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# **ARREST OF A PERSON UNDER CRIMINAL PROCEDURE CODE, 1973**

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## **ABSTRACT**

*This Article is based on the study of arrest, procedure of arrest, duties of the police officers and the rights of the arrested person. Initially the article addresses the meaning of arrest, which propounded as apprehension or restraint or the deprivation of one's liberty. Then it discussed the historical background of arrest from ancient, medieval to colonial period in India. Further, it discussed the objectives of the arrest which includes protecting individual's rights and properties, maintaining law and order in the society. Then it discussed how the arrest made is necessary. Then it discussed the procedure of arrest. Then it discussed the duties of the police officers and the rights of the arrested person. There are multiple case laws, which provide us with several guidelines of arrest. Further the information collected by the researcher is from both the primary sources and secondary sources. The primary sources include responses collected from 42 individuals in the form of questionnaire. Later the secondary sources include information collected from various books, e-sources, websites, and research articles*

**Key words:** Arrest, Objective of arrest, Duties of police officer, Rights of arrested person.

## **1.1 INTRODUCTION**

The term "arrest" derives from the French word "Arreter" which means "to stop" or "stay" and signifies a restraint on a person's movement. In common parlance, the word arrest means the "apprehension or restraint or the deprivation of one's liberty"<sup>1</sup>. It is "some kind of stopping of a person by authority of law", primarily made "for the purpose of bringing a prosecution against the person arrested"<sup>2</sup>. In arrest, a person is deprived of his freedom, at least, until there is a judicial review of the arrest. In 1964, a study conducted by the Human Rights Committee on the right of

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<sup>1</sup> B. Uma Devi, *Arrest, Detention and Criminal Justice System*, Oxford University Press, New Delhi, 2012.

<sup>2</sup> Glanville Williams, "When is an Arrest?" 54 *The Modern Law Review* 408, 408 (1991)

person free from arbitrary arrest, detention and exile defined arrest as, “The act of taking a person into custody under the authority of the law or by compulsion of another kind

and includes the period from the moment he is placed under restraint up to the time he is brought before an authority competent to order his continued custody or to release him.”

There was no specific definition of ‘arrest’ under the Indian legal system. However, the Supreme Court defined the term ‘arrest’ occurring in Article 22 of the Constitution of India, 1950 in *State of Punjab v. Ajaib Singh*<sup>3</sup>. The Court defined it as “indicating physical restraint of a person under the authority of the law in respect of an alleged accusation or default or violation of the law”. The Supreme Court in *State of Haryana v. Dinesh Kumar*<sup>4</sup>, held that the term arrest means restraining liberty of a person and hence submitting a person in custody amounts to arrest. An element of coercion by the State can be inferred as inherent in the idea of arrest.

Eg : If a police officer apprehends a pick pocket , he is arresting the pick pocket. When a dacoit apprehends a person with a view to commit robbery, the dacoit is not arresting that person but wrongfully confining him. Further every compulsion of physical restraint is not arrest.

## 1.2 Historical Background

In ancient India, legal systems varied across different regions and periods. The concept of arrest was present, often in the context of maintaining law and order within kingdoms and empires. Legal codes such as the Manusmriti and Arthashastra provided guidelines for law enforcement and punishment, including provisions for apprehending individuals suspected of crimes.

During the medieval period, various dynasties and rulers established their own systems of justice. The concept of arrest continued to exist, with authorities exercising the power to detain individuals suspected of crimes. These practices were often influenced by religious and cultural norms prevalent at the time.

The development of modern legal systems in India was significantly influenced by British colonial rule. The British introduced legal codes and procedures, including laws governing arrest and criminal procedure. The Code of Criminal Procedure (CrPC) enacted in 1861, during British rule, laid down procedures for arrest, investigation, and trial.

After gaining independence in 1947, India underwent significant legal reforms. The CrPC was revised and updated to reflect the principles of justice, fairness, and human rights. The Constitution of India, adopted in 1950, enshrines fundamental rights and provides protections

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<sup>3</sup> 1953 AIR 10

<sup>4</sup> AIR 2008 SC 1083

against arbitrary arrest and detention.

### 1.3 Objectives

Following are the objectives for arresting a person:-

1. Protecting Individual and property:

Arresting individuals who pose a threat to others or their property helps ensure the safety and security of the community. By removing potential harm-doers from society, law enforcement protects both individual citizens and their belongings from harm and damage.

2. Maintaining law and order in the society:

Arrests play a pivotal role in upholding societal norms and regulations. When individuals break the law, arresting them serves as a deterrent to others and reinforces the importance of adhering to legal standards. This helps maintain a peaceful and orderly environment for all members of society.

