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RESEARCH PAPER ON ARREST POLICY IN INDIA

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ABSTRACT

"Arrest" refers to the deprivation of a person's liberty as permitted by law and the holding of a person in custody authorized by a warrant, crime, or statute. Thus, arrest means depriving a person of his liberty by a legal authority or an apparent legal authority. According to Black Law Dictionary¹, arrest means to deprive the liberty of person by lawful authority, either real or assumed, for the purpose of detaining him in order to obtain answers for a criminal charge imposed on him.

This study outlines the legal framework that governs arrests in India, the rights that individuals in custody enjoy, potential measures that could be taken to prevent wrongful arrests and the necessity of changes and modifications to India's arresting legislation, as well as any future amendments that may be required. Ultimately, this study supports reasonable arrest practices that protect people's rights while promoting law enforcement's effectiveness. To ensure that the judicial system upholds the values of equity and parity for all citizens, reforms prioritizing openness, responsibility, and community trust are essential.

INTRODUCTION

The word "arrest" is heard regularly in our everyday lives. Every person is treated as innocent until his crime is proven in a court of law. Indian law and regulations are continuously cognizant of the protection of each individual's liberty, and they prohibit any unlawful confinement or arrest. The

¹ Halsbury's Law of England, 3rd Edition Vol 10 Page 342

primary rationale for codifying the arrest procedure is to protect the public from harassment by legal authorities and other entities. A person's arrest is dealt with under "Chapter V, Sections 41-60 of the 1973 Code of Criminal Procedure". It talks about every stage of arresting a criminal in great detail. No substantive or procedural laws, including the Code of Criminal Procedure, define "arrest."

In "**R.R. Chari v. State of Uttar Pradesh**²", the court specifies arrest as an action of taking an individual in detention, according to the provisions of law, for having been charged officially with a crime. Such person is deprived of his liberty. In "**State of Punjab v. Ajaib Singh**³", the Supreme Court defined 'arrest' as a physical restraint of an individual under the authority of law." In "**State of Haryana v. Dinesh Kumar**⁴", the court ruled that arrest implies restraining a person's liberty and placing them in custody, amounting to arrest.

EXISTING ARREST PROCEDURE IN INDIA

Apart from the Code of Criminal Procedure, several laws have provisions for arresting a person without even issuing a warrant. An arrest warrant is a written order given and endorsed by a Magistrate that directs a police officer or any person expressly identified to arrest an accused person. When a person is arrested without a warrant then such arrest is made either by a private person or a police officer but without an order from the magistrate.⁵

Thus, arrest is of two types:

➤ **ARREST WITHOUT ISSUING A WARRANT**

As per Section 41 of the CrPC⁶, when a cognizable offence is committed by an individual in the existence of a police officer, then such an individual can be arrested without even issuing a warrant but the police officer should have a reasonable suspicion on him, or a complaint should have been made against that person as stated in Section 41(1)(b). If someone has been declared an offender under this Code, the State Government may issue

² R.R Chari v State of Uttar Pradesh, AIR 1962 SC 1573 (India).

³ State of Punjab v. Ajaib Singh, AIR 1953 SC 10.

⁴ State of Haryana v. Dinesh Kumar, AIR 2008 SC 1083.

⁵ Nawsagaray, Nitish. (2022). Arrest: Necessity and Justification.

⁶ CrPC, 1973, §41, No. 2, Acts of the Parliament, 1974 (India)

an order to arrest them without a warrant, or if they are suspected of stealing, then also an arrest can be made without a warrant.. Police officers can arrest individuals who obstruct their duty, escape from lawful custody, are suspected of deserting the Armed Forces, have been involved in an act outside India that would have been punishable as an offence in India, are released convicts who breach rules under section 356, or have received a requisition from another officer for their arrest.

According to Section 42 of CrPC⁷ talks about that if someone performs a non-cognizable offence when a police officer is present, and such a police officer asks for the name and residence and that person denies or falsely tells it to the police officer. Then, the officer may hold the suspect for a short while; once the authorities have the suspect's identity and whereabouts, they must release him. The arrested person should be taken to the closest magistrate, if the actual identity or place of residence cannot be determined in a day.

According to Section 151 of CrPC⁸, a police officer can arrest a person when he believes that such person can commit an offence in the future and is planning to do so. For these two conditions shall be fulfilled- the offence must be cognizable, the person officer must presume that the offence can only be prevented by arresting the person.

