

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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PRE-TRIAL LIBERTY AND THE PRESUMPTION OF INNOCENCE IN INDIA: A CRITICAL ANALYSIS OF ARREST, INVESTIGATIVE POWERS AND PRE-TRIAL DETENTION UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

AUTHORED BY – VASUMATHI.V

LL.M Final Year Student (Criminal Law) Crescent Law School,
B. S. Abdur Rahman Crescent Institute of Science & Technology, TN

ABSTRACT

The presumption of innocence is one of the core values of criminal jurisprudence under which a person accused of an offense is presumed to be innocent until proved guilty according to law. But the use of powers of arrest, repeated remands and long pre-trial detentions give rise to serious concerns about the protection of personal liberty in India. With the coming into force of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) in place of the Code of Criminal Procedure, 1973, it is a crucial juncture to look at the relationship between investigative authority and constitutional safeguards. This article critically analyses the legal framework governing arrest, investigative powers, remand and pre-trial detention under the BNSS with specific reference to Article 14, 21 and 22 of the Constitution of India. It considers whether the statutory protections and judicial review processes are adequate in an effort to avoid unnecessary pre-conviction detention. The study also examines the implications of Section 187 which governs remand and Section 479 which deals with maximum period of detention of undertrial prisoners, in the larger context of bail, speedy trial and access to justice. The article mentions significant judicial decisions and constitutional principles. The gap between the formal recognition of individual liberty and its actual protection in the criminal process is evaluated. It says that the legitimacy of criminal investigation should not only be measured by the effectiveness of law enforcement, but also by the fairness and proportionality of the processes applied. To secure a liberty-centric approach to criminal procedure, the article recommends reasoned remand orders, stricter scrutiny of arrest, effective implementation of bail safeguards, time-bound disposal of criminal cases and periodic review of undertrial detention. It is established that the presumption of innocence should act not only as a rule that

regulates the determination of guilt, but also as a principle that guides each stage of criminal proceedings before conviction.

INTRODUCTION

One of the paramount concerns of criminal justice administration in India is the protection of personal liberty before conviction. The act of arrest, the authorization of remand and the continuation of pre-trial detention have a direct impact on an individual's freedom, dignity and ability to effectively participate in legal proceedings. Although the State has legitimate powers to investigate offences, prevent the destruction of evidence and ensure the presence of accused persons during trial, these objectives must be pursued within the limits imposed by the Constitution. Thus, the fundamental question posed by pre-trial detention is: how can the criminal justice system protect society and facilitate an effective investigation without treating the accused as guilty before the conclusion of the trial?

The presumption of innocence is a basic postulate of criminal jurisprudence and requires that an accused person be treated as innocent until his guilt is proved according to law. The principle does not rule out all pre-trial restraint, but requires that arrest and detention be for valid procedural purposes, and not constitute a premature punishment. In India, this principle is supported by constitutional guarantees of equality, personal liberty and procedural fairness under Articles 14, 21 and 22 of the Constitution.¹ Its practical importance is especially obvious in cases when a suspect is kept in custody for a long time because of delays in the investigation, lengthy judicial proceedings or difficulties in obtaining bail. In these situations, the consequences of detention can be serious even when guilt has not been proven.

A significant development in the country in the domain of procedural criminal law is the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) in place of the Code of Criminal Procedure, 1973. The BNSS retains and modifies a number of mechanisms governing arrest, investigation, remand and bail. But it also introduces changes that require careful constitutional evaluation. The sections concerning the procedure of investigation where it is not possible to complete investigation within twenty-four hours (Section 187) and the maximum period of detention of undertrial prisoners (Section 479) are of particular relevance to the protection of pre-trial liberty. However, statutory safeguards do not in themselves guarantee adequate protection of individual liberty in practice. Their effectiveness depends on lawful police behaviour, reasoned judicial decisions, and timely access to remedies.

¹ INDIA CONST. arts. 14, 21–22.

