

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019



Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

DRAFT ARREST POLICY IN INDIA

AUTHORED BY: KANAV BHARGAVA

INTRODUCTION

The phrase "**Arrest**" implies both seizure of one's personal freedom by real or presumed law enforcement officials. Thus, when an individual gets arrested, the arresting officer takes charge of the individual's liberty. Knowing what the arrest entails and its procedure aims to ensure the public are not unduly harassed by police and other stakeholders. The term "arrest" is not defined in any major statutes like the CrPC (BNSS¹). In ordinary language and in its strict legal context, arrest means to doubt or curtail someone's liberty. In India, the process of making an arrest is controlled by the CrPC. The Act includes all steps of arresting a person suspected of having committed an offense. The 1973 CrPC, in its Fifth Chapter, parts 41-60 describes the circumstances surrounding the arrest of a person.

A person, whether they committed a crime or not, should always be treated as a human being. However, in a court of law, an accused person is presumed innocent until otherwise proven guilty. Since legislation acknowledges the "personal liberty" of every citizen, no individual can be imprisoned without proper legal permission. No one can be deprived of life or liberty except in accordance to law. While Article 21² guarantees freedom as well as life to individuals, it does state that there are some legally allowed actions which can limit this very important right. Therefore, as pointed out in the **177th Law Commission Report³** on the Laws Relating to Arrest, Article 21 has a good side as well as a bad side. To preserve the right to privacy for all citizens while keeping social order, there needs to be a defined process for making arrests.

In India, the **Code of Criminal Procedure (CrPC)** divides crimes into categories of cognisable or non-cognizable, and bailable or non-bailable⁴. For crimes that are cognizable, the police are given the authority to make a warrantless arrest and register a formal complaint.

¹ Bharatiya Nagarik Suraksha Sanhita, 2023

² INDIA CONST. art. 21.

³ LAW COMMISSION OF INDIA, *Law Relating to Arrest*, Report No. 177 (Dec. 2001).

⁴ DR. K.N. CHANDRASHEKARAN PILLAI, R.V. KELKAR'S LECTURES ON CRIMINAL PROCEDURE 21 (Eastern Book Company 4th ed. 2003).

For offences that qualify for bail, the arrestee must be provided security after which police are obliged to let them go. If the arrest does not qualify for bail, only a judge can issue a bail. In the same breath, the police heave to carry forward the assumption of innocence until proven guilty. Following the implementation of the Universal Declaration of Human Rights, a multitude of instruments by the UN have stressed - in bold form or somewhat discreetly - the guardianship role of police officers within the domain of law enforcement and fundamental rights protection of freedom, public order, and welfare on behalf of a democratic society through the application of civil and humanitarian policies and strategies. Nonetheless, there still pre-vade within some law enforcement circles others who cling to the archaic notion that it is sometimes necessary for the common good to flout some laws. These misconceptions indeed make it more difficult for law enforcement to perform their duties. As history has shown so many times over, when members of the police service decide to become criminals, it is one of the most fundamental assaults on the law, human dignity, and creates numerous obstacles to effective policing.

In “*Joginder Kumar v State of U.P*”⁵, the Supreme Court held “No arrest can be made because the police officer is legally authorised to make the arrest” which stems from the fact that the police officer has a legal right to use such power. Having such power entails so much more than a reason to base it off.

The third report of the **National Police Commission** also held this view and pointed out that the power to make arrests was one of the primary sources of police corruption. It is evident that there are considerable deficits in the arrest procedure that can lead to detention and arrest without due process and subsequent misuse of this process by the police and other government agencies⁶.

CONSTITUTIONAL PROVISIONS FOR ARBITRARY ARREST

The Indian Constitution has provided several safeguards against unreasonable and unlawful apprehensions. Article 3 of the Universal Declaration of Human Rights is advanced by Article 21⁷ of the Constitution. The right to live and enjoy personal liberty is one of the dearest and most crucial of the rights granted by the constitution, as the judiciary's interpretation of Article

⁵ Joginder Kumar v. State of U.P., A.I.R. 1994 S.C. 1349.

⁶ Sangita Bhallia, Implementation of International Standards on Arrest in India, 18 J.L. & Soc’y 57 (1998).

⁷ INDIA CONST. art. 21.

21⁸ subsequent to *Maneka Gandhi v. Union of India*⁹ case shows. "Life" or "Personal Liberty" is not just living; it is also caring in being able to live with dignity and everything that comes with it.

There is a provision which has appeared for some time to be crucial and fundamental to all legal systems in order to ensure protection of the liberty of an individual which is found in Article 22¹⁰. A person who is detained in prison will be told the causes of his detention at the earliest possible moment for a reasonable period of time which is proffered in Article 22(1)¹¹. It also abrogates any limitation on the accused's ability to communicate with any lawyer of his choice. Such a person is required as a matter of law to be brought before the nearest magistrate within twenty-four hours of his arrest as stated in Article 22(2)¹². It also provides that no one shall, without the approval of a magistrate, be held in detention for longer than twenty-four hours. This is one means of curbing the arbitrary power of the police.