➤ **ARREST MADE BY ISSUING A WARRANT**

When an individual commits a non-cognizable offence, a warrant is issued to arrest that person. The judge or magistrate has the authority to issue a warrant for arrest of a person on behalf of the government. According to Section 44 of the CrPC⁹, when an offence is committed in a Judicial or Executive Magistrate's presence, the Magistrate in his jurisdiction may himself or appoint a competent person to arrest the offender.

⁷ CrPC, 1973, §42, No. 2, Acts of the Parliament, 1974 (India)

⁸ CrPC, 1973, §151, No. 2, Acts of the Parliament, 1974 (India)

⁹ CrPC, 1973, §44, No. 2, Acts of the Parliament, 1974 (India)

HOW ARREST IS MADE WITH OR WITHOUT WARRANT

Section 46 of the Code of Criminal Procedure outlines the process of conducting the process of arrest. Section 46(1)¹⁰ requires police officers to touch or confine the arrested person's body unless they submit to custody through word or action. Section 46(2)¹¹ allows for using all necessary means to arrest those who resist or attempt to evade arrest. According to Section 46 (3)¹², no one has the authority to cause the death of someone who has not been charged with a death or life sentence.

In “**Bharosa Ramdayal vs. Emperor**¹³”, the court ruled that if a person submits to the police accusing himself of committing an offence, he would be regarded as surrendering to the officer's custody. Similarly, if the offender proceeds to the police station as commanded by the officer, he will be said to have surrendered. In such instances, physical contact is unnecessary.

No female shall be arrested after dusk and before daybreak; this shall not apply except in exceptional situations if a female police officer obtains prior permission from the Magistrate having jurisdiction before arresting, as per 46(4)¹⁴ of the code. The arrest of a female shall carefully adhere to Section 42 of the code; only a lady officer may arrest a female. Suppose a female police officer is not available. In that case, the arrested woman may accompany a male person throughout the process. However, the questioning and medical examination must only be conducted by a female.¹⁵ This was inserted by the 2005 Amendment.

PROCEDURES TO BE FOLLOWED WHEN ARRESTING A PERSON

Section 41B of the CrPC, inserted by the 2010 Amendment, says that a police officer has to wear an identification that is clear and it should be visible when he arrests a person. The arresting officer

¹⁰ CrPC, 1973, §46(1), No. 2, Acts of the Parliament, 1974 (India)

¹¹ CrPC, 1973, §46(2), No. 2, Acts of the Parliament, 1974 (India)

¹² CrPC, 1973, §46(3), No. 2, Acts of the Parliament, 1974 (India)

¹³ *Bharosa Ramdayal vs. Emperor*, 1940 LawSuit(Nag) 68.

¹⁴ CrPC, 1973, §46(4), No. 2, Acts of the Parliament, 1974 (India)

¹⁵ Andhra Pradesh Police Department,

<https://www.appolice.gov.in/jsp/appm/appm/APPM%20Part%20II%20Annexures%20Index.htm> (last visit Apr 29th, 2022)

must record the arrest in writing which must be authenticated by at minimum of one witness who can either be an arrested person's family member or someone who has witnessed the arrest. The document must be signed by the arrestee. When the document is not attested by the family member of the arrestee, then arrestee has the right to name either his friend or family who should be informed about the arrest.

The "177th Law Commission" was able to modify the legislation regarding arrests without issuing a warrant because to the Supreme Court's rulings in the cases of Joginder Kumar and DK Basu. In the case of "**Joginder Kumar**¹⁶", it was ruled that "no arrest can be made because it is lawful for the police officer to do so. The existence of power of arrest is one thing; the justification for its existence is another. The police officer must be able to justify the arrest apart from his power to do so." In "**DK Basu**¹⁷", the court gave directions to the state to act according to the eleven points in cases of arrest.

RIGHTS OF AN ARRESTED PERSON IN INDIA

Both the Code of Criminal Procedure and the Indian Constitution confer some rights upon the person who has been arrested. They are: -

1. **Right to be informed**- As per Section 50(1)¹⁸ of the CrPC, the police officer is required by law to advise the individual of the grounds for his arrest. The same is said by Article 22(2)¹⁹ of the Indian Constitution. It also gives the arrested person the freedom to tell his friends and family about his arrest.
2. **Right to be Released on bail**- Section 50(2)²⁰ of the CrPC says that it is the police officer's responsibility to let the person who has been arrested know about his chances to

¹⁶ Joginder Kumar v. State Of U.P,1994 AIR 1349

¹⁷ DK Basu v. State of West Bengal, AIR 1997 SC 610.

