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(DISTRICTS- BALRAMPUR-RAMANUJGANJ,
AMBIKAPUR, JASHPUR, SURAJPUR, BAIKUNTHPUR)

ON

“Provisions Relating To Arrest, Remand And Bail With
Reference To Guidelines Issued By The Hon’ble Supreme
Court In Satender Kumar Antil Vs. CBI & Siddharth Vs. State
Of U.P.”

&

“Provision Relating To Disposal Of Property In Criminal
Cases”

Submitted by-

District – Balrampur-Ramanujganj (C.G)

Acknowledgement

We feel highly elated to work on the topic “Provisions Relating To Arrest, Remand And Bail With Reference To Guidelines Issued By The Hon’ble Supreme Court In Satender Kumar Antil Vs. CBI & Siddharth Vs. State Of U.P.s& Provision Relating To Disposal Of Property In Criminal Cases ” We would like to thank the Hon’ble High Court of Chhattisgarh and Chhattisgarh State Judicial Academy for organizing this Divisional Seminar and providing us a platform to discuss on such crucial legal points.

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1. Introduction

- The administration of criminal justice in India is an intricate balance between the **sovereign power of the State to investigate and prosecute crimes** and the **individual’s fundamental right to personal liberty**. Every criminal proceeding begins with a potential curtailment of liberty — through arrest, remand, or denial of bail — and therefore touches the very core of constitutional values.
- Article 21 of the Constitution of India guarantees that *“No person shall be deprived of his life or personal liberty except according to procedure established by law.”* This provision, as interpreted by the Supreme Court, mandates that such procedure must be **just, fair, and reasonable**. Accordingly, any act of arrest or detention that is arbitrary, mechanical, or disproportionate violates the Constitution itself.
- Yet, despite this clear constitutional mandate, Indian criminal process has long been characterised by a **culture of arrest** rather than a **culture of liberty**. Arrests are often made reflexively, remands are routinely granted without judicial scrutiny, and bail is treated as a concession rather than a right. The cumulative effect is a justice system in which **pre-trial incarceration becomes the norm**, not the exception. According to data from the National Crime Records Bureau, nearly **three-fourths of India’s prison population comprises undertrial prisoners**, many detained for years without conviction.
- Recognising this systemic problem, the Hon’ble Supreme Court has, over the years, issued a series of corrective judgments aimed at reinforcing procedural fairness and protecting personal liberty. The culmination of these efforts can be seen in two landmark rulings — *Siddharth v. State of U.P. (2021) 1 SCC 676* and *Satender Kumar Antil v. CBI (2022) 10 SCC*

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- These judgments represent a major jurisprudential shift: from discretion to accountability, from automatic custody to reasoned liberty, and from institutional convenience to constitutional conscience.

Statement of the Problem

Despite progressive legislative reforms — particularly the Criminal Procedure (Amendment) Act, 2008, which introduced Sections 41- 41d CRPC now as Section 35(1)(2) and 35(3)(6) BNSS — and repeated judicial admonitions, the misuse of arrest powers remains rampant. Arrest continues to be treated as the default step in investigation rather than the last resort. Police officers often arrest individuals merely because it is legally permissible, not because it is *necessary* for investigation or prevention of crime.

Similarly, **magistrates frequently authorise remand mechanically**, without recording reasons or evaluating whether further custody is justified. The interplay between police power and judicial oversight has, therefore, become skewed against the individual's liberty.

At the post-investigation stage, the situation is no better. Many trial courts insist that an accused must be taken into custody before accepting a charge-sheet under Section 190 BNSS / S.170 CrPC — a misconception that the Supreme Court categorically dispelled in *Siddharth v. State of U.P.*. Even after this clarification, ground-level compliance remains inconsistent.

These practices undermine the constitutional vision of criminal justice and create a paradox where **the process itself becomes a punishment**. The *Satender Kumar*

Antil judgment thus sought not only to reaffirm the principles of *Arnesh Kumar v. State of Bihar* (2014 8 SCC 273) but to transform them into a **structured, enforceable framework** for police and courts to follow.

Part II — Legislative Framework: Arrest, Remand, and Bail under the Bhartiya Nagarik, Suraksha Sanhita, 2023

1. Overview of the Statutory Scheme

The **Bhartiya Nagarik, Suraksha Sanhita, 2023** (BNSS) provides the procedural architecture of India's criminal justice system. Its provisions on **arrest, remand, and bail** determine the delicate balance between the power of the State to investigate crime and the individual's right to personal liberty under **Article 21** of the Constitution.

