
THE “IMPERATIVE AND RATIONALE” OF ARREST

Dr. Brijesh Arya, Assistant Professor, Arihant Law College, Haridwar, Uttarakhand, India

ABSTRACT

The fundamental concept of police and law enforcement institutions is rooted in the concept of arrests. A common way to assess the effectiveness of the criminal justice system is to look at how many people are arrested by police while conducting an investigation. The majority of criminal justice system opponents think that the ability to make arrests is essentially unassailable because they acknowledge the necessity of arrests for maintaining public safety and order.¹ Everyone who opposes arrests is pointing out how the police have abused their authority to make arrests. However, we don't ask ourselves if, in a liberal society, we really need to provide the CEOs this kind of authority.² Analysing if the expenses associated with arrests are reasonable given the purposes, they serve is crucial. The majority of legislation that permit arrests are still unanalysed. Perhaps as a result of the constitutional theories that govern arrests, the authority to make an arrest is taken for granted. When examining the arrest problem, we presume that making an arrest is not too expensive but rather that it is necessary to achieve the objectives of law enforcement.

However, these presumptions are absurd and untrue. Arrests cause more harm than good, not just to the people who are arrested but also to the communities in which they occur and to society at large.

Keywords: Arrest, criminal justice, public safety, Legislation, Authority, Investigation, Police.

¹ See Kelkar, R. V. "Law of Arrest: Some Problems and Incongruities." *Journal of the Indian Law Institute* 22.3 (1980): 314-321, Sankaran, S. R. "Curbing the Power to Arrest." *Economic and Political Weekly* (2009): 12-14.

² See Kamboj, N. S. "Police Custodial Death: A Growing Abuse to Human Rights in India." *Journal of the Indian Law Institute* 36.3 (1994): 372-377.

INTRODUCTION

Another crucial stage of a criminal inquiry is the arrest and custody phase. For a thorough and successful investigation, the accused's prompt arrest in serious situations is essential. In addition, it dissuades criminal activity and fosters a sense of safety and tranquillity among the populace and the government. A charge sheet is not possible without an arrest. Taking someone into custody to file charges against them is referred to as an "arrest." Its root term, "arrester," which meaning "to stop or stay," is French and denotes a person being restrained. Put differently, it describes a person being apprehended by law enforcement and having his freedom revoked.

The presence of the right to make an arrest is one thing, but the reasoning behind using that power is quite another. The National Police Commission's third report made this claim, noting that one of the main causes of police corruption was the authority to make arrests. Arrest is simply when someone is apprehended by the law and their personal freedom is taken away from them. No one should be deprived of his life or personal liberty unless in compliance with the legal process, according to Article 21 of the Indian Constitution. Such a method must be equitable, fair, and reasonable, as established in *Maneka Gandhi v. Union of India*. Consequently, it follows that procedural laws cannot be capricious or unjust. The laws pertaining to arrest under the Code of Criminal Procedure 1973 (CrPC 1973) are examined by the author in this article.

1. ARREST MEANS AND WHAT IT DEFINES

The verb "arrest" comes from the French verb "Arrester," which means "to stop" or "stay" and indicates that someone's movement is being restricted.³ The term "apprehension or restraint or the deprivation of one's liberty" describes what is generally accepted to take place during an interview. Most often, the purpose of this kind of judicial restraining order is "to bring a prosecution against the person arrested."

The individual in custody is not permitted to leave the nation, at least not until the arrest is being reviewed by the courts. In 1964, the Human Rights Committee on the Law of the Logs of Exile conducted study on Arbitrary wilful arrest, imprisonment, and statement, "I see the act of detention during detention based on the authority of law or another person." I characterize

³ B. Uma Devi, *Arrest, Detention and Criminal Justice System*, Oxford University Press, New Delhi, 2012.

the act of seeing, but he will be told to keep the guards going as soon as it is under pressure. incorporates the time frame up until this point. Within the context of the Indian legal system, the term "arrest" was not specifically defined. But in this instance, the Supreme Court clarified what the word "arrest" means in Article 22 of the Indian Constitution.

Punjab State v. Ajaib Singh⁴ It is defined by the court as "an indication of physical restraint of a person under law in connection with a suspected, negligent, or alleged offence of law." The Supreme Court held in State of Haryana v. Dinesh Kumar⁵ that putting someone in jail is equivalent to making an arrest since the word "arrest" denotes the limitation of someone's freedom. It is assumed that the arrests involved coercion of some kind from the authorities.⁶ One aspect of coercion is the transportation of an arrested individual to a jail or other type of detention facility, along with the gathering of their personal information.

