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## RIGHTS OF AN ARRESTED PERSON

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### Abstract

"Innocent until proven guilty", in context to this phrase, it's very obvious that in India the burden of proof to prove any allegation lies upon the prosecution. Until and unless, an accused is proven guilty, he or she cannot be considered a criminal. An accused who is sent behind the bars and undergoing trial is considered an undertrial prisoner, people often mistook an accused person for a criminal. In reality, an accused person is an entity who has been alleged to have committed an offence.

This article is based on research about arrests, the arresting process, and the rights of the arrested. The article begins with defining arrest, saying that it occurs when someone's personal freedom and right to travel freely are taken away from them and they are detained. Next, it was addressed how an arrest is made in accordance with the 1973 Code of Criminal Procedure, which comprises two methods: an arrest with a warrant and an arrest without one. When a person commits a non-cognizable offence, which is a less serious kind of offence, an arrest with a warrant is made. Moreover, an arrest without a warrant occurs when a cognizable offence has been committed, which denotes a more serious element to the offence. The rights of the detained individual were then discussed, including the right to speak with a lawyer, the right to be informed of the charges that led to their detention, the right to an immediate appearance before a magistrate, and others. There are several case laws that have given us a number of principles about an arrest and the rights of the arrested. Nonetheless, there have been a number of instances when this procedure has been

questioned, and a number of concerns have been expressed about how this procedural system in India operates. The extent of corruption and related malpractices in India, which primarily affect the rights of the arrested person and the detention of the proper person, is one of the major drawbacks.

**Keywords:** Arrest, Accused, Cognizable, Non-Cognizable, Criminal, Trial, Warrant, offence, etc.

### INTRODUCTION

The history of crime predates the arrival of humans on our planet. The "accused" and "law" serve as the means to an aim known as "justice," and they are the centre of the criminal justice system. Through "laws," there is a connection between justice and crime. The criminal justice system involves the interactions between crime victims, crime reporters, police, prosecutors, courts, defence attorneys, and staff members of the probation, parole, and prison systems.<sup>1</sup>

The prehistoric guy had no prior exposure to anything like human rights. One could have anticipated that as civilisation arose, some regard for human rights would follow.<sup>2</sup>

Austin asserted that "the law is the sovereign's order." Salmond, however, asserts that "Law is the corpus of ideas recognised and applied by the State in the administration of justice." In other words, the norms that have been accepted and applied by a court of justice make up the law.<sup>3</sup>

<sup>1</sup> Clark, Robert. S, *The Criminal Justice System-An Analytical Approach* (1982), p. 13.

<sup>2</sup> Diwan, Paras and Diwan Peeyushi, *Human Rights and the Law*, Delhi(192), p.(i).

<sup>3</sup> Salmond, J.W., *Jurisprudence*, (11th Edition), p.41.



The main characteristics of law include the following: (a) It is a command issued by a sovereign person backed by sufficient force to command habitual compliance from the majority of society; (b) It is related to justice in that it serves as a means to the end of administering justice; (c) It is uniform and applies to everyone equally; (d) It is administered by courts, and (e) It is enforced by the courts. Justice must thus be delivered in conformity with the law.

### MEANING OF RIGHTS OF THE ACCUSED

There is no definition of "accused" in the Indian Constitution or the Code (Criminal Procedure Code).<sup>4</sup> When used as a noun, the phrase "accused" denotes a defendant in a court case. When used as a verb, it denotes a person who has been charged with an offence. In the Code of Criminal Procedure, the term "accused" refers to an "accused person" or a person who has a crime. The accused is the centre of attention during a trial in any criminal judicial system.

In a criminal prosecution before a court or judicial body, the phrase "accused of any crime" refers to a charge that a person did an act that is punishable by the Indian Penal Code, 1860, or any other specific or local legislation. In the past, people used to judge and brutally punish those who committed crimes because they believed it to be sinful. Inquisitorial techniques were applied during the trial to learn the truth, including various forms of torture and other cruel techniques that go against human dignity.

According to ancient criminal procedure, which was different from the modern criminal procedure, people were kept in custody after they were arrested until their trials in a somewhat secretive manner, and they were unable to prepare for their defence because they were unaware of the reasons for their arrest and detention as well as the evidence against them. In order to force admissions and confessions of guilt that would support their

detention, they were tortured and subjected to brutal treatment while they were detained.

The presumption of guilt of the accused led to a multitude of cruel procedures, such as the third-degree method of extortion for confessions, which included torture. Torture was a crucial component of the ancient legal system, which was predicated on an ordeal test akin to the presumption of guilt.

All criminal laws specify the offences and the associated penalties, but no legislation has ever been passed outlining the rights of the accused individual who is about to go on trial.<sup>5</sup> Unless their liberty has been legitimately restricted by a process that satisfies all due process standards, prisoners are still people with the right to all constitutional protections.<sup>6</sup> When a person is jailed for a crime, their constitutional rights are not completely taken away. The Constitution and the nation's jails are not separated by an iron curtain.<sup>7</sup>

A person who has been accused of a crime is also entitled to have their liberty protected, making their right to do so sacred since they are still considered to be human beings even after being charged with a crime. In actuality, the Indian legal system—constitutional, evidential, and procedural—has comprehensive safeguards for preserving the "fundamental right of an accused" to uphold his human dignity and ensure that he receives the advantages of a just, fair, and impartial trial.

The accused is presumed innocent unless his guilt is proven beyond a reasonable doubt. Law believes that "It is better that ten guilty persons escape than that one innocent suffer."<sup>8</sup> Unless the assumption is disproven, an accused

<sup>4</sup> The term "accused of any offence" is used in Article 20(3) but it ties not been defined in the Constitution; See Article 366 of the Constitution for 'definitions'.

<sup>5</sup> Penal laws like IPC, and other local and special laws provides for offences and punishments. Though Constitution of India (Part III) and some provisions of CrPC provided for some procedural rights to be followed during trial but no separate statute is available which deals exclusively with rights of accused person.

<sup>6</sup> Justice Douglas in *Eve Fall's case* (1974) 417: US 817 4IL Ed. 2D 495; The observation was referred in *Francis Coralle v. Union Territory of Delhi*, AIR 1981 SC 746 at p. 751.

<sup>7</sup> *Francis Coralle v. Union Territory of Delhi*, AIR 1981 SC 746 at p. 751

<sup>8</sup> Blackstone, William Sir, (1723-80), *Commentaries on the Laws of England*, 15<sup>th</sup> Edn. 1809, Vol. 4, p.358.



person is assumed to be innocent.<sup>9</sup> The presumption of innocence is a concept of utmost significance in a criminal trial, and as a result, the guilt of the accused must always be proven beyond a reasonable doubt. Probabilities can never replace proof, no matter how powerful, suspicious, or serious they may be.<sup>10</sup> Increasing the chances that the guilty will be found guilty is the most effective and efficient strategy to reduce crime and create a more compassionate and progressive criminal justice system. The purpose of this list is to outline the rights that accused persons have under the Indian Constitution, including Part I, basic rights, Part IV, Directive Principles of State Policy, and provisions for bail and legal assistance under the Criminal Procedure Code.

When cruel acts like the blinding of prisoners or unlawful police detention take place, accused people or those who are undergoing trials may suffer at the hands of jail officials and be held for years without any legitimate authorization.<sup>11</sup> The National Human Rights Commission has been involved in defending people's rights and freedoms and has given out compensation in several instances. In a series of rulings, the Supreme Court and different High Courts have given instructions to guarantee that police do not abuse their power when questioning suspects and that family members of those being held be informed of their location. In Sunil Batra's case, the Supreme Court correctly noted that "natural law or dharma demands humanitarian treatment even to those in prison." Prisons are constructed with the stones of the law, therefore the court should demand that in the eyes of the law, inmates are individuals, not animals, and punish the aberrant "guardians" of the prison system when they go bonkers and violate the dignity of human inmates.

<sup>9</sup> Kaliram v. State of HP, AIR 1973 SC 277; Santa Ram v. State, AIR 1962 SC 605; also see K. N. Nanavati v. State of Maharashtra, AIR 1962 SC 605.