3. Delivering Justice:

Arrests are a crucial step in the criminal justice system to ensure that those who commit crimes are held accountable for their actions. By arresting and subsequently processing offenders through the legal system, justice is served, providing closure to victims and their families and reinforcing faith in the rule of law.

4. Protecting the right of the accused:

Arrests are conducted with an emphasis on respecting the rights of the accused. Law enforcement ensures that individuals are treated fairly and their rights, such as the right to legal representation and due process, are upheld throughout the arrest and subsequent legal proceedings.

5. Enforcing court order:

Arrests are sometimes made to enforce court orders, such as warrants or injunctions. By apprehending individuals who have violated these orders, law enforcement ensures that judicial decisions are respected and complied with, maintaining the integrity and authority of the court system.

## 6. Punishing the offender:

Arrests serve as the initial step towards holding offenders accountable for their actions.

Through arrests, law enforcement initiates the process of bringing offenders to justice, which may ultimately lead to penalties, fines, or imprisonment as prescribed by law, ensuring that there are consequences for unlawful behaviour.

## 2.1 Overview of Statutory Provisions of Arrest

### A. Section 41<sup>5</sup> of CrPC, 1973:

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<sup>5</sup> Sec 41 of the Code of Criminal Procedure, 1973 reads as:

“41. When police may arrest without warrant. — (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely: —

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

[Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.]

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;]

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

Section 41(1)(a), explains that any police officer can arrest any person without a warrant and without a order from a magistrate if that person has committed a cognizable offence in presence of a police officer. Section 41(1)(b) explains that if any reasonable complaint has been made or credible information has been received or a reasonable suspicion exists against a person that he has committed a cognizable offence then the police officer can arrest that person without warrant and without a order from a magistrate. As seen in the case of *Pradeep Kumar Tiwari v/s State of NCT of Delhi*<sup>6</sup>, The Delhi Court held, that an effect of person's arrest should be done by the police officer according to the Section 41(1)(d) of CrPC. More so, Section 41 divides the cognizable offence in two categories: offences punishable with imprisonment upto seven years and offences punishable with imprisonment for more than seven years or death, with or without fine. The arrest of an accused person cannot be effected by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. Before making the arrest, a police officer has to further satisfy himself that such an arrest is necessary,

- a. Prevent the commission of further offence by the person.
- b. For proper investigation of the person.
- c. To prevent disappearance of evidence by the person.
- d. To prevent that person from threatening/ inducing/ promising any other person who is acquitted with the fact.
- e. Without arrest, the police believes that he cannot secure that person's presence in the court.

The Police Officer can arrest a person without warrant if he has committed the said offences:

- a. Any person has been proclaimed under CrPC, 1973 or by an order of the state government<sup>7</sup>; or
- b. When a person is found in possession of stolen property or such thing<sup>8</sup>; or
- c. Any person who has either obstructed the police officer or escaped or attempt to escape from lawful custody<sup>9</sup>; or

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[(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.]”

<sup>6</sup> C.R.L.L.P. 542/2019

<sup>7</sup> Section 41(1)(c) of CrPC, 1973

<sup>8</sup> Section 41(1)(d) of CrPC, 1973

<sup>9</sup> Section 41(1)(e) of CrPC, 1973

- d. Any person who is reasonably suspected to be a deserter of a Armed Forces <sup>10</sup>; or
- e. If reasonable information is received by the police regarding commitment of an offence outside India and such a person is liable to be apprehended in India <sup>11</sup>; or
- f. If a released convict commits breach of rule under Section 356(5) of CrPC <sup>12</sup>; or
- g. A requisition is received from any police officer that a reasonable complaint, credible information, reasonable suspicion against a person who has committed offence outside India <sup>13</sup>.

Section 41(2), explains that subject to Section 42 CrPC no person can be arrested by a police officer without warrant if he has committed non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists. The person can only be arrested under a warrant or order of magistrate by a police officer.

The 2008 Amendment inserted Section 41 A in the CrPC which was further amended in 2010 to replace the word “may” with “shall”. As per Section 41 A of CrPC, the notice of appearance before a police officer can be made if reasonable complaint, credible information, reasonable suspicion is found against the person for committing a cognizable offence. If such a person does not comply with the notice then he can get arrested by the police officer. But if the person complies with the notice then he shall not be arrested by the police officer for the offences referred to in the notice. If the person fails to comply with the terms of the notice then the police officer may arrest him subject to such orders as may have been passed by a competent court. The Supreme Court in *Armesh Kumar case* <sup>14</sup> directed that issuing a notice of appearance under section 41A was thoughtfully implemented. Police officers should not arrest an individual unnecessarily, without any justifiable grounds and the Magistrate should not authorise detention in a casual and mechanical manner.