2. THE ARREST PROCEDURE

There are two ways to make an arrest under the 1973 Code of Criminal Procedure. The first is by arrest.

- Arrests made without a warrant as long as they follow the legal guidelines that allow them.
- Arrest using the magistrate's warrant.

Unauthorized Arrest

Police officers are authorized to make an arrest under Sections 41, 42, and 151 of the CRPC without a magistrate's warrant. According to CRPC Section 41(1), a police officer may make an arrest without a warrant if he determines that the individual has engaged in any criminal activity, or that they have having any stolen items in his hands, or he's been labelled a proclaimed criminal by the jurisdiction, or that someone has interfered with a police officer doing his or her duties, or who makes an effort to run away from a court order, etc. Personal arrests are also considered warrantless arrests. Any anyone who has committed a cognizable offense, an offense for which there is no bond, or a declared offence in his presence may be

⁴ AIR 1953 SC 10

⁵ AIR 2008 SC 1083

⁶ Rachel A. Harmon, Why Arrest? 115 Michigan Law Review. 307 (2016).

arrested or have someone arrested for them, under Section 43 of the CRPC.

Warrant-based Arrest

When someone commits an offense that is not immediately recognized, which is a less serious offense, a warrant is issued to make the appropriate arrest. A warrant is obtained when the individual committed a crime for which there is a life sentence or the death penalty, or confinement for a period longer than two years. The magistrate or judge is able to issue a warrant on the state's behalf. The CRPC's Sections 70 to 81 discuss the whole process of arrest through a warrant. Initially, the warrant is signed by the sitting judge and issued by the court in writing. then it is addressed to one or more police officers who are an official of such court.

Take How Made Arrest

The CRPC's Section 46 addresses the process of making an arrest and outlines all the guidelines that must be followed while making an arrest, whether a warrant is obtained or not. According to Section 46(1) of the CRPC, an arresting officer or police officer has the right to touch or restrain the apprehended person's body. On the other hand, a female police officer should conduct the arrest in the same manner if the individual being held is a female. A male police officer is not allowed to touch or restrain a female arrestee unless it is an extreme situation.

When someone is about to be detained tries to resist arrest or seek to avoid it, police officers are authorized by Section 46(2) to use reasonable force or other tactics to carry out the arrest. According to Section 46(3), a police officer is not authorized to use force to kill someone who is not suspected of committing a crime that carries a life sentence or the death penalty. According to Section 46(4), a woman cannot be detained before dawn or after sunset, unless there are extraordinary circumstances. In such cases, a female police officer may make an arrest by filing a report to the local Judicial Magistrate.

3. POLICE OFFICER DUTIES WHILE MAKING AN ARREST

Section 41(A) of the CRPC stipulates that if an arrest is not made in line with section 41(1), the police officer is required to issue a notice instructing the subject to appear before them or at any other location that may be specified. In the event that a police officer receives a legitimate complaint against an individual who they believe has committed a heinous offense, or if they have reasonable suspicions that the individual may have committed a horrific offense.

An arresting police officer's responsibilities are outlined in Section 41(B) of the CRPC. When preparing an arrest memorandum, a police officer must ensure that it is correct and clearly identifiable. This memorandum must be witnessed by a witness, who may be a member of the officer's family or any other individual from the area where the arrest was made. Additionally, the memo should be countersigned by the individual who was arrested. Additionally, the police officer is required by this clause to advise the arrested individual that he has the right to notify his family, friends, and other relatives of his arrest.

4. THE ARRESTED PERSON'S RIGHTS

The Indian Constitution and the 1973 Code of Criminal Procedure both grant the arrested individual some rights. The legal concept of "presumption of innocence until proven guilty" mandates that an arrested individual be treated with compassion, decency, and respect until and unless he is found guilty by a court of law. A person who has been arrested is granted several rights under the CRPC, 1973, including

- a) Right to Be Informed
- b) Right to Be Released on Bail
- c) Right to Be Taken Before Magistrate without Delay
- d) Right to Consult a Legal Practitioner
- e) Right to be examined by a Medical Practitioner

5. ARREST LAWS IN INDIA

Chapter V of the 1973 Code of Criminal Procedure (CrPC) includes the fundamental rules pertaining to arrests. The Code is not meant to represent a complete or exhaustive set of laws pertaining to arrests. Arrests made at a magistrate's request and arrests made without a warrant in contravention of a statute enabling such an arrest are the two categories of arrests distinguished under the Code of Criminal Procedure. Many additional laws outside the Code of Criminal Procedure also include provisions about unauthorized arrests. The 1861 Police Act, the 1959 weapon technique, the 1884 explosion method, and the 1989 railway law are a few examples of laws that permit unpolished arrest.