The main research issue dealt with in this article is the tension between the investigative powers of the State and the constitutional rights of persons not convicted. It examines whether the arrest, remand and detention framework under the BNSS sufficiently protects against unnecessary deprivation of liberty and gives meaningful effect to the presumption of innocence. The study attempts to analyze the relevant statutory provisions, judicial approach toward personal liberty and to identify the practical and institutional shortcoming in the protection of undertrial prisoners. It asks three basic questions: Does the BNSS offer sufficient protection against arbitrary arrest and lengthy detention? Is judicial oversight of remand and bail a real safeguard for personal freedom? What changes are needed to improve a criminal justice system that places a premium on liberty?

The study follows a doctrinal research methodology based on the analysis of statutory provisions, constitutional principles, judicial precedents and relevant legal literature. Its scope is confined mainly to arrest, investigative powers, remand, bail and pre-trial detention under the BNSS read with the Constitution of India. It does not conduct its own empirical review of police practices or prison populations. The article argues that the presumption of innocence must not only be a rule for guilt determination, but also a guiding standard for decisions concerning personal liberty during the course of criminal proceedings. A fair criminal process must protect against the use of investigative necessity as a justification for routine or disproportionate pre-conviction detention.

LEGAL AND THEORETICAL BASIS OF PRE-TRIAL FREEDOM

Protection of pre-trial liberty is a hallmark of a constitutional criminal justice system, as it sets the parameters for the exercise of the State's coercive powers against a person whose guilt is not yet established. The presumption of innocence, personal liberty and procedural fairness together require that criminal proceedings should not be conducted on the basis that accusation is proof of guilt. These principles have significance under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) as they ensure that arrest, investigative custody and judicial remand continue to be subject to legal justification and effective judicial scrutiny.

Presumption of Innocence: Meaning, Nature and Scope

The presumption of innocence is that every person accused of an offense is presumed innocent until proven guilty according to law in a fair trial. It is not only a technical rule of evidence, it is a fundamental principle which governs the relation between the individual and the State. The prosecution normally must prove the essential elements of the alleged offense beyond

reasonable doubt and the accused must be given a fair opportunity to defend himself. The principle seeks to prevent wrongful convictions and to restrict the use of criminal proceedings as a tool of arbitrary power.

The presumption does not create absolute immunity from arrest or detention. A person may be legally arrested or remanded where the conditions imposed by statute are fulfilled and there is a bona fide investigative or judicial purpose which necessitates such an act. But the mere fact that there is an accusation cannot justify unwarranted restraint. The key question is whether the deprivation of liberty is authorized by law, is necessary in the circumstances and is proportionate to the purpose. Thus, the presumption of innocence should guide decisions at every stage of the criminal process, including the initial decision to arrest, the authorization of remand and the consideration of bail.

Right to Personal Liberty under Articles 21 and 22 of Constitution

Every human being is entitled to life and personal liberty. Under Article 21 of the Constitution, no one can be deprived of his life or personal liberty except according to a procedure established by law. Judicial interpretation has added to this guarantee by requiring that such procedures be fair, just, and reasonable. In *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, the Supreme Court has laid down the importance of fairness in procedure in matters affecting personal liberty.² Article 22 provides additional safeguards against arbitrary arrest including the communication of the grounds of arrest, access to legal representation and production before a Magistrate within twenty-four hours subject to the constitutional exceptions. These protections are important because they ensure that the investigative authority is subject to constitutional control.

Article 14 ensures equality before the law and equal protection of the laws. In criminal proceedings this guarantee implies that the State authorities should exercise their powers in compliance with legal standards and not on the basis of their own discretion or of any arbitrary considerations. While an arrest may be authorized by statute, the arrest may still raise constitutional questions if the power is exercised without adequate justification or exercised in a manner inconsistent with basic rights. Thus, the application of Articles 14 and 21 requires a meaningful scrutiny of the grounds for arrest, the necessity for continued custody and the proportionality of restrictions imposed on the accused.

² *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

Burden of Proof, Presumption of Innocence and Due Process

The presumption of innocence is closely linked to the duty of the prosecution to prove the guilt of the accused by legally admissible evidence. It requires courts to weigh the evidence fairly and usually to resolve any reasonable doubt in favour of the accused. But these provisions must function within the framework of applicable constitutional safeguards. Even where some special statutes create presumptions or shift the burden of proof after the establishment of certain predicate facts. In *Sanjay Chandra v. CBI*, (2012) 1 SCC 40, the Supreme Court has emphasized that pre-trial detention should not be treated as a punishment and the necessity of custody has to be evaluated in the light of the purposes of criminal proceedings.

