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INQUIRY INTO SECURITY PROCEEDINGS AND CONSEQUENCES OF FAILURE TO FURNISH SECURITY

**A Critical Analysis under Chapter VIII of the Bharatiya Nagarik Suraksha Sanhita,
2023 (BNSS)**

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INTRODUCTION

Preventive justice forms a vital pillar of criminal jurisprudence. Rather than merely punishing offenses post-commission, a legal framework must empower executive and judicial authorities to prevent anticipated breaches of public peace and tranquility before they occur. Under the procedural framework of India, this power is exercised through **Security Proceedings** statutory provisions authorizing Magistrates to bind over individuals prone to disturbing public peace or committing offenses by requiring them to execute bonds, with or without sureties. With the enactment of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, which officially replaced the Code of Criminal Procedure, 1973 (CrPC), the statutory framework for preventive security was retained, restructured, and modernized. Chapter VIII of the BNSS (Sections 125 to 143) governs security for keeping the peace and for good behavior, while Sections 141 to 143 specify the precise procedural and penal consequences when a person fails to furnish the required security. This paper evaluates the statutory scheme, procedural standards, critical subject-matter analysis, and practical consequences surrounding security proceedings under the BNSS.

SCOPE OF THE STUDY

This study undertakes a comprehensive analysis of the preventive legal framework under the BNSS, focusing on:

- i. **Statutory Machinery:** A detailed examination of Chapter VIII of the BNSS, specifically Sections 125 through 143.
- ii. **Procedural Continuum:** The step-by-step procedural lifecycle from the initial information and preliminary order to the inquiry stage and final binding order.

- iii. **Subject-Matter Critical Analysis:** An analytical evaluation of the delicate tension between preventive state action, fundamental rights, judicial discretion, and administrative misuse.
- iv. **Consequences of Non-Compliance:** Legal ramifications under Section 141 BNSS, including detention and commitment to prison for failure to give security.
- v. **Judicial Safeguards:** Constitutional and procedural limits established by judicial precedents to prevent arbitrary or indefinite detention by Executive Magistrates.

OBJECTS OF SECURITY PROCEEDINGS

Security proceedings are purely **preventive and precautionary**, strictly distinguished from punitive criminal trials. The primary objectives include:

- 1. **Maintenance of Public Order and Peace:** Preventing imminent clashes, unlawful assemblies, or public disturbances by binding down potential miscreants under Sections 125 and 126 of the BNSS.
- 2. **Prevention of Habitual Offending:** Suppressing habitual offenders, vagrants, and persons disseminating seditious or obscene material by demanding security for good behavior under Sections 127–129.
- 3. **Protection of Society:** Balancing individual liberty with public safety by imposing financial and social accountability through mandatory sureties.

METHODOLOGY

This paper adopts a **doctrinal and analytical research methodology**. The primary sources consulted include the statutory provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), corresponding provisions of the legacy Code of Criminal Procedure, 1973 (CrPC), and landmark decisions of the Supreme Court of India and various High Courts. Secondary sources comprise authoritative legal commentaries, law journal articles, and parliamentary committee reports evaluating criminal procedure reforms.

CONCEPTUAL SCHEME, SECTIONS AND PROCEDURE –

Statutory Mapping (Chapter VIII, BNSS)

BNSS SECTION	CRPC SECTION	SUBJECT MATTER / STATUTORY SCOPE
Section 125	Section 106	Security for keeping the peace on conviction.
Section 126	Section 107	Security for keeping the peace in other cases (Executive

		Magistrate power).
Section 127	Section 108	Security for good behavior from persons disseminating seditious matters.
Section 128	Section 109	Security for good behavior from suspected persons.
Section 129	Section 110	Security for good behavior from habitual offenders.
Section 130	Section 111	Order to be made (preliminary order stating substance of information).
Section 135	Section 116	Inquiry as to the truth of information.
Section 136	Section 117	Final Order requiring execution of bond/security.
Section 141	Section 122	Imprisonment / Detention in prison for failure to give security.

