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ARREST VS. CUSTODY: UNDERSTANDING THE RIGHTS OF AN ACCUSED UNDER INDIAN CRIMINAL LAW

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ABSTRACT

This blog explains the distinction between arrest and custody under Indian criminal law, with reference to the Bharatiya Nagarik Suraksha Sanhita, 2023 and constitutional safeguards. It discusses the legal basis for arrest, communication of the grounds of arrest, informing a relative or friend, access to legal assistance, the principle that arrest should not be automatic, and the role of a Magistrate in reviewing continued detention. The article highlights the relationship between effective criminal investigation and the protection of personal liberty. It concludes that an accusation alone does not remove an individual's statutory and constitutional rights, and that arrest and custody must remain subject to lawful authority and procedural safeguards.

INTRODUCTION

Arrest and custody are two terms that are often used together, but they do not necessarily mean the same thing. In criminal proceedings, understanding the distinction is important because arrest directly affects an individual's personal liberty. The Indian legal system therefore places procedural safeguards around the power of the police to arrest and detain a person.

With the introduction of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the Code of Criminal Procedure, 1973, the legal framework governing arrest and criminal procedure has been reorganised. The basic principle, however, remains that the power to investigate an offence must operate within the constitutional protection of personal liberty.

WHAT IS ARREST?

Arrest generally means taking a person into legal custody by lawful authority. It restricts the person's liberty and places the individual under the control of the arresting authority.

The BNSS permits a police officer to arrest a person without a warrant in specified circumstances. Section 35 provides circumstances in which such arrest may be made. Importantly, where the alleged offence is punishable with imprisonment of up to seven years, arrest is not intended to be automatic merely because the police have received a complaint or information. The statutory conditions include the officer having reason to believe that the person committed the offence and being satisfied that arrest is necessary for specified purposes such as preventing further offences, proper investigation, preventing destruction or tampering with evidence, preventing inducement or threats to witnesses, or ensuring the person's presence before the court. The reasons for arrest must be recorded. [1]

This requirement reflects an important principle: the existence of a criminal allegation and the necessity of arrest are separate questions.

WHAT IS CUSTODY?

Custody is broader than arrest. A person may be in legal custody after being arrested, but custody can also arise in different procedural circumstances.

Police custody generally means that the accused remains under the control of the police for investigation. Judicial custody, on the other hand, means that the person is placed under the authority of the court and ordinarily kept in a prison or other authorised place of detention.

The distinction becomes important when a person is produced before a Magistrate. The court examines whether further detention is legally justified and what form that detention should take.

Therefore, arrest is the legal act by which liberty is initially restricted, whereas custody describes the continuing state of detention or control following that restriction.

THE RIGHT TO KNOW THE GROUNDS OF ARREST

One of the most important safeguards available to an arrested person is the right to know why the arrest has been made.

The BNSS contains specific provisions concerning communication of the grounds of arrest and related safeguards. These provisions are intended to ensure that an arrested person is not kept unaware of the allegation forming the basis of the deprivation of liberty.

The requirement is also connected with the constitutional protection of personal liberty under Article 21 of the Constitution of India. A person cannot effectively challenge an arrest or seek appropriate legal relief if the basis of the arrest is not communicated.

THE RIGHT TO INFORM A RELATIVE OR FRIEND

The arrest of an individual can have consequences for the person's family and legal representation. The BNSS therefore contains safeguards concerning communication of the arrest to a relative, friend or other person connected with the arrested individual.

This safeguard is particularly important because an arrested person may suddenly lose access to ordinary communication and may not be in a position to independently arrange legal assistance or inform family members.

The purpose of such a provision is not merely administrative. It creates an additional layer of accountability around the arrest process.

RIGHT TO LEGAL ASSISTANCE

Article 22(1) of the Constitution provides that a person who is arrested and detained in custody must be informed of the grounds of arrest and cannot be denied the right to consult and be defended by a legal practitioner of the person's choice. [2]

Legal representation is particularly important during the early stages of a criminal investigation because questions concerning remand, bail, police custody and judicial custody may arise soon after arrest.

The right to legal assistance is therefore an important component of the broader protection of personal liberty.

ARREST SHOULD NOT BE AUTOMATIC

The Supreme Court has repeatedly emphasised that arrest should not be treated as an automatic consequence of registration of a criminal case.

In *Arnesh Kumar v. State of Bihar*, the Supreme Court stressed the need for caution in exercising the power of arrest, particularly in offences carrying relatively limited punishment. [3]

The principle was subsequently reinforced in *Satender Kumar Antil v. Central Bureau of Investigation*. The Supreme Court has explained that statutory requirements governing arrest and notice must be complied with and that non-compliance can have consequences at the stage of bail. [4]

The position has continued to develop under the BNSS. A January 2026 Supreme Court judgment discussing Section 35 of the BNSS explained that failure to comply with a notice does not automatically require arrest and that arrest involves an assessment of necessity. [5]

This is significant because it reinforces the idea that arrest is a serious interference with personal liberty and must have a lawful basis.

CONSTITUTIONAL PROTECTION OF PERSONAL LIBERTY

Article 21 of the Constitution states that no person shall be deprived of life or personal liberty except according to procedure established by law. [6]

The Supreme Court has interpreted Article 21 broadly, making procedural fairness an important element of criminal justice. Arrest powers therefore cannot be exercised in an arbitrary manner merely because the police possess statutory authority.

The balance is between two legitimate interests: allowing law-enforcement authorities to investigate offences effectively while ensuring that individuals are not unnecessarily deprived of liberty.

ARREST, CUSTODY AND THE ROLE OF THE MAGISTRATE

Judicial oversight becomes particularly important once an arrested person is brought before a Magistrate.

The Magistrate's role is not merely formal. Judicial scrutiny provides an opportunity to examine the legality and necessity of continued detention and to determine whether the circumstances justify police custody or judicial custody.

This separation between investigation and judicial oversight is an important safeguard against unnecessary or prolonged detention.

CONCLUSION

Arrest and custody are closely connected but legally distinct concepts. Arrest represents the formal deprivation of liberty by lawful authority, while custody refers to the continuing detention or control of an individual.

The BNSS has replaced the earlier procedural framework but retains the broader constitutional principle that personal liberty cannot be restricted arbitrarily. The statutory requirements relating to necessity of arrest, communication of grounds, information to relatives and judicial oversight are therefore important safeguards.

Ultimately, criminal justice requires a balance between effective investigation and individual liberty. The fact that a person has been accused of an offence does not by itself eliminate the person's constitutional and statutory protections. Arrest must have a lawful basis, custody must remain subject to legal authority, and the rights of the accused must continue to be respected throughout the criminal process.

REFERENCES

- [1] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 35, India Code (2023).
- [2] INDIA CONST. art. 22(1).
- [3] Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.
- [4] Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.
- [5] Supreme Court of India, Judgment dated Jan. 15, 2026, discussing § 35, BNSS.
- [6] INDIA CONST. art. 21.