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# Draft Arrest Policy for India

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## ABSTRACT

*This paper looks at the idea of an arrest, the processes that go into it, and the rights that an arrested person has. First of all, it describes arrest as the process of apprehending and securing a person, so robbing them of their autonomy and freedom of movement. The paper then explores the arrest procedures specified in the Criminal Procedure Code of 1973, including warrantless and warranted arrests. Arrests without a warrant are only made for crimes that are considered to be more serious than non-cognizable offences, which are generally considered to be less serious transgressions. The report also goes into detail about the rights that are accorded to the person who has been arrested, including the right to legal representation, the right to know why they were detained, and the right to appear before a magistrate as soon as possible. Guidelines for arrest procedures and the rights of the arrested person have been established by a number of case laws. Critiques of this procedure have been made, nevertheless, especially in relation to India's corruption and related malpractices, which can make it more difficult to detain people legally and protect their rights.*

**Keywords:** CRPC, Detention, Offence, Police Officer, Warrant.

## I. INTRODUCTION

First and first, all people are considered to be human beings, even if they have a history of criminal activity. Even those who are accused of crimes are protected from conviction until they are shown guilty in a court of law. Indian law places a high value on individual liberty and forbids any arrest or detention without a warrant. Article 21 of the Indian Constitution, which guarantees that no person may be deprived of their life or personal liberty other than in accordance with due process, enshrines this protection.

Regretfully, incidents of corruption and related wrongdoing have permeated law enforcement operations at all levels more and more. The ability to arrest someone who is suspected of committing a crime is one of the important authorities that police officers possess, which opens the door to corruption and extortion. When someone is the subject of a case that has been filed against them for a crime that qualifies, police personnel are authorised to make an arrest. Furthermore, they have the authority to hold anyone in custody if they have solid proof that an

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offence has been committed.

Procedures must be "right, just, and fair," according to Article 21 of the Indian Constitution, which forbids any unjust, capricious, ridiculous, or insulting acts. It is anticipated that detentions will have both moral and legal justification. Moreover, the rights of people who have been arrested are acknowledged as fundamental rights by the Constitution.

Neither the Code of Criminal Procedure nor any other pertinent substantive or procedural legislation defines the term "arrest" in clear terms. As used in everyday language, the term "arrest" refers to the process of capturing, holding, or denying someone their constitutional rights. The Supreme Court made it clear that an arrest means being taken into custody in order to face official charges for an alleged crime in the case of *R.R. Chari v. State of Uttar Pradesh*<sup>2</sup>. The court underlined that it concerns an individual being lawfully seized, as allowed by the constitution. In a same vein, the court explained in *State of Punjab v. Ajaib Singh*<sup>3</sup> that an arrest includes any kind of physical constraint used on an individual during their apprehension, regardless of whether there are allegations or suspicious of committing a crime.

#### **(A) Definition and meaning of arrest**

When someone is arrested, their personal freedom and freedom of movement are restricted. This usually happens when there are suspicions that they are involved in criminal activity. Nonetheless, the 1973 Criminal Procedure Code discusses the idea of an arrest but doesn't give a clear definition. A person is essentially placed under restriction when they are arrested and brought into the custody of a legitimate authority. To stop future possible criminal action, the person must then reply to the charges made against them.

The definition of an arrest in legalese is "the act of taking or holding a suspected criminal under legal authority, typically by a law enforcement officer." Legally, an arrest can be made for a crime that the arresting officer witnesses, or it can be made based on probable cause that the person in question is involved in a crime and warrants that are issued by a court following receipt of a sworn statement of probable cause.

## **II. PROCEDURE OF ARREST**

The Code of Criminal Procedure, 1973, describes two different ways to make an arrest:

1. Unwarranted arrests carried out in accordance with the laws that permit them.
2. Arrest using a magistrate's warrant.

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<sup>2</sup> R.R. Chari vs. State of Uttar Pradesh, 1951 SCC 250.

<sup>3</sup> State of Punjab v. Ajaib Singh, (1952) 2 SCC 421.