International Human Rights Norms on Liberty and Pre-Trial Detention

International standards further enshrine the presumption of innocence by linking it to personal liberty. ³Article 9 of the International Covenant on Civil and Political Rights (ICCPR) prohibits arbitrary arrest and detention, while Article 14(2) explicitly recognizes the right to be presumed innocent until proved guilty according to law. Article 9(3) further stipulates that detention before trial shall not be the rule. These standards support a policy under which detention must be justified and release may be subject to appropriate guaranties of attendance at trial.

Preventive Custody, Investigative Custody and Punishment

A correct understanding of pre-trial liberty implies distinguishing between preventive detention, investigative custody and punishment after conviction. Preventive detention is meant to prevent some future threat under a different legal regime. Investigative custody is to serve legitimate investigative purposes. Punishment is usually after a finding of guilt by a court. The categories differ in terms of their legal bases and guaranties. As observed by the Supreme Court in *Sanjay Chandra*, pre-trial detention is fraught with the danger of being punitive in effect. The presumption of innocence ⁴therefore requires the courts to ensure that custody is justified by legitimate legal purposes and does not become an indirect substitute for conviction.

Together these constitutional, statutory and international principles have established that pre-trial liberty is not merely a procedural consideration but an essential safeguard against the premature punishment of an unconvicted person. This basis enables a critical assessment of the extent to which the provisions concerning arrest, remand and detention in the BNSS in practice protect individual liberty.

³ International Covenant on Civil and Political Rights arts. 9, 14(2), Dec. 16, 1966, 999 U.N.T.S. 171.

⁴ *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40 (India).

ARREST AND INVESTIGATIVE POWERS PURSUANT TO THE BNSS, 2023

Arrest is one of the most important exercises of State power as it directly curtails an individual's personal liberty before guilt is established. Arrest may be required for investigation of offences, securing evidence and ensuring presence of the accused person before a court but it should not be an automatic consequence of registration of a criminal case. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) thus, has to be looked at not only as a procedural framework for police powers but also as a means to protect constitutional liberty. The key issue is whether the legal safeguards surrounding arrest are well-calibrated between the needs of investigation and the right to the presumption of innocence.

Legal basis of arrest under Section 35 of the BNSS determines the cases when a police officer may arrest a person without a warrant. It stipulates different grounds of arrest such as commission of a cognizable offense in the presence of the officer and situations involving reasonable complaint, credible information or reasonable suspicion. For offences punishable with imprisonment for a term not exceeding seven years, the provision requires that the officer has reason to believe that the person committed the offense and is satisfied that arrest is necessary for one or more specified purposes. These are to prevent further offences, to allow a proper investigation, to prevent interference with evidence or witnesses and to ensure the person's presence before the court. The officer must record the reasons for making the arrest and the reasons for not arresting where arrest is not necessary. Section 35 thus recognizes that the existence of a legal power to arrest does not in itself establish the necessity to exercise it.

Necessity and Justification of Arrest: Difference between Power to Arrest and Need to Arrest

A key principle of arrest is that the existence of legal authority to make an arrest does not of itself justify the exercise of that authority. The Supreme Court in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 ⁵ has emphasized the fact that an arrest should not be made as a matter of routine, merely because an offense has been alleged. The police must determine for themselves whether an arrest is needed and must write down the reasons required by law. The judgment was an interpretation of Section 41 of the old Code of Criminal Procedure, but the reasoning is important for interpreting the corresponding safeguards under Section 35 of the BNSS. The distinction is to protect individuals from unnecessary custody and to reinforce the

⁵ *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273 (India).

notion that an arrest must be in furtherance of a legitimate investigative purpose, and not be a surrogate for expression of disapproval or punishment.”

Notice of Appearance and Protections from Unnecessary Arrest

Where arrest is not required under Section 35(1) of the BNSS, Section 35(3) of the BNSS requires the police officer to issue a notice to a person to appear before the officer. Ordinarily, a person complying and continuing to comply with the notice should not be arrested for the offense mentioned therein unless the officer records the reasons for considering the arrest necessary under Section 35(5).⁶ This mechanism is designed to limit unnecessary detention, while permitting an investigation to continue. But effectiveness depends on consistent compliance by investigating officers and proper judicial scrutiny when the legality of an arrest is challenged.

