

DRAFT OF ARREST POLICY FOR INDIA

AUTHOR – AAYUSHMAN NEPAL, STUDENT AT SYMBIOSIS LAW SCHOOL, HYDERABAD

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1. ABSTRACT

This draft in the Arrest Policy for India will restructure arrest policies under the Code of Criminal Procedure (CrPC) with a comprehensive overhaul, thus ensuring their constitutionality and consistency with judicial interpretation as well as accepted international human rights standards. Given the electoral history of arbitrary arrests, custodial violence, and inability to implement the police, this policy strives to develop arrest procedures that are uniform, open, and accountable. It considers the arrest power as a form of liberty versus Article 21 and 22 of the Constitution, Article 3 of the UDHR, and Article 9 of the ICCPR.

The study critically evaluates the legal justifications and challenges for several categories of arrests—mayor or Magistrate, private persons, with or without warrant, arrest for refusing to disclose name and residence. Therefore, it suggests, inter alia, procedural checks like review by a magistrate, written record of arrest reason, limitations on police discretion to curb abuse.

Further, the policy sets forth all the rights that an arrestee has under the CrPC and the Constitution, such as the rights of arrest information, legal aid, protection against self-incrimination, medical examination, and humane treatment. Case laws like *D.K. Basu v. State of West Bengal*, *Joginder Kumar v. State*, and *Khatri v. State of Bihar* anchor these rights.

On the suggested reforms site, judiciary, periodic reviews, gender-sensitive procedures, protection of marginalized communities, and rigorous police training are promoted. Those would preserve the dignity of the accused and, at the same time, enhance public confidence in the system. The Draft Arrest Policy foresees a criminal justice system in which legitimate, fair, and proportionate enforcement practices call forth the ideals of a democratic and humane society.

Keywords: Arrest Policy, Code of Criminal Procedure, Arbitrary Arrests, Custodial Violence

DRAFT ON NATIONAL ARREST POLICY

PREAMBLE

The Constitution of India provide detailed provisions for the elements related to arrest and the rights of arrested person in India.

The Government firmly believes that there must be a framing of national arrest policy which is the rights need of the hour and bringing amendments to the different elements of arrest and the of arrested person is the necessitate that this government puts forward.

2. OBJECTIVES

1. For laying down professional code of conduct/guidelines specifically for the police officers to provide them a methodology to deal with accused person/detenu in the custody of police.
2. To help police organizations of different states/Union Territories to frame guidelines to stop custodial violence/deaths.
3. To provide a standardized code of conduct for police personnel.

4. To make police officer provide knowledge of Human rights and bringing of behavioral and attitudinal change in the line of their duties.

5. To regain the fading faith of the public on police officers.

3. INTRODUCTION

Arrest under the Code of Criminal Procedure No. 2 of 1973 is an exercise to grant justice with individual liberties against arbitrary perspective of depriving a citizen of his personal freedom. While statutes exist to safe-guard legal, transparent and fair arrest, some issues continue to exist, like arbitrary arrests, custodial violence, and judicial violations, because of enforcement gaps and lack of accountability. Irrespective of the Supreme Court judgments emphasizing the protection of the rights, hurdles remain in their implementation. There have been reports by the Law Commission of India, UNHRC⁵⁸⁶, and human rights bodies stressing the urgent need for reform. The Draft Arrest Policy proposes amendments to the law in keeping with constitutional principles, judicial precedents, and international instruments of human rights and, above all, The Charter of the United Nations⁵⁸⁷, UDHR⁵⁸⁸, and ICCPR⁵⁸⁹. It seeks an arrest framework that is just, accountable, and transparent in India.

4. NEED FOR THE STUDY

Research has identified many cases of unlawful detention, torture of arrestees, accommodation time exceeding punishment time, pre-trial detainees outnumbering convicted detainees, and abuses by the police despite the existence of a legal framework. Over the years, the liberty of a human being has been given prime focus, be it the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1996, or Article 21 of the Constitution itself. On the contrary, the regulation of liberty brings equal attention. Liberty should never become a license. This calls

for having a proper balance of these two interests with the rights of arrestees being the focus of the present study.

