

SECURITY FOR KEEPING PEACE IN OTHER CASES AND PREVENTIVE JUSTICE

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ABSTRACT

Security proceedings for keeping the peace occupy a difficult position between the State's responsibility to prevent violence and the individual's right not to suffer coercion on suspicion alone. Section 126 of the Bharatiya Nagarik Suraksha Sanhita, 2023 permits an Executive Magistrate to require a person to show cause against a peace bond where sufficiently grounded information indicates a likely breach of the peace, disturbance of public tranquillity, or wrongful act probably producing either consequence. This paper argues that the provision is constitutionally defensible only when understood as a graduated, evidence-tested and proportionate mechanism, rather than an administrative shortcut to detention. Using doctrinal analysis of the statutory scheme and decisions under the corresponding earlier provisions, it distinguishes initiation, interim security and final security as separate legal thresholds. It examines notice, inquiry, time limits, sureties, default imprisonment and judicial supervision, while identifying risks associated with mechanical police reports, unaffordable bonds and restrictions on lawful dissent. The paper proposes an individualised necessity framework, affordability assessment, timely review and transparent recordkeeping. These refinements preserve preventive capacity without converting anticipation of disorder into punishment without conviction.

Keywords: Preventive Justice, Security for Keeping Peace, Bharatiya Nagarik Suraksha Sanhita, Section 126, Executive Magistrate, Personal Liberty, Procedural Safeguards.

I. INTRODUCTION

Preventive justice begins from an understandable proposition: the law should not always wait for violence before protecting those exposed to it. Yet a power directed at future conduct faces a distinctive problem. The anticipated event has not happened, the information may be disputed, and the person subjected to restriction may never have been convicted of any offence. Security for keeping the peace therefore requires more than an appeal to administrative convenience. It needs a principled explanation of when apprehension becomes sufficient grounds for legal intervention and how that intervention remains compatible with liberty.

The present statutory focus is section 126 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), titled “Security for keeping peace in other cases”. Its principal predecessor was section 107 of the Code of Criminal Procedure, 1973 (CrPC). The BNSS retains the essential mechanism: an Executive Magistrate receiving relevant information and finding sufficient grounds may require a person to show cause why a bond or bail bond should not be ordered for a period not exceeding one year.¹ The opening step is thus an invitation to answer a legally specified case, not an immediate final command to furnish security.

The BNSS came into force on 1 July 2024, subject to the exception specified in the commencement notification. Its repeal-and-savings provision preserves the earlier procedure for the pending proceedings identified there. Consequently, the applicable enactment must be determined before translating an older case into a present procedural argument.² Renumbering does not make earlier judgments irrelevant, but neither does substantial continuity justify treating every old statutory expression as if it remained unchanged.

This paper examines section 126 within the broader procedure for peace security. It argues that the provision is legitimate only when the Executive Magistrate applies a graduated and individualised test: information may justify an inquiry; immediate necessity may justify limited interim security; and evidence establishing necessity after inquiry may justify final security. The

¹ Bharatiya Nagarik Suraksha Sanhita 2023, Act 46 of 2023 (BNSS), s 126; Code of Criminal Procedure 1973, Act 2 of 1974 (CrPC), s 107.

² BNSS, s 1(3); Ministry of Home Affairs, Notification SO 848(E), Gazette of India, Extraordinary, Part II, s 3(ii) (23 February 2024); BNSS, s 531(2)(a).

analysis accordingly focuses on the statutory text, judicial safeguards and constitutional limits, without claiming empirical findings about the use of proceedings across India.³

II. PREVENTIVE JUSTICE AND THE NATURE OF PEACE SECURITY

A. Prevention Distinguished from Punishment

Punishment responds to established criminal responsibility through the legally prescribed adjudicative process. Peace security instead addresses a sufficiently demonstrated risk of future disorder. That distinction explains why a past conviction is not a condition of section 126. It also explains why a previous accusation cannot itself settle the present inquiry. Earlier events may illuminate a continuing threat, but the decision must concern a prospective danger falling within the statutory language, not an unofficial sentence for past conduct.