<sup>10</sup> Babu Singh v. State of Punjab 1964 (1) Cr L J 566; State of Punjab v. Bhajan Singh, 1975 Cr.L. J. 282; Sharda v. State of Maharashtra, AIR 1984 SC 1622

<sup>11</sup> See Rudal Sah v. State of Bihar, AIR 1983 SC 1086; Sant Bir v. State of Bihar, AIR 1982 SC 1470.

## LITERATURE REVIEW

A literature survey or literature review is the documentation of a comprehensive survey or review of the published and unpublished work from secondary sources of data in the areas of specific interest to the researcher. Thus, the following literature has been reviewed:

- R.V.Kelkar's Criminal Procedure, Eastern Book Company
- Ratanlal and Dhirajlal, Code of Criminal Procedure, Lexis Nexis
- Rights of Arrested Person- Case Analysis, Mubashshir Sarshar, National Law University, Delhi
- Rights of Arrested Person by Smarika Azad, Lex Articles

Based on this literature, the following review and preface have been brought up - The presumption of innocence of the accused until he is found guilty after a trial based on legal evidence is one of the fundamental principles of our legal system. Even those who are accused of a crime have the right to protect their liberty, dignity, and freedom in a democratic nation because their rights are inviolate. To safeguard him against police brutality and the arbitrary actions of the state, the accused also has some rights guaranteed by our constitution and criminal procedure code. The rights of the accused encompass their rights at the time of their arrest, during a search and seizure, and throughout the course of the trial. In India, the accused are given several rights, the most fundamental of which are outlined in the Indian Constitution. The main idea behind these rights is that since the government has tremendous resources at its disposal for a criminal prosecution, people have a right to some protection from the government abusing its authority. During the process of any investigation, inquiry, or prosecution for an offence with which he is charged, an accused has certain rights, and he should be safeguarded from unjustified or unlawful arrest. Police are given broad authority to detain someone for a recognised offence without

taking them to court, thus the court must be alert to ensure that these powers are not abused or carelessly utilised for individual gain. No arrest can be made based only on information or mere suspicion. However, damning the testimony of another person may be, even a private individual cannot pursue and detain a person. Though the police have been given various powers for facilitating the making of arrests, the powers are subject to certain restraints. These restraints are primarily provided for the protection of the interests of the person to be arrested, and also of society at large. The imposition of the restraints can be considered, to an extent, as the recognition of the rights of the arrested person. There are, however, some other provisions which have rather more expressly and directly created important rights in favour of the arrested person. State and for that matter, the police as its principal law enforcing agency have the undoubted duty to bring offenders to book. Even so, the law and procedure adopted by the State for achieving this laudable social objective have to conform to civilized standards. The procedure adopted by the State must, therefore, be just, fair and reasonable.<sup>12</sup>

The state and its personnel must under any circumstances abandon the decency of State behaviour in the fight against crime and delinquency and turn to extra-legal measures to identify crimes and even criminals. Even the rights of those who have been arrested and accused are sacred in a democratic society because they do not lose their humanity just because they have been charged with a crime. The laws of India, which are constitutional, evidentiary and procedural—have made elaborate provisions for safeguarding the rights of the arrested to protect his dignity as a human being and giving him benefits of a just, fair and impartial trial.<sup>13</sup>

Although the Code of Criminal Procedure focuses primarily on procedural matters, it also

addresses three separate but closely related topics: the Constitution and judicial authority, the administration of criminal procedures, and the prevention of crimes by proactive intervention. However, the Code sections that grant an accused person specific rights during any investigation, inquiry, or prosecution of an offence with which he is charged are the ones that concern us. However, it has to be taken note that the crimes have to be prevented and criminals punished to maintain the even tenor of life in the community. The basic object of Criminal law is to suppress criminal enterprise. Society must be protected from the transgression of the law. To achieve this end, there must be a correspondence between the crime committed, and the punishment imposed. Undoubtedly, society must be the beneficiary or the larger beneficiary<sup>14</sup>. In a catena of cases, the need for imposing penal sanctions in adequate measure was highlighted. Justice for the victim and the community must be assured by the criminal justice system. Public interest must be served while the human dignity of the arrested must be maintained and the rigour of imprisonment is ameliorated.

**“Arrest” means:**

**“A seizure or forcible restraint; an exercise of the power to deprive a person of his or her liberty; the taking or keeping of a person in custody by legal authority, especially, in response to a criminal charge.”<sup>15</sup>**

An arrest is made to secure the administration of the law or to present the arrested person in court. An arrest serves the purpose of informing the neighbourhood that a person has been accused of a crime and also has the potential to reprimand and dissuade the arrested person from committing other crimes. Both criminal and civil charges can result in an arrest, albeit a civil arrest is an extreme action that the courts do not favour. Limits are imposed on both civil

<sup>12</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597.

<sup>13</sup> R. Deb, RIGHTS OF THE ACCUSED UNDER THE LAW.

<sup>14</sup> Thiruvananthapuram v. State of Kerala, 1993 CrLJ 3242.

<sup>15</sup> Legal Dictionary by Farlex.





and criminal arrests by the federal constitution. In the leading case of *Kishore Singh Ravinder Dev v. State of Rajasthan*<sup>16</sup>, It was claimed that India's laws—the Constitutional, Evidentiary, and Procedural laws—have established extensive provisions for protecting the rights of accused people to preserve their humanity and ensure that they receive the advantages of a just, fair, and impartial trial. But in another significant case, *Meneka Gandhi v. Union of India*, it was determined that the state's the chosen approach had to be just, fair, and reasonable.

### **RESEARCH OBJECTIVE**

Through case law, judicial rulings, established legal concepts, constitutional provisions, journals and essays, the project's goal is to offer an overview of the many aspects and legal principles of "Rights of an Arrested Person."

### **HYPOTHESIS**

To ensure that the state does not act arbitrarily or ambiguously, the research for the project is centred on the concept that a person who is arrested by the police has certain constitutional and statutory rights available to him.

### **RESEARCH METHODOLOGY**

A doctrinal research approach will be employed in the creation of this project. This project work, which is descriptive in nature and analytical in approach, was completed with the use of secondary data, such as websites, papers, books, journals, etc. This project was created with the use of dictionaries, websites, foreign journals, and books. The examination of many sources on the issue, as well as the points recommended by the faculty, are among the topics covered in this project. There are additional footnotes available for citing sources when and where appropriate.

### **RESEARCH QUESTIONS**

1. What does the term 'Arrest' in criminal law means and signifies?
2. What are the rights and legal remedies available to an arrested person?
3. What are the Constitutional rights of an arrested person?
4. What are the rights guaranteed to an arrested person by The Code of Criminal Procedure?
5. What are the relevant judicial pronouncements and case laws enlightening the rights of an arrested person?

### **RIGHTS UNDER INDIAN CONSTITUTION**

The Indian Constitution's Articles 20(3) and 22 also grant the person who has been arrested some rights.

### **ARTICLE 22: Protection against arrest and detention in certain cases**

- (1) No one who is arrested may be held in custody without being promptly informed of the reasons behind the arrest or without being allowed to consult and be represented by a lawyer of his choosing.
- (2) Every person who is arrested and held in custody must appear in court before the closest magistrate within twenty-four hours of their arrest, excluding the time required for travel from the place of arrest to the magistrate's court. No person may be held in custody for an additional day without the consent of a magistrate.

A person who has been arrested is entitled to the following four fundamental rights under Article 22(1) and (2):

- i. Right to prompt disclosure of the circumstances behind the arrest.
- ii. The right to consult with and be represented by a lawyer of his choosing.
- iii. The ability to appear in person before the closest magistrate within twenty-

<sup>16</sup> AIR 1981 SC 625.



- four hours of his arrest, excluding the time required for travel from the place of arrest to the Court of Magistrate.
- iv. The right not to be held in custody for more than twenty-four hours without the magistrate's permission.