5. TYPES OF ARREST

5.1 Arrest without warrant

With the current provisions in place, police often misuse discretionary powers under **Section 41(1)**⁵⁹⁰, leading to unnecessary arrests. The Law Commission Report highlights unjustified arrests for minor offences, infringing personal liberty. When a person has been under suspicion for an arrestable infraction and when there has been a cognisable offense, a reasonable complaint backed by trustworthy information has been lodged. Section 41(1) specifies the circumstances under which an arrest may be made without a warrant.⁵⁹¹ This right has been vested in the arrested person to ensure that arbitrary arrests take place in cases when it is needed.

Justification:

In the case of **Arnesh Kumar v. State of Bihar & Anr**⁵⁹², the Supreme Court decided that the notice of presence required by this Section must be given to the accused prior to their arrest. Because the Bench felt that making unnecessary arrests would be hurtful and demeaning, the Court issued this instruction to put an end to any unnecessary arrests. The Court reinforced this view in the **Munawar v. State of MP**⁵⁹³ decision, whereby it endorsed the emphasis on the previously cited Section of the Code.

5.2 Arrest by warrant⁵⁹⁴

Non-cognizable or non-arrestable offences require a warrant to be issued by a judge, magistrate, or state official authorizing the person's arrest and/or the seizure of their property.

Justification:

⁵⁸⁶ United Nations Human Rights Commission, 2006

⁵⁸⁷ Charter of United Nations, 1945

⁵⁸⁸ UnitedDeclarationofHumanRights,1948,

⁵⁸⁹ The International Covenant on Civil and Political Rights, 1976

⁵⁹⁰ The Code of Criminal Procedure, 1973, §41(1) (India).

⁵⁹¹ *Supra* note 5.

⁵⁹² *Arnesh Kumar v State of Bihar & Anr* CrI. No. 9127/2013.

⁵⁹³ *Munawar v State of MP* IA No. 13698/2021.

⁵⁹⁴ The Code of Criminal Procedure, 1973, §41 (India).

The provision is unavoidably required to guarantee lawful and justifiable arrests. But it's feasible that arrest warrants for minor offenses may be acquired, which would add to the court's already overwhelming burden. This puts the accused's case in jeopardy since the backlog of several little cases gets problematic and occasionally lasts longer than the punishment itself. To ensure that the courts can issue the orders promptly, officers should carry out an initial investigation prior to filing an arrest warrant to prevent this.

5.3 Arrest on Refusal to Give Name and Residence

According to **Section 42⁵⁹⁵**, a police officer may arrest someone in order to find out their name or place of residence if they have committed or have been accused of committing a non-cognizable offense while the officer is present and they refuse to give it to them upon request or give one that they have reason to believe to be false. The provision is vague and can be used as a pretext for unnecessary arrests.

Justification:

The CrPC **Section 42⁵⁹⁶** specifically permits arrests in cases where the identity of an individual is not revealed, but it does not have built-in safety safeguards to prevent misuse of this provision. Asking a person his name and the place of residence does not involve self-incrimination. Hence this provision falls under the purview of **Article 21⁵⁹⁷** as in the Body of Principles for the protection of all persons under Any Form of Detention or Imprisonment—from here onwards—the Body without further notice at this point. But it does not provide that requirements should include the identification of the person or residence place. However, this also applies to arbitrariness, which puts the officer at a subjective disadvantage. It allows for the abuse of authority by stating "reasonable" fears that false information would be provided, leading to the making of arrests on

such grounds even in small, non-cognizable cases.

It is recommended that to avoid such subjectiveness, the person should be presented in front of magistrate at the very first opportunity in case of such suspicion. Instead of immediate arrest, an individual refusing to provide identity shall be required to sign a written declaration for verification. A written declaration prevents unnecessary detentions, ensuring arrests are based on due verification rather than subjective suspicion. It also introduces accountability, allowing action only if verification is not completed.