The BNSS does not confer unbridled authority; every deprivation of liberty must adhere to **procedure established by law** that is *fair, just, and reasonable*. Consequently, each stage—arrest, remand, and bail—represents a distinct checkpoint for judicial oversight and accountability.

2. Arrest: Power, Procedure, and Safeguards

2.1 Meaning and Authority

An *arrest* is the act of taking a person into custody under lawful authority, thereby restraining their freedom of movement. The BNSS provisions relating to arrest span **Sections 35–62 / S.41-62 CrPC**, supplemented by constitutional and judicial safeguards.

2.2 Arrest without Warrant — Section 35 (1)& (2) BNSS / S.41 CrPC

BNSS Section 35 / S.41 CrPC empowers a police officer to arrest without warrant any person involved in a **cognizable offence**, but the 2008 amendment sharply curtailed this discretion.

For offences punishable with imprisonment up to seven years, arrest is permissible only when the officer believes it is **necessary**:

1. to prevent further offences;
2. for proper investigation;
3. to prevent tampering with evidence or intimidation of witnesses; or
4. to ensure presence in court.

The officer must record **reasons for arrest** in writing; likewise, reasons for not arresting must also be documented. Thus, the statute converts the power into a **duty of justification**, ensuring that arrest is guided by necessity, not convenience.

The Supreme Court in *Arnesh Kumar v. State of Bihar* (2014 8 SCC 273) enforced these safeguards, holding that mechanical arrests violate BNSS Section 35 and Article 21 of The constitution of India. It directed that police officers and magistrates alike bear responsibility for ensuring compliance.

2.3 Notice of Appearance — Section 35 (3) BNSS / S.41A CrPC

Section 35 (3)/ **S.41A CrPC** introduces a civilised alternative to arrest. It mandates issuance of a **notice of appearance** to the accused when arrest is not required under Section 35(5) BNSS / **S.41A CrPC**. If the accused complies and cooperates, they shall **not be arrested**, unless reasons are later recorded showing necessity.

This provision, though introduced legislatively in 2008, achieved real prominence after the Supreme Court reaffirmed its significance in *Siddharth v. State of U.P.*

(2021 1 SCC 676) and *Satender Kumar Antil v. CBI* (2022 10 SCC 51), making it central to fair-investigation practice.

2.4 Procedural Rights of the Arrested Person

Sections 47–62 BNSS / S.50-60A CrPC codify vital protections:

- **Section 47 / S. 50 CrPC**– duty to inform the person of the grounds of arrest and right to bail;
- **Section 58 / S. 57 CrPC** – production before a magistrate within **24 hours**;
- **Section 46 / S-49 CrPC** – prohibition on unnecessary restraint;
- **Section 62 / S. 60A CrPC** – direction that arrests shall be made strictly according to the Code.

These provisions echo the constitutional safeguards of **Article 22(1)** and the judicial directives in *D.K. Basu v. State of West Bengal* (1997 1 SCC 416), which made compliance mandatory and enforceable through contempt jurisdiction.

3. Remand: Judicial Authorisation of Custody

3.1 Nature and Purpose

Remand refers to the period during which a magistrate authorises detention of an accused in police or judicial custody pending investigation or trial. It marks the transition from **executive discretion to judicial control**, ensuring that continued deprivation of liberty meets constitutional and evidentiary standards.

3.2 Detention during Investigation — Section 187 BNSS / S.167 CrPC

When investigation cannot be completed within twenty-four hours, Section 187(1) / S.167(1) CrPC obliges the police to forward the accused to the nearest magistrate. The magistrate may authorise:

- **police custody** for a total period not exceeding **15 days**, and
- **judicial custody** up to **60 days** (for offences punishable with less than 10 years) or **90 days** (for graver offences).
- **Police** custody can be granted within period of 40 days (for offences punishable with less than 10 years) or 60 days (for graver offences).

Failure to complete the investigation within these limits entitles the accused to **default bail** under Section 187(2)(a)(ii) of Bnss / S.167(2) CrPC.

The magistrate must record reasons **showing why further custody is essential; routine or perfunctory remand orders are unconstitutional.**

3.3 Section 190 BNSS / S. 170 CrPC — Forwarding of Accused After Investigation

Upon completion of investigation, when sufficient evidence appears, the officer shall forward the accused under Section 190(1) BNSS / S. 170 (1) CrPC. Historically, this section was misinterpreted to mean that **the accused must be in custody** when the charge-sheet is filed. The Supreme Court corrected this misconception in *Siddharth v. State of U.P.* (2021 1 SCC 676), holding that custody is not a pre-condition; if arrest is unnecessary, the accused may appear on summons.

