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ATTACHMENT AND RESTORATION OF PROPERTY OF PROCLAIMED PERSONS UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: A CRITICAL ANALYSIS OF PROCEDURAL SAFEGUARDS AND PROPERTY RIGHTS

Abstract

The attachment of property belonging to a proclaimed person is an important procedural measure intended to secure compliance with criminal court proceedings. However, the exercise of this power may also affect the property rights of the person concerned and innocent third parties, particularly where ownership is joint, disputed or inadequately verified. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) regulates proclamation, attachment, objections, restoration and appeal principally through Sections 84 to 89. Although the statutory framework provides safeguards, their effectiveness depends on strict compliance with procedural requirements, independent judicial application of mind and proper identification of the property sought to be attached. This paper critically examines the relationship between attachment and restoration, the position of third-party claimants, the statutory restrictions on sale, and the constitutional protection of property under Article 300A. It analyses relevant judicial decisions interpreting the corresponding provisions of the Code

of Criminal Procedure, 1973, including the Allahabad High Court's decision in *Raju Maurya v. State of Uttar Pradesh*. The paper argues that attachment must remain a measure directed towards securing the administration of justice rather than a form of punishment imposed before adjudication. It concludes that reasoned orders, verification of ownership, meaningful hearings, proportionate execution and timely restoration are essential to reconcile effective criminal procedure with the rule of law.

Keywords

Attachment of Property; Proclaimed Person; BNSS; Restoration; Property Rights; Procedural Safeguards.

Introduction

The administration of criminal justice depends upon the ability of courts to secure the presence of persons required to participate in judicial proceedings. Where a person against whom a warrant has been issued absconds or deliberately conceals himself to avoid its execution, the law provides mechanisms intended to compel appearance and prevent the frustration of judicial process. One such mechanism is the attachment of property belonging to the proclaimed person.

Attachment, however, is not an inconsequential procedural step. It may prevent the owner from dealing with property, disrupt the use of productive assets and cause serious hardship where the attached property is a residence, agricultural land, business equipment or household articles. The consequences may extend beyond the person whose appearance is sought. In a joint family, for example, indiscriminate attachment of household goods may affect relatives who neither absconded nor own the property attributed to the proclaimed person.

The Bharatiya Nagarik Suraksha Sanhita, 2023, which came into force on 1 July 2024, substantially retains the earlier statutory framework while expressly addressing international assistance concerning property situated in a contracting State. Sections 84 to 89 deal with proclamation, attachment, assistance concerning property abroad, claims and objections, restoration and appeal.[1] These provisions must be read together because the validity of

attachment depends upon compliance with the proclamation procedure, while its continuation and eventual restoration depend upon subsequent statutory conditions.

The central objective of this paper is to examine whether the BNSS sufficiently balances the need to secure the presence of an absconding person with the protection of legitimate property interests. It analyses the statutory framework, relevant judicial decisions and constitutional principles, and proposes safeguards to prevent attachment from becoming arbitrary or punitive in operation.

2. Research Methodology

This paper adopts a doctrinal and analytical method of legal research. The principal sources are the BNSS, 2023, the Constitution of India, relevant provisions of the repealed Code of Criminal Procedure, 1973 (CrPC), and judicial decisions interpreting the corresponding provisions. Secondary materials are used only to clarify the statutory framework and its practical implications.

Since the BNSS came into force recently, judicial decisions delivered under the CrPC remain relevant where the language and purpose of the corresponding provisions are materially similar. Such decisions must nevertheless be applied cautiously, with attention to the wording of the BNSS and the particular facts of each case.

The research has four objectives: to explain the procedure for attachment and restoration; to assess the safeguards available to proclaimed persons and third-party claimants; to examine the constitutional implications of attachment; and to recommend practical measures that improve procedural fairness without undermining legitimate criminal proceedings. This is a doctrinal study and does not claim to be based on empirical fieldwork or statistical data.

