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“ARBITRARY ARREST TO JUDICIAL CONTROL: THE EVOLUTION OF ARREST JURISPRUDENCE IN INDIA”

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Abstract

Liberty occupies a central position in modern constitutional democracies and forms the very essence of civilized existence¹. The power of arrest, while indispensable for the maintenance of law and order, directly intrudes upon the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India². This paper critically examines the law governing arrest in India, focusing on statutory provisions, constitutional safeguards, and judicial interventions aimed at preventing arbitrary and mechanical arrests. It traces the evolution of judicial thought from early constitutional interpretation to contemporary jurisprudence under the Code of Criminal Procedure (CrPC) and the Bharatiya Nagarik Suraksha Sanhita (BNSS). Special emphasis is placed on Section 41 and 41A, the landmark rulings in *Arnesh Kumar v. State of Bihar* and *Satendra Kumar Antil v. CBI*, and the expanding jurisprudence on the right to be informed of grounds of arrest. The paper also analyses recent Supreme Court and High Court decisions reinforcing procedural safeguards, the duty of magistrates, and the consequences of non-compliance. Paper further explores law of arrest from human rights perspective, recognising arrest as an intrusive exercise of state power that demands careful restraint, openness, and accountability. It also traces gradual shift in judicial approach from formal statutory compliance to insistence on constitutional reasonableness, informed by principles of due process. Attempt is also made to examine growing emphasis on communication of grounds of arrest in writing and in language understood by arrestee as an effective measure to prevent misuse of arrest powers by state authorities. Paper points out continuing implementation gaps and institutional resistance to change, and stresses on the need to align policing practices on the ground with constitutional morality. It concludes that despite robust legal safeguards, arbitrary arrests persist due to institutional inertia, necessitating stricter judicial oversight and cultural transformation within policing practices.

¹ Jain, M. P. (2022). Indian constitutional law (9th ed.). LexisNexis.

² Krishna Iyer, V. R. (1982). Human rights and the criminal process (1st ed), Eastern Book Company

Keywords: Arrest, Personal Liberty, Constitutional Safeguards, Judicial Oversight, Bail Jurisprudence.

INTRODUCTION: -

“Liberty is one of the most essential requirements of the modern man. It is said to be the delicate fruit of a mature civilization. It is the very quintessence of civilized existence and essential requirement of a modern man”

...John E.E.D.

Arrest and detention in police lock-up may be very traumatic for a person. It can cause him incalculable harm by way of loss of his mental well-being and reputation. Denying a person of his liberty is a serious matter³. Indian constitution has held liberty of the person to be of paramount importance. Article 21 of Constitution lays down that “No person shall be deprived of his life or personal liberty except according to procedure established by law”. Since independence Hon’ble Apex Court and Hon’ble High Courts have come down heavily on any attempt by state to curtail the liberty of individual. From **A. K. Gopalan vs State of Madras**⁴ to **Maneka Gandhi**⁵ nation has travelled a long way and Judiciary has made every attempt to fortify the liberty of individual. In the case of **Joginder Kumar vs State of Uttar Pradesh**⁶, It was held that no arrest can be made because it is lawful for the police officer to do so. However, in spite of all these efforts it is often noticed that arrests are in total disregard of law as well as guidelines.

The concepts of arrest and Bail form two of the most critical pillars of the criminal procedure in India, they embody the delicate balance between the sovereign power of the state to maintain law and order and the fundamental rights of individuals guaranteed under the constitution. An arrest, by its very nature involves the restraint of personal liberty, and thus engages the most cherished right under article 21 the right to life and personal liberty⁷. Bail on the other hand, acts as a safeguard against the excesses of pre-trial detention and ensures that a person, presumed innocent until proven guilty, is not unnecessarily deprived of liberty. The law relating to arrest and bail, therefore, sits at the intersection of State authority and individual

³ M. P. Jain, *supra*, Note 1

⁴ AIR 1950 SC 27

⁵ AIR 1978 SC 597

⁶ AIR 1994 SC 1349

⁷ *Joginder Kumar vs State of Uttar Pradesh*, AIR 1994 SC 1349

freedom, demanding a careful calibration by legislatures and courts alike.