5.4 Arrest by a private person

A private person can arrest if the other person has committed non bailable offense or is a proclaimed offender, and sufficient reason must be given. After the arrest, he shall be handed to the police officer or shall be taken to the nearest police station in case the officer is absent.⁵⁹⁸

Justification:

Since the person arresting will later be called upon to give grounds for the arrest, there will be a very good reason, therefore, for putting the accused person before the court after arrest at the earliest possible opportunity, in line with **Section 43⁵⁹⁹**. Emphasizing the limitations of this provision prevents mob justice or personal vendettas disguised as lawful arrests. Aligning with international human rights standards ensures due process applies to all forms of detention, promoting responsible enforcement of **Section 43⁶⁰⁰** without enabling arbitrary or unlawful actions.

5.5 Arrest by magistrate

Within his local jurisdiction, the magistrate has the authority to make an arrest personally or to issue an arrest warrant under Section 44 of the Code. The magistrate is not even obliged to take care of the case or hold a trial prior to arrest. In the **Ram Chandra v. State of Uttar**

⁵⁹⁵ The Code of Criminal Procedure, 1973, §42 (India).

⁵⁹⁶ *Supra* note 10

⁵⁹⁷ INDIA CONST. art. 21

⁵⁹⁸ The Code of Criminal Procedure, 1973, §43 (India)

⁵⁹⁹ *Id.*

⁶⁰⁰ *Supra* Note 13.

Pradesh⁶⁰¹ case, this was supported by the argument that the magistrate had the right to arrest the defendant because he had personally witnessed the offense being committed.

Justification:

This clause is in the nature of a very important safeguard against police abuse; it allows an impartial judicial authority to step in at the right time as necessary. Magistrates are independent of the law enforcement agencies and are bound by judicial principles. Retaining this section ensures that magistrates can exercise their authority to uphold justice and prevent instances where law enforcement might misuse their powers to detain individuals unlawfully.

This clause was justified in the case of **Ram Chandra v. State of Uttar Pradesh**⁶⁰², which said that if a magistrate witnesses a crime, they can arrest the person. Though this is risky, what appears to be the situation on the surface is not, and no provision for pre-trial proceedings has been made. As a result, no verification mechanism is in place. As a result, it is proposed that, as with private individuals, after arrest, a presentation before the police or a trial by magistrate provide for equity and justice.

6. RIGHTS AVAILABLE TO AN ACCUSED PERSON IN THE CODE OF CRIMINAL PROCEDURE

- According to Section 49 of CrPC⁶⁰³ it prevents the use of excessive force or restraint during arrest, ensuring humane treatment of the accused. Excessive restraint violates fundamental rights and can lead to custodial violence.

This provision must be retained as it prevents the use of excessive force and restraint during the arrest. It is a more humane way of dealing with the accused.

Justification:

It has been provided under **Section 49**⁶⁰⁴ that there exists no vested right to police officers to

subject the arrested person to any restraint than what is necessitated for ensuring the latter does not escape. In the notable case of **D. K. Basu v State of West Bengal**⁶⁰⁵, the Supreme Court pronounced that the police cannot use more than the necessitated restraint of the accused person. It further held that, if an arrest is done contradictory to the provisions of this section, then, the police officer could be held in contempt of court and face departmental inquiry regarding the same. Also mentioned in the case was a list of conditions that must be adhered to upon arrest. Important information is to be placed on a notice board at prominent locations showing the arrest and residence of the arrestee; the arresting officer had to notify the Police Control Room Board within 12 hours of the arrest.

- The Supreme Court, in **D.K. Basu vs. State of West Bengal** (1997),⁶⁰⁶ stated that when excessive force or coercion is exercised in arresting a person, it amounts to custodial violence and is in violation of **Article 21**⁶⁰⁷ of the Constitution; Article 5⁶⁰⁸ of the Universal Declaration of Human Rights (UDHR) prohibits "cruel, inhuman or degrading treatment or punishment" as part of common international human rights standards.