THE ARREST PROCESS IN INDIA

Even though reasonable arrest provisions are prescribed in the Constitution as well as in the CrPC 1973, the executive branch within the police system tends to abuse the power to arrest people. Under Section 41¹³ of the CrPC 1973 (Section 35 (1)-(6) of the BNSS), a police officer is granted the power to arrest a citizen without a warrant if that citizen has committed any cognizable offence. This is the same with the definition of cognizable offence as provided in section 2(c)¹⁴ of the CrPC 1973 (Section 2(1)(g) of the BNSS). A cognizable offence is one in which a constable is empowered to arrest the offender without any warrant. It is very important to understand the term "may" in the context of an arrest. The term "may" gives officers a lot of discretion.

In regards "*Nandini Satpathy v. PL Dani*¹⁵," the Supreme Court of India held that balancing the protection of individual rights and the rights of society should be maintained. It is common knowledge that the rights of the accused have been well protected over time. By the conclusion

⁸ INDIA CONST. art. 21.

⁹ *Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C. 597.

¹⁰ INDIA CONST. art. 22.

¹¹ INDIA CONST. art. 22, cl. 1.

¹² INDIA CONST. art. 22, cl. 2.

¹³ The Code of Criminal Procedure, 1973, §41, No. 2 Acts of Parliament, 1973 (India)

¹⁴ The Code of Criminal Procedure, 1973, § 2(c), No. 2 Acts of Parliament, 1973 (India)

¹⁵ *Nandini Satpathy v. PL Dani*, A.I.R. 1978 S.C. 1025.

of the trial, the court adjudged that in excess of 60% of the nation's arrests were not only unlawful, but quite superfluous. In addition, it was determined that these arresting procedures have large costs on the government, constituting 43.2 percent of the budget spent on prisons. These rulings highlight the shocking injustice faced by individuals who are imprisoned without having proper legal steps taken on their behalf. The systematic procedure involved in making an arrest, executing it precisely, notifying family or other stakeholders about the wellbeing of the arrested individual, and even paying for an illegal arrest leaves so much to be desired. These processes seem to be outdated, underreported, and badly managed in regard to the global standards of arrests. And, as disheartening is the way these existing standards are followed. Police enforcement agencies consistently breach these standards with little to no effort. They withhold the arrestee's presentation to the magistrate and the arrest is not recorded until they have sufficiently interrogated the person. The rule of law suffers either way because these police tendencies have become so contemptibly acute. It, therefore, does stand to reason that there seems to be absolute draconian abuse of power and a disturbing deficit of accountability. The judiciary has been actively involved in developing new mechanisms of enforcement alongside offering several draft proposals to solve the issue within law enforcement.

SUPREME COURT PRONOUNCEMENTS AND THEIR PROPOSALS

Since no law at the time limited the power of the police, a number of secondary recommendations were formulated in the case of "*D.K. Basu v. State of West Bengal*¹⁶". The Supreme Court has to follow specific directions if it is to do complete justice under Articles 141¹⁷ and 142¹⁸ of the Indian Constitution. In the D.K. Basu case, the court stated that police officers must have "clear, conspicuous, and unambiguous" identification which guarantees their affiliation to the police. It is necessary to periodically retain and refresh the altercation memorandum. There should also be requisite contribution from a case diary and other inspection memoranda.

Also, to avoid any potential misuse or abuse of power afforded to law enforcement, the provision for a legal representative and a medical evaluation for the detainee has now been made compulsory. In addition, a police control room should also be established in every district headquarters. The police control room is to take charge of displaying the arrest and the place

¹⁶ D.K. Basu v. State of West Bengal, A.I.R. 1977 S.C. 416.

¹⁷ INDIA CONST. art. 141.

¹⁸ INDIA CONST. art. 142.

of detention of each arrested person. There was a number of important amendments in the CrPC 1973, especially the ones concerning the arrest, in the year 2008. The revisions in the *D.K. Basu v. State of West Bengal*¹⁹ case were put into legislation with these changes. Every modification closely follows the guidelines presented in D.K. Basu case, demonstrating that legislators do, in fact, take the court's suggestions into account.

In the 154th report, the Law Commission of India²⁰ urged the splitting up of the investigative agency and the police order maintenance section. The Law Commission advanced several reasons to justify its proposal unbundle police services. Among other things, it was stated that the political blocks would be provided too much scope for interference, and that the courts would protect the investigative agency. This commits effective investigation of crimes with minimal chances of arbitrary and capricious prosecutions. Secondly, the stratification will help in the achievement of division of labour which would lead to faster investigations and ultimately resolution of the cases. It will also reduce chances of excesses of power during arrests.