1. Security for Keeping the Peace on Conviction (Section 125 BNSS):

Section 125 empowers a Court of Session or Magistrate Court to require a convicted person to execute a bond, with or without sureties, for keeping the peace for a period not exceeding three years. This section applies when an accused is convicted of offenses involving public tranquility, assault, criminal intimidation, or offenses involving a breach of peace. The order is passed at the time of sentencing and acts as an additional preventive layer to ensure that the offender does not resume anti-social behavior immediately after conviction or release. If the conviction is set aside on appeal, the bond executed under this section automatically becomes void.

2. Security for Keeping the Peace in General Cases (Section 126 BNSS):

Section 126 authorizes an Executive Magistrate to initiate proceedings against any person who is likely to commit a breach of peace or disturb public tranquility, or do any wrongful act that may occasion a breach of peace. The Magistrate acts upon police reports or other credible information and requires the person to show cause why they should not be ordered to execute a bond for a period not exceeding one year. The primary objective is public order management, particularly in cases of local disputes, land conflicts, or communal tensions. Because this power is preventive and affects personal liberty, Magistrates are legally bound to exercise it strictly within procedural limits rather than as a tool for arbitrary suppression.

3. **Security for Good Behavior from Habitual and Suspected Persons (Sections 127–129 BNSS):** Sections 127, 128, and 129 provide a broader preventive net aimed at persons disseminating seditious/obscene material, suspected persons concealing their presence to

commit cognizable offenses, and habitual offenders. Under Section 129, Executive Magistrates can require habitual offenders (such as repeat thieves, extortionists, or drug offenders) to execute a bond for good behavior with sureties for a period up to three years. These sections require higher standards of proof regarding the habitual nature or deliberate conduct of the individual. Unlike Section 126, which focuses on immediate peace maintenance, these provisions target systemic criminal tendencies to safeguard public safety.

4. The Preliminary Order and Notice Requirement (Section 130 BNSS):

When an Executive Magistrate deems it necessary to act under Sections 126, 127, 128, or 129, Section 130 mandates the issuance of a formal, written preliminary order. This order must explicitly set out the substance of the information received, the amount of the bond, the period for which it will remain in force, and the required number, character, and class of sureties. The fundamental goal of Section 130 is to satisfy the principles of natural justice by giving the respondent clear notice of the allegations against them. Passing an order to execute a security bond without first issuing a compliant preliminary order under Section 130 renders the entire proceeding illegal and void.

5. Statutory Inquiry and Judicial Timelines (Section 135 BNSS):

Section 135 governs the procedure for inquiring into the truth of the information upon which the preliminary order was made. The inquiry must follow the procedure prescribed for trial in summons cases, ensuring that the person affected has a fair opportunity to cross-examine witnesses and present a defense. Crucially, Section 135(6) mandates that the inquiry must be completed within a period of six months from its commencement. If the inquiry is not completed within six months, the proceedings automatically terminate unless the Magistrate records special reasons in writing justifying an extension in the interest of justice.

6. Final Order and Execution of Bond (Section 136 BNSS):

If the inquiry under Section 135 establishes that it is necessary for maintaining peace or good behavior that the person execute a bond, the Magistrate passes a final order under Section 136. The final order cannot require security that is different from or excessive compared to what was specified in the preliminary order under Section 130. The amount of every bond must be fixed with due regard to the circumstances of the case and must not be excessive or unreasonable. If the inquiry reveals no ground for preventive action, the Magistrate must discharge the person under Section 137.