3.4 Sections 227 and 232 BNSS / S. 204 & 209 CrPC — Process and Commitment

At the post-investigation stage:

- Section 227 / **S. 204 CrPC** empowers the magistrate to issue **summons or warrant** when taking cognizance;
- Section 232 / **S. 209 CrPC** governs **committal to the Court of Session** for trial of offences triable exclusively by it, allowing the magistrate to remand the accused to custody until trial commences.

Judicial practice now demands that remand under these provisions be exercised sparingly and supported by reasons showing necessity, not merely because the charge-sheet has been filed.

4. Bail: Safeguarding the Presumption of Innocence

4.1 Concept and Constitutional Context

Bail is the process by which an accused person is released from custody, subject to conditions ensuring appearance at trial. The presumption of innocence, a foundational principle of criminal jurisprudence, mandates that detention before conviction should remain the **exception**. Article 21 reinforces this by recognising the right to liberty and speedy trial.

4.2 Types of Bail

1. **Regular Bail** — under Sections 480/ 437 and 483/ 439 BNSS/CrPC.
2. **Anticipatory Bail** — under Section 482 BNSS/ 438 CrPC, granted to a person apprehending arrest.
3. **Default Bail** — under Section 187(2) BNSS/ 167(2) CrPC, when the investigation exceeds the prescribed period.
4. **Statutory Bail for Undertrials** — under Section 479 BNSS/ 436A CrPC, for those detained for half the maximum sentence.

4.3 Section 480 BNSS/ 437 CrPC — Bail in Non-Bailable Offences

This section empowers magistrates to release an accused on bail unless there are reasonable grounds to believe they are guilty of an offence punishable with death or life imprisonment. Even in such cases, bail may be granted to minors, women, or the infirm. Courts must record reasons for granting or refusing bail, ensuring transparency.

4.4 Section 483 BNSS/ 438 CrPC — Special Powers of the High Court and Sessions Court

The High Court and Court of Session enjoy wider discretion to grant bail and may impose appropriate conditions. The jurisprudence under this section has developed through landmark decisions like *Gudikanti Narasimhulu v. Public Prosecutor* (1978 1 SCC 240), where Justice Krishna Iyer proclaimed that “bail is the rule and jail the exception.”

4.5 Section 482 BNSS— Anticipatory Bail

Introduced by the 1973 Code, this provision enables a person to seek bail in anticipation of arrest. The courts consider factors such as the nature of accusation, antecedents, and likelihood of absconding. *Satender Kumar Antil* reiterated that anticipatory bail should be unnecessary where the investigating agency itself refrains from arresting a cooperative accused under Sections 35 BNSS.

4.6 Section 479 BNSS/ 436A CrPC — Bail to Undertrials

Inserted in 2005, this humane provision directs release of an undertrial who has undergone half the maximum sentence prescribed for the alleged offence. The Supreme Court has repeatedly urged its strict implementation to reduce prison overcrowding.

5. Interplay Between Arrest, Remand and Bail

These three procedural stages form a **continuum of liberty and restraint**. Arrest initiates the curtailment, remand prolongs it under judicial oversight, and bail restores liberty under conditions. The Constitution and the BNSS envision **judicial scrutiny at each stage** to ensure proportionality and prevent abuse.

However, in practice, mechanical remands and perfunctory bail denials have transformed this continuum into a conveyor belt of incarceration. The Supreme Court's recent interventions in *Siddharth* and *Satender Kumar Antil* thus aim to restore the balance envisioned by the law.

Part III — Judicial Interpretation Prior to 2021: The Road to Procedural Fairness

Before the landmark judgments in *Siddharth v. State of U.P.* and *Satender Kumar Antil v. CBI*, the Supreme Court of India had already laid the groundwork for ensuring that the provisions of arrest, remand, and bail under the *Bhartiya Nagarik, Suraksha Sanhita (BNSS)* were interpreted in line with constitutional guarantees, particularly Article 21, which protects the right to life and personal liberty. The Court consistently emphasized that the power to arrest is not an unfettered discretion; it must be exercised judiciously, with necessity, proportionality, and fairness in mind.