The phrase “other cases” is best understood through the neighbouring provision. Section 125 concerns security on conviction and permits specified courts to order it when sentencing for the offences covered there, for a period up to three years. Section 126 does not depend on conviction and imposes a one-year ceiling.⁴ Importing the longer period or conviction-based rationale into section 126 would erase a distinction deliberately drawn by the legislature.

B. Keeping the Peace Distinguished from Good Behaviour

Chapter IX also contains security for good behaviour concerning dissemination of specified matters, suspected persons and habitual offenders. Those provisions have their own conditions. A section 126 proceeding cannot become a general inquiry into whether an individual is respectable, obedient or socially acceptable. The distinction is reinforced by the interim-security proviso: a person not proceeded against under sections 127, 128 or 129 cannot be directed to furnish interim security for maintaining good behaviour.⁵ The proper undertaking under section 126 concerns peace, not an unrestricted demand for conformity.

³ BNSS, ss 125–143, especially ss 126, 130 and 135–137.

³ Constitution of India 1950, arts 14, 19 and 21; *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

⁴ BNSS, ss 125(1)–(3) and 126(1).

⁵ BNSS, ss 127–129 and 135(3), proviso (a).

C. Security Proceedings Distinguished from Preventive Detention

The possibility of detention does not make every security proceeding identical to preventive detention under a separate detention statute. In *Madhu Limaye*, the Supreme Court distinguished the security scheme from detention resting on executive prediction, stressing the bond mechanism, inquiry and review safeguards.⁶ Nevertheless, the distinction must remain substantive. If an impossible bond predictably produces incarceration without a genuine inquiry, calling the measure “security” does not answer the liberty objection. The statutory route and the actual effect both matter.

III. SECTION 126: CONDITIONS, DISCRETION AND JURISDICTION

A. Information and Sufficient Grounds

Section 126(1) requires information about a person likely to breach the peace, disturb public tranquillity, or commit a wrongful act probably occasioning either consequence. It separately requires the Magistrate’s opinion that sufficient grounds exist for proceeding.⁷ Receipt and evaluation are therefore distinct tasks. A police report may trigger consideration, but it cannot replace the Magistrate’s assessment. The information should identify the conduct apprehended, its factual basis and the connection between that conduct and the feared disturbance.

The provision does not require a completed offence or a prior conviction. Equally, its predictive character does not authorise intervention whenever conflict is conceivable. A neighbourhood disagreement, political rivalry or pending civil suit must be connected to a credible risk of a statutory consequence. Specific threats, preparations for confrontation or a recent pattern of escalation may provide such a connection. A bare assertion that someone is “likely to disturb peace”, without supporting particulars, merely repeats the legal conclusion that the Magistrate is supposed to examine.

B. Wrongful Acts and the Prospective Connection

The third branch is important because the anticipated wrongful act need not itself constitute the ultimate disturbance. The statute covers a wrongful act that may probably occasion a breach of peace or disturbance of public tranquillity. However, the causal link still requires explanation. A

⁶ *Madhu Limaye v Sub-Divisional Magistrate, Monghyr* (1970) 3 SCC 746; AIR 1971 SC 2486 (concerning the Code of Criminal Procedure 1898).

⁷ BNSS, s 126(1).

disputed claim of ownership does not automatically establish that asserting it will probably cause violence. Prevention should address the threatening conduct rather than convert an unresolved private right into proof of dangerousness.

For example, competing traders may quarrel over access to a market entrance. If credible information indicates that one trader intends to bring armed associates to force entry, a peace inquiry may be justified. If the material establishes only a disagreement about a licence, the licensing controversy belongs before the competent authority. The example illustrates the necessary inquiry: identify what threatens peace, who is responsible for that risk, and why security would reduce it.

C. Territorial Jurisdiction

Section 126(2) provides two territorial connections. Proceedings may be taken where the place of the apprehended breach or disturbance lies within the Magistrate's local jurisdiction. They may also be taken where the person is within that jurisdiction but the anticipated conduct or consequence lies beyond it.⁸ This flexibility prevents a threatened disturbance from escaping consideration merely because the person and its expected location are in different areas. It does not remove the need to record the jurisdictional connection in the particular case.

