
BALANCING CRIME CONTROL AND FUNDAMENTAL RIGHTS

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ABSTRACT

As a lawyer with a deep interest in constitutional rights and criminal justice, I have often found myself grappling with the complex balance between the necessity of policing and the protection of civil liberties. This article delves into the legal boundaries of police power in India, particularly focusing on instances where these powers have been misused, resulting in wrongful arrests, illegal detentions, and custodial violence. Drawing upon landmark judgments like *D.K. Basu v. State of West Bengal* and real-life cases such as the custodial deaths of Jayaraj and Bennix, the piece critically examines the gap between legal safeguards and actual police conduct. Through this article, I attempt to explore not only the statutory framework laid down in the CrPC and IPC but also the urgent need for judicial oversight, police accountability, and systemic reforms. My aim is to highlight that ensuring public order should never come at the cost of eroding fundamental rights, and that meaningful reform begins with awareness, legal literacy, and civic engagement.

Introduction

In a country like India, where the law must balance public safety with individual freedoms, the role of the police is both pivotal and pertinent. The police are expected to be protectors of society, curbing crime, maintaining order, and upholding justice. But time and again, concerns have been raised about the misuse of police power, especially in the form of arbitrary arrests, custodial violence, and abuse of discretion in cognizable and non-cognizable offences.

As a lawyer observing the criminal justice system closely, I have found myself questioning: Where do we draw the line between necessary enforcement and the violation of fundamental rights? The reply isn't always straightforward. While it's essential to empower the police to prevent and investigate crime, there must be firm legal boundaries to ensure that their powers do not erode the constitutional liberties of citizens.

Understanding Police Powers Under Indian Law:

Police powers in India are primarily governed by the Code of Criminal Procedure (CrPC), the Indian Penal Code (IPC), and constitutional provisions. The CrPC distinguishes between cognizable and non-cognizable offences:

In cognizable offences, the police have the authority to arrest without a warrant and begin investigations on their own.

In non-cognizable offences, they require prior approval from a magistrate before making an arrest or starting an investigation.

While this classification is meant to regulate police discretion, the ground reality often reflects a different picture. There are numerous instances where police have bypassed procedural safeguards, citing urgency or public interest.

Constitutional Safeguards and Judicial Oversight

The Indian Constitution provides certain inviolable rights to every individual, including those accused of a crime:

Article 21 guarantees the right to life and personal liberty.

Article 22 provides protection against arbitrary arrest, detention and the right to consult, and to be defended by, a legal practitioner of his choice.

Judicial interventions have also played a key role in defining the legal limits of police power.

Landmark cases include:

1. **D.K. Basu v. State of West Bengal (1996)¹**: The Supreme Court issued detailed guidelines to prevent custodial torture and deaths.

Guidelines:

- Arrest memo must be prepared and attested by a witness and countersigned by arrestee.
 - Police must inform a friend or relative of the arrestee.
 - Medical Examination every 48 hours.
 - Right to meet a lawyer during interrogation
 - Police must maintain register of all arrest.
2. **Joginder Kumar v. State of U.P. (1994)²**: The Court held that arrest should not be made in a routine manner and must be justified.

Guidelines:

a. No Arrest Should Be Made in a Routine Manner:

- The Court emphasized that **arrest is a major interference with personal liberty**.
- Police officers **should not automatically arrest** just because the offense is cognizable.

b. Necessity of Arrest Must Be Justified:

¹ D.K. Basu v. State of West Bengal AIR 1997 SC 610

² Joginder Kumar v. State of U.P. 1994 AIR 1349, 1994 SCC (4) 260

- Arrest must be based on a **reasonable justification**, such as preventing the person from committing further crimes, ensuring proper investigation, or ensuring the person's presence in court.

c. **Informing the Arrested Person's Family:**

- The **right of the arrested person to inform a friend or relative** about the arrest and location of detention was affirmed.

d. **Preparation of an Arrest Memo:**

- The Court recommended the **preparation of a memorandum of arrest**, which must:
 - Be attested by at least one witness (either a family member or a respectable person from the locality).
 - Be countersigned by the arrested person.

e. **Prompt Judicial Oversight:**

- The person arrested must be produced before a **Magistrate within 24 hours**, as per **Section 57 of the CrPC** and **Article 22(2)** of the Constitution.

f. **Right to Legal Counsel:**

- The arrested person has the **right to consult a lawyer during interrogation**, although not throughout the interrogation.

3. **Arnesh Kumar v. State of Bihar (2014)**³: The **Supreme Court of India**, in the landmark case **Arnesh Kumar v. State of Bihar (2014)**, laid down crucial guidelines to prevent unnecessary arrests and safeguard the **personal liberty** of individuals, particularly in cases under **Section 498A IPC** and similar offences punishable with imprisonment up to seven years.