The journey of judicial interpretation began with cases like *Joginder Kumar v. State of U.P.*, where the Court highlighted the misuse of arrest powers and underlined that no arrest should be made mechanically merely because the law permits it. The Court insisted that the police must record reasons for an arrest and ensure that the accused is informed of the grounds, and relatives or friends are notified. This principle of necessity became a recurring theme in the Court's

jurisprudence. In *D.K. Basu v. State of West Bengal*, the Court went further, formulating specific safeguards for arrest and detention, including the preparation of an arrest memo, notification to relatives, prompt production before a magistrate, and periodic medical examinations. These guidelines underscored the Court's concern for humane treatment in custody and the protection of personal liberty.

Over the years, the Court also examined the concept of bail and its relation to personal liberty. Early rulings such as *State of Rajasthan v. Balchand* and *Gudikanti Narasimhulu v. Public Prosecutor* emphasized that bail is the rule and imprisonment is the exception, reaffirming the presumption of innocence. The Court recognized that detention before trial should never be punitive and must be proportionate to the needs of investigation, risk of flight, or possibility of tampering with evidence. Economic and social factors were also highlighted to ensure that bail was not effectively denied to the poor through disproportionate sureties, as seen in *Moti Ram v. State of M.P.*

By the mid-2010s, cases like *Arnesh Kumar v. State of Bihar* reiterated that arrests must not be automatic even for non-bailable offences. Police officers were required to apply their mind and ascertain whether arrest was genuinely necessary for investigation, preventing routine arrests for minor offences. The Court stressed that Section 41A CrPC / 35 (3) & (6) BNSS notices could often suffice, and magistrates had to ensure compliance with these safeguards. Similarly, judicial oversight of remand became critical, as the Court recognized that detention orders must be reasoned, limited in time, and strictly supervised to avoid arbitrary deprivation of liberty.

A significant aspect of pre-2021 jurisprudence was the recognition of different categories of offences, which later became pivotal in the guidelines formulated in *Siddharth* and *Satender Kumar Antil*. The four broad categories of offences

distinguished were: offences punishable with imprisonment of less than seven years, serious offences with imprisonment exceeding seven years, offences related to economic crimes such as corruption and financial fraud, and offences involving heinous crimes or sexual offences. This categorization enabled a more nuanced approach to arrest, remand, and bail, ensuring that procedural safeguards and judicial oversight were commensurate with the gravity of the alleged offence while avoiding unnecessary incarceration for minor offences.

Despite these principles, a gap persisted between law and practice. Arbitrary arrests continued, remand orders were often mechanical, and bail was frequently denied even in cases where the accused posed no threat. The judiciary repeatedly emphasized that arrest should be the exception and that the rights of undertrials and the accused must be protected at every stage. Cases such as *Hussainara Khatoon v. State of Bihar* and *Khatri II v. State of Bihar* underscored the link between prolonged detention and the denial of the right to a speedy trial, highlighting the systemic issues in undertrial incarceration. These rulings collectively laid the foundation for the Supreme Court to later issue comprehensive procedural guidelines in *Siddharth* and *Satender Kumar Antil*, consolidating decades of jurisprudence into enforceable standards aimed at preventing abuse of arrest, remand, and bail procedures.

Part IV — *Siddharth v. State of U.P.* and *Satender Kumar Antil v. CBI*: Supreme Court Guidelines on Arrest, Remand, and Bail

The Supreme Court in *Siddharth v. State of U.P.* (2021) and *Satender Kumar Antil v. CBI* (2022) addressed long-standing concerns about arbitrary arrests, indiscriminate remands, and the denial of bail despite established judicial safeguards. These cases built upon prior jurisprudence such as *Arnesh Kumar v. State of Bihar* and *D.K. Basu v. State of West Bengal*, but went further by

systematizing the approach to arrest, remand, and bail based on the **nature and severity of the offence**, as well as the stage of investigation and trial.

The Court recognized that routine arrests, especially in minor or non-heinous cases, often led to overcrowded prisons, undue mental stress, and a violation of the constitutional guarantee of liberty. To address this, the Court categorized offences into four broad types:

- (i) offences punishable with imprisonment of **less than seven years**, generally considered minor;
- (ii) offences punishable with imprisonment of **seven years or more**, involving serious but non-heinous crimes;
- (iii) offences such as **economic crimes, corruption, and financial fraud**, where evidence is often documentary and flight risk needs assessment; and
- (iv) **heinous and sexual offences**, which carry significant societal implications and require careful consideration of remand and bail.

The Court emphasized that arrests in the first category should be **exceptional**, and in most cases, notice under Section 35(3)&(6) BNSS suffices to secure the presence of the accused. For serious offences punishable with seven years or more, the Court allowed arrest where the police can demonstrate necessity, including the risk of tampering with evidence or interference with witnesses. In the case of economic offences, judicial scrutiny is essential to determine whether pre-trial detention is required for investigation, particularly given the complexity and volume of documentary evidence. For heinous and sexual offences, arrests are more likely, but the Court stressed that remand and bail decisions must still follow reasoned judicial orders to prevent misuse of procedural powers.