Procedural Safeguards under Sections 36, 38, 47 & 48

The BNSS has several inbuilt safeguards aimed at improving transparency and accountability in the arrest process. Section 36 requires the arresting officer to show identification and to prepare a memorandum of arrest subject to the prescribed requirements. Section 38 says that the arrested person has the right to consult a lawyer of his choice during interrogation but not throughout the interrogation. Section 47 stipulates that the arrested person should be informed of the particulars of the offense or other grounds of arrest, and where applicable, of the right to bail. Section 48 requires a relative, friend or other nominated person to be informed of the arrest and the place of detention and the police officer in charge. These safeguards aim to prevent secret detention, to provide access to legal assistance and to allow scrutiny of police conduct.

Judicial Scrutiny of Arrest and Constitutional Safeguards

The arrested person’s right to be informed of grounds of arrest and to consult and be defended by a legal practitioner of choice is protected by Article 22(1) of the Constitution. Article 22(2) provides for production before nearest Magistrate within twenty-four hours excluding necessary journey time. The protections in sections 57 and 58 of the BNSS deal with the production of a person before a Magistrate and the restriction on the detention of an individual beyond twenty-four hours without proper legal authority. In *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416, the Supreme Court laid down important safeguards against arbitrary arrest

⁶ The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 35(3)(6), India Code (2023).

and custodial abuse.⁷ The decision indicates that legality of arrest requires adherence to statute and respect for constitutional liberty, says Arnesh Kumar.

Discretionary Policing and Arbitrary Deprivation of Liberty: A Critical Analysis

The major concern with police discretion is the arrest decision is made before judicial scrutiny, notwithstanding the statutory safeguards. Unless officers can show that broad expressions like “proper investigation” are relevant to the facts of a particular case, they may use these expressions in a mechanical fashion. The law’s protection may be undermined if meaningful grounds are not recorded, or grounds and routine requests for custody are poorly communicated. Further, the social consequences of arrest—such as reputational damage, disruption of employment, and financial hardship—can occur even when the accused is ultimately acquitted.

REMAND AND PRE-TRIAL DETENTION UNDER THE BNSS, 2023

Remand and pre-trial detention are important stages where the interests of the State in investigation must be balanced against the constitutional protection of personal liberty. Although detention may be necessary for the purposes of investigation or to ensure the presence of the accused during proceedings, it must not serve as a substitute for punishment prior to conviction. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), specifically Section 187, deals with detention in cases where the investigation cannot be completed within the prescribed twenty-four hours. While implementing it, one should keep in mind Article 21 and 22 of the Constitution and the presumption of innocence.

Magistrate’s Powers to Authorize Detention u/s. 187

Section 187 enables a Magistrate to authorize detention⁸ if the statutory conditions are satisfied and there are grounds for believing that the charge or information is well founded. The mere request of the investigating officer cannot be sufficient to continue a person’s detention by the police. Judicial authorization is a crucial safeguard. The Magistrate must independently assess the circumstances, the grounds for seeking custody and the legality of the proposed detention. The danger with mechanical remand orders is that they turn judicial oversight into a procedural formality and undermine the protection of personal liberty.

⁷ D.K. Basu v. State of West Bengal, (1997) 1 S.C.C. 416 (India).

⁸ The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 187, India Code (2023).

Police Custody, Judicial Custody and the Prolonged Custody Regime

Police custody means the accused is in the custody of police for the purpose of investigation. Judicial custody means the accused is in the custody of the court and the prescribed custodial system. The BNSS permits police custody of up to fifteen days, in whole or in parts, during the first forty days or sixty days of the relevant sixty-day or ninety-day detention period, depending on the offense (see Section 187). This is different from the earlier Code of Criminal Procedure framework and raises questions about the timing and justification of police custody. The constitutionality and the practical working have to be judged by the safeguards against coercion, the right to legal assistance and the requirement of effective judicial supervision.

