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LEGAL SAFEGUARDS IN CROSS-STATE WARRANT EXECUTION

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Abstract

The Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023, outlines detailed procedures for executing warrants outside the jurisdiction of the issuing court, safeguarding individual liberty under Articles 21 and 22(1) of the Indian Constitution. Sections 80, 81, and 82 emphasize transparency, accountability, and procedural compliance by law enforcement in inter-jurisdictional warrant execution.

Section 80 allows warrants to be forwarded to local authorities for execution, accompanied by relevant information and documents for bail considerations. Section 81 mandates obtaining endorsements from local officials before warrant execution, with exceptions for urgent cases. Section 82 ensures arrested individuals are presented before the nearest Magistrate within 24 hours unless the issuing court is within a 30-kilometer radius.

Section 83 governs bail and custody decisions post-arrest. It enables the Magistrate to release the accused on bail for bailable offenses or transfer them to the issuing court for non-bailable offenses, reflecting safeguards for transit remand. The concept of "transit anticipatory bail" emerges, ensuring protection until the accused reaches the jurisdictional court.

These provisions uphold procedural integrity, transparency, and constitutional rights while enabling seamless inter-jurisdictional enforcement, ensuring justice is balanced with individual liberties.

- **Introduction**

The execution of warrants across state lines raises complex legal questions and underscores the balance between law enforcement powers and individual rights. Cross-state warrant execution is governed by a combination of federal statutes, state laws, and constitutional provisions designed to ensure due process and prevent abuses of authority. Understanding these legal safeguards is essential to protect individuals from unlawful detention, improper jurisdictional overreach, or violations of procedural rights. This article examines the critical protections in place, including extradition laws, the right to legal representation, and judicial oversight, highlighting their role in upholding justice and safeguarding individual liberties in interjurisdictional cases.

- **Critical Analysis of Execution and Procedures under the Bhartiya Nagarik Suraksha Sanhita, 2023**

Before understanding the sections that are dealing with the execution and procedure prescribed under the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023, one should get to know the laws which are enforced or play a crucial role in legalization of the warrants executed that are specifically issued outside the jurisdiction of the court issuing the same.

Section 80¹ of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023:

(1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.

(2) The Court issuing a warrant under sub-section (1) shall forward, along with the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 83 to decide whether bail should or should not be granted to the person.

Section 81² of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023:

¹ https://www.livelaw.in/pdf_upload/bharatiya-nagarik-suraksha-sanhita-511325.pdf

² https://www.livelaw.in/pdf_upload/bharatiya-nagarik-suraksha-sanhita-511325.pdf

(1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.

Procedure of execution of warrants that are specifically issued outside the jurisdiction of the court issuing it.

Section 82³ of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023:

(1) When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometres of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 73, be taken before such Magistrate or District Superintendent or Commissioner.

(2) On the arrest of any person referred to in sub-section (1), the police officer shall forthwith give the information regarding such arrest and the place where the arrested person is being held to the designated police officer in the district and to such officer of another district where the arrested person normally resides.

The above mentioned Section which outlines the procedures for executing warrants outside the jurisdiction of the issuing court, ensuring clarity and efficiency in inter-jurisdictional law enforcement as highlighted in our constitution which focuses on the protection and safeguarding the liberty of the citizens of the India which enshrines in the Article 21 and Article

³ https://www.livelaw.in/pdf_upload/bharatiya-nagarik-suraksha-sanhita-511325.pdf

22(2).

Section 80 of The BNSS, 2023 provides for the forwarding of warrants to an Executive Magistrate, District Superintendent of Police, or Commissioner of Police when the execution lies outside the issuing court's jurisdiction. The receiving authority must endorse the warrant and facilitate its execution. The issuing court must also forward pertinent information and documents to aid in bail considerations under Section 83.

Section 81 of The BNSS, 2023 governs the execution of warrants directed to police officers outside the issuing court's jurisdiction. The police officer must typically obtain an endorsement from a local Executive Magistrate or a police officer in charge within the jurisdiction where the warrant is to be executed. This endorsement authorizes the officer to execute the warrant. However, in cases where delays in obtaining the endorsement may hinder execution, the police officer is permitted to execute the warrant directly.