The Court also reiterated that **production before a magistrate within 24 hours** remains a mandatory safeguard and that magistrates must record reasons when

authorizing remand. It was clarified that remand should be granted only when truly necessary, and periodic review of custody must be conducted. Bail, the Court held, is generally the rule and denial is the exception; magistrates must balance the gravity of the offence against factors such as the likelihood of absconding, tampering with evidence, or endangering witnesses. The Court specifically cautioned against setting unreasonably high sureties, echoing prior rulings that personal liberty cannot be curtailed indirectly through economic barriers.

In both cases, the Supreme Court also emphasized **judicial accountability**. It directed that failure to comply with these guidelines would attract the possibility of departmental or legal action against errant officers or judicial officers. The Court's decisions reinforced the principle that arrest and detention are not administrative conveniences but constitutional acts affecting the most fundamental human right — liberty. They also codified that **remand, arrest, and bail must be proportionate to the offence and the circumstances of the accused**, ensuring fairness, consistency, and transparency in criminal procedure.

These judgments mark a significant step in consolidating decades of Supreme Court jurisprudence. They effectively operationalize the four-category approach, making it clear that the decision to arrest, remand, or grant bail is not merely a procedural formality but a carefully reasoned action subject to judicial review. By doing so, the Court has sought to harmonize the goals of criminal investigation with the constitutional mandate to protect personal liberty, reducing arbitrariness while maintaining the integrity of law enforcement and justice delivery.

Conclusion

The judgments in *Siddharth v. State of U.P.* and *Satender Kumar Antil v. CBI* represent a watershed moment in the Supreme Court's efforts to balance effective law enforcement with the protection of individual liberty. By providing a structured, four-tier framework for assessing arrest, remand, and bail, the Court has clarified the exercise of discretionary powers, minimizing arbitrariness and ensuring that constitutional safeguards are not subordinated to procedural expediency.

These decisions reaffirm that the criminal justice system must prioritize proportionality, fairness, and judicial oversight at every stage of investigation and trial. They reinforce the principle that liberty is the norm and pre-trial detention the exception, demanding that both police officers and magistrates justify interventions that restrict personal freedom. Moreover, the Court's emphasis on accountability—through reasoned orders, periodic review of custody, and the possibility of legal or departmental consequences for non-compliance—strengthens the rule of law and promotes public confidence in the judiciary.

Ultimately, these rulings consolidate decades of jurisprudence into actionable guidelines, operationalizing a framework that is both principled and practical. They signal a paradigm shift in criminal procedure, one where the protection of individual rights and the demands of effective investigation coexist in a reasoned, transparent, and just manner. The Supreme Court, through these judgments, has underscored that liberty is not a procedural afterthought but the cornerstone of justice in a democratic society.

DISPOSAL OF PROPERTY IN CRIMINAL CASES IN INDIA:

1. Introduction

Every criminal case involves not only an accused and a victim but often a *thing*—a property, object, document, vehicle, or contraband—that forms the subject matter or evidence of the alleged offence. The seizure and subsequent custody of this property are essential to investigation and prosecution, yet after seizure, these materials remain in the custody of the police or the court for years. This scenario has created enormous administrative and ethical difficulties: valuable vehicles corrode in police yards, perishable goods decay, and valuable contraband risks theft or tampering.

Recognising this, the framers of the Code of Criminal Procedure, 1973 introduced a dedicated scheme (Sections 451–459) to regulate how courts should deal with property seized during investigation or trial. The objective is to ensure (i) proper custody and preservation, (ii) return to rightful owners where possible, (iii) sale or destruction of perishable or hazardous items, and (iv) accountability in every case.

The law has been further refined by numerous Supreme Court and High Court judgments, which repeatedly stress that the purpose of seizure is not to punish but to preserve evidence and prevent misuse. Yet, the ground reality remains problematic—thousands of seized vehicles and goods languish in police malkhanas, costing crores of rupees in maintenance and losing evidentiary value.

As India transitions towards the new *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS), which will replace the CrPC, the issue of disposal of property assumes renewed importance. BNSS Sections 499–507 substantially replicate

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CrPC Sections 451–459, underscoring the continued relevance of the judicial principles discussed herein.