A police officer or other authorized person is directed to arrest the defendant listed in the warrant by a written order that has been approved by a magistrate. When an arrest occurs without a warrant, a police officer or other non-judicial person makes the decision to make the arrest rather than a judge. These people often lack critical thinking skills and a dispassionate viewpoint.

Nonetheless, the Code allows them to decide whether to make an arrest on their own without asking the Magistrates for an arrest warrant, depending on the specifics of the case. Sections 41 and 42 of the 1973 Code grant police officers' broad authority to make arrests without a warrant in certain situations. The primary provision defining circumstances under which police may make an arrest without a warrant is Section 41.

Through the Criminal Procedure Code (Amendment) Act, several new sections were added to the CrPC in 2008. These mostly came from the recommendations made by the Law Commission in its 177th Report, as well as from rulings made by the Supreme Court in the cases of *D.K. Basu v. State of West Bengal*⁷ and *Joginder Kumar v. State of Uttar Pradesh*.⁸ By expanding the definition of arrest, Section 41 was modified by the CrPC (Amendment) Act of 2008. Sub-section (1)'s clauses (a) and (b) have been changed to require a police officer to utilize their arrest authority only after using reasonable caution and cause.

The arrest under section requires the officer to be satisfied that it is necessary and required. The amendment to subsection (2) of section 41 states that an individual cannot be in custody for a non-cognizable offense unless a magistrate's warrant or order is obtained, subject to the rules of section 42 concerning arrest upon refusal to furnish name and residence. When Section 151 of the Code was already in place, it was deemed that Sub-section (2) of Section 41, which addressed arrest powers in preventative scenarios, was no longer needed.

Police officers have the authority to make an arrest without a warrant under section 41 (1) (a) of the CrPC when someone commits a crime while they are in their presence.⁹ Section 41, therefore, distinguishes between two types of cognisable offenses: those for which the maximum penalty is seven years in jail and those for which the maximum penalty is either the death penalty or more than seven years in prison. It is generally accepted in India that offenses

⁷ (1997) 1SCC 416

⁸ (1994) 4 SCC 260

⁹ See, Sec 41 (1) (b) CrPC, 1973.

with a maximum sentence of seven years are not considered "heinous" crimes, and as a result, a person charged of one of these crimes is seen to be less dangerous to society.

A police officer cannot arrest an accused person based only on his or her conviction that the accused person committed the aforementioned crime, as stated in Section 41 (1) (b) of the CrPC, 1973, "if an adequate complaint has been created, or information that is trustworthy has been received, or a reasonable suspicion exists" of the commission of a "cognizable offence rewarded with imprisonment for a term which may be a minimum of seven years or which can reach up to seven years with or without fine." In order to proceed with the arrest, a police officer must confirm to himself that it is required.

1. "To stop them from committing any more crimes; or
2. To conduct a thorough investigation of the matter; or
3. To stop them from destroying the evidence of the crime or interfering with it in any way; or
4. To stop that individual from offering any enticement, threat, or promise to anybody who knows the case's facts in an effort to get them not to tell the police officer or the court about those facts; or
5. Since it is impossible to guarantee that he will appear in court when needed unless he is arrested.

Consequently, if there is no immediate reason to detain the accused, a police officer may be convinced that a crime has been committed yet still be unable to make an arrest. The Code enumerates five factors that a police officer must take into account before making an arrest of a person suspected of committing a crime that carries a sentence of no longer than seven years in jail.

Section 41 A of the CrPC was added by the 2008 Amendment, and it was later revised in 2010 to substitute "shall" for the term "may." According to Section 41 A of the CrPC, a police officer has a duty to provide notice to someone to appear before him if he needs their participation and they are not needed to be detained under Section 41 (1) of the CrPC. The person to whom the notification is addressed is required to appear at the designated location and time. The person

verifying the notification won't be taken into custody unless the police deem it appropriate, in which case the official must document their reasoning in written.