Application of Mind by Judiciary and Default Bail

A Magistrate's decision to authorize remand should be the result of an independent judicial application of mind and not the automatic acceptance of the prosecution's request. The court shall consider the need for custody, the progress of investigation and availability of less restrictive alternatives. Section 187⁹ also retains the right to default bail if the investigation is not concluded and the charge-sheet is not filed within the statutory period of sixty or ninety days as the case may be, provided the accused fulfils the conditions specified by law in that behalf. Default bail is thus a vital safeguard against prolonged investigative detention.

Extended Pre-Trial Detention and Section 479¹⁰ provides release of eligible undertrial prisoners who have undergone detention for half of the maximum period of imprisonment prescribed for the offence. The rule generally provides for release on bail for a first offender with no prior convictions after custody for up to one third of the maximum period, with statutory conditions and exceptions. These safeguards are intended to ensure that detention is not out of proportion to the potential sentence. But delayed trials, procedural obstacles and difficulties in obtaining legal representation may still limit their practical effectiveness.

Socio-Economic and Prison Overcrowding Implications

Long periods of detention before trial can result in job loss, financial hardship, and disruption of family and social ties, even if the accused is ultimately acquitted. Such consequences hit hardest those who cannot afford competent legal representation or onerous bail requirements. Detention pending trial also causes overcrowding in prisons, putting pressure on correction facilities and limiting access to basic services. The issue is therefore more than a question of

⁹ The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 187(3), India Code (2023).

¹⁰ The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 479, India Code (2023).

individual liberty; it is a wider question of equality and access to justice.

BAIL AND JUDICIAL SAFEGUARD OF LIBERTY

Bail is an important instrument for safeguarding personal liberty before conviction and for maintaining the balance between the investigative powers of the State and the rights of the accused. The principle of the presumption of innocence means that no one can be punished until he has been proved guilty by a proper legal procedure. The bail provisions under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) provide a mechanism for courts to avoid unnecessary detention and yet ensure the presence of the accused during investigation and trial. Their effective implementation becomes especially important in cases of long periods of detention and delays in the criminal process.

Bail as a Means of Protecting Pre-Trial Liberty

Bail allows an accused person to remain at liberty subject to conditions imposed by the court. It understands that pre-conviction detention must be justified by real concerns, not treated as an automatic consequence of being accused. The grant of bail also allows the accused to retain employment, to support family members and to prepare an effective defense. Bail is thus both a procedural protection and a practical expression of the constitutional protection of personal liberty under Article 21.

Bailable and Non-Bailable Offences under BNSS

Section 478 of the BNSS provides for bail in bailable offences, and bail is generally as of right subject to the statutory requirements. Section 480¹¹ is concerned with bail in non-bailable offences where judicial discretion operates within the limits prescribed by law. The classification does not mean that every person accused of a non-bailable offense must be kept in custody until the trial. The courts have to take into account the circumstances of the case, the statutory limits that apply and the reason for continued detention. The distinction highlights the need for an individual judicial determination.

Bail - Regular bail, anticipation bail and judicial powers

One can get released by way of regular bail after arrest. Whereas one can seek protection by way of anticipatory bail under Section 482 in case he apprehends arrest. Section 483 is a special

¹¹ The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 478, 480, 482–83, India Code (2023).

bail provision for the High Court and Court of Session. These provisions allow judicial intervention against detention which is unnecessary or disproportionate. Their application must be responsive to the circumstances of each case and to the constitutional imperative that limitations on liberty be justified in law.

Judicial Discretion, Proportionality, and Unequal Access to Bail

In bail applications, courts will take into account relevant factors like the gravity of the alleged offense, likelihood of absconding, possibility of influencing witnesses and risk of tampering with evidence. Such considerations must be assessed objectively, not simply inferred from the charge. There are also poverty concerns, as strict surety conditions might keep otherwise qualifying persons from obtaining release. The correct application of personal bonds and proportionate conditions can achieve the purpose of reducing this inequality without affecting legitimate judicial interests.

Bail, Speedy Trial and the Innocent Until Proven Guilty

The Supreme Court has repeatedly stressed the importance of protecting liberty during the course of criminal proceedings. *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51¹² dealt with safeguards on arrest and principles relating to bail. In *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81,¹³ it has been held that speedy trial is an integral part of Article 21. The Court in *Sanjay Chandra v. CBI*, (2012) 1 SCC 40, has laid stress that pre-trial detention should not be punitive. These decisions together underscore the constitutional import of avoiding unnecessary imprisonment and redressing delays impinging on personal liberty.