D. Duration and the Choice of Security

The maximum period under section 126 is one year, not a standard term to be imposed automatically. A reasoned order should explain why the selected duration corresponds to the identified risk. The BNSS defines a "bond" as a personal bond or undertaking without surety and a "bail bond" as an undertaking with surety.⁹ Although the terminology also appears in bail provisions, its use here does not turn the peace proceeding into ordinary bail after an offence. Within the statutory choice, the necessity of sureties should be considered rather than assumed.

IV. PROCEDURAL SAFEGUARDS: FROM NOTICE TO FINAL ORDER

A. The Written Preliminary Order

Section 130 requires a written order setting out the substance of the information, the amount of the bond, its proposed term and the number of sureties, after considering their sufficiency and

⁸ BNSS, s 126(2).

⁹ BNSS, s 2(1)(d)–(e) and s 126(1).

fitness.¹⁰ These particulars give practical meaning to the opportunity to show cause. Without knowing the factual allegation and proposed obligation, the respondent cannot prepare a useful answer. A printed form can organise an order, but the form must contain the individual reasons and information relevant to the actual person.

A preliminary order should not announce that the respondent has already failed to keep the peace or must necessarily furnish security. Its function is to communicate the case requiring examination. The Magistrate's sufficient-ground assessment is provisional: it explains why inquiry is justified, not why the inquiry has been decided. Maintaining this distinction protects both impartiality and the quality of the subsequent evidentiary process.

B. Communication, Appearance and Representation

Sections 131–134 govern communication and attendance. An order concerning a person present must be read over or explained as provided. Where the person is absent, section 132 supplies the summons or warrant procedure; section 133 requires the accompanying copy of the preliminary order. Section 134 permits personal attendance to be dispensed with for sufficient cause and appearance through an advocate.¹¹ These safeguards reduce the danger that a respondent encounters coercion before understanding the allegation. Their practical implementation should also consider language, disability and the consequences of repeated attendance for employment.

C. Inquiry into the Truth of Information

Section 135(1) directs the Magistrate to inquire into the truth of the information and take further evidence as necessary. Subsection (2) requires, as nearly as practicable, the procedure for conducting trials and recording evidence in summons cases.¹² Thus the initiating report is not self-proving. The respondent must have a meaningful opportunity to challenge the allegation, question supporting testimony through the applicable procedure and present an explanation. The inquiry should evaluate whether a current need for peace security exists, not merely whether police once recorded a dispute.

¹⁰ BNSS, s 130.

¹¹ BNSS, ss 131–134.

¹² BNSS, s 135(1)–(2).

D. Interim Security and Immediate Necessity

Section 135(3) permits interim security after commencement and before completion of the inquiry where immediate measures are necessary for the specified preventive purposes. Reasons must be recorded in writing, and the interim conditions cannot be more onerous than those in the preliminary order. The power includes custody pending execution or conclusion of the inquiry, subject to the statutory framework.¹³ Its seriousness makes the timing and reasons requirements indispensable. An interim order is not a routine accompaniment to every notice.

The majority in *Madhu Limaye* rejected the practice of repeatedly adjourning proceedings while demanding interim bonds without entering upon an inquiry into the information. It emphasised strict construction where liberty rests on information and suspicion.¹⁴ For the present scheme, the doctrinal lesson is not that every emergency requires a completed inquiry. It is that a legally sufficient commencement and an articulated immediate necessity must precede interim coercion. The exceptional power must remain connected to evidence and urgency.

E. Time Limits and the Cost of Delay

Section 135(6) ordinarily requires completion within six months from commencement. Proceedings terminate on expiry unless the Magistrate directs continuation for special reasons recorded in writing. The proviso separately requires termination against a person detained pending inquiry on expiry of six months of detention, unless terminated earlier. Section 135(7) permits the Sessions Judge, on an aggrieved party's application, to vacate an extension unsupported by special reasons or otherwise perverse.¹⁵ The six-month period is a limit, not permission to delay every case for that long.

Sajeev illustrates the consequences of neglecting the corresponding CrPC time limit. The Kerala High Court quashed proceedings where the inquiry had not been completed and the necessary special reasons had not been recorded.¹⁶ Delay weakens preventive justification because the threat initially relied upon may disappear or change. It also burdens respondents through attendance and unresolved financial obligations. A case-management record should therefore identify commencement, the normal expiry date and any reasoned extension.