Section 41 B of CrPC, 1973 laid the procedure of arrest and the duties of the police officer making the arrest. Every police officer while making arrest shall-

- a. Bear- accurate, visible and clear identification of his name.

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<sup>10</sup>Section 41(1)(f) of CrPC, 1973

<sup>11</sup>Section 41(1)(g) of CrPC, 1973

<sup>12</sup>Section 41(1)(h) of CrPC, 1973

<sup>13</sup>Section 41(1)(i) of CrPC, 1973

<sup>14</sup> (2014) 8 SCC 273.

- b. Should prepare a memorandum which should be attested by atleast one witness- who can be family member or respected member of locality, and it should be countersigned by the person arrested.
- c. The person arrested should be informed- that he has the right to have his friend or relative informed about his arrest.

Supreme Court in the case of *Joginder Kumar V/s State of UP* <sup>15</sup> has laid down some comprehensive guidelines which are as follows:

1. An arrested person being held in custody has a right to have a one friend, relative or any other person informed about the arrest and the place of detention. The arrested person shall be informed of this right when he is brought in the police station.
2. An entry shall be made in the diary as to who was informed of the arrest.
3. The reasons for making an arrest have to be made in the case diary.
4. It is the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that the above requirements have been complied with.

Supreme Court in the case of *DK Basu v/s State of West Bengal* <sup>16</sup> laid down the following guidelines for the arrest and detention of individuals:

1. Police officers involved in the arrest and interrogation of an arrestee must wear clear, visible identification and name tags with their designations. Details of all police personnel handling the interrogation must be recorded in a register.
2. The police officer affecting the arrest must prepare a memo of arrest at the time of arrest. It should be witnessed by at least one person who may be a family member or a respected individual from the area where the arrest occurs. The memo should also be countersigned by the arrested person and include the time and date of the arrest.

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<sup>15</sup> 1994 SCC (4) 260

<sup>16</sup> 1997 (1) SCC 416

3. Any person arrested and held in custody has the right to have a friend, relative, or someone is known to them informed about their arrest and detention as soon as possible unless the witness to the arrest is such a friend or relative.
4. The police must notify the time, place of arrest and place of custody of the arrestee to the next of kin if they live outside the district or town. This notification should be made through the Legal Aid Organisation in the district and the concerned area's police station within 8 to 12 hours after the arrest.
5. The person arrested must be informed of their right to have someone informed of their arrest or detention as soon as they are taken into custody.
6. An entry regarding the arrest must be made in the case diary at the place of detention. This entry should also include the name of the person informed about the arrest (next of kin) and the names and details of the police officials responsible for the arrestee.
7. The arrestee, upon request, should be examined at the time of arrest and any visible injuries on their body, major or minor, should be documented. Both the arrestee and the police officer should sign an "Inspection Memo," and a copy should be provided to the arrestee.
8. The arrestee should undergo a medical examination by a qualified doctor every 48 hours during their custody. These doctors should be on a panel of approved doctors appointed by the Director of Health Services in the respective State or Union Territory. Such a panel should be prepared for all Tehsils and Districts.
9. Copies of all documents, including the memo of arrest, should be sent to the Magistrate for their records.

10. The arrestee may be allowed to meet with their attorney during the interrogation, although not necessarily throughout the entire process.
11. Police control rooms should be established at all district and state headquarters. The officer in charge of the arrest must communicate information about the arrest and the place of custody of the arrestee to the control room within 12 hours of effecting the arrest. This information should be displayed on a visible notice board at the control room.

Section 41 C of CrPC, 1973 explains that a control room should be established by every state government at every district and state level. The State Government should ensure that the name and address of the person arrested as well as the name and designation of the police officer should be displayed on the notice board. As per Section 41 D of CrPC, any person who is arrested and is interrogated by police, legislature has cast duty upon the arresting officer that accused shall be entitled to meet with his advocate of his choice during interrogation. These provisions were directly based on the guidelines given by the Supreme Court in *D.K Basu vs State of West Bengal*.

**B.** Section 42 of CrPC, 1973<sup>17</sup> explains that arrest on refusal to give name and address. When any person who in the presence of police officer who has committed or is accused of committing any non-cognizable offence, refuses to give or gives false name and address to the police officer he shall be arrested. But if the person's true name and residence is ascertained, then he shall be released on his executing a bond, with or without sureties, to appear before a magistrate if so required. If such person is not a resident of India, then the bond shall be secured by a surety or sureties resident in India.

