

PREVENTIVE ACTION BY POLICE AND ITS CONSTITUTIONAL LIMITS

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ABSTRACT

Preventive police action is necessary to avert cognizable offences and protect public order, but it must operate within constitutional limits. This paper examines Sections 168–172 of the Bharatiya Nagarik Suraksha Sanhita, 2023, which address prevention of cognizable offences, communication of information, preventive arrest, protection of public property and compliance with lawful police directions. It distinguishes these powers from preventive detention under separate legislation. The paper analyses Articles 14, 19, 21 and 22 of the Constitution and considers judicial decisions concerning arbitrary arrest, fair procedure, custodial safeguards and peaceful assembly. It argues that preventive action must rest on credible grounds, be necessary and proportionate, and remain subject to documentation, accountability and judicial review. Effective prevention of crime and protection of personal liberty are complementary obligations in a constitutional democracy.

Keywords: Preventive policing; BNSS; constitutional limits; personal liberty; preventive arrest; public order; fundamental rights.

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I. INTRODUCTION

The police perform a vital role in preventing crime, protecting life and maintaining public order. Their responsibilities do not begin only after an offence has occurred. The law also authorises preventive steps where there is a legally sufficient basis to believe that a cognizable offence or an immediate threat to public safety may arise. Preventive action can include warning, intervention, communicating information, issuing lawful directions and, in narrowly defined circumstances, arrest to prevent an imminent cognizable offence.

Preventive power, however, is not unlimited. A democratic Constitution does not permit a person to be restrained merely because an officer dislikes that person, disagrees with their views or considers them inconvenient. The exercise of police power must have legal authority, a legitimate purpose and a rational connection to the threat being addressed. It must also respect equality, freedom of speech and assembly, personal liberty and procedural safeguards.

This paper examines preventive police action under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), particularly Sections 168–172, and analyses the constitutional limits imposed by Articles 14, 19, 21 and 22 of the Constitution of India. It distinguishes ordinary preventive action by police from preventive detention under separate legislation. The central argument is that prevention is a legitimate public function only when it is lawful, necessary, proportionate, non-arbitrary and open to judicial review.^[1–2]

II. OBJECTIVES AND RESEARCH METHODOLOGY

The objectives of this paper are: (i) to explain the statutory basis of preventive police action under the BNSS; (ii) to identify the constitutional rights that constrain preventive measures; (iii) to examine leading judicial decisions on arrest, liberty and public order; and (iv) to suggest safeguards against arbitrary or excessive use of preventive powers.

The paper adopts a doctrinal and analytical method. It considers the text of the BNSS and the Constitution, together with selected decisions of the Supreme Court of India. The analysis is limited to the legal principles relevant to preventive action and does not claim that every form of preventive detention is governed exclusively by Sections 168–172 BNSS. Separate preventive-detention statutes have their own constitutional and procedural framework.

III. MEANING AND SCOPE OF PREVENTIVE ACTION

Preventive action means lawful action taken to avert an anticipated offence or danger before it occurs. It differs from punitive action, which follows an offence and is directed towards investigation, prosecution or punishment. Preventive action is forward-looking, but its anticipatory character makes safeguards especially important: suspicion about future conduct can otherwise become a basis for arbitrary interference with liberty.

Preventive police action must also be distinguished from “preventive detention”. Sections 168–172 BNSS confer operational powers on police to prevent cognizable offences, communicate information, arrest in a limited situation, prevent injury to public property and require compliance with lawful directions. Preventive detention, by contrast, generally involves detention under a separate law to prevent conduct considered prejudicial to specified public interests, and is subject to Article 22 and the relevant statute. The two concepts should not be used interchangeably.