Section 499 — Order for Custody and Disposal of Property Pending Inquiry or Trial Essence: This provision empowers criminal courts to make orders regarding the **interim custody**, preservation, or disposal of property produced during investigation or trial.

Key Elements:

- Judicial power is exercisable at any stage before final adjudication.
- The court may order delivery to a person claiming entitlement, subject to bond and security.
- Mandatory recording of photographic and digital evidence of the property’s condition before release.

Judicial Guidance: In *Sunderbhai Ambalal Desai v. State of Gujarat*⁵, the Supreme Court directed Magistrates to act promptly, observing that “valuable vehicles and goods should not be allowed to rust in police custody.” Similarly, in **General Insurance Council v. State of A.P.**⁶, the Court advised release of insured vehicles to legitimate claimants rather than retaining them unnecessarily.

Under the BNSS, Section 499(3) explicitly incorporates this principle by recognising **electronic documentation** as valid evidence of property condition.

Section 500 — Disposal of Property after Conclusion of Trial

Once the trial concludes, the court must issue a definitive order determining the fate of the property—return, destruction, or confiscation. Disposal can occur only **after the expiry of the appeal period**, except for perishable or hazardous materials.

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Judicial Standards: The Supreme Court in *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*⁷ affirmed that confiscation must satisfy tests of **proportionality and due process**.

High Courts have similarly ruled that property belonging to innocent third parties should be returned, not confiscated, unless proved to be part of the crime.

BNSS Section 500 codifies this equitable discretion, ensuring courts balance evidentiary and ownership interests.

Section 502 — Appeal Against Disposal Orders

An appeal lies against any order made under Sections 500 or 501. This ensures **judicial oversight** and prevents arbitrary deprivation of property rights. The appellate court (usually the Sessions Court) may modify, confirm, or annul the disposal order. High Courts have repeatedly reminded subordinate courts to record reasons in disposal orders to withstand appellate scrutiny.

Section 503 — Destruction of Libellous or Obscene Matter

This provision empowers courts to order destruction of obscene or defamatory material—books, images, or digital content—that form the subject of an offence.

In the context of digital media, BNSS expands the court’s power to include deletion from electronic storage and servers. Courts are to exercise this power judiciously, ensuring material destruction only after conviction and with proper record.

Section 505 — Procedure by Police upon Seizure of Property

When property is seized by the police but not produced before a court, Section 505 mandates the officer to report the seizure to the Magistrate for directions.

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This ensures judicial control over all seized items, preventing misuse or illegal retention.

Section 506 — Disposal When No Claimant Appears

If no person establishes ownership within six months, the court may order sale or confiscation of the property. However, before such disposal, due public notice is mandatory. BNSS modernises this process by allowing **electronic publication** of notices and **online auctions**, enhancing transparency.

Section 507 — Sale of Perishable Property

This provision allows **immediate sale or destruction** of perishable, hazardous, or low-value items. The proceeds must be deposited in court or treasury, subject to later claims.

Judicial directions under *Union of India v. Mohanlal*⁸ mandated that narcotics, explosives, or decaying goods must be destroyed or sold within six months under supervised documentation.

BNSS Section 507 carries forward this principle with express statutory authority for *digital evidence of destruction*.

Landmark Judicial Interpretations

Although the BNSS is recent, the long-standing jurisprudence under the CrPC remains authoritative and will continue to guide the application of BNSS

Section 499–507. The following leading judgments are essential precedents.

Sunderbhai Ambalal Desai v. State of Gujarat, (2002) 10 SCC 283

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This decision remains the cornerstone for all disposal matters. The Supreme Court lamented the large number of vehicles lying in police yards for years and held that magistrates must act swiftly under Section 451 CrPC (now Section 499 BNSS).

“It is of no use to keep such seized vehicles in police custody for a long time. ... It is for the Magistrate to pass appropriate orders immediately by taking proper bond and guarantee.”

The Court directed all criminal courts to adopt *supurdnama* release as the norm, subject to photographs, panchnamas, and bonds to produce the vehicle when required.

Relevance to BNSS: The same principle now guides Section 499 BNSS—prompt judicial action, digital documentation, and conditional interim release.

Basavva Kom Dyamangouda Patil v. State of Mysore, AIR 1977 SC 1749

The Court underscored that property seized by police is *custodia legis*, and the court owes a duty of care. Any loss or theft of such property from the court’s custody amounts to administrative failure.

The judgment highlighted the moral and constitutional responsibility under Article 300A to safeguard citizens’ property.