In the *Arnesh Kumar* case¹⁰, the highest court in India mandated that the section 41A notice of appearance be issued carefully. Officers are not allowed to make unnecessary arrests without a warrant, and magistrates are not allowed to grant arbitrary or mechanical detention orders. Although the 2008 CrPC reforms were praised for their progressive nature, protests prevented some of the amendment's provisions from going into effect until 2010. The 2010 modification calls for rationale for not making an arrest in addition to the previous need that the reasons for the arrest be recorded. It has been stated that recording the reasons why an individual should not be arrested amounts to treating arrests as standard procedure rather than an exception. That would negate the whole purpose of the 2008 legislation amendment regarding arrests. Section 41 (1) (ba) of the CrPC states that an investigator may arrest a suspect despite a warrant if he receives credible information about the commission of a crime that carries a punishment of over seven years in jail or the death penalty, or if he has reasonable suspicion that the suspect is responsible for the crime. When someone is charged with a cognizable offense—a crime for which the potential sentence is greater than seven years in prison—police have far more discretion in making an arrest. In some circumstances, the only prerequisite for an arrest is that officers must possess "valid facts" that the subject of the investigation has carried out the crime in question.

Sections 41A, 41B, 41C, and 41D were also included by the 2008 Amendment.¹¹ 41A dealt with giving the accused a notice of appearance when an arrest was not necessary; 41B described the arrest process and the responsibilities of the police officer making the arrest; 41C discussed the creation of a control room where information about arrests could be recorded; and 41D provided for the accused to see his attorney during questioning. The directions provided by the Supreme Court in the *D.K. Basu* case served as the immediate basis for these rules. In order to prevent non-female police officers from touching any females "unless the circumstances indicated to the ordinary," a proviso was introduced to Section 46(1). Section 41 lists a number of additional circumstances in which a police officer may make an arrest with no a warrant. This covers situations when someone is labelled a proclaimed criminal, has been found in

¹⁰ (2014) 8 SCC 273.

¹¹ S R Sankaran, Amendment to an Amendment: To Arrest or Not to Arrest, *Economic and Political Weekly*, Vol 45, no. 17, April 24-30 2020, pp 17-18.

holdings of stolen goods, deserted from the armed forces, or is a prisoner who has violated the conditions of a conditional release among other situations.

Section 42 delineates an additional scenario in which an arrest can be made by a police officer. When someone commits a non-cognizable offense in front of a police officer or when they are accused of committing one and they refuse to give their name and address when asked, or they provide a false address, they may be arrested, but only for the specific purpose of finding out who they are and where they live. A private individual may make an arrest under Section 43, which also describes the process that must be followed in such a case.

A judge may make an arrest under Section 44 if someone breaks the law in front of him. In addition, the judge may order someone else to make the arrest instead of the magistrate themselves. Police officers may enter a location under Section 47 if they have reasonable suspicion that the person they want to arrest has entered or is already within it. Police are able to follow someone into any part of India that is outside of their jurisdiction under Section 48, even if they have the authority to arrest them without a warrant.

In addition to the authority granted by the Code to detain an individual who has violated the law, the Code encompasses arrest as a preventative measure. Every police officer may intervene under section 149 in order to stop a cognizable offense from being committed, and he must do so to the best of his abilities. Furthermore, a police officer tasked with stopping the conduct of an offense must be informed of any plans to commit any cognizable offense by another police officer. If it seems to the police officer that there is no other way to stop the offense from being committed, they may make an arrest without a warrant or permission from a magistrate.¹²

When someone is detained with no a warrant according to Section 151(1), they are subject to all the provisions of the Code that apply to detention without a warrant, including notifying the individual of the reason for their arrest, notifying his friends and family, and notifying a judge within 24 hours, among other things.