CRITICAL ANALYSIS: THE PRESUMPTION OF INNOCENCE AND THE PRACTICE OF PRE-TRIAL DETENTION

Presumption of innocence is the elementary principle of criminal justice but its practical application is still a big challenge in India. Despite the constitutional guaranties of personal liberty under Articles 21 and 22, and the safeguards against arbitrary arrest and detention, the realities of criminal proceedings reveal an ongoing tension between constitutional guaranties and the exercise of investigative powers. The *Bharatiya Nagarik Suraksha Sanhita*, 2023 (BNSS) provides for arrest, remand and bail, but the effectiveness of these safeguards depends on their consistent application by police authorities and courts.

¹² *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 S.C.C. 51 (India).

¹³ *Hussainara Khatoon v. State of Bihar*, (1980) 1 S.C.C. 81 (India).

The Gap between Criminal-Process Reality and Constitutional Promise

The constitutional protection of liberty is not merely the formal existence of statutory safeguards. Investigations are delayed, trials take a long time, bail is expensive and legal help is insufficient. This means that defendants can be detained for a long time before they are found guilty. These circumstances raise questions whether the criminal process provides adequate protection to individuals against undue restrictions on their liberty. The main concern is that procedural safeguards may be ineffective when applied in a mechanical fashion or without sufficient judicial supervision.

Arrest and Remand: Investigation or Pre-Punishment?

The arrest and remand are legitimate instruments of criminal investigation in so far as they are used in conformity with the law and based on necessity. But routine use can have the effect of punishing before a trial. In *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, the Supreme Court cautioned against the unnecessary arrest and emphasized on the observance of statutory safeguards. Similarly, in *Sanjay Chandra v. CBI*, (2012) 1 SCC 40, it was observed that detention prior to trial should not be punitive. These decisions support the principle that custody must have a legitimate procedural purpose and not be merely an expression of the seriousness of an accusation.

Judicial Remand and Adequacy of Judicial Review

Judicial authorization of detention is an important constitutional safeguard especially under Section 187 of the BNSS. But its effectiveness depends on the Magistrate's independent assessment of the need for custody, investigative requirements and the need for further detention. Remand orders that cover the same ground as the prosecution's submissions run the risk of making judicial oversight a mere formality. Legally justified detention requires reasoned orders, periodic reassessment, and meaningful consideration of less restrictive alternatives.

Long-term Incarceration Undermines Presumption of Innocence

The practical value of the presumption of innocence may be eroded by prolonged pre-trial detention, even when the accused remains in law a person presumed innocent. The loss of employment, family hardship, social stigma and difficulties in preparing a defense may occur before a court determines guilt. In *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81, the Supreme Court has recognized speedy trial as of constitutional importance. Thus, unreasonable delays raise not only procedural but also substantive issues concerning the protection of

personal liberty.

Effect on the Economically Disadvantaged and Marginalized Accused Persons

The effects of pre-trial detention are not the same for everyone. Those with limited financial means may have difficulty organizing sureties, obtaining effective legal representation or contesting extended custody. Hence, two persons accused of similar crimes may be detained for different periods of time because of their economic conditions. Effective legal aid, proportionate bail conditions and the appropriate use of personal bonds are needed to reduce this inequality.

Individual Liberty, Crime Control and the Public Interest

The State has a legitimate role to play in the investigation of offences, protection of witnesses and prevention of interference with evidence. But these goals must be weighed against the constitutional rights of the accused. A liberty-centred approach does not dilute criminal investigation, but requires that investigative measures are necessary, proportionate and subject to judicial oversight. Public interest cannot be a blanket justification for detention where other less restrictive measures can sufficiently address the identified risks.

Does the BNSS Improve or Undermine Existing Safeguards?

The BNSS retains key protections around arrest and bail, while amending parts of the remand system. Section 35 relates to arrest without warrant. It lays stress on necessity of arrest in certain circumstances. Section 479 deals with maximum period of detention of eligible under trial prisoners. Section 187 also provides for police custody in part for specified initial periods of the applicable detention period, which raises concerns about the timing and supervision of custodial interrogations. These changes have to be carefully examined in the light of the earlier Code of Criminal Procedure, 1973 and the constitutional standards laid down by the Supreme Court. The existence of a statutory framework, by itself, does not determine whether liberty is better protected; what matters is the working out and judicial construction of the framework.