Section 82 of The BNSS, 2023 focuses on the treatment of arrested persons outside the district of the issuing court. *If the issuing court is not within 30 kilometres of the arrest location, the arrested individual must be presented before “the Executive Magistrate or District Superintendent or Commissioner Of Police” nearer to the place of arrest within the local limits of whose jurisdiction the arrest was made* , unless security is taken under Section 73.

Additionally, the arresting officer must inform both the local authorities and those in the arrested person's home district about the arrest and their location.

The Section 82 of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 forms a crucial link between making arrest legal or illegal as in accordance to this section the police official executing the warrants are required to produce the arrestee to *The Magistrate* near to the place of arrest within 24 hours or unless the court which issued the warrants lies *within a distance of 30 Kilometeres* or there are complying circumstances/situation which requires steps otherwise.

Now there must be certain cases where the police officials can ensure the presence of the accused person Infront of the Court which issued the warrants and lies outside the jurisdiction from where the person originally resides as well as is situated outside the 30 Kilometres radius

within 24 hours whether in this situation can a police official overrides or bypass the procedural requirements which has to be followed under Section 82 of BNSS?

To understand this we have to understand the true intention of the legislature in drafting of the above mentioned section and as these sections becomes very crucial in cases where the person against whom warrants are issued usually resides outside the jurisdiction of the court issuing those warrants hence the following of these above mentioned sections not only outline the procedure of execution of the warrants but also underlines the transparency of the procedure but also protection of an individual who is been taken from the place of his residence to another jurisdiction in lieu of a case which has been registered against him for which his presence is required. Thereby this section are not a mere formality or words which police officials can simply ignore or plead ignorance against the same as this directly infringes Article 21 and Article 22(2) of the Indian Constitution and as held in various of judgements which highlights the basic understanding of the law of the land that if there is a procedure which outlines certain guidelines to situation in this context i.e Executing of warrants outside of jurisdiction leading to arrest/detention of the person then the police officials are bound by the law to follows these procedure without any doubt and cannot make any procedure which they think is convenient to them. It is the duty of the police officers i.e the police officials who are executing the arrest as well as the duty of the police officer in whose jurisdiction the arrest has been executed to make a detail Diary entry of the same and forward it to “The Magistrate” nearest to the place of arrest⁴. The reason which lies behind the intent of the legislature is that to secure a transit remand.

The term Transit Remand is not defined any sections of BNSS but it means simply that the custody is sought by the police officials for taking accused from one place to another in their own custody, the concept of the transit Remand can be inferred from former Section 167(2) CrPc or 187(2) BHARTIYA NAGARIK SURAKSHA SANHITA (BNSS), 2023 which reads as:

“ The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and

⁴ <https://indiankanoon.org/doc/62360503/>

considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction⁵

The Legislature has not used “any” or “a” magistrate within whose jurisdiction the arrest was made but have used “the” Magistrate within whose jurisdiction the arrest has been carried out, the emphasis is on “the” because it becomes crucial for the police officials to produce arrestee Infront of “The Magistrate” in whose jurisdiction the arrest has been made in order for the police officials to seek remand as mentioned in the Section 187(2) i.e “Transit Remand” of that person to take him into their custody and transport him to another jurisdiction in which his warrants were originally been issued to secure his presence.

To understand the analogy of “The” used before “Magistrate” the Supreme Court in the case Title: ***CONSOLIDATED COFFEE LTD. AND ANR. ETC. Vs. COFFEE BOARD, BANGALORE ETC. ETC. {1980 AIR 1468}***⁶ highlighted the understanding of this analogy and explained as :

“where two or more words, which are susceptible of analogous meaning, are coupled together they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general.”

Applying the above logic the legislature has not used “a magistrate” or “any Magistrate” but has place “the” before magistrate hence the context which in literal sense would means that it has to be the local magistrate in whose the arrest takes place and hence making the police officials duty bound to present the arrestee Infront of the magistrate in whose jurisdiction the arrest has been conducted in order to proceed forward failure to which will not only make the arrest illegal but also infringes the article 21 and article 22(2) of the Indian constitution.⁷

The reason why the Section 82 Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 has been given so much emphasis till now is because what lies further in the Section 83 of the BNSS. Let’s examine the importance which of this section.