³ Arnesh Kumar v. State of Bihar 2014 8 SCC 273

Guidelines:

- **No Automatic Arrests**

Police officers must not make arrests automatically upon receiving complaint, especially under Section 498A IPC. Arrest must be based on necessity and proper justification.

- **Mandatory Arrest Checklist**

Before making an arrest, police must prepare a **checklist** under Section 41(1)(b)(ii) CrPC, stating the reasons for arrest. This checklist must be submitted to the Magistrate.

- **Judicial Scrutiny of Arrest**

The Magistrate must carefully examine the police report and checklist before authorizing detention. Detention should be permitted only if the Magistrate is **satisfied with the justification**.

- **Use of Section 41A CrPC Notice**

If arrest is not required, the police must issue a **notice of appearance** to the accused under Section 41A CrPC within two weeks of the case being filed.

- **Communication of Non-Arrest**

If the police decide not to arrest, they must **inform the Magistrate in writing** within two weeks, with valid reasons. This period can be extended by the SP with recorded reasons.

- **Accountability for Non-Compliance**

Any police officer or Magistrate not complying with these guidelines will be subject to **departmental action and contempt of court** proceedings.

- **Wider Applicability**

These directions apply not just to Section 498A IPC or Dowry Act cases but to **all offences punishable with imprisonment up to 7 years**, with or without a fine.

Real-World Misuse and Challenges:

Despite clear legal boundaries, the misuse of police power remains a pressing issue. Reports of custodial deaths, third-degree torture, and illegal detentions are not uncommon. The tragic

deaths of Jayaraj and Bennix in Tamil Nadu in 2020 stand as a grim reminder of what unchecked police power can lead to.

Many times, preventive arrest provisions like **Section 151 CrPC** (arrest to prevent the commission of a cognizable offence) are invoked without adequate justification, undermining due process. Additionally, the lack of independent oversight mechanisms means that complaints against police officers often go unaddressed.

Case Laws of Wrongful Confinement by Police:

1. Jayaraj and Bennix Case (Tamil Nadu, 2020)⁴:

- Arrested for violating COVID-19 lockdown norms.
- Brutally tortured in custody, leading to death.
- Violations: No warrant, no legal process, custodial torture.
- Outcome: CBI probe; police officers arrested.

2. Dr. Kafeel Khan Case (Uttar Pradesh, 2020)⁵:

- Detained under the NSA for a speech that did not incite violence.
- Continued custody despite no legal grounds.
- Outcome: Allahabad High Court termed it "illegal confinement."

3. Ishrat Jahan Fake Encounter⁶ (Gujarat, 2004):

- Allegedly abducted before being killed in a fake encounter.
- CBI confirmed illegal detention.

⁴ https://en.wikipedia.org/wiki/Custodial_death_of_P_Jayaraj_and_Bennicks

⁵ Habeas Corpus Writ Petition No. - 264 of 2020

⁶ <https://blog.ipleaders.in/fake-encounter-light-ishrat-jahan-case/>

- The case is still under judicial review.

These cases highlight blatant disregard for CrPC provisions, constitutional protections under **Article 21**, and Supreme Court guidelines.

Need for Reforms and Accountability:

To ensure a just balance between crime control and civil liberties, systemic reforms are essential:

1. **Independent Oversight Bodies:** Establish State and District Police Complaints Authorities, as recommended by the Supreme Court in the Prakash Singh case.
2. **Training and Sensitization:** Regular training of police personnel on human rights, legal procedure, and stress management.
3. **Strict Enforcement of Judicial Guidelines:** Courts must ensure their rulings (like D.K. Basu) are followed rigorously.
4. **Public Awareness:** Citizens should be informed about their rights during arrest and detention.
5. **Legal Reforms:** Laws on custodial violence and wrongful arrest need to be strengthened with harsher penalties and faster trials.

Conclusion:

In reflecting on the current state of policing in India, I can't help but feel both concern and a strong sense of responsibility. While I understand that the police are often overworked, understaffed, and face immense pressure to maintain law and order, that can never justify the misuse of power or the violation of fundamental rights. As someone pursuing law, I've come to realize how crucial it is to uphold constitutional values—especially the rights to life, liberty, and dignity—even in the face of crime and disorder.

Through this article, my aim was to highlight the importance of legal boundaries, not to vilify the police, but to emphasize that true justice lies in accountability and fairness. The law must

empower, but it must also restrain. Cases of wrongful confinement, custodial violence, or illegal detentions shake public faith not just in the police but in the entire justice system.

There is an urgent need to implement reforms, ensure that guidelines issued by courts are not just on paper, and create systems where victims of police misconduct are heard and protected. At the same time, I believe it is equally important for us - as future lawyers, citizens, or policymakers, to stay informed, question authority when necessary, and speak up for those who can't.

Ultimately, maintaining a balance between effective crime control and the preservation of civil liberties is not just a legal challenge—it's a moral one. And it's one we all share.