¹⁸ CrPC, 1973, §50(1), No. 2, Acts of the Parliament, 1974 (India)

¹⁹ INDIA CONST. art. 22(2), cl. k

²⁰ CrPC, 1973, §50(2), No. 2, Acts of the Parliament, 1974 (India)

be released on bail when offence committed by him is punishable by bail. Article 21²¹ of the Indian constitution says that the person has freedom to enjoy his liberty until his offence is proved in the court of law. As per “**Uday Mohanlal Acharya v. State of Maharashtra**”²², the accused was granted bail by the court as the police officers had failed to gather evidences against him.”

3. **Right to Consult a Legal Practitioner**- As per Section 41D²³ of the CrPC, the person who has been arrested is entitled to select a lawyer of his own choice and meet with him during the process of questioning. This is also said in Article 22(2)²⁴ of the Indian Constitution.
4. **Right to appear before the Magistrate**- As per Section 56²⁵ of the CrPC, the arrested person, whether arrested with or without warrant, must be present before the Magistrate by the police officer within 24 hours from arrest excluding the time taken to travel to the court of the Magistrate.
5. **Right to be examined by a Medical Practitioner** - Section 54(1)²⁶ of the CrPC guarantees the right to a thorough physical examination for the arrested person. This examination could help the accused disprove the offence he is believed to commit or provide evidence that another person is at fault. But this can only happen if the magistrate gives his or her permission.
6. **Right to Legal Aid** – As per Article 39A of the Constitution of India, the state has an obligation to ensure that all citizens have unrestricted access to justice so that it does not

²¹ INDIA CONST. art. 21, cl. k

²² Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453.

²³ CrPC, 1973, §41D, No. 2, Acts of the Parliament, 1974 (India)

²⁴ INDIA CONST. art. 22(2), cl. k

²⁵ CrPC, 1973, §56, No. 2, Acts of the Parliament, 1974 (India)

²⁶ CrPC, 1973, §54(1), No. 2, Acts of the Parliament, 1974 (India)

become difficult for them to raise voice against violation of their rights. In “**Hussainaara Khatoon v. State of Bihar**²⁷”, it was said that every citizen has the right to free legal aid.

OTHER PROVISIONS

“A person is protected against ex post facto law by Article 20(1)²⁸ of the Indian Constitution.” It states that a person is only convicted for violating a law which is in force and shall be punished accordingly, and if later any law that increases the punishment for that offence, then such law shall not apply to that person. Before interrogating in custody in an unfamiliar setting, the police officer must inform the suspect of their right to stay silent, as this could force them to say something that would lead to their self-incrimination. Interrogation involves psychological techniques "that attempt to weaken the person's will to resist and to force him to communicate in places where he would not freely do so," as was decided in the landmark case in American history, **Miranda v. Arizona**²⁹.

No person can be punished for the same offence twice as stated by Article 20 (2)³⁰ which talks about Double Jeopardy. In “**Ratanlal v. State of Punjab**³¹, a 16-year-old boy was convicted of house trespass for outraging the modesty of a 7-year-old girl. After his conviction, the Probation of Offenders Act of 1958 came into force, which said that persons below 21 years cannot be subject to punishment. Here, the Supreme Court held that the ex post facto law could be applied to reduce the punishment by the rule of beneficial interpretation.”

Article 20(3)³² says the accused of any crime will not be forced to testify against themselves. The CrPC protects citizens' rights against self-incrimination. As per Section 161 (2) of CrPC, every person must answer truthfully all questions posed by a police officer, except for questions whose replies might subject that individual to a criminal charge, fine, or forfeiture. The Supreme Court

²⁷ Hussainaara Khatoon v. State of Bihar, (1980) 1 SCC 98

²⁸ INDIA CONST. art. 20(1), cl. k

²⁹ Miranda v. Arizona, 384 U.S. 436.

³⁰ INDIA CONST. art. 20(2), cl. k

³¹ Ratanlal v. State of Punjab, AIR 1965 SC 444.