⁵ <https://indiankanoon.org/doc/839149/>

⁶ <https://indiankanoon.org/doc/1542029/>

⁷ <https://indiankanoon.org/doc/167825786/>

Section 83 Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023:

“(1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: Provided that, if the offence is bailable, and such person is ready and willing to give bail bond to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 73 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail bond or security, as the case may be, and forward the bond, to the Court which issued the warrant: Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 480), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of section 80, to release such person on bail.

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 73.⁸ “

Section 83 of the BNSS, 2023 comes in force when the arrestee is produced before the Magistrate in whose jurisdiction the arrest have been conducted against the warrants which has been issued by the court of another jurisdiction can direct his removal from custody if the offence is bailable and such arrestee is ready to furnish a bail bond to the satisfaction of such Magistrate and forward the same to the court which have issued the warrant Or if the offence is Non-Bailable the Chief Judicial Magistrate or The court of Session in accordance to the provision of Section 480 of BHARTIYA NAGARIK SURAKSHA SANHITA (BNSS), 2023 in which district the arrest has been made, on consideration of the information and documents referred in Section 80(2) of BHARTIYA NAGARIK SURAKSHA SANHITA (BNSS), 2023 shall release such person on bail.

This Section also allow us to draw an inference towards a term i.e *“Transit Anticipatory Bail”* another term in the Code which has not been defined anywhere but it is a form of protection which has been given to the arrestee on production Infront of the Magistrate or the Court of Session in whose district the arrest have been made to protect the accused from being arrested until they reach a court having the territorial jurisdiction for the alleged offence.

⁸ https://www.livelaw.in/pdf_upload/bharatiya-nagarik-suraksha-sanhita-511325.pdf

• Conclusion

The procedures outlined in Sections 80, 81, and 82 of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023, reflect a deliberate and structured approach to handling warrants issued outside the jurisdiction of the court. These provisions emphasize the importance of safeguarding individual liberties, as enshrined in Articles 21 and 22(2) of the Indian Constitution, while ensuring effective inter-jurisdictional law enforcement.

Section 80 of BNSS,2023 highlights the process for forwarding warrants to authorities in other jurisdictions and mandates the inclusion of relevant information to enable decisions on bail. Section 81 governs the endorsement and execution of such warrants by local authorities or police officers, even permitting direct execution in urgent circumstances to avoid undue delays. Section 82 further establishes the framework for presenting arrested individuals before the appropriate magistrate near the place of arrest, ensuring adherence to procedural fairness and protecting against arbitrary detention.

A critical element of these sections is the requirement for police officials to comply with procedural safeguards, particularly regarding transit remand. The term "transit remand," although not explicitly defined in BNSS, signifies the custody sought by police to transport an accused person from one jurisdiction to another. This requirement underscores the need for transparency and accountability, mandating that police officials present the arrestee before "the Magistrate" in the jurisdiction where the arrest occurred, rather than bypassing this step for convenience. The Supreme Court's interpretation of the term "the Magistrate" reinforces this duty, emphasizing the necessity of adherence to procedural rigor.

Section 83 complements these provisions by granting the magistrate authority to release the arrested individual on bail, either on a bailable offence or, in the case of non-bailable offences, by a Chief Judicial Magistrate or Sessions Judge after reviewing relevant documents. This section draws an inference towards the concept of "transit anticipatory bail," offering a protective mechanism for the accused, ensuring they are not arbitrarily detained while en-route to the jurisdiction of the issuing court.

The legislative intent behind these sections is to balance the state's need to enforce the law with the individual's right to liberty and due process. The emphasis on transparency, procedural compliance, and accountability reflects the Constitution's commitment to justice and fairness.

By mandating procedures such as obtaining transit remand and ensuring timely production before the appropriate magistrate, these sections protect individuals from unlawful detention and ensure that inter-jurisdictional law enforcement operates within the bounds of legality.

In conclusion, Sections 80, 81, 82, and 83 of the BHARTIYA NAGARIK SURAKSHA SANHITA (BNSS), 2023 are not merely procedural formalities but fundamental safeguards to uphold the rule of law. They highlight the interplay between effective law enforcement and the protection of individual rights. Failure to comply with these provisions could render arrests and subsequent actions illegal, infringing upon constitutional rights. Therefore, these sections serve as a vital component of India's legal framework, ensuring that justice is pursued within the confines of fairness and due process.