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<sup>17</sup> (1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required: Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

**C.** Section 43 of CrPC, 1973<sup>18</sup> lays down the arrest made by private persons and the procedure on such arrest. Any private person can arrest a person who in his presence commits a non-bailable and cognizable offence or is a proclaimed offender. Further, that person has to make over the arrested person to the police officer or to the nearest police station. If the arrest of the person comes under the provision of Section 41, he shall be re-arrested by the police. If the person arrested has committed non-cognizable offence and refuses to give his true name and address to the police officer, then he shall be dealt as per the provision of Section 42 of CrPC.

**D.** Section 44 of CrPC, 1973<sup>19</sup> lays down the power of arrest by magistrate where a person commits an offence in his presence. The Magistrate whether Executive or Judicial, within his local jurisdiction, can himself arrest the person, or alternatively direct another person to do so. The magistrate whether, judicial or executive, can make an arrest or direct the arrest of a person for whom he is competent at the time and in the circumstances to issue a warrant.

**E.** Section 46 of CrPC, 1973<sup>20</sup> lays down the procedure for how the arrest is made. The arrest of a person can be made by actually confining/ touching the person's body. In case of arrest of a

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<sup>18</sup> (1) Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

<sup>19</sup> (1) When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

(2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

<sup>20</sup> (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action: 35

1 [Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.]

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

2 [(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.]

woman, if she submits to the custody an oral intimidation it shall be presumed that she has accepted her custody. If the person forcibly resists to arrest him, then the police can make the arrest by using a necessary force. But the force applied should not cause the death of the person if the person is not accused of life imprisonment or death. No women shall be arrested after sunset and before sunrise except in some circumstances the women police officer after making a written report and obtaining permission from the Judicial Magistrate First Class (JMFC) can arrest a women at any time.

In the case of *Christian Community Welfare Council v/s State of Maharashtra* <sup>21</sup>, Bombay High Court held that no female persons shall be detained or arrested without the presence of lady constable and in no case shall be arrested after sunset and before sunrise.

In the case of *Citizen for democracy v/s State of Assam* <sup>22</sup> The Hon'ble Court observed that 'we declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner, convicted or under trial while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to Court and back.

In the case of *Rajkumari v/s SHO Noida* <sup>23</sup> The Court ruled that while arresting a female accused, all efforts should be made to keep a lady constable, but in circumstances where the arresting officers are reasonably satisfied that such presence of a lady constable is not available or required and such a requirement would cause unreasonable delay affecting the validity or fruit of arrest then the officers would be permitted to arrest such a female accuse at any time of the day and even without the presence of a lady constable, however the burden of proof is on such arresting officers.

In the case of *Bharti S Khandar v/s Maruti Govind Jadhav* <sup>24</sup> states that a woman cannot be arrested after sunset and before sunrise, except in unavoidable circumstances. This provision ensures the protection of women's rights during the arrest process.

## 2.2 Duties of police officer

1. Person arrested to be informed grounds of arrest <sup>25</sup>:

Every police officer arresting any person shall communicate with him the grounds for which he has been arrested.

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<sup>21</sup> 1996ACJ199

<sup>22</sup> 1995 (3) SCC 743

<sup>23</sup> 2003 AIR SCW 5512

<sup>24</sup> WP-453-08

<sup>25</sup> Section 50 of CrPC, 1973

2. Obligation of person making arrest to inform about arrest, etc. to a nominated person <sup>26</sup>:

Every police officer making an arrest shall give the information of the person arrested to any of his relative, relatives or any such person as may be described by the arrested person for giving such information.

3. Search of arrested person <sup>27</sup>:

The search of an arrested person is done by the police officer when that person is unable to furnish bail. All the articles which were found on the person's body, must be place in safe custody by the police officer. In case the person arrested is a female, then the search of such person should be done by a women police officer. And the search should be done in a decent way.

4. Power to seize offensive weapons <sup>28</sup>:

The police officer arresting the person has the power to seize any offensive weapon which is found with the person arrested and should be given to the court.

5. Health and safety of arrested person <sup>29</sup>:

It is the duty of the police officer having the custody of an accused to take reasonable care of the health and safety of the accused.

6. Discharge of a person apprehended <sup>30</sup>:

The person arrested by a police officer should not be discharged except on his own bond, or on bail, or under the special order by the magistrate.

7. Power, on escape, to pursue and retake <sup>31</sup>:

If a person has escaped from lawful custody or is rescued then the police officer has the power to rearrest him from any place in India.