**(A) Arrest without warrant**

Police personnel are authorised to make arrests under Sections 41, 42, and 151 of the Code of Criminal Procedure (CRPC) without first obtaining a magistrate's warrant. According to **Section 41(1)** of the CRPC, a police officer may make an arrest without a warrant if they discover that the suspect has committed a crime that is punishable by law, has stolen property, has been designated as a proclaimed offender by the state, has obstructed a police officer while they are performing their duties, or has made an attempt to evade custody.

Even in cases of non-cognizable offences, a police officer may make an arrest without a warrant under **Section 42** of the CRPC if the person being held refuses to give the officer their name or address or if the officer believes the information they have been given is untrue.

Similar to this, a police officer may arrest someone without a warrant under **Section 151** of the CRPC if they are suspected of committing a crime that is punishable by law. But in order to proceed, two requirements must be satisfied: first, the suspected offence must be cognizable; second, the officer must think that the suspect's arrest is the only way to stop the offence.

Private citizen actions are also subject to arrest without a warrant. Any private person may arrest or cause the arrest of a person who has committed a cognizable offence, an offence for which there is no bail, or who has been declared an offender in their presence, in accordance with Section 43 of the CRPC. They then have to take the arrested person right away to the closest police station. The police officer may re-arrest the person if they have good reason to think they have committed an offence covered by Sections 41 and 42 of the CRPC.

**(B) Arrest by warrant**

When someone commits a less serious offence known as non-cognizable offence, a warrant is usually issued for their arrest. When an offence carries a sentence of life in prison, the death penalty, or more than two years in jail, this warrant is issued. On behalf of the state, judges or magistrates have the ability to issue such warrants. The CRPC's Sections 70 through 81 describe the whole warrant-based arrest procedure.

The warrant is first issued by the court in writing, addressed to one or more police officers, and bearing the signature of the presiding officer. Any police officer whose name appears on the warrant may carry it out. The arrested individual must then be informed about the warrant by the police officer. After that, the policeman has to bring the person before the court as soon as possible and without any further delay.

**III. ARREST HOW MADE**

Whether an arrest is made with or without a warrant, **Section 46** of the CRPC gives a detailed set of guidelines for the process. According to Section 46(1), the person making the arrest or a police officer must physically touch or detain the subject's body. On the other hand, a female police officer should make the arrest in the same way when dealing with a female suspect. Male police officers are often not allowed to touch or physically restrain female suspects.

When an individual is being detained and tries to resist arrest, police personnel are authorised by Section 46(2) to use reasonable force or techniques to make the arrest. Nothing in this provision, according to provision 46(3), gives a police officer the right to kill someone who isn't suspected of a crime that carries a life sentence or the death penalty.

In addition, Section 46(4) states that a woman cannot be arrested before dawn or after nightfall unless there are special circumstances. When an exception is warranted, a female police officer may only conduct an arrest with the previous consent of a local Judicial Magistrate. This consent must be requested in writing and must include a report outlining the extraordinary circumstances.

#### **IV. DUTIES OF THE POLICE OFFICER WHILE MAKING AN ARREST**

The procedure to be followed when an arrest is not made in compliance with Section 41(1) is outlined in **Section 41(A)** of the CRPC. In certain situations, a notification will be sent out instructing the recipient to appear in person before the issuing authority or at a designated site. This notice may be given if the subject of it is the subject of a legitimate complaint, if a police officer has grounds to believe that the subject is involved in a major offence, or if there is a reasonable suspicion that the subject may have committed a significant offence.

The CRPC's **Section 41(B)** outlines a police officer's obligations when making an arrest. It requires all police officers making an arrest to have properly matched identification on them and to write up an arrest memo. A member of the officer's family or a resident of the area where the arrest occurred must observe and certify to this memorandum. The memorandum must be countersigned by the individual who was arrested. This provision also mandates that the arresting police officer advise the person that they have the right to notify friends, family, or relatives of their arrest.

In the case of **D.K. Basu vs. State of West Bengal**<sup>4</sup>, India's highest court established particular rules that police personnel must follow while making an arrest or holding someone. In order to reduce the number of deaths that occur while a person is in police custody, the Supreme Court

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<sup>4</sup> D.K. Basu vs State of West Bengal, (1997) 1 SCC 416.

also placed certain obligations on police officers.