It is high time to stop turning the blind eye towards such arbitrary exercise powers and therefore it is necessary to understand the law related to arrest and Bail.

Law of Arrest:-

Arrest brings humiliation, curtails freedom and cast scars forever. Police machinery as well as the Justice delivery system and Legislature are not oblivious to this fact. history of criminal jurisprudence in India reveals a persistent and continuing battle between individual liberty and power of arrest. It seems that police machinery has not learnt its lesson; the lesson implicit and embodied in the Code of Criminal Procedure (now BNSS). It has not come out of its colonial mindset even after Seven decades of independence⁸. Power to arrest is often used as a tool of harassment, oppression and certainly not considered a friend of public⁹. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Hon'ble Apex court and Hon'ble High Courts but has not yielded desired result. Unbridled power to arrest greatly contributes to the arrogance of Police machinery and failure of the Magistracy to check it may further boost it. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

Chapter V, sections 41 to 60A of the Code (Chapter, Sections 35 to 62 of BNSS)¹⁰ deals with ARREST OF PERSONS. Each section has its own objective. However, section 41 (Section 35) makes provision as to when police may arrest a person without warrant. It provides very important principles and conditions, which are mandatory to follow for the police before arresting a person. In spite of that number of unnecessary arrests are ever increasing. On number of occasions Hon'ble Apex Court and Hon'ble High Courts have expressed their disapproval about such arrests, ultimately on the recommendation of the Law Commission in its reports, section 41A is inserted in CrPC (Section 35 of BNSS) by amendment in the year 2008.

⁸ Upendra Bakshi, The Crisis of Indian Legal System, 85-102, (Oxford Univ. Press, 1982)

⁹ Law Commission of India, 177th Report on Law Relating to Arrest (2001).

¹⁰ Bharatiya Nagrik Suraksha Snhita, 2023

SECTION 41A:-

It is evident that Section 41A (Section 35 of BNSS) makes it amply clear that in all cases where the arrest of a person is not required under Section 41(1) of the Code (Section 35 of BNSS), the police officer concerned must issue a notice directing the accused to appear before him at a specified place and time¹¹. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary¹². At this stage also, the condition precedent for arrest as envisaged under Section 41 of the Code (Section 35 of BNSS) has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid¹³.

Arnesh Kumar Vs State of Bihar:-

Hon'ble Apex Court noticed that the Amendment to Section 41A of the Code was not complete and sensed that the same may be misused. It was noticed that no time limit is mentioned in the provision, Hence, the Hon'ble Supreme Court directed in **Arnesh Kumar vs State of Bihar**¹⁴ that issuing a notice of appearance under Section 41A be thoughtfully implemented. It was held that their endeavor in this judgment is to ensure that a police officer does not arrest any accused unnecessarily, and the Magistrate does not authorize detention casually and mechanically. It prescribed time limit for informing the magistrate whether the police are going to arrest an individual or not within fifteen days from the institution of the FIR. Hon'ble Apex Court laid down detail guidelines regarding arrests, they are as under: -

- A. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498A of the I.P.C. is registered but to satisfy themselves about the necessary details before that arrest under the parameters flowing from Section 41 of Cr. P.C.;
- B. All police officers must be given a checklist that contains specified sub clauses under Section 41(1)(b)(ii) of Cr. P. C.;
- C. The police officer should forward the checklist duly filled and produce the reasons and materials which necessitated the arrest while taking the accused before the Magistrate for his further detention;

¹¹ *The Code of Criminal Procedure, 1973* § 41A. (1974). Government of India

¹² *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273.

¹³ *Satendra Kumar Antil v. CBI*, (2022) 10 S.C.C. 51.