³² INDIA CONST. art. 20(3), cl. k

ruled in “**Selvi vs State of Karnataka**³³ that narco-analysis, polygraph examination, and BEAP test should not be forcibly administered to individuals, despite the admissibility of voluntary test results in accordance to Section 27 of the Evidence Act, 1872.”

NEED FOR THE MODIFICATION AND AMENDMENT OF ARREST LAWS OF INDIA

Even after existence of legal framework, several cases have been registered with unlawful detention, torturous treatment of arrested³⁴, arrested time exceeding the prescribed time for punishment³⁵, under-trials and pre-trial arrestees exceeding the convicted arrestees³⁶ and officers exceeding their powers³⁷. Even though India's Code of Criminal Procedure of 1973 offers various protections and freedoms, the arrest procedure is inappropriately used throughout the country. Arrest is usually done to obtain money or other goods. This arresting power is also exploited in civil disputes, with many innocent people being falsely accused. A lack of legal information leads to police harassment, which occurs when a police officer goes above their assigned duty to take advantage of a citizen. Such can be done in various ways like death in police custody, grave bodily harm, rape or attempted rape, arrest or imprisonment without due process of law, or any other occurrence involving significant abuse of authority and many more unlawful and dishonest behaviors. In the Indian criminal justice system, arrests are mostly a police action. Arrests are typically humiliating and demeaning. Apart from losing liberty, a person may lose their work and livelihood due to arrest. According to a “consultation paper issued by the Law Commission of India in 2001³⁸”, over 60% of arrests are inappropriate, leading to more than 40% of jail expenses resulting from such arrests that could easily be avoided. According to National Crime Records Bureau data released in August 2020, 7 out of every 10 of the 478,600 prisoners in Indian jails are

³³ Selvi vs State of Karnataka, AIR 2010 SC 1974.

³⁴ United Declaration of Human Rights, 1948, Art. 5, https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf.

³⁵ World Prison Brief, Institute for Crime & Justice Policy Research, 2020.

³⁶ *Ibid.*

³⁷ Body of Principles for the protection of All Persons under Any Form of Detention or Imprisonment, 1988, Principle 6, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment | OHCHR.

³⁸ ONE HUNDRED AND SEVENTY SIXTH REPORT ON THE ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2001, LAW COMMISSION IF INDIA

on trial.³⁹ According to a CHRI report on pre-trial arrests published in June 2022, India ranks second out of 54 Commonwealth countries.⁴⁰

As per “**Arnesh Kumar v. State of Bihar**⁴¹”, the court ruled that as per Section 41A a notice of appearance should be issued. The court also specified that a police officer should not arrest any person without a valid reason. Therefore, no police officer should arrest an individual needlessly and no magistrate shall sanction such an arrest.

Thus, an arrest of a person should be made with proper care and caution so that no innocent person is treated immorally. The police officer should investigate properly without making an arrest and when the investigation is completed and the police officer is sure that a person is legally wrong or has committed an offence then only, he should be arrested. Arrest not only causes physical pain but also mental suffering.

Police officers can be classified into various groups based on the type of civil or criminal wrong committed. For example, there may be a group for crimes against youths, another for organized crime/terrorists, a third for digital crime, and a fourth for offences against women, such as dowry deaths, rape, and so on. The Ministry of Law and Justice made a similar suggestion, recommending that its earlier 154th report be repeated. Numerous law commission findings say that reforms are needed in police officer training and organizational culture. Police officers should be obliged to work 8 to 10 hours per day rather than 18 hours. Every police station must rotate shifts, and no one should be able to work more than two consecutive shifts in 36 hours.

CONCLUSION

When developing an arrest policy that is both effective and just, a careful balance must be struck between law enforcement needs and the preservation of individual rights. Arrest should be made according to the legal provisions and no innocent should be arrested. This violates the freedom and liberty of the innocent person who are arrested without a valid reason. We are all Indian citizens at the end of the day, and the police are charged with keeping us secure, irrespective of the fact

³⁹ Prison Statistics India 2019, published by National Crime Records Bureau, New Delhi.

⁴⁰ 3 in 4 prisoners in Indian jails await trial, Government data from 2020.

⁴¹ Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

that someone is in prison. Although certain rights protect the accused or those detained, their safety comes first, regardless of whether they have behaved improperly. The proposals and adjustments presented in this arrest policy seek to provide a framework that promotes transparency, fairness, and community confidence.