## **V. RIGHTS OF ARRESTED PERSON**

Arresting someone gives you certain rights under the 1973 Code of Criminal Procedure and the Indian Constitution. According to legal philosophy, there is a concept known as the "presumption of innocence until proven guilty," which requires that those who have been arrested be treated with decency, dignity, and respect until a court of law finds them guilty. Arrested individuals are granted a number of rights under the CRPC, 1973:

### **1. Right to be informed**

A police officer who makes an arrest without a warrant is required by **Section 50(1)** of the CRPC to inform the person being detained of the grounds for their detention. In addition, if the crime has a bail requirement, the arresting police officer must advise the subject of their right to be freed on bond and their capacity to find sureties. The Indian Constitution's Article 22(2) also requires that the person who has been detained be made aware of the reasons for their detention. Moreover, it gives the individual who has been arrested the ability to inform friends, family, and relations of their arrest. The Supreme Court held in the matter of **Joginder Kumar v. State of U.P.**<sup>5</sup> that an individual who has been detained is entitled to disclose their imprisonment to any friend, relative, or family member of their choosing. While the detained person is being transported to the police station, the arresting police officer also has a duty to advise them of their legal rights.

### **2. Right to be released on bail**

According to **Section 50(2)** of the CRPC, the police officer must advise the person who has been arrested of their entitlement to be freed on bond if they have committed an offence for which they are eligible for bail. Until proven guilty, everyone has the right to liberty, as stated in Article 21 of the Indian Constitution. It is the right of the person to be aware that the court may decide to give bail even in situations when the offence is not eligible for it based on the seriousness or nature of the crime. In addition, Section 167 gives the accused the right to be freed on bail if, depending on the circumstances, the investigation into their offence has not been concluded after sixty or ninety days from the start of their imprisonment. When the investigation is not completed within the allotted period, the accused is entitled to bail under this clause, which is also referred to as default bail.

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<sup>5</sup> Joginder Kumar vs. State of U.P, (1994) 4 SCC 260.

In the case of **Uday Mohanlal Acharya v. State of Maharashtra**<sup>6</sup>, the police failed to get evidence against the accused within the allotted investigative period, as stipulated by Section 167 of the Code of Criminal Procedure. Consequently, the court granted default bail to the accused.

### **3. Right to be taken before magistrate without delay**

Any police officer making an arrest, whether on a warrant or not, is obligated by Section 56 of the CRPC to bring the accused before a magistrate within 24 hours of their imprisonment. This does not include the time that is required for transit from the site of the arrest to the magistrate's court.

### **4. Right to consult a legal petitioner**

The accused is entitled to legal counsel from any lawyer of their choice under Section 41D of the CRPC. The accused also has the right to speak with any attorney of their choosing while being questioned, albeit this access may not be granted at all times. In a similar vein, Article 22(2) guarantees the accused person's freedom to choose counsel of their own selection.

### **5. Right to free legal aid**

The provision of legal aid to economically disadvantaged persons to facilitate their navigation of legal disputes or procedures in a court of law or before judicial tribunals and authorities is known as free legal aid. According to Article 39A of the Indian Constitution, it is the state's duty to provide that justice is freely available so that all citizens can easily seek redress in court to protect their rights. A Public Interest Litigation (PIL) was filed in the Supreme Court on behalf of Hussainara Khatoon, a prisoner in a Bihar jail, in the case **Hussainara Khatoon v. State of Bihar**<sup>7</sup>. The Court decided that people who can't afford legal counsel should be entitled to free legal assistance paid for by the government.

### **6. Right to be examined by a medical practitioner**

Section 54(1) of the CRPC stipulates that the accused is entitled to a thorough physical examination. An investigation of this kind might help the accused refute the charge or obtain proof that suggests another individual may have been the offender. But the magistrate's permission is required in order to carry out this investigation.