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<sup>26</sup> Section 50 A of CrPC, 1973

<sup>27</sup> Section 51 of CrPC, 1973

<sup>28</sup> Section 52 of CrPC, 1973

<sup>29</sup> Section 55 A of CrPC, 1973

<sup>30</sup> Section 59 of CrPC, 1973

<sup>31</sup> Section 60 of CrPC, 1973

8. Arrest to be made strictly according to the code <sup>32</sup>:

No arrest shall be made except in accordance with the provisions under CrPC or under any other law for time being in force for arrest.

### 2.3 Rights of the Accused Person

1. No necessary restraint <sup>33</sup>:

The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

2. Right to bail <sup>34</sup>:

Every Police Officer arresting any person without warrant other than a person accused of non-bailable offence the police officer shall inform the person arrested that he is entitled to be released on bail.

3. Right to meet an advocate <sup>35</sup>:

Any person who is arrested and is interrogated by police, legislature has cast duty upon the arresting officer that accused shall be entitled to meet with his advocate of his choice during interrogation.

4. No deprivation of Fundamental Rights <sup>36</sup>:

Every accused has the right to life and personal liberty, including the right to a speedy trial, and ensures that the delay in legal proceedings does not unduly prejudice the accused

5. Right to free and fair trial <sup>37</sup>:

Every accused has the inherent right to a free and fair trial. This implies the right to be heard without prejudice to ensure that no bias hinders achieving justice.

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<sup>32</sup> Section 60 A of CrPC, 1973

<sup>33</sup> Section 49 of CrPC, 1973

<sup>34</sup> Section 50 of CrPC, 1973

<sup>35</sup> Section 41 D of CrPC, 1973

<sup>36</sup> Article 21 of Indian Constitution of India, 1950

<sup>37</sup> Article 14 of Indian Constitution of India, 1950

## 2.4 Medical Examination when required

1. Examination of accused by medical practitioner at the request of police officer <sup>38</sup>:

The examination of accused is done by a registered medical practitioner when requested by police officer who is not below the rank of sub-inspector. The examination is done for getting any evidence related to the commission of the offence. If the accused person is a female then the examination should be done by the female registered medical practitioner.

2. Examination of person accused of rape by medical practitioner <sup>39</sup>:

The examination of person accused of rape or attempt to rape should be done by registered medical practitioner of government hospital. The examination is done when requested by police officer who is not below the rank of Sub-Inspector as well as for getting any evidence related to commission of the offence. Any other registered medical practitioner can conduct this examination if any of them is not available within a radius of 16km in which the offence is committed. The examination report of the accused should be submitted by the medical practitioner to the investigating officer. The investigating officer will forward such report to the magistrate u/s 173 of CrPC when the charge sheet is being prepared.

3. Examination of arrested person by medical officer <sup>40</sup>:

When any person is arrested he shall be examined by a medical officer who is in the service of Central or State Government and in case of his absence the medical practitioner would examine the person arrested. The medical examination of the accused should be done as soon as he is arrested. The Medical officer or medical practitioner examining the arrested person should make a record mentioning if there are any injuries or marks of the violence on the body of the person arrested along with appropriate time when such injuries or marks are being inflicted. The examination report should be given to the arrested person or any person nominated by the arrested person.

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<sup>38</sup> Section 53 of CrPC, 1973

<sup>39</sup> Section 53 A of CrPC, 1973

<sup>40</sup> Section 54 of CrPC, 1973

### 3.1 Research Methodology

#### A. Primary Data:

The researcher obtained the primary source of data by conducting an empirical study on seeking responses from the general public based on an online questionnaire. The analysis of the data was conducted using a statistical tool, allowing for the development of relevant conclusions and recommendations. The researcher has used the empirical type of research which is done by a survey method. In this research paper, the researcher has taken responses from 42 participants for conducting the survey on arrest. Statistics is based on percentage analysis.

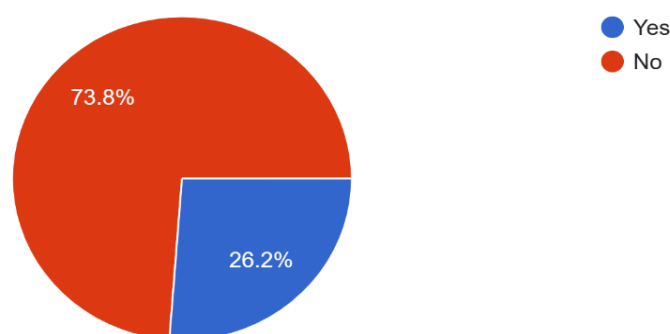
#### B. Secondary Data:

The researcher also collected information from secondary sources of data such as books, journals, e-sources, websites and research articles. Data was aggregated using the internet.

**Figure 1:**

Do you think arrest is an illegal detention of person ?

