

# Arrest and Detention

**Police and You**  
Know Your Rights



## **ARREST AND DETENTION**

The Constitution of India and laws guarantee rights to anyone arrested in criminal cases. This pamphlet tells you all the circumstances under which you can be arrested, what rights you have during and after arrest, and the duties of the police to enforce these rights.

### **DO THE POLICE NEED A WARRANT TO MAKE AN ARREST?**

This depends on whether you have been arrested for a cognizable or non-cognizable offence. If you are accused of a non-cognizable offence, then the police must have a warrant to arrest you. If you are accused of a cognizable offence, the police can arrest you without a warrant.

The First Schedule to the Code of Criminal Procedure (CrPC) 1973 classifies offences under the Indian Penal Code as cognizable or non-cognizable.

#### **COGNIZABLE OFFENCE**

A cognizable offence is one in which the police may arrest a person without a warrant. They are authorized to start investigation into a cognizable case on their own and do not require any orders from a judicial Magistrate to do so. These are the more serious offences like murder, rape, or rioting.

#### **NON-COGNIZABLE OFFENCE**

A non-cognizable offence is an offence in which a police officer has no authority to arrest without a warrant. A police officer can investigate these offences only after getting permission from a Magistrate. These offences are of a lesser nature like simple hurt, fraud or forgery.

### **WHEN CAN YOU BE ARRESTED WITHOUT A WARRANT?**

You may be arrested without a warrant if:

- You commit a cognizable offence in front of a police officer;
- A police officer has good reason to suspect, or receives a complaint, that you are involved in a cognizable offence;

- You have been declared a proclaimed offender under law;
- You are in possession of stolen property and are suspected of having committed an offence connected to it;
- You obstruct a police officer in carrying out his/her duty;
- You have escaped or attempted to escape from lawful custody;
- You are a released convict who has breached stipulated rules;
- You are suspected of being a deserter from any of the Armed Forces; or
- You are implicated in, or there is “reasonable suspicion” of your involvement in, an act committed outside India, which if committed in India, would be punishable as a criminal offence and you are liable to be brought back and arrested in India.

### **Special procedure for cognizable offences punishable up to 7 years**

There is a special procedure if you are accused of a cognizable offence punishable by seven years or less. A police officer can arrest you for these offences only if s/he is satisfied that this is necessary for proper investigation, or to prevent you from committing a further offence, or tamper with evidence, or influence or threaten witnesses. The police officer must consider all of these factors and decide if it is necessary to arrest you or not, and must record the reasons in writing. If you are not arrested, but the police want to question you for further information, the police officer will issue a “notice of appearance” instead of taking you into custody. You must appear before the police for questioning whenever you are summoned under the notice. If you do not show up when summoned, or refuse to identify yourself, you can be arrested for the offences listed in the notice on the basis of a court order in this regard [Sections 41 and 41A, CrPC].

## **YOUR RIGHTS ON ARREST & DETENTION**

If you are arrested, you have certain rights. These are:

- To be informed of the grounds of arrest by the police. [Article 22(1), Constitution of India; Section 50, CrPC]
- To be released on bail when arrested for a bailable offence. It is the arresting officer's duty to inform you of your right to be released on bail and that you may arrange for your sureties. [Section 50, CrPC] If you cannot afford bail, you will be discharged on executing a bond without sureties for your appearance. [Section 436, CrPC]
- To be produced before the nearest Magistrate within 24 hours from the time of your arrest. This period excludes the time taken in the journey to court. [Article 22(2), Constitution of India; Sections 57 & 76, CrPC]
- To have a relative or friend informed about your arrest and the place of detention. It is the duty of the police to inform you of this right, and also to inform your relative or friend about your arrest. This information should be entered in a designated register at the police station. [Section 50A, CrPC]
- To meet and consult a lawyer of your choice. You can consult a lawyer during, but not throughout, interrogation. [Article 22(1), Constitution of India; Section 41D, CrPC]
- To be entitled to reasonable care of your health and safety while in custody. [Section 55A, CrPC]
- Not to be ill-treated, abused, or tortured while in custody. [Article 21, Constitution of India]
- Not to be pressured, threatened, or influenced by a police officer or any other person in authority to make a confession. [Section 163, CrPC]

## **RIGHT TO MEDICAL EXAMINATION**

- You should be examined by a government medical officer, if the government officer is not available, then by a registered medical practitioner, soon after arrest. A female suspect must be examined by a female medical officer. You, or a person nominated by you, must be given a copy of the report of the medical examination by the doctor. [Section 54, CrPC]

- If you request, any injuries found on your body should be recorded in an “Inspection Memo” by the arresting officer. This memo should be signed by you and the arresting officer, with a copy given to you. [Supreme Court judgment, D.K. Basu vs. State of West Bengal]
- You have the right to ask for a medical examination every 48 hours during your detention in custody by a qualified and government-approved doctor. [D.K. Basu vs. State of West Bengal]