3. Statutory Framework Under the BNSS, 2023

3.1 Proclamation under Section 84

Section 84 provides the legal foundation for proceedings against a person who absconds or conceals himself to prevent execution of a warrant. The court must have reason to believe that the statutory conditions are satisfied and must issue a written proclamation requiring the

person to appear at a specified place and time. The prescribed period and modes of publication are essential components of the procedure.

A proclamation cannot be treated as a routine administrative formality. The court must apply its mind to whether the available material supports the belief that the person has absconded or is concealing himself to evade execution of the warrant. Mere absence from a known address, without more, should not automatically be equated with deliberate evasion.

Section 84 also provides for a declaration as a proclaimed offender in specified serious cases subject to the statutory conditions. The distinction between a proclamation and the additional declaration is significant because the legal consequences depend upon the applicable subsection and the nature of the offence.

3.2 Attachment under Section 85

Section 85 authorises the court issuing the proclamation to order attachment of movable property, immovable property or both belonging to the proclaimed person. The court must record reasons in writing. Attachment may ordinarily follow the proclamation; simultaneous attachment is permitted where the statutory conditions concerning the anticipated disposal or removal of property are satisfied.

The requirement to record reasons is a substantive safeguard. An attachment order should identify the property and explain the basis for concluding that it belongs to the proclaimed person. Where simultaneous attachment is sought, the order should also disclose the material supporting the belief that the property is likely to be disposed of or removed from the court's local jurisdiction.

The provision prescribes different methods for attaching movable and immovable property. The method selected should correspond to the nature of the asset and the purpose of attachment. The power is not an unrestricted authority to seize every article found at premises associated with the proclaimed person.

3.3 International Assistance under Section 86

Section 86 addresses property situated in a contracting State. It provides a statutory route for requesting assistance concerning the identification, attachment and forfeiture of property

abroad, subject to the prescribed requirements and the international cooperation framework in the BNSS.

This provision reflects the reality that persons may transfer or maintain assets outside India. Nevertheless, the cross-border location of an asset does not remove the need for a lawful basis, reliable identification and compliance with applicable procedures. International cooperation must operate within the domestic statutory framework and relevant treaty arrangements.

3.4 Claims and Objections under Section 87

Section 87 permits a person other than the proclaimed person to lodge a claim or objection asserting an interest in the attached property that is not liable to attachment. The statutory period is six months from the date of attachment. The court must inquire into the claim and may allow or disallow it, wholly or partly.

This provision is especially important where property is jointly owned, inherited, mortgaged or held by a person other than the proclaimed person. The right to object would be ineffective if the court merely accepted the police's description of the property without examining ownership documents and the claimant's evidence.

Where a claim or objection is disallowed wholly or partly, the statute permits the claimant to institute a suit within one year to establish the asserted right, subject to the statutory consequences of the court's order and the result of the suit.[1]

3.5 Release, Sale and Restoration under Section 88

Section 88 regulates the release, sale and restoration of attached property. If the proclaimed person appears within the time specified in the proclamation, the court must order release of the property from attachment. Where the person does not appear within that period, the property is placed at the disposal of the State Government, subject to statutory restrictions.

Ordinarily, the property cannot be sold until six months have expired from the date of attachment and the claims or objections under Section 87 have been disposed of. The statute recognises exceptions where the property is subject to speedy and natural decay or where sale would benefit the owner.

Section 88 also provides a restoration mechanism for a person who appears voluntarily or is apprehended and brought before the court within two years from the date of attachment, provided the statutory conditions are proved. The applicant must establish that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant and that he did not have notice of the proclamation sufficient to enable him to appear within the specified time. The property, net sale proceeds or the remaining property, as applicable, may then be delivered after deduction of costs incurred because of the attachment.