CONCLUSION AND RECOMMENDATIONS

One could note that the incorporation of provisions 41-A, B, C, and D of the recommendations of the Hon'ble Supreme Court is crucial as it ensures the scrutiny of the system of arrests in India. A consultation paper issued by the Law Commission of India in the year 2000 suggests that nearly 40% of all arrests in the country may be classified as unnecessary or unjustifiable, which translates to an estimated 60% of arrest cases.

The components of the Indian criminal justice system are absolute, and must be operated within the folds of law provided by the Constitution. The failure of the existing criminal justice system to control the soaring crime rate calls for the State to discard the archaic law of arrest and detention for a scientifically and constitutionally viable crime control policy. That is, the researcher supports policies which seek to enhance the accountability of police officers for their arrests.

The Supreme Court has interfered to limit the scope of indiscriminate arrest, and protection of the arbitrary detained individuals by requiring the government to amend legislation to add

¹⁹ D.K. Basu v. State of West Bengal, A.I.R. 1977 S.C. 416.

²⁰ LAW COMMISSION OF INDIA, THE CODE OF CRIMINAL PROCEDURE, Report No. 154 (1996).

clauses from the National Human Rights Commission, the legislative Commissions, the National Police Commission, and the Court. An important remark made in the Judicial Pronouncements on Law of Arrest and the CrPC. 1973 revisions in 2005, 2008 and 2010 was that arrests must only be made for constitutionally permissible reasons. Just because you are in a position to make an arrest does not mean that you can do so at will.

With this understanding, the author now proposes this set of recommendations.

1. Officers must know both the statutes and the Supreme Court's rulings on arrests to know how to use their authorities optimally, especially when dealing with socially vulnerable people. Non-Governmental Organizations (NGOs) must be consulted by the government to aid in the enforcement of these rules. Renewing the public's trust in the police is a government's responsibility. A lower crime rate would be reported because so many violations of human rights exist without notice or documentation because the victims of such crimes consider the police as a threat. It is necessary to shift the perception of the police force so that they are viewed as friends, rather than enemies, of society and citizens. The actions of its employees should be attributable to the state. If the law enforcement acts in excess of authority or unlawfully, the state should be responsible for it. Moreover, the police as well as any other government institution have to be politically neutral. There has to be a system for guaranteeing and monitoring the enforcement of these provisions within the police.
2. The State should go above and beyond the suggestions above by increasing public understanding of the law and the rights entitled to them as citizens. Persons may not infringe their rights if they know what those rights are, so the government has to partner with non-government organizations to help inform the citizens. Just like the NHRC suggested that messages be broadcasted over the Doordarshan channel, it would be helpful to allow NGOs to access police stations to observe cases of infringement of the suspect's rights and the police's compliance with legal procedures.
3. The advisory body, who will not report to the jail administration, will conduct regular checks. The jail administration should be subject to **The Right to Information Act of 2005**²¹, and there ought to be more functions for the National Human Rights Commission.

²¹ The Right to Information Act, 2005, No. 22, Acts of Parliament, 2005 (India)

4. The presence of the accused's lawyer at the police station during questioning would lessen the chances that the police would use aggressive, third-degree tactics in the course of the investigation.

Although individuals are afforded specific privileges by the **Code of Criminal Procedure, 1973 (Bharatiya Nagarik Suraksha Sanhita, 2023)**, the police still misuse their powers of arrest indiscriminately. Most people think the police utilize their authority to coerce and bully suspected criminals into surrendering cash. In a democracy, law enforcement officers are accountable to the citizens for their behavior. The two most important elements in efficient policing are observance of the law and the protection of people's fundamental rights. The police's obligation to use force in order to curtail an escalation in violence and disorder raises the problem of police brutality, which is an important social concern. The government needs to reform the criminal justice system for it to accept that its foremost duty is to rehabilitate rather than punish offenders.

Enforcement of the law is responsible for ensuring that the rights of every member of the public, including those in custody, are protected. As such, it falls to the police to guarantee the accused are treated with dignity, laws are followed, and harassment is not tolerated. The primary functions of law enforcement officials are to enforce the law and protect the rights of the accused.

***THE CODE OF CRIMINAL PROCEDURE, 1973 HAS BEEN UPDATED TO BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 WHICH CAME INTO FORCE FROM 1ST JULY 2024 AND REPLACING ALL THE CRPC 1973 SECTIONS TO BNSS SECTIONS AND THE ABOVE MENTIONED DRAFT WAS MADE ON THE BEHALF OF CRPC 1973 AND PUTTING ACCORDING TO CRPC SECTIONS. THE DRAFT CONTAINS THE RIGHTS OF AN ARRESTED PERSON, PROCEDURE OF ARREST IN INDIA AND THE MODIFICATIONS SHOULD BE MADE IN INDIA.**