IV. STATUTORY FRAMEWORK: SECTIONS 168–172 BNSS

A. Section 168 — Police to prevent cognizable offences

Section 168 provides that every police officer may intervene for the purpose of preventing, and must use their best ability to prevent, the commission of a cognizable offence. This imposes a preventive responsibility on the police. The power is directed at preventing an offence, not at punishing a person for a belief, identity or lawful activity.^[2]

B. Section 169 — Information of a design to commit cognizable offences

Where a police officer receives information that a cognizable offence is being planned, Section 169 requires the officer to communicate that information to the superior officer and to any other officer whose duty it is to prevent or take cognizance of the offence. This promotes coordination and timely intervention. The information should be assessed responsibly; unverified or malicious allegations should not automatically be treated as proof that a person intends to commit an offence.^[2]

C. Section 170 — Arrest to prevent commission of cognizable offences

Section 170 permits arrest without a warrant or Magistrate’s order where a police officer knows of a design to commit a cognizable offence and considers that the offence cannot otherwise be prevented. The language establishes a significant condition: arrest is not justified merely because a possible offence has been mentioned. The officer must have knowledge of a design to commit a

cognizable offence and the commission must appear incapable of being prevented by other means.^[2, 8]

Section 170(2) provides that a person arrested under this section must not be detained for more than twenty-four hours from the time of arrest unless further detention is required or authorised under another provision of the BNSS or another law. This is a limit on the special preventive arrest power; it does not authorise continued custody without independent legal authority.

D. Section 171 — Prevention of injury to public property

Section 171 permits a police officer to intervene on their own authority to prevent injury being attempted in their view to public property, or removal or injury of public landmarks and navigational marks described in the section. The power is linked to an attempted injury occurring in the officer's view. It should not be expanded into a general authority to punish peaceful criticism or to interfere with lawful conduct unrelated to the protected property.^[2]

E. Section 172 — Compliance with lawful directions

Section 172 requires persons to comply with lawful directions given by a police officer in fulfilment of duties under the chapter. It permits detention or removal of a person who resists, refuses, ignores or disregards such a direction, with the person either being taken before a Magistrate or, in petty cases, released as soon as possible within twenty-four hours. The statutory word "lawful" is crucial. A direction outside the officer's authority, or one that violates constitutional guarantees, cannot become valid merely because it was issued by a police officer.^[2]

V. CONSTITUTIONAL LIMITS ON PREVENTIVE POLICE ACTION

A. Article 14 — Equality and non-arbitrariness

Article 14 prohibits arbitrary State action and requires equal protection of the laws. Preventive powers must therefore be exercised on relevant facts and not on personal hostility, political pressure, stereotypes or discriminatory assumptions. Similar situations should be treated consistently, and the officer should be able to explain the factual basis for intervention. A measure that is selective, irrational or unsupported by material may be challenged as arbitrary.^[1]

B. Article 19 — Speech, assembly and movement

Article 19 protects specified freedoms, including speech and expression, peaceful assembly and movement, subject to constitutionally permitted reasonable restrictions. Police may regulate a

gathering or intervene against credible threats of violence, but peaceful criticism, protest or dissent is not itself a cognizable offence. Restrictions must be grounded in law and reasonably connected to a recognised constitutional purpose. A blanket or indefinite restraint, imposed without considering less restrictive measures, risks suppressing legitimate democratic activity.^[1]

C. Article 21 — Life and personal liberty

Article 21 provides that no person shall be deprived of life or personal liberty except according to procedure established by law. Read in light of constitutional jurisprudence, the procedure must be fair, just and reasonable. Preventive action affecting liberty should therefore be supported by lawful authority and the facts of the particular case. Unnecessary restraint, prolonged informal detention, coercion or action based on vague suspicion may violate Article 21. The seriousness of the anticipated threat and the availability of less intrusive alternatives are relevant to whether the measure is justified.^[1, 3]

D. Article 22 — Safeguards on arrest and detention

Article 22 provides safeguards for persons arrested, including communication of the grounds of arrest and the right to consult and be defended by a legal practitioner, subject to the constitutional text and its exceptions. Article 22(2) ordinarily requires production before the nearest Magistrate within twenty-four hours, excluding necessary journey time. These safeguards are important when preventive action takes the form of arrest. The special twenty-four-hour rule in Section 170(2) must be read with the rest of the applicable law; it is not a licence to bypass constitutional protections.^[1, 8]