¹⁴ *Supra*, note 12

- D. The Magistrate while authorizing detention of the accused shall peruse the report produced by the police officer in terms aforesaid and only after recording his satisfaction, the Magistrate will authorize detention;
- E. The decision of not arresting an accused, must be forwarded to the Magistrate within two weeks from the date of the institution of the case with Police which may be extended further by the Superintendent of Police of the district for the reasons to be recorded in writing;
- F. The Notice of appearance in terms of Section 41A of Cr. P. C. must be served on the accused within two weeks from the date of institution of the case, which may further be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;
- G. A failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for their departmental action; shall also be held liable for contempt of court, which is to be instituted before High Court having territorial jurisdiction.
- H. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the High Court having territorial jurisdiction.

Hon'ble Apex Court further observed that, we hasten to add that the directions aforesaid shall not only apply to the cases under section 498A of IPC or Section 4 of the Dowry Prohibition Act, but also in such cases where offence is 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.

Satendra Kumar Antill vs C.B.I.:-

In the case of **Satendta Kumar Antil**¹⁵ Hon'ble Apex Court observed that direction given in the case of Arnesh Kumar are not being followed and implemented in its letters and Spirit. Therefore, Hon'ble Apex Court again considered powers of police officers to arrest any person and the procedure to be followed before arresting. It is held that it is clear that in all cases where the arrest of a person is not required under Section 41(1) of Cr. P. C., the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further

¹⁵ Supra note 13

mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr. P. C has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

Guidelines in the case of Satendra Kumar Antil:-

- A. The investigating agencies and their officers are dutybound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in **Arnesh Kumar** (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.
- B. The courts will have to satisfy themselves about the compliance of Section 41 and 41A of the Code. Any noncompliance would entitle the accused for grant of bail.
- C. All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under Section 41 and 41A as per Judgment of Delhi High Court in **Amandeep Singh Johar vs State of NCT Delhi**¹⁶.
- D. There needs to be a strict compliance of the mandate laid down in the judgment of this court in **Siddharth vs State of U.P**¹⁷.

RIGHT TO KNOW THE GROUNDS OF ARREST:-

Obligation to inform the arrested person of the grounds of arrest is one of the most vital constitutional safeguards against arbitrary arrest. This safeguard flows directly from Article 22(1) and has been described by constitutional scholars as an essential component of procedural fairness. The right to be informed of grounds of arrest is inseparable from the right to legal representation and the right to seek bail. vague or stereotyped grounds defeat the constitutional purpose of Article 22, as they do not enable the arrested person to challenge the legality of detention or prepare an effective defence. The requirement of communicating grounds also serves as a systemic check on police discretion. When officers are compelled to articulate precise grounds, it discourages arbitrary action and promotes accountability.

The terms "reasons for arrest" and "grounds of arrest" differ significantly. Section 35(1) (b) of BNSS deals with reasons of arrest. The "reasons for arrest" may formal and common for various offences. These reasons would typically apply to anyone who is arrested on suspicion of a crime. But the "grounds of arrest" must include all information that the investigating officer

¹⁶ (2018) 250 DLT 70

¹⁷ (2021)1 SCC 676

has on record that led to the accused's arrest. Section 47 of the BNSS talks about grounds of arrest. Therefore, the "reasons of arrest," which are broad in nature, cannot be equated with the "grounds of arrest," which are always specific to the accused. Marking this difference, the division bench of the Hon'ble Supreme Court in case of **Prabir Purkayastha v. State NCT of Delhi**¹⁸, extended the precedent laid down in **Pankaj Bansal v. UOI**¹⁹. It strongly reaffirmed that Articles 22(1) and 22(5) guarantees the right to be informed of grounds of arrest or detention. It clarified that this right includes written communication, even if not explicitly stated in the constitution. Said rational is extended to the UAPA, confirming that Section 19(1) of PMLA and 43(1)B UAPA are pari materia and should be interpreted uniformly. The precedent laid down in **Pankaj Bansal** has been followed by the Hon'ble Bombay High Court has also in **Vishal Ravani Vs. State**²⁰ and **Rajrishi Bindawat Vs. State**²¹.