- Under **Section 50**⁶⁰⁹ of the code, the arresting officer, a police officer or any person duly authorized in this behalf, shall inform the person being arrested of all particulars of the arrest and the grounds thereof. An arrest without warrant for an offense for which bail is not insisted on ought to have his right to be released on bail and to have any requisite sureties arranged on his behalf explained to him.

This provision has the right intention for the accused but needs amending as it has certain loopholes that the police officers might use against the accused. Police officers must

⁶⁰¹ Ram Chandra v. State of Uttar Pradesh 1977 Cri. L. J 1783 (India).

⁶⁰² *Supra* Note 16

⁶⁰³ code of criminal procedure, 1973. § 49 (India)

⁶⁰⁴ SUPRA NOTE 9

⁶⁰⁵ D. K. Basu v State of West Bengal AIR 1997 SC 610.

⁶⁰⁶ *Supra* note 11.

⁶⁰⁷ INDIA CONST. art. 21.

⁶⁰⁸ INDIA CONST. art. 5.

⁶⁰⁹ Code of Criminal Procedure, 1973. § 50 (India)

provide a written document detailing the grounds for arrest and bail eligibility, signed by the accused. Officers failing to comply shall face disciplinary action and potential imprisonment.

Justification:

The arrested has the right to know by whom he is being arrested and his close ones also ought to know about the same, for further course of action. Principle 19 and 12 of THE Body justifies the same.⁶¹⁰ Article 9(2) ICCPR⁶¹¹ also supports the same stating necessity of knowledge of reasons for arrest and charges to the arrestee.

Providing a written document to the accused outlining the details of arrest, eligibility of bail etc will make the accused who in most cases are bound to be lay men will also become aware of their fundamental rights. This will ensure that they are provided with an opportunity to defend themselves even before the arrest is done

- **Section 50-A**⁶¹² deals with the obligations that rest on a police officer who arrests to inform regarding the same to any of the accused's relatives/friends/any other such persons per the "nomination" given by the arrested person

Once the arrest has been made, any senior officials should be notified and as per **Section 54 CrPC**⁶¹³ the arrestee must undergo a through medical examination in a government hospital, if the doctor is not available then to a private hospital by giving prior information to the senior officials. This provision should be amended as per the justification provided.

Justification:

This is inherently violative of a person's bodily autonomy and right against self-incrimination.⁶¹⁴ The provision mandates medical examination, which is infringing the person's right over his/her own body, clearly violating Article 7 of ICCPR⁶¹⁵. Rather, principle 23 of the Body⁶¹⁶ and Article 25 of UDHR⁶¹⁷ provides for mandatory medical facilities.

- **Section 55-A**⁶¹⁸ obligates authorities to ensure the health and safety of arrested people, but enforcement remains weak. Many custodial deaths occur due to poor detention conditions and medical negligence.

Justification:

In the case of **Joginder Kumar v State**⁶¹⁹, The Court ruled that although while a police officer is legally required to make an arrest, they must always have a good reason for doing so; they cannot be made based only on a suspect or an accusation that someone may have committed a crime. Therefore, the arrest can only take place upon the attainment of a "reasonable satisfaction" that the complaint is sincere and legitimate, at which point the arrest can be deemed justifiable.

7. PROVISIONS FOR THE RIGHTS OF THE ACCUSED UNDER THE CONSTITUTION OF INDIA

The founding base for the right of a just and fair trial is based on the legal ethicalities provided under **Article 14**⁶²⁰ that stipulates that under the law, every person is to be subjected with equal treatment.

According to **Article 20(1)**⁶²¹ any person shall be convicted of any offense unless such an act was an offense under law either present at that time or in force.

⁶¹⁰ Body of Principles for the protection of All Persons under Any Form of Detention or Imprisonment, 1988, Principle 12, 19, [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment | OHCHR](https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf).

⁶¹¹ International Covenant on Civil and Political Rights, 1966, Art. 9(2) <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf>.

⁶¹² CODE OF CRIMINAL PROCEDURE, 1973, § 50-A (India)

⁶¹³ The Code of Criminal Procedure, 1973, § 54 (India).