E. Proportionality and least restrictive means

A lawful objective does not justify every means of achieving it. The nature and immediacy of the threat, the quality of the information, the seriousness of the anticipated offence and the likely impact on rights should be assessed. Where a warning, separation of opposing groups, protection of a location or another less intrusive step can adequately prevent the threat, arrest or broad restrictions may be unnecessary. The response should be proportionate to the risk and limited in duration and scope.

VI. JUDICIAL APPROACH AND RELEVANT CASE LAW

A. Maneka Gandhi v. Union of India (1978)

In *Maneka Gandhi v. Union of India*, the Supreme Court explained that a procedure affecting personal liberty under Article 21 cannot be arbitrary, unfair or unreasonable. The decision is foundational to the principle that State action affecting liberty must satisfy constitutional standards of fairness. Applied to preventive policing, it supports scrutiny of the legal basis, fairness and reasonableness of measures that restrain a person.^[3]

B. Joginder Kumar v. State of Uttar Pradesh (1994)

In *Joginder Kumar v. State of Uttar Pradesh*, the Supreme Court stressed that the existence of a power to arrest is distinct from justification for exercising it. Arrest should not be routine merely because the police possess the power. Although the case concerned arrest generally, its principle is relevant to preventive arrest: the officer must consider whether restraint is necessary in the circumstances and must not treat arrest as an automatic response.^[4]

C. D.K. Basu v. State of West Bengal (1997)

D.K. Basu v. State of West Bengal laid down safeguards to reduce custodial abuse, including requirements concerning arrest documentation, informing a friend or relative, medical examination and records of custody. These safeguards reinforce the principle that police action affecting liberty must be accountable and traceable. Preventive purpose does not remove the need to observe safeguards applicable to arrest and custody.^[5]

D. Arnesh Kumar v. State of Bihar (2014)

Arnesh Kumar v. State of Bihar cautioned against automatic arrests and emphasised the need to apply statutory conditions and record reasons where required. The judgment arose in a particular statutory context, so it should not be read as rewriting Section 170 BNSS. Nevertheless, its broader concern with unnecessary arrest supports careful scrutiny before using coercive police powers.^[6]

E. Himat Lal K. Shah v. Commissioner of Police, Ahmedabad (1973)

Himat Lal K. Shah v. Commissioner of Police, Ahmedabad recognised that the right to assemble peacefully may be regulated in the interests of public order, but regulation cannot amount to an arbitrary denial of the constitutional freedom. The decision illustrates the distinction between reasonable management of public spaces and suppression of peaceful assembly. Preventive

measures directed at demonstrations must accordingly be based on lawful, relevant and proportionate grounds.^[7]

F. Legal significance

Taken together, these cases support several principles: police power must be exercised for a lawful purpose; arrest is not automatic; restrictions on liberty require fair procedure; custody must be accountable; and public order regulation must not extinguish constitutional freedoms. The precise outcome in any case depends on the statutory provision invoked, the evidence available and the facts before the court.

VII. RISKS OF ABUSE AND PRACTICAL DIFFICULTIES

Preventive action often takes place under time pressure, when officers must respond to uncertain information. This makes professional judgment necessary, but also creates risks. Broad or vague intelligence may be used to justify detention without a clear connection to an imminent offence. Preventive directions may be selectively applied against particular communities, political opponents or peaceful demonstrators. Informal detention, failure to record reasons, and non-compliance with safeguards can make later review difficult.

Another concern is the confusion between maintaining public order and preventing embarrassment or inconvenience to the authorities. Peaceful dissent may cause disruption in a broad sense, but inconvenience alone does not establish a lawful basis for arrest. The State must distinguish genuine threats of violence or cognizable crime from lawful expression and assembly. The record of the officer's observations, information received and steps taken can assist supervisors and courts in determining whether the action was justified.