¹³ BNSS, s 135(3), including provisos (a)–(b).

¹⁴ *Madhu Limaye* (n 7), especially para 42; BNSS, s 135(3).

¹⁵ BNSS, s 135(6)–(7).

¹⁶ *Sajeev v State of Kerala*, CrI MC 3829 of 2012 (Kerala HC, 7 March 2014), paras 5–8 (PD Rajan J).

F. Final Security, Discharge and Sureties

Section 136 authorises final security when inquiry proves its necessity. The final order cannot require a different nature of security, a larger amount or a longer period than the preliminary order specified. The amount must reflect the circumstances and must not be excessive; the section also specifies the surety arrangement where the person is a child. Section 137 requires release or discharge when necessity is not proved.¹⁷ Failure of proof is therefore a reason to end the proceeding, not to impose a smaller bond as an administrative compromise.

Sections 138 and 139 address commencement of the security period and the undertaking's contents. Section 140 regulates rejection of sureties through inquiry, notice and recorded reasons.¹⁸ Surety assessment cannot become an unexplained barrier to release. The Magistrate should distinguish genuine concerns about fitness from preferences that unnecessarily exclude people lacking local property or influential contacts.

G. Default Imprisonment and Remedies

Section 141 provides imprisonment in default of ordered security and separately addresses a proved breach of a peace bond. Imprisonment for failure to give security for keeping the peace is simple imprisonment. Section 142 provides mechanisms for release and reduction of security conditions.¹⁹ These consequences demonstrate why affordability cannot be postponed until after the order. An apparently modest administrative requirement may determine whether an economically vulnerable person remains free.

Section 414 permits the specified appeals to the Court of Session against security orders under section 136 and orders refusing or rejecting sureties under section 140, subject to its proviso. The Act also supplies revision powers, while constitutional supervision remains relevant in appropriate cases.²⁰ Different remedies address different orders; a preliminary notice, interim direction, extension and final security order should not be treated as procedurally interchangeable.

¹⁷ BNSS, ss 136–137.

¹⁸ BNSS, ss 138–140, especially s 140(1)–(3).

¹⁹ BNSS, s 141(1)(a)–(b) and (7); s 142(2).

²⁰ BNSS, s 414; s 135(7); ss 438–442; Constitution of India, arts 226–227.

V. JUDICIAL PRINCIPLES AND CONSTITUTIONAL LIMITS

A. Madhu Limaye: Validity Depends on Safeguards

Madhu Limaye upheld the earlier security framework against the constitutional challenge considered there, but its reasoning relied on the procedure's judicial character and safeguards. The case arose under the 1898 Code, not the BNSS or the 1973 CrPC.²¹ Its continuing significance lies in method: preventive authority is not legally unlimited because prevention is desirable. Notice, inquiry, reasons and access to superior courts form the justification for intervention. A selective reading that preserves executive power while discarding those safeguards misunderstands the decision.

B. Fair Procedure and Individual Liberty

Maneka Gandhi supplies the wider constitutional principle that a procedure depriving personal liberty must be fair, just and reasonable.²² Applied analytically to peace security, this principle demands an intelligible allegation, a genuine hearing and a defensible connection between risk and restriction. The present argument is an application of constitutional reasoning, not a claim that Maneka Gandhi itself adjudicated section 126. Article 14 likewise requires scrutiny of arbitrary differentiation, especially where identical facts produce different bond burdens without explanation.

C. Status Labels and the Limits of Analogy

Gopalanachari concerned the habitual-offender provision in section 110 CrPC and warned against loose use of descriptions associated with dangerousness.²³ It should not be misreported as a direct decision on section 107 or section 126. Its relevant contribution is an interpretive caution: coercive preventive powers should rest on substantiated circumstances rather than elastic labels. Under section 126, the essential question is the probability of the stated peace-related consequence, not whether authorities consider the person troublesome.

Sajeev adds a procedural lesson to that caution: a proceeding directed at prevention cannot remain indefinitely unresolved simply because the authorities have initiated it.²⁴ Read together, these authorities support a three-stage approach. The initiation threshold, urgent interim

²¹ Madhu Limaye (n 7) (majority opinion on Chapter VIII of the Code of Criminal Procedure 1898).