6. WHAT ACTUALLY IS THE PRICE OF AN ARREST?

Arrests are primarily a police function within the Indian criminal justice system. Reformers and academics alike have not questioned the need of police arrests. Arrests are frequently

¹² Sec 151, Code of Criminal Procedure, 1973.

dehumanizing and humiliating. In addition to losing their freedom, someone who skips work runs the risk of losing their employment and means of support. In addition to paying legal expenses, if he retains counsel for the initial court appearance, he must also cover the cost of bail, as set by the court. If he gets arrested, his home may be thrown away from him, and perhaps his family may desert him. A foreign national's right to child custody may also be impacted by an arrest, as it may lead to their deportation. Individuals with arrest histories have less favourable job and financial opportunities.¹³

Arrests significantly increase the likelihood that a suspect will be held in custody before their trial. Approximately 60% of arrests are deemed unwarranted or uncalled for, according to a 2001 Law Commission of India consultation report.¹⁴ These arrests also result in over 40% of incarceration expenses that might have been prevented. The main challenge has always been putting the law into practice, even if the laws surrounding arrests have undoubtedly evolved throughout time. Reports of unauthorized arrests and extended detentions conducted against legal requirements are still being made. Based on National Crime Records Bureau data on prisons issued in August 2020, 7 out of 10 of the 478,600 individuals incarcerated in Indian Jails are now awaiting trial.¹⁵ India's undertrial population places its 15th out of 217 nations. Arrests entail grave violations of people's privacy and right to life. Arrested people frequently have their fingerprints and photos taken; the police also confiscate their private possessions and clothes following an arrest. After being arrested, they frequently get a medical checkup and a body scan.

A police officer has the right to use force to make an arrest once he makes an attempt. Arrests are inherently risky and can result in harm or even death. The law gives police the right to make an arrest by whatever means necessary.¹⁶ When someone is being arrested for a crime that carries a death sentence or a life sentence in prison, employing force against them may result in their death. Therefore, even if the arrest and the force employed to make sure it was lawful, the arrest results in fatalities and injuries. After being arrested, a person may also endure

¹³ Christopher Uggen et.al, *The Edge of Stigma: An Experimental Audit of the Effects of Low-Level Criminal Records on Employment*, 52 *Criminology* 627 (2014); Benjamin D. Geffen, *The Collateral Consequences of Acquittal: Employment Discrimination on the basis of arrests without Convictions*, 20(2) *Univ. of Pennsylvania Journal of Law and Social Change*, 82.

¹⁴ One Hundred and Seventy Seventh Report on Law Relating to Arrest, Law Commission of India, Govt. of India, 2001.

¹⁵ *Prison Statistics India 2019*, Published by National Crime Records Bureau, New Delhi.

¹⁶ Section 46(2), CrPC, 1973.

physical abuse while in the care of the police, which might even cause their death.

Tamil Nadu Police apprehended and arrested businessman P Jayaraj and his son J Bennicks during the lockdown on suspicion of breaking COVID-19 lockdown regulations. After experiencing assault while in custody, they were checked into a hospital. Bennicks passed away in the hospital three days after the arrest, and Jayaraj died the next day. They said that the cops had beaten and tortured them for hours. The CBI has charged nine Tamil Nadu police officers in connection with the suspected murders of Jayaraj and Bennicks. The deceased man's family has been granted an ex-gratia payment of Rs. 10 lakhs. Once more at Thiruvananthapuram, Udayakumar passed away while in police custody after being apprehended in a theft case.

After a drawn-out 13-year fight¹⁷, a CBI investigation and prosecution resulted in the death sentence of two police officers and the incarceration of others. A rights group said that 1,731 individuals passed away in Indian jails and prisons in 2019. This equates to about five of these fatalities every day. According to the study, 125 of the fatalities occurred in police custody¹⁸ and 1, 606 occurred in court custody. According to the research, torture is the main cause of deaths that occur when people are in police custody.

Ninety-three people, or 74.4% of the 125 fatalities examined by the National Campaign Against Torture (NCAT), died while under police custody as a result of suspected torture or foul play; 24 more people, or 19.2%, died under dubious circumstances when police claimed they were suicide victims. The majority of those subjected to police torture belonged to the impoverished and excluded segments of society, who are frequently singled out according to their financial standing.

It is possible for certain people who are insensitive to current criticisms of the criminal justice system to minimize the number of arrests by arguing that most of them are made of criminals who should have them in the first place. However, a number of arrests are made for insignificant and pointless crimes, where the consequences of the arrest significantly outweigh any intended retaliatory or deterrent effects of the penalty. Lingering, gambling, begging, money disputes, family disputes, water disputes, and other related offenses result in arrests. Furthermore, it is simply not possible to downplay the consequences of arrests by arguing that

¹⁷ <https://indianexpress.com/article/what-is/what-is-the-udayakumar-custodial-death-case-5275619/>

¹⁸ India: Annual Report on Torture 2019, Published by National Campaign Against Torture on 26th June 2020. See <http://www.uncat.org/wp-content/uploads/2020/06/INDIATORTURE2019.pdf>

they were justified. Saying that these offenders "deserve" the harms associated with their arrests is difficult.