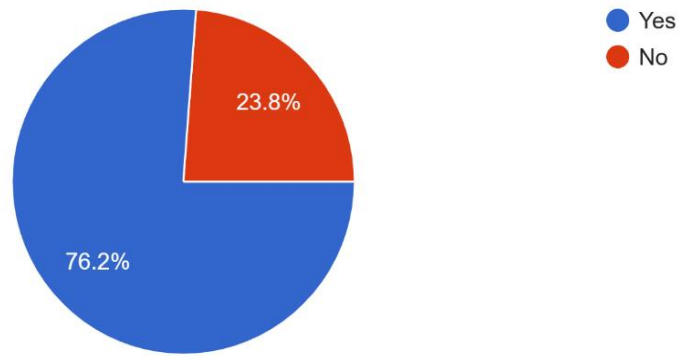
42 responses



In the above given graph, it can be seen that out of 42 responses, 73.8% responses are saying **No**, whereas 26.2% are saying **Yes**. Hence, it indicates arrest is not an illegal detention of person.

**Figure 2:**

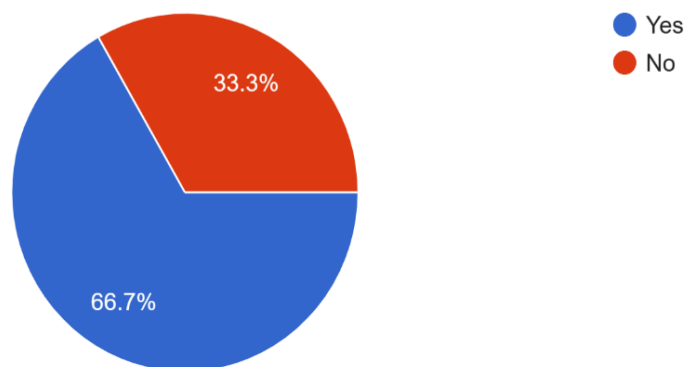
Do you know the procedure of arrest ?  
42 responses



In the above given graph, it can be seen that out of 42 responses, 76.2% of the responses are saying **Yes**, whereas 23.8% of the responses are saying **No**. Which indicates that majority of the people knows the procedure of arrest.

**Figure 3:**

Do you know the provision of arrest ?  
42 responses



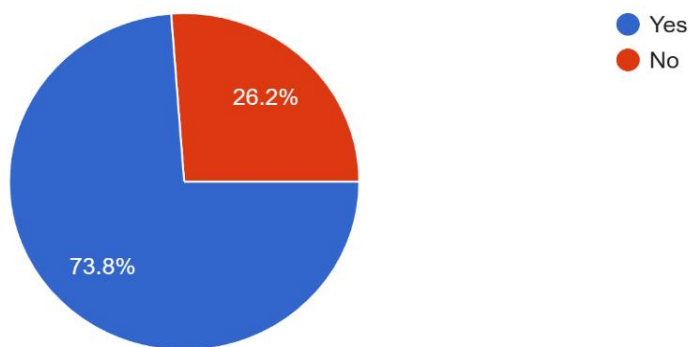
In the above given graph, it can be seen that out of 42 responses, 66.7% of the responses are

saying **Yes**, whereas 33.3% of the responses are saying **No**. Which indicates that majority of the people knows the provision of arrest.

**Figure 4:**

Do you know the rights of arrestee ?

42 responses

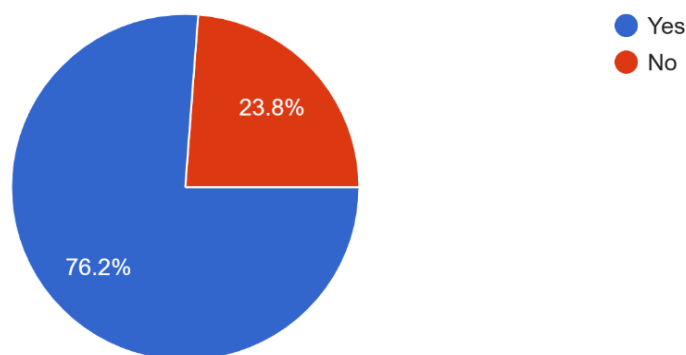


In the above given graph, it can be seen that out of 42 responses, 73.8% of the responses are saying **Yes**, whereas 26.2% of the responses are saying **No**. Which indicates that most of the people are aware of the rights of arrestee.

**Figure 5:**

Do you know the duties of police officer ?