## **VI. NEED FOR MODIFICATION AND AMENDMENT OF ARREST**

Even with all the rights and protections that the Indian Code of Criminal Procedure 1973

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<sup>6</sup> Uday Mohanlal Acharya vs. State of Maharashtra, (2001) 5 SCC 453

<sup>7</sup> Hussainara Khatoon vs. State of Bihar, 1979 AIR 1369.

provides, it is clear that the authority to make an arrest is often misused and illegally exploited all throughout the nation. This power is frequently used against the jailed person by personal enemies or for the goal of extortion, which includes taking money and other valuable assets. Furthermore, this arrest power often misused in civil disputes, resulting in false allegations against innocent people. Police personnel are endowed with enormous powers that are prone to misuse due to the broad discretion allowed by the CRPC to arrest persons for offences that are eligible for bail, as well as the additional permission for preventative arrest.

The Supreme Court held in the landmark case of *D.K. Basu v. State of West Bengal*<sup>8</sup> that it is illegal to get information from an accused person via third-degree procedures. The Supreme Court provided particular guidelines in this case as well. These included the need for police officers to inform the person they have arrested of their rights, the obligation to refrain from using third-degree torture as a means of obtaining information, and the requirement that they prepare a memorandum and have at least one member of the accused's family attest to it. Furthermore, the court stipulated a number of precautions that the supervising police officer must follow when apprehending the defendant.

The rise in fatalities occurring in Indian prisons is a major justification for updating and changing the nation's current arrest legislation. Custodial fatalities continue even after the Supreme Court of India issued many instructions in a number of historic instances; this is especially true in northern Indian states like Uttar Pradesh. Experts have noted that a flagrant disdain for the Supreme Court's directives by law enforcement agencies is demonstrated by the frequency of fatalities in custody and incidents of police abuse. According to recent data, 4,484 custodial deaths have been reported countrywide in the last two years. At 952, comprising 451 in 2020 and 501 in 2021, Uttar Pradesh registered the greatest number of custodial fatalities in India. West Bengal reported the second-highest number of fatalities in custody, after Uttar Pradesh. Therefore, it is necessary to propose an additional revision to India's arrest laws in order to protect our country's inhabitants from arbitrary detentions. The recently passed modifications must be strictly implemented nationally, and those who are discovered to be in violation of the arrest laws must face harsh penalties.

In my capacity as a member of the Law Commission of India, I now propose the following amendments to the country's current arrest laws, which are supported by established legal precedents and verified records, such as Law Commission reports and international agreements:

1. When someone refuses to give their name and address, they may be arrested under

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<sup>8</sup> *D.K. Basu vs State of West Bengal*, (1997) 1 SCC 416.



Section 42 of the CRPC. According to subsection 42(2), an individual may be freed upon posting a bond—with or without sureties—and consenting to appear before a magistrate as needed once their true identity and place of abode have been established. It is required that the bond be backed by a guarantee from an Indian resident if the individual does not live in India. Subsection (2) of Section 42 of the Code of Criminal Procedure should be repealed, according to the Commission, as it is superfluous and redundant.

2. The kinds of criminal or civil offences that are committed might be used to divide the police department into different sections. For example, there could be a division that deals with crimes against minors, another that deals with organised crime or terrorism, a unit that specialises in cybercrime, and a different division that deals with crimes against women, including honour killings, dowry deaths, and rape, among other things. The Ministry of Law and Justice made a similar suggestion, supporting the reasoning for creating a specialised investigative agency in its previous 154th report. It also applauded the rationale for keeping the police officers in charge of upholding public order apart from the investigation and law enforcement roles.
3. A number of Law Commission studies have indicated the need for changes to the organisational culture and police officer training programme. Officers ought to be required to work no more than 8 or 10 hours a day instead of doing 18-hour shifts. A rotational shift system should be used to execute this in all police stations, guaranteeing that no person works more than two shifts in a 36-hour period.

## **VII. CONCLUSION**

In conclusion, these rules are frequently ignored and not applied as intended, even though they contain provisions that outline the correct protocols for making arrests and protecting the rights of those who are detained. Police personnel routinely disregard their responsibilities and misuse their power. The general public's ignorance of their rights is also a major contributing element to this problem. Even though we may believe that law enforcement officials protect the law, a number of situations show how they have abused their authority.

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