²² Maneka Gandhi (n 4).

²³ Gopalanachari v State of Kerala 1980 Supp SCC 649; AIR 1981 SC 674 (concerning CrPC, s 110, not s 107).

²⁴ Sajeev (n 17), paras 6–8; BNSS, s 135(6).

threshold and final evidentiary determination protect different interests. Compliance at one stage does not cure a defect at another, and eventual discharge does not erase an unjustified period of interim custody.

D. Peaceful Dissent and Economic Equality

The freedoms of expression, assembly, association and movement remain relevant when peace proceedings affect collective activity. Constitutional restrictions must fit the applicable clauses of Article 19; anticipated disagreement with a political message is not itself an adequate explanation of a likely breach of peace.²⁵ Authorities should identify threatening conduct rather than infer it from participation in a lawful protest. Conversely, genuine preparations for violence do not become immune merely because they accompany a political cause.

The economic dimension is equally important. A wealthy respondent may execute a substantial undertaking without difficulty, while a low-income respondent faces detention under the same nominal condition. Articles 14 and 21, read with section 136's express prohibition of excessive amounts, support an affordability-sensitive analysis.²⁶ A decision-maker should consider income, dependants, available support and the realistic ability to obtain sureties. Preventive necessity cannot be assessed independently of the burden imposed.

VI. AN INDIVIDUALISED NECESSITY APPROACH

A. Specify the Risk and the Person's Connection

A disciplined peace-security order should identify the expected conduct, the source and reliability of the information, the likely peace-related consequence and the respondent's individual connection. Where several people are involved, the same report may be relevant to all, but it should not eliminate individual analysis. This approach reduces the risk that a general atmosphere of tension becomes grounds to bind over everyone present.

B. Keep Arrest and Security Powers Distinct

Peace security must be separated from other preventive powers. The immediate-arrest proviso in section 132 and police prevention provisions in sections 168–170 have distinct conditions.²⁷ The existence of those powers does not permit section 126 to function as an independent general

²⁵ Constitution of India, art 19(1)(a)–(d), (2)–(5); BNSS, s 126(1).

²⁶ Constitution of India, arts 14 and 21; BNSS, s 136, proviso (b).

²⁷ BNSS, s 132, proviso; ss 168–170. These are distinct statutory powers with separate conditions.

arrest authority. Each coercive act should identify its own legal source. A person arrested through a preventive police power should not automatically be subjected to a final bond merely because arrest has already occurred.

C. Match the Response to the Evidentiary Stage

At initiation, the written order should explain sufficient grounds and communicate the case. At the interim stage, it should explain why immediate measures cannot await completion. At final disposal, it should identify the evidence establishing necessity and justify amount, sureties and duration.²⁸ Recording these matters separately prevents the preliminary allegation from being copied into the final decision without assessment.

D. Affordability, Review and Practical Access

Before financial conditions are imposed, there should be an explicit affordability assessment. Where a personal bond can adequately secure peace, demanding sureties should require explanation. Where sureties are justified, their number and liability should correspond to the risk and the person's circumstances. Existing powers governing excessive security, reduction, attendance, discharge and appellate scrutiny provide the statutory foundation for this approach.²⁹ Legal-aid access and clear explanations of remedies would make these protections usable rather than merely formal.

Registers should also track the date of commencement, interim orders, custody, extensions and final disposal. Such records can ensure compliance with the six-month rule and enable meaningful judicial review. Administrative efficiency must support reasons and timely inquiry; it must not encourage automatic notices generated from unexamined police lists.