REFORM PROPOSALS: CRIMINAL PROCEDURE RECENTERED ON THE PRESUMPTION OF INNOCENCE

Effective implementation of statutory safeguards and a stronger commitment to constitutional principles are necessary to protect pre-trial liberty under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Though the BNSS rules for arrest, remand and bail, procedural

provisions alone cannot prevent unnecessary detention unless police authorities and courts use their powers judiciously. Reform must therefore be focused on ensuring the presumption of innocence is a working standard throughout criminal proceedings.

Proportionality and Necessity in Arrest and Pre-trial Detention

Arrest must be based on a clear need in law, not just the fact of someone's accusation." Police officers are required to comply with Section 35 of the BNSS and record the reasons necessary and consider whether the investigative objective can be achieved by less restrictive measures. The individual circumstances should likewise be invoked to justify continued detention. This approach would also enhance the connection between efficiency of investigation and the constitutional protection of personal liberty.

Orders of Reasoned Remand and Meaningful Judicial Review

"Magistrates should independently apply their mind to each request under Section 187 for remand, including the reasons for seeking police custody and the necessity of continued detention. Remand orders should clearly set out the legal basis, investigative needs and relevant circumstances justifying custody. Routine judicial review would help to avoid automatic authorization of detention and ensure meaningful accountability.

Access to Legal Aid, Timely Investigation and Trial:

An undue delay in the investigation and trial may transform a temporary detention into a lengthy deprivation of liberty. The investigating agencies and the courts should adopt effective case management practices, delays should be monitored and cases involving prolonged undertrial detention should be prioritized. Accused persons must have access to legal aid at the earliest stage of custody so that they can understand their rights, challenge unlawful detention and seek appropriate bail remedies.

Protection of Undertrial Prisoners and Bail Reform

The conditions for bail must match the risks posed by the particular case. Courts should not impose unduly burdensome surety requirements upon economically disadvantaged accused persons and should consider personal bonds where legally appropriate. Effective Implementation of Section 479 of BNSS The BNSS provides for regular identification and review of eligible undertrial prisoners and should be effectively implemented subject to its statutory conditions and exclusions. Periodic review would help prevent detention from

continuing simply because the accused lacks the means to obtain release.

A liberty-centred criminal justice system and responsibility

Non-observance of safeguards relating to arrest and remand should be subject to appropriate institutional scrutiny and legal consequences in accordance with the applicable law. Implementation can be strengthened through police training, judicial monitoring and transparent reporting of undertrial detention. In the final analysis, the principle that legitimate crime-control objectives cannot be allowed to override constitutional protections without a valid legal justification must guide the criminal process.

CONCLUSION

Presumption of innocence is an essential component of a fair and constitutional criminal justice system. The exercise of the powers of arrest, investigative powers and pre-trial detention under the BNSS must accordingly be assessed not only in terms of their contribution to effective investigation but also in terms of their impact on personal liberty. Articles 14, 21 and 22 of the Constitution provide necessary safeguards against arbitrary deprivation of liberty. Judicial pronouncements have also emphasized the need for fair procedures, speedy trials and non-punitive pre-trial detention.

Whilst the BNSS provides important safeguards and some changes to the procedural framework, the effectiveness of these will ultimately depend upon responsible police conduct, independent judicial scrutiny and timely access to legal remedies. Prolonged detention, unequal access to bail and delayed trials continue to be concerns that require sustained institutional attention. Reform should be directed toward arresting on the basis of necessity, reasoned remand orders, effective legal aid, proportionate bail conditions and regular review of undertrial detention.

The basic purpose is not to diminish the State's capacity to investigate crime, but to guarantee that such power is exercised within constitutional bounds. The pre-trial detention should be the exception, justified by law and not the norm that follows an accusation. The presumption of innocence should therefore guide every decision relating to the liberty of an accused person before conviction. A criminal justice system that upholds this principle strengthens the individual rights as well as the legitimacy of the administration of justice in India.