Vijay Madanlal Choudhary v. Union of India, (2022) 10 SCC 1

In upholding the Prevention of Money Laundering Act, 2002, the Court confirmed that confiscation under special statutes can coexist with the general

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procedure of the CrPC/BNSS. Courts must, however, ensure due process before depriving ownership.

Denash v. State of Tamil Nadu, 2025 INSC 1258 (Supreme Court)

This recent landmark clarified that the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022 do not divest Special Courts of power to grant interim custody of seized conveyances to innocent owners.

The Court held:

“The power of the Special Court under the NDPS Act to pass orders for interim custody or disposal is preserved; the 2022 Rules operate in addition to, not in derogation of, judicial powers.”

Significance: BNSS Section 499, when read with NDPS Section 52A and the 2022 Rules, mandates coordinated judicial oversight rather than bureaucratic stagnation.

Disposal of Property under Special Statutes in India

The BNSS operates as the *general procedural law* for all criminal proceedings in India. However, numerous **special statutes** contain *self-contained mechanisms* governing seizure, confiscation, and disposal. Judicial interpretation has consistently favoured **harmonious construction** — the BNSS applies unless expressly excluded by the special statute.

The Supreme Court in *Vijay Madanlal Choudhary v. Union of India*⁹ reaffirmed that procedural fairness from the general criminal law must inform even special confiscatory regimes.

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)

Statutory Scheme

- **Section 52A:** Inventory, sampling, and certified destruction of narcotics.
- **Section 63:** Confiscation of property used in offences.
- **NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022:** Detailed procedural framework.

Judicial Evolution

- *Union of India v. Mohanlal*, (2016) 3 SCC 379 — Directed creation of *Drug Disposal Committees*; mandated destruction of seized drugs within six months.
- *Denash v. State of Tamil Nadu*, 2025 INSC 1258 — Held that 2022 Rules do **not** restrict judicial power to grant interim custody; the Special Court retains discretion under BNSS Section 499.
- *R. Manimaran v. State of Tamil Nadu*, 2025 Mad HC — Ordered release of vehicles under *supurdnama*, emphasising photographic documentation and insurance verification.

Effect: The NDPS framework and BNSS complement each other—the former provides technical rules; the latter provides judicial authority and constitutional safeguards.

Forest and Wildlife Laws

Statutory Framework

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- *Indian Forest Act, 1927* —Section 52–61: Seizure and confiscation of forest produce, vehicles, tools.
- *Wildlife (Protection) Act, 1972* — Section 39: Seized wildlife or trophies vest in the State.

Judicial Interpretation

State of M.P. v. Madhukar Rao, (2008) 14 SCC 624 — Confiscation by authorised officers before conviction is valid if due process is followed.

BNSS Application: When seized forest property is produced before a Magistrate, courts may either—

- Release it on *supurdnama* under **BNSS Section 499**, or
- Direct transfer to authorised officers pending departmental confiscation under **BNSS Section 505**.

Arms Act, 1959 & Explosives Laws

Statutory Provisions

- **Section 32 Arms Act** — Confiscation of arms or ammunition involved in offences.
- **Section 7 Explosive Substances Act** — Similar confiscation powers.

Practice:

After trial, lawful arms of acquitted persons must be returned (BNSS Section 500).

Unclaimed or prohibited weapons are destroyed under **BNSS Section 507** after appeal periods expire.

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CG Excise Act, 1915

- Sections 47 to 50 of the *Chhattisgarh Excise Act, 1915* regulate the seizure, confiscation, and disposal of liquor, materials, and vehicles used in excise offences. The **Collector or authorised officer** may confiscate such property after giving notice and hearing the owner.
- Under **Section 47-A**, interim release is allowed on bond or security, but once confiscation proceedings begin, **Magistrates have no jurisdiction** to order release or disposal, as held in *Dinesh Kumar v. State of C.G.* (2016) and *Kallo Bai* (1999).
- Confiscation proceedings are **independent of criminal trials**, and acquittal does not automatically restore the property. Disposal usually occurs through **destruction of liquor or auction of vehicles and implements**, with proceeds deposited in the Treasury. Courts emphasise **timely and fair disposal**, avoiding delay or deterioration, consistent with *Sunderbhai Ambalal Desai v. State of Gujarat* (2002). The framework is thus self-contained, ensuring enforcement efficiency while upholding due process and property rights.

The Chhattisgarh Agricultural Cattle Preservation Act, 2004

Under The Chhattisgarh Agricultural Cattle Preservation Act, 2004 the property (cattle and any vehicle used for illegal transport) is seized. Seized cattle are held by a registered cow shelter until the legal proceedings conclude, and the shelter can charge the owner for their maintenance. The vehicle used to transport the cattle is also subject to seizure and cannot be released until after the court's final judgment.