### **ARTICLE 20(3): Right Against Self-Incrimination**

A person who is charged with a crime and forced to testify against themselves is protected from testimonial compulsion by Article 20(3).<sup>17</sup>

The "right to silence" is a common law principle that states that parties or prosecutors shouldn't typically allow or encourage courts or tribunals of fact to assume that a suspect or an accused is guilty simply because he has declined to answer inquiries from the police or the Court. Regarding the beginnings of the right to remain silent, the Justice Malimath Committee states that "it was primarily the right to refuse to answer and incriminate oneself in the absence of a sufficient charge." Not initially, the right to refuse to reply to a proper charge." According to the Justice Malimath Committee, despotic societies with arbitrary charges against anybody are the only ones that require the right to silence. It makes the erroneous assumption that if an accusation is "valid," the accused does not require protection. Examining the right to silence and its companion right against self-incrimination is crucial in this context. These are the two components of a fair trial, hence they are exempt from legislative regulation. The fundamental predicate of all procedural laws is the right to a fair trial. It is important to understand how procedural law has developed over time in the historical context of the desire to replace the rule of men with the rule of law. Any declaration or admission made to a police officer is not admissible in court. Confession is the major issue of the right to quiet. The accused may break their silence in front of a magistrate, but it must be voluntary and free from coercion or incentive. The magistrate must

take several safeguards to guarantee the veracity and dependability of the information he mentioned. The right to remain silent and the privilege against self-incrimination have been significantly curtailed by interpretation rather than law. The defendant has the option to testify in his defence if he so chooses. His confession made to a police officer or a magistrate outside of court is admissible. On the promise of forgiveness, he is persuaded to turn on his criminal cohorts. The court has the authority to draw unfavourable conclusions while considering the evidence against him, and he is required to explain every unfavourable circumstance to the court after the evidence.

According to Article 20(3) of the Indian Constitution, "No person accused of any wrongdoing will be compelled to be a witness against himself." everyone has the right against self-incrimination. It is well-established that the accused has the right to remain silent during questioning thanks to the decision in the case of *Nandini Sathpathy vs. P.L. Dani*<sup>18</sup>. As a result, no one may forcefully extract statements from the accused (investigation). By implementing these tests, a violent mental intrusion is being brought back, invalidating the Right to Silence's legitimacy and validity. Narco-analysis, brain mapping, and lie detector tests were declared violations of Article 20 by the Supreme Court in 2010.<sup>19</sup>

### **RIGHT UNDER THE CODE OF CRIMINAL PROCEDURE**

#### **CREDIBLE INFORMATION AND A REASONABLE SUSPICION: -**

A police officer can only make an arrest based on information that is supported by concrete facts. Before making a final judgement in this regard, the police officer must carefully analyse all the evidence that has been presented to him in favour of the arrest. When a police officer makes a mistaken arrest, he will be protected, and an illegal arrest has no bearing on how the

<sup>17</sup> <http://www.lawctopus.com/academike/immunity-self-incrimination/>.

<sup>18</sup> AIR 1978 SC 1025.

<sup>19</sup> <http://www.legalservicesindia.com/article/article/rights-of-arrested-person-1635-1.html>





case will be tried. Similarly to this, if an arrest is made based just on suspicion, it must be justified, and the police should launch an investigation right once. The magistrate must also exercise caution because it is very likely that the police will abuse this power. It would be a fair foundation for suspicion to support an individual's arrest if they are thought to have stolen clothing and are unable to provide a satisfactory explanation. ***State of Uttar Pradesh v. Kasturi Lal***<sup>20</sup>. But mere suspicion wouldn't be sufficient; it must be grounded in reality. ***(Tripura Administration v. Faish Mian)***<sup>21</sup>

#### PURPOSE OF ARREST:

The arrest of a person might be necessary under the following circumstances: -

- (1) ***To secure the attendance of an accused person at trial*** –It becomes obligatory for a defendant to appear at the trial when they are accused of a crime. If sending him a notice or summons is unlikely to guarantee his appearance, probable arrest and custody are the only way to guarantee his presence at the trial.
- (2) ***As a preventive or precautionary measure***– The person who is planning to commit a serious crime (a cognizable offence) may need to be arrested as a preventive measure if there is an immediate risk that the crime will be committed. Other situations might call for the precautionary detention of a habitual criminal, an ex-offender, a person found in suspicious circumstances, etc.
- (3) ***For obtaining the correct name and address***– When a person refuses to provide his name and address when asked by a police officer, there are some situations where it would be appropriate for the police to arrest

that person in order to find out his true name and address.

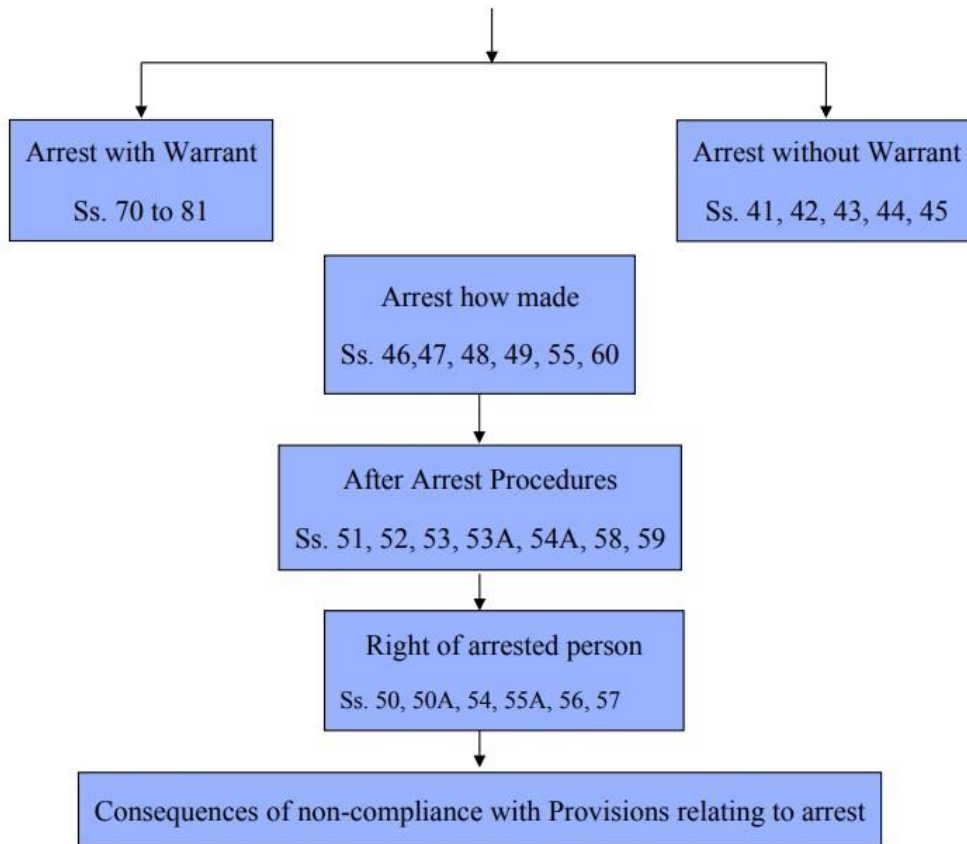
- (4) ***For removing obstruction to police***– Any person who hinders a police officer from performing his duty is and should be subject to immediate arrest by that police officer. For the police to effectively carry out their duties, this is necessary.
- (5) ***For taking a person who escaped from custody***– A person who has escaped from legitimate custody needs to be detained by the police right away.

- **It would be seen that the Code contemplates two types of arrest:**

- (1) Arrest made in pursuance of a warrant issued by a magistrate; and
- (2) Arrest made without such a Warrant but made by some legal provision permitting such an arrest.

<sup>20</sup> Kasturi Lal v. State of U.P, AIR 1965 SC 1039.

<sup>21</sup> Faish Mian v. Tripura Administration, (1962) Cr LJ 673.



**ARREST WITH WARRANT**

A person may need to be arrested in some situations, or it may even be beneficial. The individual's freedom and the needs of the community should be given serious consideration when determining whether such conditions exist and when to make an arrest. The best person to resolve such matters with a good amount of logic, objectivity, and detachment is ideally a judicial official. Therefore, a magistrate must essentially base their decision to arrest the facts they typically get from the police or the complainant. A warrant of arrest would be issued by the magistrate if he decided to make an arrest. The provisions for an arrest with a warrant are covered in Sections 70 to 81.