3.6 Appeal under Section 89

Section 89 provides an appellate remedy against rejection of an application for restoration under Section 88. The existence of an appeal is significant because restoration proceedings may determine whether property or sale proceeds remain with the State or return to the person entitled to them. An appellate remedy, however, can provide effective protection only if the original order contains adequate reasons and the relevant record is preserved.

4. Attachment as a Procedural Measure, Not Punishment

The principal justification for attachment is to secure the presence of a person who is evading the criminal process. It should not be confused with a final determination of guilt or treated as an independent punishment for the alleged offence. Attachment is distinct from confiscation: the former operates under a particular procedural framework, while permanent deprivation of property requires its own lawful basis.

The Supreme Court considered the purpose of the corresponding provisions in *Vimalben Ajitbhai Patel v. Vatslaben Ashokbhai Patel*, explaining that the attachment mechanism under the CrPC was intended to secure the accused's presence and that, once this purpose was achieved, the attachment should be withdrawn in accordance with law.[2] The principle is important under the BNSS because it directs attention to the purpose for which the power exists.

The decision should not be interpreted to mean that every appearance automatically resolves every question concerning restoration. The applicable statutory route remains important. Appearance within the proclamation period engages the mandatory release provision, while

an application made under the later restoration mechanism must satisfy the conditions specified in Section 88.

The practical implication is that a court should not continue attachment mechanically after the purpose of securing attendance has been achieved. Equally, it must not disregard express statutory restrictions or the rights of third parties. The court must identify the applicable provision and pass an order consistent with its conditions.

5. Judicial Scrutiny and Verification of Ownership

A central issue in attachment proceedings is whether the property actually belongs to the proclaimed person. The presence of an article at a family residence or the association of a property with an accused person does not, by itself, establish exclusive ownership. Title documents, purchase records, bank statements, registration particulars and other relevant evidence may be necessary to determine the ownership or interest attributable to the person concerned.

This issue was addressed directly by the Allahabad High Court in *Raju Maurya v. State of Uttar Pradesh*, Neutral Citation No. 2024:AHC:192918, decided in December 2024.[3] The case arose from the attachment of household articles belonging to a family in proceedings concerning an accused who could not be traced. The court noted that the record did not establish that the articles had been purchased from the earnings of the absconding accused. It criticised the indiscriminate attachment of family property without adequate verification and directed the release of the attached goods.

The decision is significant because it connects statutory compliance with practical fairness. Attachment cannot be justified merely by the relationship between the proclaimed person and the person possessing the property. Nor should an entire household be deprived of essential goods simply because one family member is accused of absconding.

In its discussion of Sections 84 and 85 of the BNSS and their corresponding CrPC provisions, the High Court emphasised the importance of judicial application of mind and verification that the property belongs to the proclaimed person.[3] This approach supports the view that the ownership requirement is a substantive limitation on the power, not a procedural detail that can be overlooked.

The decision also highlights the consequences of excessive attachment. Household articles may have modest monetary value but substantial practical importance to the family. Their removal can interfere with ordinary living conditions and may cause deterioration or loss before a final decision is made. Courts should therefore consider both ownership and the proportionality of the proposed method of attachment.

6. Third-Party Claims and the Right to a Meaningful Hearing

Section 87 is a statutory safeguard for persons whose interests may be affected by attachment even though they are not the proclaimed person. Potential claimants include co-owners, family members, mortgagees, purchasers, business partners and persons asserting an independent legal interest in the property.

The provision requires an inquiry into the claim or objection. A meaningful inquiry should involve consideration of the documents and circumstances relevant to ownership and the extent of the claimant's interest. The court should explain why the asserted interest is, or is not, liable to attachment. A summary rejection that does not address material evidence risks making the statutory remedy ineffective.

Family relationships should not be treated as conclusive evidence in either direction. A relative's possession of property does not automatically establish that the property belongs to the relative, but neither does the relationship with the proclaimed person establish that the property belongs to the proclaimed person. The question must be decided on the evidence and applicable law.