The judgment of the Hon'ble Supreme Court in the case of **Vihaan Kumar v. State of Haryana and another**²² serves as a pivotal reference point in Indian jurisprudence regarding the rights of individuals upon arrest. The Court held in unambiguous terms that informing the person arrested of the grounds of arrest is not a procedural formality but a mandatory constitutional safeguard enshrined in Article 22(1), and non-compliance with this requirement renders the arrest itself unlawful. This obligation, the Court emphasized, is rooted in the principle of fairness and due process, for an individual cannot exercise the right to seek legal counsel or apply for bail unless they are made aware of why they are being deprived of liberty. The Court clarified that communication of grounds must be meaningful and effective, which means that the information must be conveyed in a language and manner that the arrestee clearly understands, thereby ruling out vague, incomplete, or technical recitals that do not enable real comprehension. Where an arrested person alleges non-compliance, the burden of proof rests on the police, who must establish by contemporaneous and precise documentation that such communication was indeed made. The Court categorically rejected the sufficiency of mere arrest memos or diary notings, holding that unless the police can demonstrate exactly what was communicated and how, the safeguard is breached. Importantly, the Court declared that subsequent judicial or prosecutorial processes such as obtaining remand orders, filing charge-sheets,

¹⁸ (2024) 8 SCC 254

¹⁹ (2024) 7 SCC 576

²⁰ 2024 SCC OnLine Bom 3859

²¹ 2024 SCC OnLine Bom 3660

²² 2025 SCC OnLine SC 269

or continuing custody—cannot retrospectively cure the initial illegality of a defective arrest; once the constitutional mandate is violated, the custody stands tainted from inception. Hon’ble Supreme Court, has held that constitutional violations override statutory restrictions for grant of bail. It further emphasized that magistrates must ensure compliance with constitutional safeguards during remand proceedings.

Hon’ble Supreme Court in its judgment dated 23rd May 2025 in **Kasireddy Upender Reddy vs. State of Andra Pradesh and Others**²³. Reiterated the view taken in the case of **Vihaan Kumar** however, held that if arrest is pursuant to warrant of arrest issued by court then no further grounds are required to be communicated.

In state of Karnataka Vs Sri Darshan etc²⁴, Hon’ble Supreme Court, while dealing with cancellation of bail application preferred by state of Karnataka clarified that procedural lapses such as delay or failure to furnish written grounds of arrest under Section 50 CrPC (Section 48 BNSS) cannot automatically justify bail unless the accused demonstrates actual prejudice to their defence. In other words Hon’ble SC has laid down a test of prudential approach to asses if any prejudice is caused to accused due to procedural noncompliance.

Recently in the case of **Mihir Rajesh Shah Vs State of Maharashtra**²⁵ Supreme Court held that grounds of arrest must be communicated to arrestee in a language they understand, is mandatory under Article 22(1) and must be provided within a reasonable time, at least two hours before production before a magistrate; non-compliance renders the arrest and remand illegal. Supreme Court also observed that considering conflicting views on this point, the directions would take effect prospectively to avoid disturbances to arrests effected prior to the pronouncement of this judgment.

In this judgment Supreme Court has attempted to balance the rights of police officer to effect arrest and rights of arrestee to know the grounds of arrest for effectively exercising right to apply for bail. Supreme court appears to have considered that communicating grounds of arrest as contemplated under section 47 of BNSS before

²³ [SLP (Cri) 7746 of 2025 pertaining to Criminal Appeal No. 2808 of 2025]

²⁴ 2025 INSC 979

²⁵ Criminal Appeal No. 2195 of 2025 (Supreme Court of India, decided Nov. 6, 2025)

effecting arrest is not always possible. Therefore laid down specific instructions about the manner and time of supplying the same.