60.8% of the 125 people who died in the hands of police in the 124 incidents that NCAT recorded in 2019 were members of the underprivileged and marginalized populations. These 76 people made up the majority of the deaths. Three were cultivators, one was a laborer, one was a refugee, and two was working as operators. These victims' economic status is indicated by the fact that thirteen were from Dalit and tribal communities, fifteen were from Muslim minority communities, and thirty-seven were picked up for minor offenses like theft, robbery, fraud, illegal alcohol sales, betting, etc.

The suffering of an arrested individual's family does not end with him. His family is looked down upon and humiliated by society. They may lose their good source of income because the family's primary provider is probably incarcerated or under police custody. Police have been known to intimidate relatives of those they suspect of being guilty or to detain relatives or friends as a negotiating chip. Even if taking a person into arrest for this kind of thing without good reason is prohibited on the side of the police, a private citizen cannot compete with the well-protected state apparatus on their own. The physical and mental health of children may suffer when a parent or other family member is arrested. Comparatively speaking to their classmates who were not exposed, children who see their parents or other family members being arrested have greater degrees of mental health issues.¹⁹

7. STATUS OF CONSTITUTIONALITY ARRESTS'

The 21st article of the Indian Constitution states that individual freedoms may only be taken away in compliance with a legally prescribed process. Following the case *Maneka Gandhi versus Union of India*²⁰, it is now a well-established legal precept that the "process" set out by legislation must be "right and just and fair," as opposed to capricious, ridiculous, or oppressive. The US Constitution's idea of "as a process of law" has been essentially adopted into Indian jurisprudence by *Maneka Gandhi*. A protection against unfair arrest and detention is established by Article 22 of the Constitution, which requires an accused person to appear before a

¹⁹ Roberts, Yvonne Humenay et al., Children exposed to the arrest of a family member: Associations with mental health. *Journal of child and family studies* vol. 23,2 (2014): 214-244. <https://doi.org/10.1007/s10826-013-9717-2>.

²⁰ AIR 1978 SC 597.

magistrate within 24 hours, provide an explanation for the reason for his arrest, and provide him the chance to speak with an attorney.

It was then stated that there were safeguards against arbitrary arrest absent from the Draft Constitution. Consequently, Article 22 became the clause that guaranteed "the method established by law" would have a "due process" component. The Criminal Procedure Code of 1898, which was in effect at the time, served as a model for the formulation of Article 22. After liberty, the 1898 Code's shortcomings were addressed with the passage of the Code of Criminal Procedure in 1973. Section 173(4) of the 1898 Code required the police to provide the person being accused with a replica of the charging document, the preliminary report, and other materials "before they started of an inquiry or trial."

Because of this ambiguity, Section 50 of the 1973 Code requires the police officer to "immediately disclose" to the accused the complete details of the offense for which he is being held or any further justification for the arrest in order to guarantee that the legal duty is carried out. An individual that was whether detained with an outstanding warrant (section 81) or did not have one (Sections 60 and 61) might be produced under specified circumstances under the 1898 Code. Section 76 of the earlier and Sections 56 and 57 of the later of the 1973 Code include similar requirements. It follows that the 1973 Code continued to safeguard the rights granted by Articles 21 and 22 of the Constitution, building beyond the foundation established throughout the 1898 Regulation.

We frequently believe that an arrest is lawful and, if so, warranted in accordance with the protections provided by the Constitution. Arrests cause suffering to people not just when they are arbitrary or illegal but also when they are lawful and done so without using undue force. Arrests entail a denial of liberty, thus it's critical that they only be carried out when they significantly advance the interests of the state. A police officer may make an arrest on the basis of "reasonable suspicion" without a court order under Section 41 of the CrPC 1973. If a police officer believes that a person is likely to commit a crime that is punishable by law, they may make an arrest under Section 151.