**ARREST WITHOUT WARRANT**

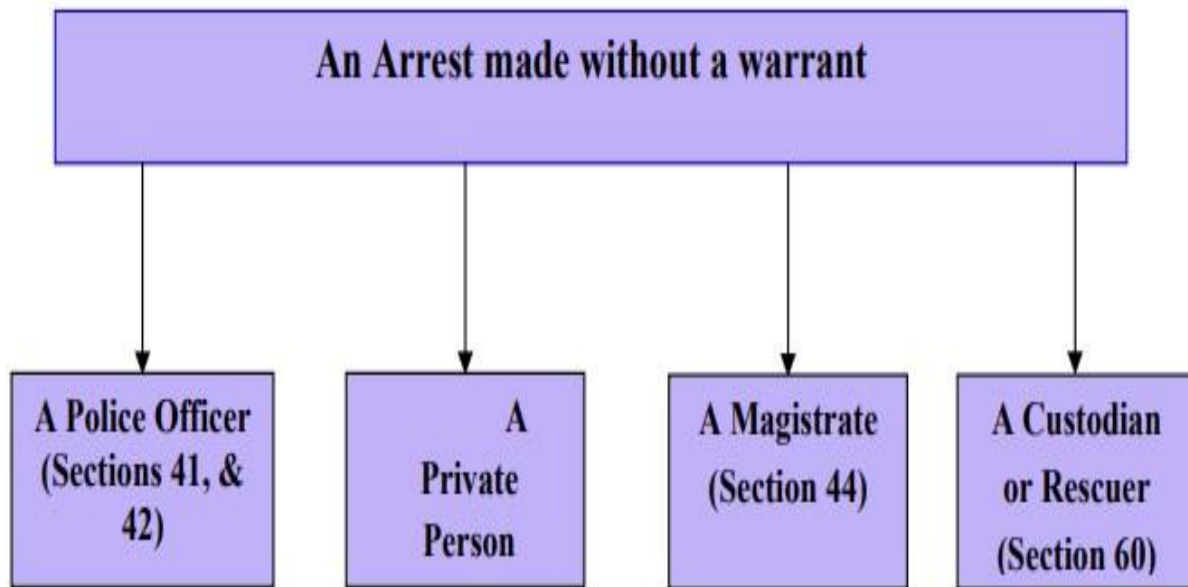
In some cases, a swift and immediate arrest may be required; in these situations,

approaching a magistrate and getting a warrant from him is not an option. For instance, it would be foolish to demand that an arrest be conducted only after getting a warrant from a court in cases when a person has committed a significant crime and there is a likelihood that the individual may flee if not promptly apprehended. In some cases, taking preventative measures may be required to reduce the risk of a criminal upsurge. In certain situations, the decision to arrest will frequently need to be taken by someone other than a court magistrate. In these situations, it is up to the investigating agency to decide whether to make an arrest.

The investigative agency may make arrests in all of these situations, although the Code provides for a quick judicial review following any such arrest. According to the Code (Sections 56 & 57 of the Cr.P.C. and Article 22(2) of the Constitution of India), any person detained without a warrant must appear before the

judicial magistrate within 24 hours of their detention. According to reports, the police frequently disregarded this legal duty. The Kerala High Court ruled in ***Poovan v. S.I. of Police*** that whenever a magistrate receives a complaint that a person has been arrested within his jurisdiction but has not been produced before him within 24 hours or that a

person is being held within his jurisdiction for longer than 24 hours after his arrest, he can and should call upon the police officer concerned to state, whether the allegations are true, and if so, on what and unspecified grounds. The magistrate can conduct an investigation and provide the necessary orders if the officer contests the arrest.



Under the following circumstances, a person may be arrested without a warrant.

- **A police officer may arrest without a warrant (Sec 41<sup>22</sup>)**

A police officer may arrest any of the ten categories of offences listed in Section 41(1) without a warrant or a request from a magistrate.

S. 41 (1)'s use of the term "may" implies that a police officer has discretion while conducting an unwarranted arrest. In the case of ***Binoy Jacob v. CBI***, the Delhi High Court ruled that in a nation with a rule of law, an investigative agency's discretion does not include acting on a whim, fancy, or in a fully arbitrary manner. Because the authority to arrest without a warrant based on suspicion is

subject to misuse, the magistrate must exercise caution.

This section serves as a repository for the broad authority of a police officer to make arrests, although this authority is subject to other Code sections as well as the specific statutes to which the Code is made relevant. A police officer cannot utilise the powers granted by Section 41(1)(d) with regard to a non-cognizable offence if Sec. 155(2) prevents them from doing so without a magistrate's order [***Avinash v. State***].

According to Section 42 of the Criminal Procedure Code, a police officer may also detain anyone who has been charged with a non-cognizable offence and refuses to give his name and address when asked or whom the officer has reason to believe is lying about such information.

<sup>22</sup> Section 41 of Code of Criminal Procedure, 1973 (Hereinafter referred to as CrPC)





The Supreme Court ruled that Articles 21 and 22 of the Constitution already grant an arrested person the right to request information about his arrest, to have someone informed of his arrest, and the right to consult privately with attorneys to ensure transparency in the relationship between the police and the accused. According to the Supreme Court, no one may be arrested since the police officer can do it legally. Being able to arrest someone is one thing. The basis for using it is very different. The police officer must be able to defend the arrest outside the scope of his authority. The reputation and self-esteem of a person might be irreparably damaged by being arrested and held in a police cell. Police officers shouldn't make any arrests until they are reasonably confident in the validity and veracity of the complaint, and they should also have a reasonable suspicion that the subject of the complaint is complicit, if not that an arrest is actual. [Joginder Kumar v. State of U.P.]<sup>23</sup>

**Section 41:- Section 41(1) of Cr.P.C. provides for ten clauses of persons who may be arrested by the police without a warrant. Cases, where a police officer may arrest a person without warrant, are specified in Schedule I of the Code. Sec. 41 is not exhaustive. There are various other Acts, e.g. Arms Act, Explosives Act, etc. which also confer such powers on police officers.**

**1. Notice of appearance before police officer (Sec 41-A<sup>24</sup>)**

A person who is the subject of a complaint or who is being sought for any other reason

than those listed in Section 41 must appear before a police officer, and if they fail to do so, the police may detain them.

**2. Procedure of arrest and duties of officer making arrest (Sec 41-B<sup>25</sup>)**

Every police officer while making an arrest shall

- i. bear an accurate identification;
- ii. prepare a memorandum of arrest which shall be-
  - a. attested by a family member or a respectable member of the locality;
  - b. countersigned by the person arrested; and
- iii. inform the person arrested, unless the memorandum is attested by a family member.

**3. Control room at districts (Sec 41-C<sup>26</sup>)**

The State Government is required to set up a police control room in each district and at the State level; post a notice outside the room with the name and address of the person being arrested as well as the name and rank of the officer, and keep a database accessible to the general public.

**4. Right of arrested person to meet an advocate of his choice during interrogation. (Sec 41-D<sup>27</sup>)**

<sup>23</sup> Joginder Kumar v. State of U.P., 1994 AIR 1349, 1994 SCC (4) 260.  
<sup>24</sup> Section 41A of CrPC.

<sup>25</sup> Section 41B of CrPC.  
<sup>26</sup> Section 41 of CrPC.  
<sup>27</sup> Section 41 of CrPC.

Any individual who is detained by the police and questioned by them has the right to see an advocate of his choosing while being questioned, just not constantly.

- **Arrest on refusal to give name and residence (Sec 42<sup>28</sup>)**

According to this Section, the arrest must be made to ascertain the person's name or residence; following this, the person must be released after executing a bond (with or without sureties) before a magistrate, if necessary.

In one instance, a police officer asked a guy not to cause any trouble on a public street. When the individual refused, the officer asked for his name and address, which were not provided. The officer then detained the suspect. According to the ruling [Goolab Rasul<sup>29</sup>], the constable had legitimately used his authority under the circumstances. However, despite one of the officers knowing the man's name and address, the court ruled that the actions of the two police officers who detained a man for causing a disturbance on a public road without a warrant and imprisoned him in the police station were unjustified [Gopal Naidu<sup>30</sup>].