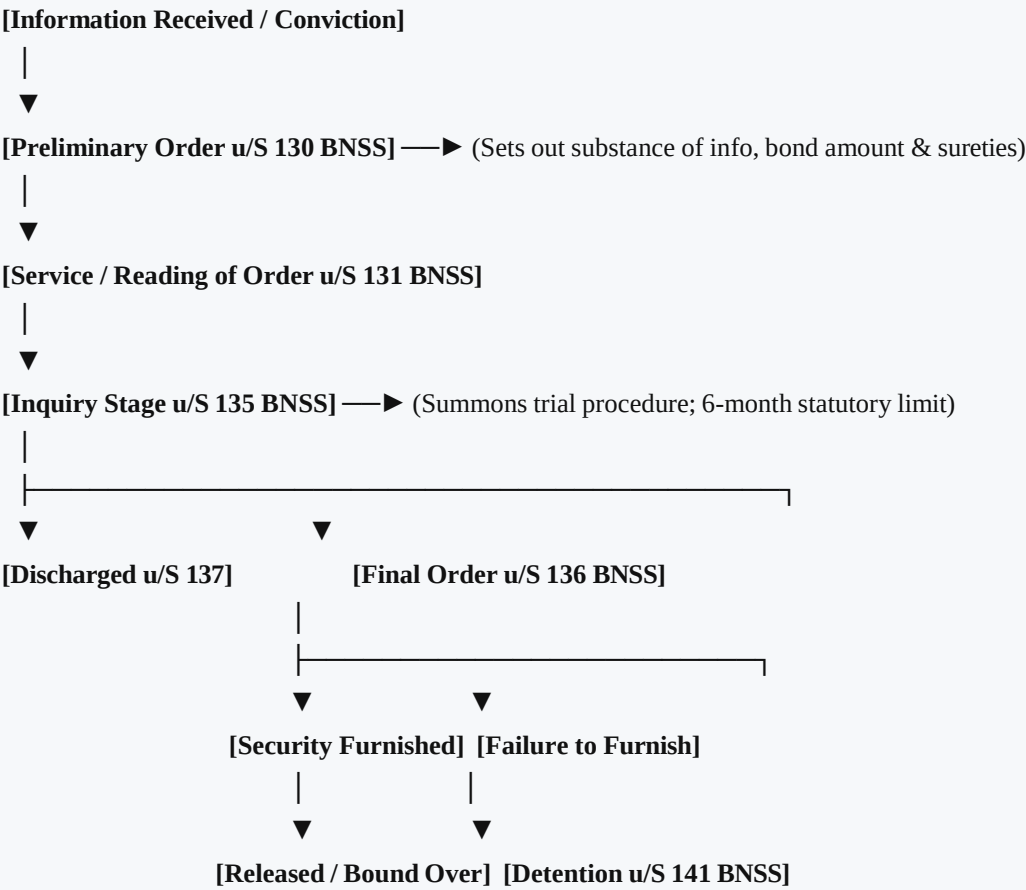
7. Consequences of Failure to Furnish Security (Section 141 BNSS):

Section 141 details the penal and administrative consequences if a person ordered to give security under Section 125 or Section 136 fails to do so on or before the specified date. The

Magistrate may commit the defaulting person to prison, or if they are already in custody, order them to be detained in prison until the period expires or until security is provided. The nature of imprisonment is simple for peace maintenance under Section 126, whereas for good behavior cases (Sections 127–129), it may be rigorous or simple as directed by the court. If the required period of security exceeds one year, the Magistrate cannot order detention beyond one year without referring the case to the Sessions Judge, who may affirm, modify, or set aside the order.

Procedural Roadmap

PROCEDURAL STEPS IN SECURITY PROCEEDINGS:



ANALYSIS OF THE SUBJECT

The machinery of security proceedings under Chapter VIII of the BNSS, 2023 represents a crucial interface between administrative law, preventive policing, and fundamental rights guarantees under Articles 14, 19, and 21 of the Constitution of India. A critical jurisprudence analysis of this subject reveals several key dimensions:

1. **Preventive vs. Punitive Jurisprudence:** Security proceedings operate strictly on the logic of prevention rather than punishment. No conviction is recorded, and no finding of criminal guilt is required to bind down a person under Section 126 or Section 129. While this empowers the State to pre-empt communal clashes and local unrest, it inherently creates a risk of pre-conviction deprivation of liberty, requiring higher judicial oversight over administrative actions.
2. **Constitutional Validity and Article 21 Safeguards:** In landmark rulings such as *Madhu Limaye*, the judiciary affirmed that preventive laws constitute reasonable restrictions under Article 19(1). However, under Article 21, procedure established by law must be 'just, fair, and reasonable'. The statutory mandate under Section 130 (issuing a preliminary order detailing specific information) and Section 135 (completing inquiries within six months) are mandatory constitutional safeguards that cannot be diluted into administrative informalities.
3. **Socio-Economic Dynamics and Indigence:** A major critique of Section 141 (failure to furnish security) stems from its disproportionate impact on economically weaker sections. When Executive Magistrates set onerous security bond amounts or require local property-owning sureties, indigent individuals are often subjected to long terms of incarceration simply due to poverty rather than actual threat to public order. As held in *Gopalan Chari*, setting exorbitant security turns preventive law into an unconstitutional trap for the poor.
4. **Institutional Role of Executive Magistrates:** Unlike Judicial Magistrates who are independent of executive hierarchy, Executive Magistrates (such as Sub-Divisional Magistrates and District Magistrates) are revenue and administrative officers under direct government control. Judicial scrutiny consistently warns against the mechanical reliance on police reports by Executive Magistrates, enforcing that independent judicial application of mind is non-negotiable before issuing orders under Section 130 or remanding individuals under Section 141.