RIGHT TO BE TAKEN BEFORE A MAGISTRATE:-

According to Article 22(2) of the Indian Constitution, everyone who is arrested and held in prison has to be produced before the closest magistrate within twenty-four hours, excluding the time required for travel. According to Section 56 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), the police officer who is in charge of an arrested individual must take necessary precautions for health and safety of arrested person. Creating a custody note that details the arrest and has a witness' and the detained person's countersignature is part of this. The time and date of the arrest should be mentioned in the note. The arrested person/s must also be made aware of the reasons for the arrest as well as grounds of arrest and their right to bail in the event that the offense qualifies for it.

Role of the magistrate at the remand stage is central to arrest jurisprudence. Judicial scrutiny at the earliest possible stage of detention is often the only real opportunity to prevent executive excess. The magistrate is constitutionally obligated to determine legality of arrest after examining compliance with statutory and constitutional safeguards, and to decide necessity of custody. Mechanical authorization of detention undermines the doctrine of separation of powers and erodes constitutional framework aimed at protecting individual liberty. If magistrates endorse police action passively, constitutional guarantees become illusory. Thus, effective scrutiny at remand stage acts as the first institutional firewall against arbitrary deprivation of liberty.

In Hanumant Jagannath Nazirkar Vs State of Maharashtra²⁶ Hon'ble Bombay High Court referred **Kaushik Rameshchandra Thakkar @ Anam Vs. State of Maharashtra**²⁷ and dealt with the term "arrest" in detail. Hon'ble Bombay High Court held that the statutory provision to produce the accused within 24 hours before Magistrate commences, the time, he is put under restrain and the time for conducting pre-arrest medical examination cannot be said to be excluded. For this purpose, Hon'ble High Court has relied upon its Judgment in **Hemang Shah V/s. State of Maharashtra**²⁸. Similarly, Hon'ble Supreme

²⁶ WP NO. 54 OF 2025 dated 27th June 2025

²⁷ 2025 (SCC OnLine BOM1493)

²⁸ (2025 SCC OnLine BOM 2145)

Court in **Directorate of Enforcement V/s Subhash Sharma**²⁹, has directed release of the accused who was arrested for committing offence under Section 4 of Prevention of Money Lending Act, but was not produced before Magistrate within 24 hours of his arrest.

Conclusion:-

The law of arrest and bail serves as a cornerstone of criminal jurisprudence, balancing the imperatives of state authority with the fundamental rights of individuals. Arrest, while a necessary tool for maintaining public order and ensuring the administration of justice, must be exercised within the bounds of legality, reasonableness, and proportionality. Constitution, embodies the principle that liberty should not be curtailed without following procedure established by law. Beyond doctrinal articulation, the effective operation of the law of arrest and bail depends upon faithful implementation by the police and vigilant oversight by the judiciary.

Judicial precedents have consistently underscored that deprivation of liberty at the pre-trial stage must be the exception rather than the norm, yet empirical realities reveal a persistent disconnect between law on the books and law in action³⁰. Mechanical arrests, routine remand orders, and delayed consideration of bail applications continue to undermine constitutional guarantees, contributing to overcrowded prisons and prolonged incarceration of under-trial prisoners. The role of the magistracy assumes critical importance in this context, as judicial scrutiny at the remand stage constitutes the first institutional checkpoint against executive excess. Bail jurisprudence, therefore, must be viewed not merely as a procedural accommodation but as an essential constitutional device to preserve human dignity, fairness, and proportionality in the criminal justice process. A rights-oriented approach to arrest and bail, grounded in constitutional morality, is indispensable to ensure that the coercive power of the State does not eclipse the foundational values of liberty and justice.

²⁹ (2025 SCC OnLine SC 240)

³⁰ *Sanjay Chandra v. CBI*, (2012) 1 S.C.C. 40