**Section 42:- Section 42 provides for the arrest of a person if he refuses to disclose his identity & if he is suspected to be one of the offenders. But such person must be released on bail after securing a bond if he is suspected of having committed a non-cognizable offence.**

- **Arrest by Private person and procedure on such arrest (Sec. 43<sup>31</sup>)**

A person who has committed a non-bailable and cognizable offence in his presence or a person who has been declared an offender may be arrested under S. 43.

According to Indian common law, there is a right to be arrested. Therefore, a private individual has the right to arrest a person who is acting erratically while intoxicated and attacking others [Ramaswami Ayyar<sup>32</sup>]. It cannot be maintained that this clause only applies in instances where a substantive offence was committed in the presence of a private person and that this authority is not accessible when an offence is just being attempted. A person may also be justified in making an arrest even if they have a genuine belief that a non-bailable and cognizable offence—such as the kidnapping of a girl—is being committed in their presence, even though it may later become clear that this is not the case [Anant Prasad<sup>33</sup>]. However, Section 43(1)'s definition of "in his presence" does not include the phrases "in his view," "on suspicion," or "on receipt of information." Therefore, if someone tries to arrest someone who is running while being chased by others while holding a knife in his hand, they violate this clause [Abdul Habib v. State].

The person conducting the arrest must take the person being arrested to the police after making the arrest; otherwise, he would violate the law for unlawful imprisonment.

**Section 43:- Any private individual may arrest a person only when:-**

1. **The person is a proclaimed offender, or**

<sup>28</sup> Section 42 of CrPC.

<sup>29</sup> Goolab Rasul (1903) 5 Bom LR 597.

<sup>30</sup> Goolab Rasul (1903) 5 Bom LR 597.

<sup>31</sup> Section 43 of CrPC.

<sup>32</sup> Ramaswami Ayyar AIR 1921 Mad 458.

<sup>33</sup> Anant Prasad, 27 Cr LJ 1378.

2. **The person commits a non-bailable & Cognizable offence in his presence.**

• **Arrest by Magistrate (Sec 44<sup>34</sup>)**

An individual may be taken into custody without a warrant by any magistrate (executive or judicial). The circumstance when any offence is committed in front of a magistrate while within his local jurisdiction is covered by Section 44(1). In that situation, he has the authority to arrest the criminal himself or to direct another person to do so (subject to the bail provisions). According to section 44(2), the Magistrate has the authority to detain a suspect in custody if no authority to commit him to custody has been granted. The failure to use this authority to place such a suspect in custody was not an oversight; it was intentional [Ram Chandra v. State<sup>35</sup>]. In the latter scenario, committing to custody must be done by Sections 57 and 167 of the Code.

• **Protection of members of the Armed Forces from arrest (Sec.45<sup>36</sup>)**

It should be emphasised that this clause does not provide complete protection against arrest. A member of the Force may be detained with the Central/State Government's approval. Furthermore, a member of the Force is not permitted to assert, in violation of this clause, that he committed the crime while carrying out his official responsibilities. Therefore, behaviours like lying or accepting a bribe would not be considered a "discharge of official responsibilities" [*Satwant Singh v. State, AIR 1960 SC 266*].

• **Immunity of Member Judicial Service**

Even though the members of the judicial service are not granted immunity or protection from arrest under the Code of Criminal Procedure, certain rules must be observed, according to the Supreme Court's landmark decision in *Delhi Judicial Service Association v. State of Gujarat*<sup>37</sup>.

**RIGHTS OF ARRESTED PERSON**

In its Universal Declaration of Human Rights, the General Assembly of the United Nations recognised the right to personal liberty as a fundamental human right. It is acknowledged as a basic right by our constitution. Although the police have been granted a variety of authorities to aid in making arrests, these powers are subject to several limitations. These constraints are mainly offered for the protection of the detained person's interests as well as the interests of society at large. Not only should the arrest be lawful and warranted, but it also needs to be carried out strictly by the legal process. To some extent, the use of restrictions might be viewed as acknowledging the rights of the individual who was detained. However, there are certain additional sections that more clearly and expressly provided significant rights in the arrestee's favour. The "Fundamental Rights" in the Indian Constitution also acknowledge the rights of those who have been detained.

"No person shall be deprived of his life or personal liberty except by Procedure established by law," states Article 21 of the Constitution. The process envisioned by this Article must be proper, just, and fair, not capricious, irrational, or oppressive.

1. **Right to be informed of the grounds for arrest (Sec. 50(1))**
2. **Right to be informed of the right to bail (Sec. 50(2))**
3. **Right to be examined by a Medical Practitioner (Sec. 54)**

<sup>34</sup> Section 44 of CrPC.

<sup>35</sup> Ram Chandra v. State, 1977 CrLJ 1783 (All).

<sup>36</sup> Section 45 of CrPC.

<sup>37</sup> Delhi Judicial Service Association v. State of Gujarat, (AIR 1991 SC 2176).



4. **Person arrested is not to be detained for more than twenty-four hours (Sec. 57)**
  5. **Right to be produced before Magistrate without Delay (Sec. 56)**
  6. **Right to be produced before Magistrate without Delay (Sec. 56)**
  7. **Right to be produced before Magistrate without Delay (Sec. 56)**
  8. **Right to consult a legal practitioner (Sec. 41D)**
  9. **Right of an arrested indigent person to free legal aid and to be informed about it (Sec. 304)**
  10. **Right to obtain compensation for illegal arrest (Sec. 358)**
  11. **Right to Health and Safety (Sec. 55A)**
  12. **Obligation of the person arresting to inform about the arrest, etc., to a 25-nominated person (Sec. 50A)**
- **Person arrested to be informed of grounds of arrest and of right to bail (Sec. 50<sup>38</sup>)**

Sections 50 and 50A's rules must be followed. When someone is detained without a warrant, they should be notified right away of the specifics of the offence, the reasons for their detention, and, if the offence is one for which bail is allowed, their right to be released on bond. This means that an arrest without a warrant may only be justified if the individual who was arrested was informed of the charge. This clause grants an important right, and failure to comply with it amounts to disobeying the legal process. The individual making the claim must provide evidence to support it, such as the absence of the reasons for the arrest or other

information that would have allowed him to request a writ of habeas corpus. It is a constitutional requirement to inform the accused of the reasons for his arrest; if this requirement is not met, the arrest is unlawful.

In *Raj Kumari v. S.H.O. Noida*<sup>39</sup>, the petitioner, a leader of employees who had used violence and a strike to protest, was taken into custody that evening after a formal report of the event was filed. After an inquiry revealed she had been in charge of the crowd, the police made the arrest.

The petitioner claimed that she was detained overnight in contravention of the Supreme Court's rulings in *Joginder Kumar v. State of U.P.*<sup>40</sup> and *D.K. Basu v. State of West Bengal*<sup>41</sup>. The petitioner provided evidence in support of her claim through an affidavit, but no affidavits from her family members were submitted. She further said that the police officers who detained her lacked name tags and that no arrest document had been issued. Police refuted the claim that she was detained at night by releasing an affidavit. It was decided that the petitioner's affidavit was the only affirmative piece of evidence on file. There was no other supporting information or affidavit from her family members. The petitioner's argument that she was arrested at night was, therefore, unpersuasive, especially since her bail application, which was submitted the same day and with legal representation, did not mention any possible violations of Supreme Court decisions. Because of this, the petitioner's allegation was rejected, and it was determined that the petition to sue the police should be dismissed.

<sup>39</sup> Raj Kumari v. S.H.O. Noida, (2004) Cri.L.J. 9 (S.C.)

<sup>40</sup> Joginder Kumar v. State of U.P., 1994 AIR 1349, 1994 SCC (4) 260.

<sup>41</sup> D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

<sup>38</sup> Section 59 of CrP.C.

