an emphasis on institutional design, judicial review, operational practices, and lessons for India’s reform trajectory.

**Comparative Table — Models & Core Implications**

Country	Model / Legal Architecture	Operational Features	Core Implications (Strengths / Risks)
<b>USA</b>	Broad police arrest authority; adversarial criminal process; strong constitutional due-process protections	Warrantless arrests in exigent circumstances; Miranda warnings; judicial review through exclusionary rule and habeas corpus; independent public defenders	<b>Strengths:</b> Robust procedural safeguards and remedies (exclusionary rule, motions to suppress, civil rights litigation). <b>Risks:</b> High policing discretion can still produce racial disproportionality, stop-and-frisk type abuses, and variable quality of local prosecution.
<b>UK</b>	Relatively circumscribed arrest powers embedded in Police and Criminal Evidence Act (PACE) and statutory codes; independent inspectorates (IPCC/IOPC)	Clear statutory arrest grounds; mandatory custody records; legal aid system; independent oversight bodies and inspectorates; emphasis on records and codes of practice	<b>Strengths:</b> Lower incidence of arbitrary detention; strong investigatory standards and recorded procedures. <b>Risks:</b> Slower response in rapidly evolving cyber/terror contexts; variability in resource allocation across local forces.
<b>China</b>	Security-first, party-state model; administrative detention and broad public security powers	Extensive preventive detention powers, administrative detention mechanisms, limited independent judiciary or public review	<b>Strengths:</b> Rapid state response and high clearance/conviction rates. <b>Risks:</b> Severe curtailment of individual liberties, weak procedural safeguards, political uses of law enforcement.
<b>India (BNS Vision)</b>	Hybrid model — enhanced preventive and forensic powers plus constitutional safeguards on paper	Expanded warrantless arrest and preventive detention language balanced by judicial review doctrines under Articles 14/19/21/22	<b>Strengths (potential):</b> Ability to target sophisticated criminal networks; modernization of evidence standards. <b>Risks (actual):</b> Success depends on institutional safeguards; without them, risks mirror worst aspects of both

Country	Model / Legal Architecture	Operational Features	Core Implications (Strengths / Risks)
			strong-state and weak-accountability models.

### Analytical Discussion — Lessons from Each Model

#### 1. United States — Procedural Remedies as a Check on Power

The U.S. model combines **wide police authority** with **institutionalized procedural remedies** — e.g., the exclusionary rule (suppression of illegally obtained evidence), Miranda safeguards, robust judicial review, and avenues for civil suits under federal statutes (e.g., §1983). This produces a system where the police can act quickly, but improper conduct carries litigation and evidentiary costs that deter abuse.

**Lesson for India:** Empowerment of victims of wrongful arrest (civil remedies, disciplinary costs) and strong exclusionary doctrines for tainted evidence can deter arbitrary arrests while keeping investigative agility.

#### 2. United Kingdom — Codes, Record-Keeping, and Independent Oversight

The UK emphasises **statutory clarity** (PACE codes), **mandatory custody records**, and **independent oversight** (inspectorates and ombuds institutions). Arrest and detention are tightly documented, improving transparency and prosecutorial accountability. This reduces arbitrary or opaque uses of arrest powers.

**Lesson for India:** Standardised arrest/ custody procedures (checklists, time-stamped logs, custody suites with recording) and empowered inspectorates can reduce misuse while maintaining legality.

#### 3. China — Efficiency Without Liberal Safeguards (Cautionary Tale)

China's approach demonstrates how state capacity and centralized control can deliver swift law-and-order outcomes, but at the cost of civil and political liberties. Lack of independent judiciary and limited remedies mean arrests can be used for political or social control.

**Lesson for India:** Institutional capacity must not substitute for rights protections. Robust accountability cannot be sacrificed for short-term enforcement gains.

#### 4. India (BNS Vision) — A Delicate Hybrid

BNS aims to combine **preventive capability and modern forensic practices** with India's constitutional rights framework. The crucial determinant of outcomes will be **implementation design**: training, judicial oversight, independent review, data transparency, and civic legal aid.