LANDMARK JUDICIAL PRECEDENTS

1. **Madhu Limaye v. Sub-Divisional Magistrate, Monghyr - AIR 1971 SC 2486 / (1970) 3 SCC 746**

Held: The Supreme Court upheld the constitutional validity of preventive security proceedings, holding that they impose reasonable restrictions on personal liberty under Article 19 in the interest of public order. However, the Court emphasized that Magistrate powers are

emergency powers and **must strictly adhere to procedural safeguards**; passing arbitrary detention orders without conducting a proper inquiry violates Article 21.

2. Gopalan Chari v. State of Kerala - AIR 1981 SC 674 / (1981) Supp SCC 28

Held: The Supreme Court held that demanding excessive or unaffordable security amounts from indigent persons, resulting in their imprisonment for failure to give security, is **unconstitutional**. The Court ruled that binding down poor citizens by setting impossible surety conditions turns preventive provisions into arbitrary mechanisms of imprisonment without trial.

3. Ram Charan v. State of U.P. - (1972) 1 SCC 302

Held: The Court established that an Executive Magistrate **cannot send a person to prison under Section 122 CrPC (now Section 141 BNSS) without first issuing a formal order under Section 117 CrPC (now Section 136 BNSS)** and giving the individual a reasonable opportunity to furnish security. Mechanical commitment orders are illegal.

4. Vijaya Sanjeevappa v. State of Karnataka - 1982 Cri LJ 2162 (Kant HC)

Held: The High Court ruled that inquiry under preventive provisions must strictly adhere to the time limit prescribed by law (6 months). If the inquiry is delayed without recorded reasons, the entire proceeding lapses, and any detention ordered for failure to give security during an invalidly extended period is void.

5. V. Madhavan v. State of Kerala - 1993 Cri LJ 2092 (Ker HC)

Held: The High Court observed that imprisonment for failure to give security under preventive law is an **exception to the rule of personal liberty**. Courts must record specific reasons regarding why the surety provided was rejected or why alternative measures were inadequate before remanding a person to prison under Section 122 CrPC (Section 141 BNSS).

CONCLUSION

The framework governing security proceedings under Chapter VIII of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) retains the preventive architecture necessary to maintain public peace and control potential offending. However, because Section 141 BNSS authorizes detention without conviction of a substantive criminal offense, its invocation demands strict adherence to procedural fairness. Judicial mandates consistently enforce that security requirements must remain reasonable, inquiries must conclude within statutory timelines, and detention for failure to furnish security must serve as a last resort rather than a routine administrative tool.

REFERENCES

1. **Ratanlal & Dhirajlal**, *The Code of Criminal Procedure* (LexisNexis, 23rd Ed., 2020 / BNSS Comparative Commentary).
2. **S.C. Sarkar**, *Law of Criminal Procedure* (LexisNexis, 12th Ed., 2023).
3. **K.N. Chandrasekharan Pillai**, *RV Kelkar's Criminal Procedure* (Eastern Book Company, 7th Ed., 2021).
4. **Government of India**, *The Bharatiya Nagarik Suraksha Sanhita, 2023* (Act No. 46 of 2023), Official Gazette of India.
5. **Law Commission of India**, *41st Report on the Code of Criminal Procedure, 1898* (Ministry of Law, Government of India).