42 responses

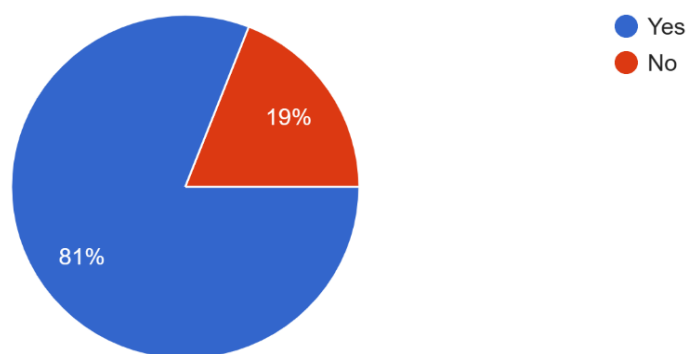


In the above given graph, it can be seen that out of 42 responses, 76.2% of the responses are saying **Yes**, whereas 23.8% of the responses are saying **No**. Which indicates that most of the people are aware of the duties of police officer.

**Figure 6:**

Do you think law related to arrest are justifiable ?

42 responses

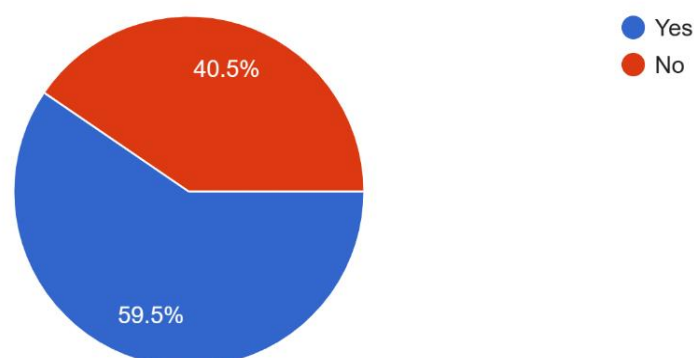


In the above given graph, it can be seen that out of 42 responses, 81% of the responses are saying **Yes**, whereas 19% of the responses are saying **No**. Which indicates that most of the people think that the law related to arrest are justifiable.

**Figure 7:**

Do you know the guidelines given in case D.K Basu vs State of West Bengal ?

42 responses

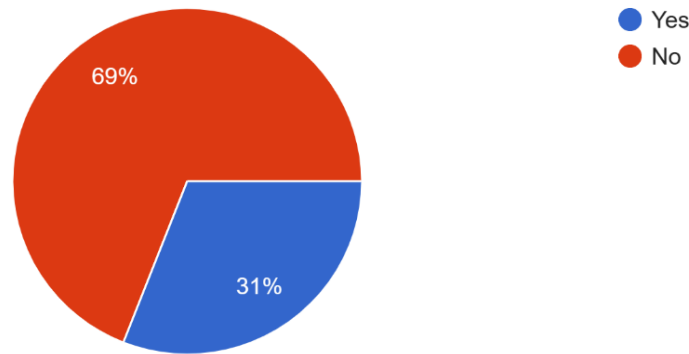


In the above given graph, it can be seen that out of 42 responses, 59.5% of the responses are saying **Yes**, whereas 40.5% of the responses are saying **No**. Which indicates that some of the people are only aware of the guidelines given in D.K Basu vs State of West Bengal.

**Figure 8:**

Do you know the guidelines given in case Arnesh Kumar vs State of Bihar ?

42 responses

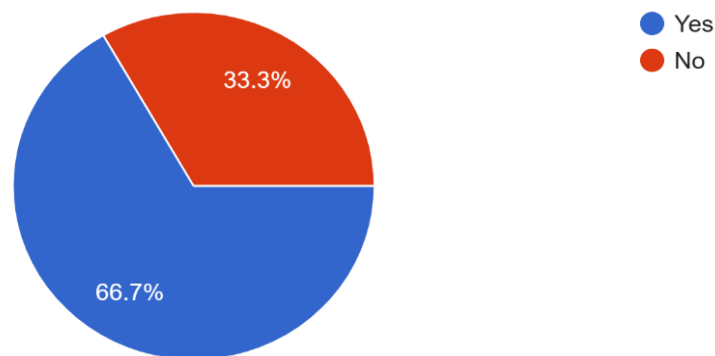


In the above given graph, it can be seen that out of 42 responses, 69% of the responses are saying **Yes**, whereas 31% of the responses are saying **No**. Which indicates that only few people are aware of the guidelines given in Arnesh Kumar v/s State of Bihar.

**Figure 9:**

Do you think that laws related to arrest shall be Amended ?

42 responses



In the above given graph, it can be seen that out of 42 responses, 66.7% of the responses are saying **Yes**, whereas 33.3% of the responses are saying **No**. Which indicates that majority of the people think that there are loopholes in laws related to arrest and therefore shall be Amended.