Does a police officer's subjective pleasure count as justification for limiting someone's freedom? What are the objective criteria that may be used to gauge this kind of doubt or belief? Police officers are required under the 2008 amendment to the CrPC to document in writing their justifications for making or declining to make an arrest. The magistrate should review the

police case file before issuing remand to ensure that the arresting officer has good reason. However, this is limited to those instances that qualify for prosecution and have a maximum sentence of seven years in jail or a fine. The Supreme Court noted the following in *Armesh Kumar v. State of Bihar*:

“The arrest must be lawful, in compliance with the arrestee's rights under the constitution, and the magistrate must be convinced of these things before authorizing the arrest under Section 167 CrPC. It is the magistrate's responsibility to refuse to permit the police officer's continued custody and to free the accused if the arrest they made does not meet the conditions of Section 41 of the Code.” Subsequently ordered that the judge must consider the investigating officer's documented grounds for the arrest and determine whether or not they are clearly valid if the suspect is brought before him to request authorization for detention. The Magistrate conducts judicial scrutiny to this restricted extent. The *Armesh Kumar* ruling²¹ stipulates that cops who disobey the protocol risk departmental repercussions and even contempt of court charges. Is a magistrate subject to departmental punishment if they approve detention without following the proper protocol?

There is ongoing debate about whether the state has a greater interest in an arrest than the potential expenses incurred by the individual, even in cases when someone is arrested in accordance with legal process and appears before a magistrate within a day of the arrest. Shouldn't the authority to make an arrest be bestowed by legislation exclusively in situations when the possibility of damage does not outweigh the interests of the State? Until there is a stronger interest in making an arrest, it should not be taken into consideration whether the State can carry out its duties without doing so.

The duties that police officers fulfil are many. They are there to uphold public safety and order as well as to safeguard life and property. Any free society must have both public order and safety. In order to accomplish such ends, the state must subdue anybody who poses a threat to it, even if it means using force, particularly by making an arrest. In spite of the harm they inflict, our practice of making arrests may be acceptable if police are unable to uphold law and order in society without them. For a very long time, the initial step in starting a criminal investigation and apprehending offenders has been an arrest.²²

²¹ Supra note 12.

²² id p. 279.

The issue at hand is: To what extent do arrests play a role in the police investigation, trial, and sentencing of the guilty? Not all criminal activity calls for an arrest. A summons of some kind is actually sent to the accused at the beginning of many criminal trials. A response to an illicit activity charge is also required by a summons that is served.

8. CONCLUSION

Constitutional limitations on the state's ability to make arrests have little effect on whether the existing police situation, which mostly relies on arrests as a tactic, is just and proper. At best, the conventional rationale for arrests—that they are necessary for criminal investigations and the upkeep of public order—supports many fewer arrests than we actually allow. The protections afforded to people by the Constitution establish a minimum, not an ideal, bar for State behaviour. It might not consider the cumulative impacts of governmental coercion sufficiently. Although the criminal law jurisprudence has changed dramatically as a result of judicial activism, individuals should demand that the criminal justice system be reoriented in light of freedom, equality, and brotherhood rather than merely complying with constitutional requirements.

The colonial legacy of criminal jurisprudence about law enforcement's duty needs to be abandoned. someone in general should view police as friends and someone to be trusted. Although this has been repeated several times, the police force cannot evolve into a better "service" to the public as long as their powers are unrestricted. Lastly, considering things from a colonial perspective, how do police discourage if not by apprehending offenders? The reason is that police discourage potential criminals by convincing them that their efforts would fail, instead of apprehending a few offenders to install fear in others about impending arrests.

Instead of acting as "apprehension agents," police deter as "sentinels." Instead of making arrests to reduce crime, police should enforce the law to such an extreme degree that individuals are incentivized to obey it. The definition of cognizable²³ and non-cognizable offenses²⁴ under the Code of Criminal Procedure may be altered such that police may undertake an investigation

²³ See Section 2(c) and Sections 156(1) and 157 CrPC, 1973. In case of a cognizable offence, a police officer can arrest the alleged offender without warrant and can investigate into such cases without any orders or directions from Magistrate. Also, offences generally punishable with imprisonment for more than three years are categorized as cognizable offences.

²⁴ See Section 2(1); Offence punishable with imprisonment for less than 3 years or with fine only, are generally categorized as non-cognizable offence.

without a magistrate's order or direction, but they are not permitted to make an arrest without a warrant from a magistrate. The extra requirements imposed on Section 41 (1)(b) that must be met before an arrest can be made in cases of offenses carrying a maximum sentence of seven years in prison ought to be extended to include cognizable offenses, regardless of the severity of the offense's penalty. The authorities are not allowed to conduct an arrest lacking a search warrant if

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