The six-month period for making a claim also raises a practical concern. A person who does not receive timely information about the attachment may be unaware of the need to act. Courts and executing authorities should, where reasonably possible, ensure that affected persons receive clear information about the order and the statutory remedy. The procedure should also preserve the distinction between the criminal court's inquiry under Section 87 and the civil suit that the statute permits after rejection of a claim.

A fair third-party procedure does not weaken attachment powers. It helps ensure that the power is directed only at property legally liable to attachment and prevents the State from imposing avoidable hardship on persons unconnected with the alleged evasion.

7. Restoration of Property and the Importance of Statutory Time Limits

The restoration provisions are intended to prevent attachment from becoming an irreversible deprivation in circumstances where the statutory conditions for return are satisfied. Section 88 distinguishes between timely appearance and later restoration. The two routes should not be conflated.

Where the proclaimed person appears within the time specified in the proclamation, the statute directs the court to release the property from attachment. Where the person appears later, the court must examine the conditions prescribed for restoration, including the two-year period and the required proof concerning evasion and notice of the proclamation.

In *Rinku Singh @ Harveer Singh v. State of Uttar Pradesh*, decided on 31 March 2026, the Allahabad High Court considered the corresponding CrPC provisions in the context of an accused who surrendered after attachment.[4] The decision underscores the need to examine the chronology of proclamation, attachment and appearance, and to identify the statutory route applicable to the application. It should be used as an interpretation of the corresponding CrPC provisions, not described as a direct ruling under the BNSS.

The two-year period in Section 88 makes prompt action important. An applicant seeking restoration should preserve evidence relevant to the reasons for non-appearance, including any circumstances bearing on knowledge of the proclamation. The court should assess the evidence in light of the precise statutory conditions and record its reasons.

The sale of attached property raises an additional concern because sale may be difficult to reverse. The statutory waiting period and the disposal of third-party claims are therefore important safeguards. The exceptions permitting earlier sale should not be invoked routinely. Where the court considers early sale necessary, it should record why the statutory exception applies and why the proposed action is appropriate for the property concerned.

8. Constitutional Protection of Property under Article 300A

Article 300A of the Constitution of India provides that no person shall be deprived of property except by authority of law.[5] It does not prevent the State from attaching property in accordance with a valid statute. It does, however, require that interference with property remain within the authority and limits conferred by law.

In attachment proceedings, the constitutional concern is not limited to the existence of statutory power. It also concerns the manner in which that power is exercised. An order that fails to identify the owner, ignores a third-party interest or authorises action beyond the statute may expose the affected person to arbitrary deprivation.

The principle is particularly relevant where a proclaimed person belongs to a joint family or where assets are held by a separate legal entity. The State must establish the legal basis for attaching the relevant property rather than assume that every asset connected with the accused is available for attachment. At the same time, genuine ownership cannot be defeated merely by nominal arrangements intended to conceal the proclaimed person's property. The proper response is an evidence-based inquiry.

The constitutional balance is therefore one of legality and proportionality. Courts must permit attachment where the statutory requirements are met, but must ensure that the action does not extend beyond what the law authorises.

9. Practical Challenges in Implementation

The statutory framework may be weakened by procedural shortcomings. First, proclamation requirements may be treated as formalities rather than conditions that require judicial scrutiny. Secondly, property descriptions may be vague or inaccurate, making it difficult to determine the precise asset affected. Thirdly, ownership may not be verified before execution, particularly where movable articles are found in shared premises.

Further difficulties arise when third-party claimants are unaware of the attachment or cannot obtain the necessary records. Delayed disposal of objections may leave property unused or cause depreciation. Where property has been sold, incomplete records of sale proceeds and expenses may complicate restoration.

These challenges demonstrate why attachment orders should be carefully drafted and supported by reliable material. They also show the importance of maintaining records concerning the property attached, the method of attachment, any receiver appointed, claims received, sale proceedings and the amount retained or deducted. A well-documented process protects both the State and the property holder.