- **Examination of arrested person by the medical officer (Sec. 54<sup>42</sup>)**

The right to a medical examination is granted to the individual who has been arrested under this clause. In V.J. Vaghela v. Kantibhai Jethabhai<sup>43</sup>, it was decided that the Magistrate had a responsibility to advise the individual who was detained of his right to have himself examined if he had allegations of physical abuse or mistreatment while in the custody of the police. [Sheela Barse v. State of Maharashtra<sup>44</sup>] The Supreme Court has warned the subordinate Courts not to adopt a casual approach to prison torture. The Magistrate may reject the accused's test if he believes it to be burdensome or to further the ends of justice. Arrested person's health and safety (Section 55A<sup>45</sup>)

It shall be the duty of the person having the custody of an accused to take reasonable care of the health & safety of the accused.

- **Person arrested to be taken before the Magistrate or officer in charge of the police station (Sec. 56<sup>46</sup>)**

A police officer who makes an unwarranted arrest must immediately bring the person in custody before a magistrate with relevant jurisdiction or the officer in charge of a police station, subject to the provisions regarding bail outlined in this document.

- **Person arrested not be detained for more than twenty-four hours (Sec. 57<sup>47</sup>)**

Without a special order from a magistrate under Section 167, no police officer may keep someone arrested

without a warrant in custody for more time than is reasonable given all the circumstances of the case. This does not include the time needed to get from the place of arrest to the magistrate's court. A person who has been arrested cannot be held for more than 24 hours. It should be highlighted that the inclusion of the right as a basic right in the Constitution has reinforced it even more. According to Article 22(2) of the Constitution, "No person shall be detained in custody beyond the said period without the authority of a Magistrate," and "Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate."

The accused in Kultej Singh v. Circle Inspector of Police<sup>48</sup> was detained on the morning of 27-9-1990 and presented to the magistrate the following day. First information reports indicated that the respondent authorities were instantly compelled to travel to another location due to community rioting, which is what caused the delay in bringing the accused before the magistrate. Additionally, they extended a sincere apology for the delay. It was decided that the extra twenty-four hours of detention or custody were not illegal since there was a valid justification for the delay and the respondents' actions were not immoral.

- **Right to consult a legal practitioner**

Every person who has been arrested has the legal right to consult with a lawyer of their choosing, as recognised by both the Constitution and the Code's provisions. (Section 303 of the Code and Article 22(1) of the Indian Constitution)

<sup>42</sup> Section 54 of CrPC

<sup>43</sup> V.J. Vaghela v. Kantibhai Jethabhai, (1985 Cr.L.J. 974 (Guj).

<sup>44</sup> Sheela Barse v. State of Maharashtra, 1983 Cr.L.J. 642 SC.

<sup>45</sup> Section 55 of CrPC.

<sup>46</sup> Section 56 of CrPC.

<sup>47</sup> Section 57 of CrPC.

<sup>48</sup> Kultej Singh v. Circle Inspector of Police, 1992 CrLJ 1173 (Karn)



The right is applicable from the time of the arrest.

Any person accused of an offence before a Criminal Court or who is the subject of proceedings under this Code may, by right, be defended by a pleader of his choosing, according to Section 303.

This section considers that the accused should not only be free to be represented by counsel but also that if, in custody, he should have a reasonable opportunity to contact counsel for his defence. This clause does not grant the accused person the right to be provided with legal representation; rather, it grants him the right to request legal representation if he so chooses.

The Supreme Court ruled in **R.M. Wasawa v. State of Gujarat**<sup>49</sup> that "The requirement to provide State counsel for unrepresented accused in severe instances should be taken seriously by the Sessions Judge. A fair trial or equitable justice should never be denied on the basis of indigence. As a result, designated advocates should be qualified to handle cases. For them to prepare the case and the accused to feel sure that the court-appointed attorney has had the time and resources to adequately defend him, they need also be given access to sufficient time and comprehensive documentation".

- **Right of an arrested indigent person to free legal aid and to be informed about it.**

The Supreme Court ruled in **Khatri (II) v. State of Bihar**<sup>50</sup> that the State has a constitutional duty (implied in Article 21) to offer free legal representation to a poor defendant. In some circumstances, Section 304 of the Code provides defence counsel at State cost.

1. Apart from the above-mentioned rules the Supreme Court in **D.K. Basu V. State of West Bengal**<sup>51</sup>, issued the following instructions: -
  - a. The police officers involved in the arrest and handling of the arrestee's interrogation should wear precise, obvious, and legible identification and name tags with their designations. All such police officers who handle the arrestee's interrogation must have their information entered in a register.
  - b. That the police officer arresting the suspect must prepare a memo of arrest at the time of the arrest, and that this memo must be attested by at least one witness, who may be a relative of the arrested person or a respectable local citizen. It must include the time and date of the arrest as well as the countersignature of the arrestee.
  - c. Within eight to twelve hours of the arrest, the police must telegraphically notify the Legal Aid Organization in the district and the Police Station of the area in question where the next friend or relative of the arrested person lives outside the district or town about the time, place of arrest, and place of custody of the arrested person.
  - d. If the suspect desires it, the arrestee should also be inspected, and any significant and minor injuries found on the suspect's body must be noted at that time. The "Inspection Memo," a copy of which must be given to the arrestee, must be signed by

<sup>49</sup> R.M. Wasawa v. State of Gujarat, AIR 1974 SC 1143.  
<sup>50</sup> Khatri (II) v. State of Bihar (1981) 1 SCC 627.

<sup>51</sup> D.K. Basu V. State Of West Bengal (1997) 1 SCC 416; 1997 SCC (Cri) 92.



both the suspect and the police officer who made the arrest.

- e. Throughout his time in custody, the arrested person must undergo medical examinations by trained medical professionals every 48 hours. These medical professionals must be selected from a panel of approved doctors by the Director of Health Services of the relevant State or Union Territory. Such a panel ought to be prepared by the Director of Health Services for each Tehsil and district as well.
- f. The Illaqa Magistrate should receive copies of all the paperwork, including the memo of arrest mentioned above, for his records.
- g. While being questioned, the arrested person may be allowed to meet with his or her attorney, but not throughout.
- h. All districts and State Headquarters should have a police control room where information about the arrest and the detainee's location must be communicated by the arresting officer within 12 hours of the event. In the police control room, the information must be posted on a noticeable noticeboard.

In addition to being subject to departmental repercussions, failure to comply with the requirements listed above makes the offending official subject to legal action for contempt of court, which may be brought before any High Court in the nation with jurisdiction over the matter.

- **Right of the accused to produce evidence**

In cases involving police reports or private defence, the accused even has the right to call witnesses in support of his position. The accused will be asked to enter his defence after all prosecution witnesses have been examined and cross-examined, or after the prosecution case has been concluded, and any written statements submitted will be entered into the record. He could even want further cross-examination. Until the prosecution concludes its case, the court will continue to record the testimony of prosecution witnesses. The accused has the right to cross-examine a prosecution witness to challenge the credibility of his evidence. The Indian Evidence Act of 1872's Section 138 grants the accused the ability to question only witnesses. By using this privilege, the accused is guaranteed the chance to question the opposing witness. According to Section 33 of the Indian Evidence Act, an issuing commission may discharge a witness' testimonial statement if the witness cannot attend the trial. One example of past testimonial comments that can be used as documented evidence in a future trial is the testimony in a formal trial. When an accused individual or anybody else who wants to speak up is brought before a magistrate during an investigation, every confession or statement that he may be forced to make voluntarily is recorded. According to Section 25 of the Evidence Act, confessional remarks made by the accused to the police are wholly excluded. The laws are also governed by Sections 243(1) and 273 of the CrPC.

#### **JUDICIAL PRONOUNCEMENTS**

#### **JOGINDER KUMAR v. STATE OF UTTAR PRADESH AND ORS.** **(AIR 1994 SC 1349)**

A lawyer was summoned to a police officer's office in connection with inquiries into a case.

He was told he would be free later in the day but was held while his friends departed. A few days later, it was discovered that the attorney was being held by another official, who claimed to be dealing with a case, without being brought before the relevant magistrate. When the advocate's brother wanted to inquire about his welfare, it was discovered that the advocate had been brought to a secret place. An article 32 petition was submitted.

The police claimed that the advocate had been released and that there was no need to keep him in custody because he was helping them with some abduction-related issues.