Cattle

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- **Interim custody:** The seized agricultural cattle are placed under the interim custody of the nearest registered cow shelter, cow-sadan, or other registered institution.
- **Maintenance charges:** The institution in charge of the cattle may levy charges for their care and maintenance from the owners.
- **Final disposal:** The final fate of the cattle is determined by the court after the prosecution concludes.

Vehicles

- **Seizure:** Any vehicle used to transport agricultural cattle for slaughter is liable to be seized by the authorities.
- **Release:** The vehicle will not be released by the court on bond or surety until after the final judgment or at least six months from the date of seizure, whichever is earlier.
- **Confiscation:** The vehicle is also liable for confiscation at the end of the trial.

Disposal of Property under the Essential Commodities Act, 1955

- The *Essential Commodities Act, 1955* empowers the State and Central Governments to regulate production, storage, and distribution of essential goods and to confiscate property involved in violations. Under **Section 6A**, the **Collector** may confiscate essential commodities, packaging materials, vehicles, or equipment seized in connection with contraventions of control orders. The owner must be given **notice and opportunity of hearing** before confiscation, and an **appeal lies to the Sessions Court** under **Section 6C**.

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- The **Special Court** or Magistrate has **no jurisdiction** to release or dispose of seized goods once confiscation proceedings begin — a statutory **bar similar to that under the Excise Act**. The Collector may order **sale, distribution, or destruction** of perishable or hazardous goods, following government directions.
- Courts have held that confiscation under this Act is **independent of criminal prosecution** (*Shambhu Dayal Agarwala v. State of West Bengal*, AIR 1990 SC 1887), and that **delay or arbitrary seizure violates Article 14**. Judicial practice stresses prompt disposal, especially of perishable commodities, in line with *Sunderbhai Ambalal Desai v. State of Gujarat* (2002). The disposal framework ensures that seized goods serve public interest, prevent hoarding, and uphold fairness through notice, hearing, and appeal.

IT Act 2000 and Digital Evidence

Though the IT Act lacks explicit disposal provisions, courts increasingly apply BNSS Section 499–500 to **digital property**.

- *Vishal Ramesh Khatwani v. State of Karnataka*, 2024 Karn HC — Directed release of seized laptops after creating *forensic clones* with verified hash values, balancing evidentiary preservation and property rights.

Digital property thus falls under the protective umbrella of BNSS Section 499(3), read with *Bharatiya Sakshya Adhinyam*, 2023.

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6. Recent Judicial Developments (2024–2025) and Practical Challenges

The years **2024 and 2025** have seen the judiciary actively applying the newly enacted BNSS provisions in coordination with special laws. Courts have reasserted that *prompt disposal of property* is a **constitutional obligation** under Article 300A, and delay amounts to denial of due process under Article 21.

6.2 Emerging Judicial Trends

1. **Digitalisation:** Courts insist on photographs, metadata, and online records of seized property.
2. **Time-Bound Action:** Six-month outer limits for disposal are being judicially enforced.
3. **Victim-Oriented Approach:** Innocent owners or third parties are given restitution priority.
4. **Integration of Technology:** Electronic property (laptops, phones, cryptocurrency) is treated as “property” under BNSS Section 499.
5. **Accountability:** Magistrates and police officers are made personally responsible for negligence or delay.

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Conclusion

The effective disposal of property in criminal cases is a litmus test of judicial administration. The BNSS (Sections 499–507) realises a modern legal framework that harmonises judicial discretion with technological accountability. However, law alone is insufficient. Its spirit must be realised through:

- **Judicial will** (prompt, reasoned orders);
- **Administrative capability** (secure storage, digital systems); and
- **Legislative clarity** (rules that prescribe timeframes and processes).

Judicial precedents from *Basavva Patil* and *Sunderbhai Desai* to recent decisions such as *Denash (2025)* show a continuous judicial insistence on timely, transparent and fair disposal. These cases instruct that courts are trustees of seized property; delay or negligence converts judicial custody into de facto dispossession.

Implementing BNSS effectively will protect property rights (Article 300A), ensure procedural fairness (Article 21), and enhance public trust in criminal justice. The recommendations above—digital e-Malkhana systems, time-bound statutory rules, district PMCs, e-auction infrastructure, and training—provide a practical roadmap. Judicial officers, as stewards of *custodia legis*, must lead this reform through reasoned orders, monitoring, and insistence on accountability.