VIII. SAFEGUARDS AND RECOMMENDATIONS

First, officers should identify the precise statutory provision authorising the proposed action and record the material facts supporting it. Secondly, preventive arrest under Section 170 should be used only where the statutory conditions are met, including the apparent inability to prevent the offence by other means. Thirdly, police departments should provide clear standard operating procedures, regular training and supervisory review.

Fourthly, records should identify the time, place, reasons and duration of any restraint, the directions given and the steps considered as alternatives. Records should be preserved in accordance with law and made available to the competent authority or court when required.

Fifthly, officers should receive training on constitutional rights, crowd management, de-escalation, non-discrimination and the difference between peaceful protest and violence. Sixthly, persons affected by unlawful restraint should have practical access to legal assistance and remedies before the courts, including appropriate writ jurisdiction where the legal conditions are satisfied.

Finally, accountability should be meaningful. Complaints of excessive force, unlawful detention or discriminatory enforcement should be examined independently and promptly. The objective is not to disable the police from preventing crime, but to ensure that effective policing remains compatible with constitutional government.

IX. CONCLUSION

Preventive action is an essential part of policing because the State has a duty to protect life, property and public order before harm occurs. Sections 168–172 of the BNSS provide a statutory framework for preventing cognizable offences, sharing information, making a limited preventive arrest, protecting public property and enforcing lawful police directions. These provisions must be read narrowly enough to preserve their preventive purpose without turning them into general powers of coercion.

The Constitution supplies the controlling limits. Article 14 requires non-arbitrary and non-discriminatory action; Article 19 protects freedoms subject to lawful and reasonable restrictions; Article 21 demands fair, just and reasonable procedure; and Article 22 provides safeguards in cases of arrest and detention. Judicial decisions reinforce that the mere existence of police power does not automatically justify its exercise. Ultimately, legitimate preventive policing depends on credible grounds, necessity, proportionality, accurate records, respect for rights and effective judicial review. Public safety and personal liberty are not opposing ideals: lawful and accountable policing protects both.

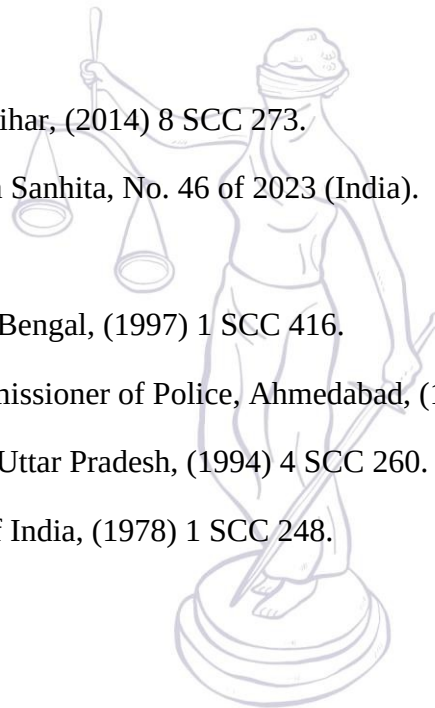
X. FOOTNOTES

1. Constitution of India, arts. 14, 19, 21 and 22.
2. Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, ch. XII, §§ 168–172 (India).
3. Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
4. Joginder Kumar v. State of Uttar Pradesh, (1994) 4 SCC 260.

5. D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.
6. Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.
7. Himat Lal K. Shah v. Commissioner of Police, Ahmedabad, (1973) 1 SCC 227.
8. Constitution of India, art. 22(1)–(2).
9. Bharatiya Nagarik Suraksha Sanhita, 2023, § 170(1)–(2).
10. See also Constitution of India, arts. 32 and 226 (constitutional remedies).

XI. REFERENCES

- Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.
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- Himat Lal K. Shah v. Commissioner of Police, Ahmedabad, (1973) 1 SCC 227.^[7]
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