### 3.2 Suggestion

From the data collected following are the suggestion of the people regarding laws of arrest in India:

1. Arrest is not an illegal detention of person.
2. Arrest of a person is necessary for betterment of the societies and also to reduce the crime rate in India.
3. The arrest should be made by the police officer only after conducting proper procedures for administration of the justice.
4. Laws related to arrest shall be Amended.
5. The procedure and provisions for arrest are fine with what has been given under CrPC. Although strict actions should be taken against those officials who do not follow these provisions, in case of cognizable offences in my opinion.
6. Arrest is a crucial tool in administering justice, ensuring individuals comply with the law and preventing flight from justice. However, it should be used judiciously, balancing the need for public safety and the presumption of innocence until proven guilty. Overuse or misuse of arrest powers can infringe on civil liberties and undermine trust in the legal system. So, it's essential to strike a balance and ensure that arrests are made based on clear evidence and legal principles.
7. A major purpose of arrest in India is to bring the person before court and secure administration of justice. An arrest also serves the purpose of notifying the society that a particular individual has committed an act which is against the society and act as a remark to deter crime in future. Hence arrest should made necessary.
8. There is no room for arbitrariness, fantasy, or oppression in the "right, just, and fair" application of the process outlined in Article 21. It is anticipated that the arrest will be warranted in addition to being lawful. Arrested individuals Fundamental Rights are acknowledged even in the Indian Constitution.
9. Arrest should not be based on the reputation of a person and the law should be equal to everyone! And Our criminals should know Arrest is not a shelter for them. In India the gangsters do crime to get safe from the other opponents and for example many of the gangsters in Mumbai are openly doing crimes and they don't get a serious punishment for their crime because they get loopholes from our laws and it's not right. To decrease the crime rate we should make our laws strict. And the bigger criminals get good facilities in the Jail and the innocent people whose crime is not proven yet feel the Jail like hell for them and therefore the crime rate increases.

### 3.3 Opinion

The police officer shall arrest a person with order of the magistrate in some situations and arrested person shall be presented before magistrate within twenty-four hours and cannot be detained beyond the said period. No person shall be detained beyond the period of three months except on the recommendation of the advisory board. The police officer shall follow the procedures of arrest and his duties towards accused person. No person shall be illegally detained if done so then other person representing that person can file a writ of habeas corpus in the courts. No person shall be subject to false imprisonment or unlawfully imprisonment and if a person intentionally restricts other persons movement without legal authority or without persons permission that the punishment shall be of high degree. An illegal detention is the unjustifiable imprisonment or unlawful deprivation of liberty by way of arrest for a wrongful cause or suspicion and continued restriction of freedom by such person in police custody. The fundamental rights of the prisoners shall not be deprived resulting in custodial death and also police officer should follow the guidelines given in D.K Basu v/s state of West Bengal while making an arrest. Some provisions should be modified such that no one can take advantage of such provisions Eg:- 498 A IPC, 1860 cruelty by husband or relative of husband this section being a non bailable and cognizable offence some women were taking advantage of this section and filling FIR against their husband resulting in arrest of their husband. Then, later in Armesh Kumar v/s state of Bihar the court restricted the police from making arrests solely based on complaints. The arrest of the women has been properly represented under Section 46 of this code so that there is no deprivation of the reputation of the women in our society. According to questionnaire survey conducted we founded that people only know the previous provisions of arrest.

### 4. CONCLUSION

The process of arrest, the procedure involved, and the rights of the arrested person is crucial for ensuring fairness and upholding the principles of justice. Arrests are made on reasonable grounds and, in some cases, require an arrest warrant. During the arrest process, law enforcement officers must adhere to certain guidelines, such as identifying themselves and informing the individual of their arrest. Once arrested, individuals have several rights that protect them including, the right to be informed about the charges against them, right to meet an advocate and protection against unreasonable seizures and searches. It is important to note that arrest procedures and rights may vary depending on jurisdiction, so it is advisable to consult local laws for specific details.

Ultimately, the aim is to balance the interests of law enforcement with the protection of individual rights, ensuring a fair and just legal system. Lastly, it can be concluded that even though there are certain provisions regarding how the arrest should be made and regarding the rights of the arrested person but this were somehow violated and not been utilised accordingly. The police officers misuse their powers and also they failed to do their duties properly. Moreover, the main reason behind it was the unawareness of the people about their rights. We somehow console ourselves that these protectors of law and order must be doing right but there are several cases where we witness how they misuse their power. The police officers misuse their powers and also they failed to do their duties properly. Moreover, the main reason behind it was the unawareness of the people about their rights. We somehow console ourselves that these protectors of law and order must be doing right but there are several cases where we witness how they misuse their power.

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