The Hon'ble Court looked for a method to strike a balance between an individual's right and the protection of society given the rise in crime and human rights violations caused by indiscriminate arrests. The issue of "simply determining what is wanted and where to lay the weight and attention; of deciding who comes first - the criminal or society, the law violation or the law abider" was noted as requiring a realistic approach. The statement made by Justice Cardozo in *People v. Defore* that "the question is whether protection for the individual would not be acquired at a disproportionate cost of a safeguard for society" was quoted with approbation. On the one hand, there is the societal need for crime to be suppressed, and on the other, there is the social need for the law to be upheld without the snub-nose of authority. All decisions include some risk.

According to the ruling, a police officer cannot make an arrest just because it is legal to do so. Justification for the use of the arrest power and the existence of that power are two distinct concepts. A routine arrest cannot be made based solely on an allegation of an offence. In light of a citizen's constitutional rights and the police officer's interests, it would be wise for a police officer to refrain from making an arrest when they have a reasonable suspicion that:

- a) relating to the individual's involvement in an offence; and
- b) about the necessity to detain such an individual.

along with a reasonable resolution as to the validity and merits of a complaint that was reached after some investigation.

The apex courts ruled that these rights must be acknowledged and scrupulously protected because they are inherent in Articles 21 and 22(1) of the Indian Constitution.

The guidelines that followed were as follows:

1. A person who has been arrested and is being held in custody has the right, upon request, to have one friend, relative, or another person who is familiar to him or likely to be interested in his welfare informed, to the reasonably practical extent, of his arrest and the location of his detention.
2. When the arrested individual is transported to the police station, the police officer must tell him of this privilege.
3. The person who received notification of the arrest must be noted in the diary. (These safeguards against power flow are provided by Articles 21 and 22(1) and must be properly implemented.)

The Magistrate must also confirm that the requirements have been met after the arrested person is brought before him.

**D.K BASU v. STATE OF WEST BENGAL**  
**(AIR 1997SC 610)**

The Supreme Court in this instance treated a few letters it had received regarding incidents of police killing people while they were in custody as writ petitions in the public interest.

The victim's self-esteem is destroyed by "custodial torture," according to the court, which is a flagrant breach of human dignity and degrading and does not even spare the victim's individuality. Torture committed while in custody, according to the Court, is a deliberate



attack on human dignity, and every time that happens, civilization regresses. The Court held that despite recommendations to banish torture from the investigative system, growing instances of torture and deaths in police custody come back to haunt. The Court based its conclusion on the Report of the Royal Commission on Criminal Procedure and the Third Report of the National Police Commission in India.

In **Joginder Kumar v. State of U.P. and Others**, Smt. Nilabati Behera alias **Lalita Behera v. State of Orissa and Others**, **State of M.P. v. Shyamsunder Trivedi and Others**, and the 113th report of the Law Commission of India, which recommended the addition of Section 114-B to the Indian Evidence Act, this Court held that while an individual's freedom must be sacrificed for Having stated that, the State's action, according to this Court, must be reasonable and fair. Any use of torture, regardless of its purpose, is prohibited and in violation of Article 21 of the Constitution because it is neither right nor just nor fair to use torture to obtain any kind of information.

According to the court, a suspect in a crime may be questioned and subjected to sustained and scientific questioning by the legal requirements, but no such suspect may be eliminated, tortured, or subjected to third-degree methods to elicit information, extract a confession, or learn more about his accomplices, weapons, etc. Although by nature there would be a qualitative difference in the mode of questioning of such a person as opposed to an average criminal, his fundamental right cannot be restricted other than in the ways authorised by law. This Court decided that state terrorism is not a viable countermeasure to terrorism. It could simply legitimise terrorism, which is detrimental to the State, the community, and most importantly the rule of law.

The Court in this case issued the following significant guidelines as preventive measures to

be adhered to as requirements in all instances of arrest and detention:

- (1) Police officers should wear precise, obvious, and legible identification, as well as name tags with their designations when making the arrest and managing the arrestee's questioning. All such police officers who handle the arrestee's questioning must have their information entered into a registry.
- (2) That the police officer arresting the suspect must prepare a memo of arrest at the time of the arrest, and this memo must be attested by at least one witness, who may be a relative of the arrested person or a respectable local citizen. It must include the time and date of the arrest as well as the countersignature of the arrestee.
- (3) A person who has been detained or arrested and is being held in custody in a police station, interrogation facility, or other lock-up has the right to have one friend, relative, or other person known to him or having an interest in his welfare informed of his detention as soon as it is practical unless the person who signed the memo of arrest is also the arrestee's friend or relative.
- (4) When an arrestee's closest friend or relative lives outside of the district or town, the police are required to notify them of the time, location, and place of their arrest and custody via telegraph to the district's legal aid organisation and the local police station within eight to twelve hours of the arrest.
- (5) As soon as a person is placed under arrest or taken into custody, they must be informed of their right to have someone informed of their arrest or detention.



- (6) The arrest of the person must be recorded in the diary kept at the place of detention. This entry must also include the name of the person's next friend who has been informed of the arrest as well as the names and contact information of the police officers holding the arrestee.
- (7) If the suspect desires it, the arrestee should also be inspected, and any significant and minor injuries found on the suspect's body should be noted at that time. The "Inspection Memo" must be signed by the person being arrested as well as the police officer making the arrest, and a copy must be given to the person being arrested.
- (8) During the course of the arrestee's detention in custody, a doctor on the list of approved doctors chosen by the director of the state's or union territory's health services should subject the suspect to a medical examination by a qualified doctor every 48 hours. A similar panel ought to be created for each district and tehsil by the director of health services.
- (9) The Illaqa Magistrate should receive copies of all the paperwork, including the memo of arrest mentioned above, for his records.
- (10) The arrested person may be allowed to meet with his or her attorney while being questioned, but not throughout the interview.
- (11) At all district and state headquarters, there should be a police control room where the officer making the arrest must report the arrest and the location of the arrestee within 12 hours of the arrest. The information should also be posted on a

visible notice board in the police control room.

The Supreme Court ordered that failing to follow the aforementioned standards would subject the official in question to departmental action in addition to possible punishment for contempt of court, which might be brought before any High Court in the nation with jurisdiction over the issue.

**NANDINI SATHPATHY v. P.L. DANI**  
**AIR 1978 SC 1025**

Former Orissa Chief Minister and former national minister Smt. Nandini Satpathy was ordered to appear at the Vigilance Police Station for questioning about a complaint filed against her under the Prevention of Corruption Act. The investigation was started based on the initial information report, which listed the petitioner, her sons, and other people as suspects. She was questioned throughout the course of the investigation in response to a lengthy list of written questions. Her acquisition of assets out of proportion to her known sources of income was the main charge levelled against her.

In delivering the court's judgement, V.R. Krishna Iyer, J., stated that the restrictive scope of Art. 20(3) does not just begin in court but also extends to the stage of police questioning. Beyond that instance, the prohibition on self-accusation and the right to remain silent also apply to the accused regarding other offences that are ongoing or imminent, which may discourage him from voluntarily disclosing incriminating information. The term "compelled testimony" should be understood to refer to testimony that was obtained not only through physical threats or violence, but also through psychological torture, peer pressure, environmental coercion, exhausting interrogative length, overbearing and intimidating techniques, and other similar tactics. However, under Art. 20, the legal



repercussions for refusing to respond or responding truthfully cannot be "compelled."

**The Miranda case (1966) 384 US 436**

judgement, which extended the privilege against self-incrimination to police questioning and in-custody interrogation and covered suspects in the same manner as normal accused people, set the legal precedent that the Supreme Court adopted. Furthermore, it was held that an accused person cannot employ improbable justifications, irrational fears, or hazy possibilities as a cover. Where there is no obvious tendency to accuse, he must respond.

The best way to advance the right against self-incrimination is to grant the accused the right to consult a lawyer of his choosing, which is guaranteed by Art. 22. The lawyer's presence is a guarantee that the client is aware of and respects his or her right against self-incrimination.

In this case, the court also defined the term "self-incrimination" and made a distinction between it and a confession, stating that "answers that would, by themselves, support a conviction are confessions, but answers that have a strong tendency to point out the guilt of the accused are incriminatory."