#### Key Implementation Variables

1. **Judicial Oversight:** Timely magistrate review and restrictions on executive extensions.
2. **Evidence Rules:** Clear admissibility rules to exclude evidence obtained via rights violations.
3. **Transparency Mechanisms:** Mandatory audio-visual recording, electronic arrest memos, publicly accessible arrest statistics disaggregated by region/community.
4. **Independent Accountability:** Strong police boards, institutionalized ombudspersons, and functioning NHRC/state HRC interventions.
5. **Capacity & Resources:** Forensic labs, digital forensics personnel, legal aid access, and training for judges and prosecutors.

#### 7. Policy and Institutional Safeguards Recommended

For expanded arrest powers under the *Bhartiya Nyaya Sanhita (BNS)* to remain constitutionally sound, enforceable, and socially legitimate, the criminal justice system must institutionalize safeguards at multiple levels — **legal, administrative, technological, and human rights-oriented**. These safeguards are not



constraints on law enforcement capacity; rather, they ensure that policing becomes more **accountable, evidence-driven, transparent, and constitutionally compliant**.

### 7.1 Legal Safeguards — Ensuring Procedural Fairness

Recommended Safeguard	Purpose / Rationale	Expected Impact
<b>Mandatory written justification for every arrest</b>	To replace discretionary, verbal grounds with documented reasoning	Discourages arbitrary detention; facilitates judicial review
<b>Judicial oversight on extended detentions</b>	Prevents excessive police control beyond the initial 24 hours	Promotes due process and strengthens Article 22 protections
<b>Strict compliance with DK Basu guidelines</b>	Ensures procedural safeguards during arrest and custody (medical exams, arrest memo, family intimation, etc.)	Reduces custodial abuse and improves evidentiary quality for prosecution

**Insight:** Strong arrest laws require equally strong rights-based compliance mechanisms. Without legal safeguards, preventive powers may incentivise shortcuts rather than structured policing.

### 7.2 Administrative Safeguards — Creating Uniform Enforcement Standards

Recommended Safeguard	Rationale	Effect on Outcomes
<b>Nationwide capacity-building for police, judiciary, and prosecution</b>	Expanded powers require knowledge of constitutional limits and forensic protocols	Reduces misuse born from ignorance or outdated practices
<b>Standardised Arrest Assessment Checklist</b>	Ensures that officers evaluate necessity, proportionality, and alternatives to arrest before acting	Harmonises enforcement across States and reduces over-policing

**Insight:** Even progressive laws fail if frontline actors lack the training and tools for proper implementation. Institutional capacity is the *bridge* between legislative intent and field realities.

### 7.3 Technological Safeguards — Transparency & Accountability via Digital Evidence

Recommended Safeguard	Function	Benefit for both State and Citizens
<b>Digital, time-stamped audio-video recording of arrests and interrogations</b>	Creates tamper-proof evidence of procedure and treatment	Protects officers from false allegations and detainees from abuse
<b>Blockchain-secured electronic case diaries</b>	Prevents alteration, fabrication, or backdating of investigative records	Builds public and judicial trust in chain of custody and digital evidence

**Insight:** Technology can make rights protection *self-executing* by strengthening evidentiary credibility and reducing dependency on oral testimony.

### 7.4 Human Rights Safeguards — Reinforcing Public Trust and Access to Justice

Recommended Safeguard	Purpose	Structural Result
<b>Independent Custodial Oversight Commissions</b>	Third-party monitoring of police stations and lock-ups	Detects patterns of abuse and enables corrective reforms
<b>Public legal awareness campaigns</b>	Empowers citizens to understand rights and available remedies	Prevents misinformation, fear-driven compliance, and exploitation

**Insight:** Access to rights must not depend on privilege or awareness. Democratising knowledge reduces arbitrary exercise of power and enhances citizen participation.

## 8. Conclusion

The Bhartiya Nyaya Sanhita embodies India's effort to modernise criminal justice and strengthen national security. However, **expanded arrest powers must operate within the constitutional boundaries of equality, reasonableness, fairness, and dignity**. Criminal law reforms will be successful only if **liberty is protected while security is ensured**, rather than one being sacrificed for the other. The future of BNS depends not on the text of the law alone but on the robustness of safeguards, accountability mechanisms and judicial oversight.

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