10. Recommendations

First, courts should adopt a structured checklist before ordering attachment. The checklist should cover the validity of the warrant and proclamation, compliance with publication requirements, the material supporting the conclusion that the person has absconded or concealed himself, identification of the property, ownership evidence and the reasons for choosing the proposed method of attachment.

Secondly, attachment orders should state the property details with sufficient precision. In relation to immovable property, relevant registration and survey particulars should be verified. In relation to movable property, the executing authority should prepare an accurate inventory. Where ownership is shared or uncertain, the order should explain the basis for attachment and address how legally distinct third-party interests will be protected.

Thirdly, courts should ensure meaningful consideration of objections under Section 87. Claimants should be allowed to produce relevant evidence, and the resulting order should address the material issues raised. Claims that may affect an impending sale should receive timely attention.

Fourthly, any sale before the ordinary statutory waiting period has expired should be supported by recorded reasons demonstrating that a statutory exception applies. Courts and executing authorities should preserve an auditable record of sale proceeds, expenses and the balance available for restoration.

Fifthly, training should emphasise the distinction between attachment, forfeiture and confiscation. Attachment should not be used as an informal substitute for punishment or as a means of pressuring family members. Finally, courts should give effect to the restoration mechanism where its statutory conditions are met and should ensure that appellate remedies under Section 89 remain practically effective.

These measures would not remove the court's power to secure attendance. Rather, they would make its exercise more accurate, proportionate and consistent with the rule of law.

11. Conclusion

Sections 84 to 89 of the Bharatiya Nagarik Suraksha Sanhita, 2023 establish a connected procedure for proclamation, attachment, third-party objections, restoration and appeal. The framework recognises the legitimate need to prevent persons from defeating criminal

proceedings by absconding. At the same time, it contains safeguards intended to prevent wrongful attachment and unnecessary deprivation of property.

The effectiveness of these safeguards depends on judicial discipline. Proclamation must satisfy statutory requirements; attachment orders must contain reasons; ownership must be verified; third-party objections must receive meaningful consideration; and sale and restoration must comply with the prescribed conditions. The decision in *Raju Maurya v. State of Uttar Pradesh* demonstrates the serious consequences that may follow when property is attached without adequate verification of ownership.

The constitutional protection under Article 300A reinforces the importance of acting strictly within the authority of law. Attachment should remain a procedural measure directed towards securing the administration of justice and must not become punishment before adjudication. A system that combines effective enforcement with precise orders, fair hearings and workable restoration remedies can protect both the authority of criminal courts and the property rights of persons affected by their orders.

References

[1] The Bharatiya Nagarik Suraksha Sanhita, 2023, Act No. 46 of 2023, Sections 84–89, Government of India, official text available at India Code: https://www.indiacode.nic.in/indiacode/handle/123456789/20099?view_type=browse.

[2] *Vimalben Ajitbhai Patel v. Vatslaben Ashokbhai Patel*, (2008) 4 SCC 649, particularly paragraph 32.

[3] *Raju Maurya v. State of Uttar Pradesh and Another*, Application under Section 482 No. 25039 of 2024, Neutral Citation No. 2024:AHC:192918, Allahabad High Court, December 2024.

[4] *Rinku Singh @ Harveer Singh v. State of Uttar Pradesh*, Allahabad High Court, decided 31 March 2026. The decision concerns the corresponding provisions of the Code of Criminal Procedure, 1973; the full judgment and case details should be checked before formal submission.

[5] Constitution of India, Article 300A.

[6] The Code of Criminal Procedure, 1973, Sections 82–86, for comparison with the corresponding BNSS provisions.

[7] Bureau of Police Research and Development, *The Bharatiya Nagarik Suraksha Sanhita, 2023*, Government of India, available at: https://bprd.nic.in/uploads/pdf/Final_BNSS.pdf.