VII. CONCLUSION

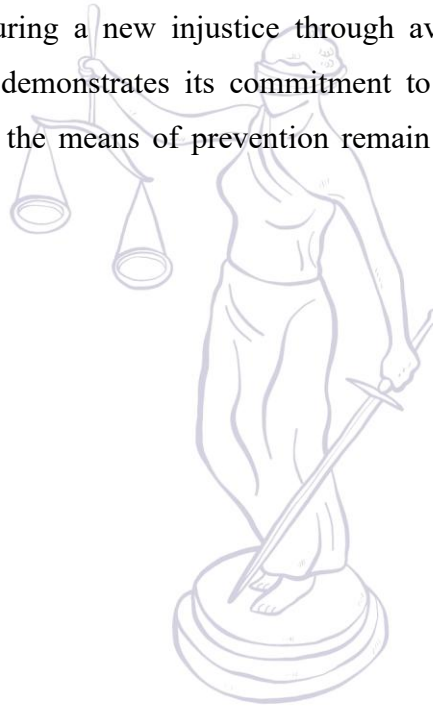
Section 126 is neither an ordinary prosecution nor an unrestricted licence to detain on suspicion. It is the entry point to a regulated process that permits preventive intervention while requiring notice, inquiry and proof of necessity before final security. Its usefulness lies in addressing credible danger before harm occurs; its constitutional vulnerability arises when prediction is treated as proof or procedural safeguards are reduced to paperwork.

²⁸ BNSS, ss 130, 135(1)–(3) and 136.

²⁹ BNSS, ss 134, 135(6)–(7), 136, proviso (b), 137, 142 and 414.

The central conclusion is that sufficient grounds for initiation, immediate necessity for interim security and proven necessity for a final order are distinct thresholds. The provisions concerning duration, non-excessive amounts, discharge, sureties, default imprisonment and review must be read together. Earlier judgments remain valuable because they explain why these safeguards matter, but their statutory setting and the limits of analogy must remain visible.

An individualised necessity approach preserves the proper preventive purpose of the law. It requires specific risk identification, independent assessment, stage-specific reasons, affordable conditions and timely supervision. Preventive justice should protect people from threatened disorder without manufacturing a new injustice through avoidable custody or indiscriminate restrictions. A legal order demonstrates its commitment to peace not simply by anticipating harm, but by ensuring that the means of prevention remain lawful, proportionate and open to challenge.



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REFERENCES

Books

1. C.K. Takwani, Criminal Procedure (5th ed., Eastern Book Co. 2022)
2. K.N. Chandrasekharan Pillai, R.V. Kelkar's Lectures on Criminal Procedure (7th ed., Eastern Book Co. 2023).
3. M.P. Jain, Indian Constitutional Law (8th ed., LexisNexis 2018).

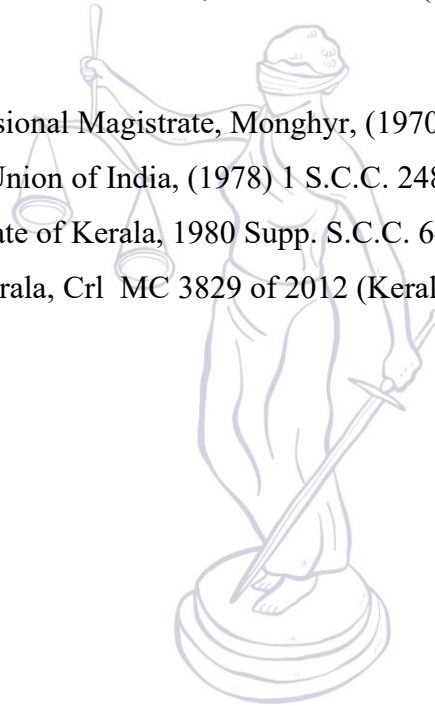
4. R.V. Kelkar, Criminal Procedure (K.N. Chandrasekharan Pillai ed., 7th ed., Eastern Book Co. 2023).
5. Ratanlal & Dhirajlal, The Code of Criminal Procedure (K.N. Chandrasekharan Pillai ed., 24th ed., LexisNexis 2023).
6. V.N. Shukla, Constitution of India (Mahendra P. Singh ed., 14th ed., Eastern Book Co. 2022).

Statutes

1. Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023 (India).

Cases

2. Limaye v. Sub-Divisional Magistrate, Monghyr, (1970) 3 S.C.C. 746 (India).
3. Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India).
4. Gopalanachari v. State of Kerala, 1980 Supp. S.C.C. 649 (India).
5. Sajeev v State of Kerala, Crl MC 3829 of 2012 (Kerala HC).



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