The court noted that the person's right against self-incrimination would start the moment their name appears in the police department's "First Information Report."

**ARNESH KUMAR v. STATE OF BIHAR & ANR (2014) 8 SCC 273**

The relationship between the public and the police has been substantially recast in light of this decision. The significant decision resulted from an appeal filed by a spouse who anticipated his arrest in a case under Section 4 of the Dowry Prohibition Act of 1961 and Section 4 of the Indian Penal Code, 1860. The Court felt it appropriate to note the widespread misuse of Section 498-A of the Indian Penal Code, 1860 while addressing the matter. The court stated

that the judge who issued the decision, Justice Chandramauli Kr. Prasad, and Justice Pinaki Chandra Ghose, had noted the ground realities: "There has been a tremendous rise in marriage conflicts in recent years. In this nation, the institution of marriage is highly cherished. The IPC's Section 498-A was created with the express purpose of combating the threat of harassment a woman might experience from her husband and his family. Section 498-A has a dubious place of pride among the provisions that are used as weapons rather than a shield by irate wives because it is a cognizable and non-bailable offence. The easiest way to harass is to use this clause to have the husband and his family arrested.

The Court has conveyed its displeasure with how the authority of arrest and detention is handled equally by Police and Magistrates in the strongest terms imaginable. The statement reads, "The authority to order detention is a highly solemn role. It has an impact on citizens' freedom and liberty, thus it must be used very carefully. According to our experience, it is not used with the seriousness it requires. Detention is frequently authorised in a regular, casual, and careless manner. Before a Magistrate approves detention under Section 167 of the Criminal Procedure Code, he must first be satisfied that the arrest was lawful, in conformity with the law, and that the arrestee's constitutional rights were upheld. The Magistrate must not approve the accused's continued detention and release him if the arrest made by the police officer does not meet the requirements of Section 41 of the Code. The Court also issued some directives in this regard to avoid pointless arrests as well as mechanical and causal detention.

**DR. RINI JOHR & ANR. V. STATE OF M.P. & ORS. 2016 SCC ONLINE SC 594**

Both Rini Johar, a doctor, and her mother, Gulshan Johar, a lawyer who is seventy years old, are situated in Pune. They had gone to the

top court to contest their detention on November 27, 2012, which was based on a complaint made by Vikram Rajput of Bhopal, who had bought an aura camera from Rini Johar, the only distributor of the US-made device in India.

After seeing the machine in action in Pune, he decided to buy it in 2012. But when he got back to Bhopal, he accused Rini and the product's maker of fraud and lodged a case with the Cyber Cell.

While searching for Rini Johar in Pune, the Bhopal Cyber Cell also detained her elderly mother, who had no part in the transaction. After 17 days, the lawyer's release on bond was granted, but Rini Johar's release took more than three weeks. They were allegedly made to hand up Rs. 5 lakhs to Deepak Thakur, the deputy head of the S.P. Cyber Cell in Bhopal. In the meanwhile, police presented a charge sheet to the magistrate court against these two ladies.

She was even later released from the case. As a result of the abuse they endured at the hands of the police and the lack of a magistrate's approval during their transfer from Pune to Bhopal, the Johars filed a complaint with the Supreme Court for a breach of their fundamental right to live in dignity under Article 21. The petitioners had to suffer humiliation. They were spoken to as if they were stupid. In the case of DK Basu, there were flagrant violations of both the law's mandate and the guidelines issued by Sections 41 and Section 41-A of the CrPC.

According to the Apex Court, it is fairly obvious from the investigation report that the arrest of the petitioners, two women who are doctors and practising attorneys, was not done by the established process for arrest. As a result, their dignity was gravely imperilled.

The Apex Court decided what compensation these two women were entitled to after ruling that they were unlawfully detained. The Apex Court determined the following while granting compensation:

- i. State officials have tried and fooled these two women's freedom. Law forbids such experiments because they result in unending suffering and anguish.
- ii. The Constitution's Article 21 was broken, and they were made to endure humiliation.
- iii. They were handled with a callous attitude.
- iv. These are flagrant violations of the law as laid out in Sections 41 and 41-A of the CrPC, in addition to the guidelines issued in the case of **D.K. Basu**.
- v. Investigating officers are under no obligation to break the law willfully.

#### **CONCLUSION & SUGGESTION**

In conclusion, the ability to make an arrest implies restricting the freedom of the person making the arrest, which violates the fundamental right to liberty. Nevertheless, the State's ability to detain anybody is recognised by both the Indian Constitution and international human rights law as a component of the State's core duty of upholding law and order. The Constitution mandates that only through a legally established, just, fair, and reasonable process is such a restriction of liberty permitted.

Although S.50 of the Code of Criminal Procedure, 1973 Cr. PC mandates that a police officer arresting any person "forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest," Article 22 (1) of the Constitution stipulates that every person placed under arrest shall be informed as soon as may be the ground of arrest and shall not be denied the right to consult and be defended by a lawyer of his choice. These standards are more frequently violated in actual practice.

Similarly, the Constitution's Article 22 (2) and the Criminal Procedure Code's Section 57, which

both compel that the arrested individual appears before the court quickly, are not rigorously followed. Abuse of police authority, particularly when it comes to arresting and custody, is a common allegation about human rights breaches. Even after the National Human Rights Commission issued guidelines to close the gap between law and practice, restricting the police's ability to effectively uphold and enforce law and order, and requiring adequate investigation, it has been mostly unsuccessful.

Therefore, it is urgent to conduct and implement more strict action to limit the authority of police officers to make arrests in real life. The establishment of a police ombudsman's office, as practised in Brazil and Ireland, is one of the steps advocated since it has proven to be extremely effective in limiting the use of the police's arbitrary authority and in preserving the rights of those who have been detained.

Recently, In ***Siddharam v. State of Maharashtra***<sup>52</sup> the Supreme Court, by way of illustrative cases made the following suggestions, which may be helpful before an accused is arrested:-

- 1) 1) Request that the accused participate in the inquiry; only when the accused refuses to do so will the accused be detained.
- 2) Take the accused person's passport and any relevant papers, including share certificates, title deeds to real estate, and fixed deposit receipts.
- 3) Tell the accused to carry out their bonds.
- 4) The accused may be ordered to provide sureties of several individuals that the prosecution claims are required in light of the specific facts of the case.
- 5) The accused must assure that he won't go to the location where the witnesses live to prevent the possibility of tampering with the evidence or

otherwise influencing the outcome of the case.

- 6) Bank accounts should be temporarily blocked while the inquiry is underway.

#### **REFERENCE**

##### • **Books**

1. V. Kelkar, Lectures on Criminal Procedure, (6th ed. 2017).
2. N. Chandrashekar Pillai, R.V. Kelkar's Criminal Procedure, (6th ed. 2018).
3. Ratanlal & Dhirajlal, Commentary on the Code of Criminal Procedure (18th 2006).

##### • **Articles**

1. Preeti Singh, Rights of the arrested person.
2. Mahak Gandhi, Arrested Person's Rights under CrPC, July 23, 2019.
3. Gazala Parveen, Arrest and the rights of the arrested in India, September 10, 2019.
4. Komal Shrivastava, All out Procedure of Arrest under Code of Criminal Procedure.
5. Subodh Asthana, Detailed Analysis of Arrest of Person and Arrest without Warrant, June 19, 201

##### • **Internet Sites**

1. <https://blog.ipleaders.in/analysis-arrest-without-person/>
2. <https://blog.ipleaders.in/rights-person-arrest-india/>
3. <http://www.legalserviceindia.com/legal/article-1747-arrest-and-rights-of-arrested-person.html>
4. [All about Procedure of Arrest under Code of Criminal Procedure By: Komal Srivastava \(latestlaws.com\)](http://www.latestlaws.com/articles/all-about-procedure-of-arrest-under-code-of-criminal-procedure-by-komal-srivastava)
5. <http://lawtimesjournal.in/arrested-persons-rights-under-crpc/>
6. <https://www.jstor.org/>
7. <https://www.manupatrafast.in/>
8. <https://indiankanoon.org>

<sup>52</sup> Siddharam v. State of Maharashtra (2011) 1 SCC 694.