⁶¹⁴ INDIA CONST. art. 20(3).

⁶¹⁵ International Covenant on Civil and Political Rights, 1966, Art. 7, <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf>.

⁶¹⁶ Body of Principles for the protection of All Persons under Any Form of Detention or Imprisonment, 1988, Principle.

⁶¹⁷ United Declaration of Human Rights 1948, Art. 25,

⁶¹⁸ CODE OF CRIMINAL PROCEDURE, 1973, § 55A (India).

⁶¹⁹ Joginder Kumar v State AIR 1994 SC 1349.

⁶²⁰ INDIA CONST. art. 14.

⁶²¹ INDIA CONST. art. 20 cl (1).

Article 20(2)⁶²² states that once a person has been punished for an offense he cannot again be prosecuted and punished for the same offense, hence a second trial cannot be held against the accused.

Under **Article 20(3)**⁶²³ no person shall be deemed an accomplice against himself in a case of violation of the law.

The right to a prompt trial has been established via a series of rulings that has been epitomized under the provisions of **Article 21**⁶²⁴. In *Huissainara Khatoun v Home Secretary, State of Bihar*⁶²⁵, it was held by the Court that the vested constitutional obligation on the State to ensure a speedy trial cannot be disregarded or avoided by the latter. The State must adopt all necessary requirements for ensuring this constitutional mandate of a speedy and just trial also stating the State's obligation to ensure that necessary arrangements are made to ensure provision of free legal aid to those who are unable to avail the access to justice due to any legal/economical hinderance This stance was furthered in the case of *Ashim v National Agency*⁶²⁶ wherein, it was pronounced that the lack thereof of a speedy trial is contravening and inconsistent with Article 21 of the Constitution.

Under the provisions of **Article 22**⁶²⁷, it is stated that an individual under custody cannot be detained until they are informed of the reasons behind their arrest. Additionally, it guarantees that they will not have their right to counsel with and be defended by any lawyer of their choosing.

Under **Article 39-A**⁶²⁸ the state shall provide free legal aid to ensure that justice is not denied due to economic constraints. This guarantees that an accused can have equal representation

before the law, despite being economically disadvantageous.

In the case of *Khatri v State of Bihar*⁶²⁹, Every Session judge is required by law to advise the accused of their right to receive free legal aid and to give them the necessary "advice" if they are unable to afford legal representation for their defence because of their financial situation or other circumstances.

1. CONCLUSION AND SUGGESTIONS

However, the amendment in the Code of Criminal Procedure (CrPC) attempted to address a balance: need as against rights for arrest, and stricter judicial oversight and mandatory electronic records, and provision of alternative measures such as citation for minor offences. These reforms are to address the avoidance of unnecessary detentions or misuse of police powers.

Moreover, gender-sensitive procedures and special protection to the marginalized community are also a reaffirmation of the commitment to the fair and equal justice system. Periodic judicial review and enhanced training to the law enforcement officers of the country will also further strengthen the accountability framework to ensure less arbitrary arrests and reduction of custodial violence.

They meet internationally recognized human rights standards and best practices to create an increased climate of public trust within the legal system. Modernizing arrest procedures and ensuring transparency will also bring a fine balance between effective law enforcement and preservation of fundamental rights in the above process of reform. This will become instrumental into a humane and just criminal justice system that encourages constitutional values where law enforcement practices must remain fair, proportionate, and subject to adequate checks and balances.

⁶²² INDIA CONST. art. 20 cl (2).

⁶²³ INDIA CONST. art. 20 cl (3).

⁶²⁴ INDIA CONST. art. 21.

⁶²⁵ *Huissainara Khatoun v Home Secretary, State of Bihar* MANU/SC/0121/1979.

⁶²⁶ *Ashim v National Agency* MANU/SC/1169/2021.

⁶²⁷ INDIA CONST. art. 22.

⁶²⁸ INDIA CONST. art. 39-A.

⁶²⁹ *Khatri v State of Bihar* 1981 SCR (2) 408, 1981 SCC (1) 627.