### **ADDITIONAL DUTIES OF THE POLICE**

- Arresting officers must wear accurate, visible and clear name-tags with their rank shown. [Section 41B(a), CrPC]
- Arresting officers must prepare a Memo of Arrest with your name, and the date and time of your arrest. This should be signed either by your relative, or a respectable person of the locality, and by you. [Section 41B(b), CrPC and D.K. Basu vs. State of West Bengal]
- An arresting officer can search you and place all the articles seized from you in safe custody. A receipt of the seized articles must be given to you. [Section 51, CrPC]
- Copies of these various documents should be sent to the local area Magistrate for his/her record. [D.K. Basu vs. State of West Bengal]
- Details of every arrest and the location of every arrested person should be given to the State and District Police Control Room within 12 hours of each arrest. This information should be displayed clearly on the notice board of the Control Room. [D.K. Basu vs. State of West Bengal]
- The names and addresses of arrested persons, and the names and designations of the arresting officers, should be displayed on the notice board of the district control room. The State police control room should maintain a public database of arrested persons. [Section 41C, CrPC]
- Handcuffs are to be used only if an arrested person is:
  - ❖ involved in serious non-bailable offences;
  - ❖ violent and disorderly;
  - ❖ likely to commit suicide;
  - ❖ likely to attempt escape.

- The reasons for the use of handcuffs must be recorded and shown to the court. When the accompanying police officer feels the arrested person must be handcuffed to travel to court, s/he must take the court's permission to use handcuffs, and also explain to the Magistrate why they had to be used. [Supreme Court judgment, Prem Shankar Shukla vs. Delhi Administration]

## **SPECIAL RIGHTS OF WOMEN**

- Except in exceptional circumstances, no woman can be arrested between sunset and sunrise. If an arrest has to be made in this period, a woman police officer must take the permission of a judicial Magistrate. [Section 46(4), CrPC]
- Only a woman can search a woman arrestee with strict regard to privacy and decency. [Section 51(2), CrPC]
- Women arrestees must be kept in a separate lock-up from men in the police station, and they have to be interrogated in the presence of women police officers. [Supreme Court judgment, Sheela Barse vs. State of Maharashtra]

## **RIGHT TO LEGAL ADVICE**

- If you cannot afford a lawyer, you are entitled to free legal aid. This right begins from the time of your arrest. If you are not aware of this right, it is the duty of the Magistrate to inform you of this right when you are first produced in court. [Supreme Court judgment, Khatri (II) vs. State of Bihar]

## **RESISTANCE TO ARREST**

- Do not resist arrest. If you willingly submit to arrest, then no restraint will be used against you. If you resist, the arresting officer can use force to overcome your resistance. [Section 46, CrPC]
- If you are accused of a non-cognizable offence and you refuse to give your name and address, or give a false name or address to the police, you can be arrested. [Section 42, CrPC]

## **REDRESS AGAINST UNLAWFUL ARREST & DETENTION**

An arrest and detention of anyone in custody must always be lawful, this flows from Articles 21 and 22 of the Constitution of India. To be lawful, the grounds for the arrest and detention must be valid, and all the legally required procedures must be complied with. These features are essential, and in their absence, the arrest and detention become unlawful. There are several legal remedies if you are a victim of unlawful arrest and detention. You may make a complaint against the police officer(s) who illegally arrested or detained you. You may also be eligible for monetary compensation.

### **You can:**

- Register an FIR against the police officer who illegally arrested or detained you
- Complain in person, or send a written complaint through registered post, about the incident to the District Superintendent of Police or any other senior police officer
- File a complaint with the Magistrate of the area
- Make a complaint to your Police Complaints Authority, if there is one in your state. These are special bodies in states that look at complaints from the public about the police
- Make a complaint to your State Human Rights Commission, if your state does not have one, you can complain to the National Human Rights Commission
- If you are not produced before a Magistrate within 24 hours of your arrest, or cannot be located at any point while you are in custody, your family or a friend can file a writ of habeas corpus. This means they file a petition straight to the High Court, who will order the local police to produce the detained person before them
- Seek compensation under the Constitution for violation of your fundamental rights

### **What is a Writ Petition?**

A writ petition can be filed when a person feels that one or more of his/her fundamental rights have been violated. It can be filed either in your state's High Court or in the Supreme Court of India. If the Court agrees that there has been a violation, then it will direct the concerned authority to register the complaint or make other orders.

### **ABOUT CHRI**

The Commonwealth Human Rights Initiative (CHRI) is an international, independent non-profit organisation headquartered in India. Its objectives are to promote the practical realisation of human rights in the Commonwealth. CHRI advocates for greater adherence to human rights standards.

#### **Our programmes are:**

- ✦ Access to Justice (Police Reforms)
- ✦ Access to Justice (Prison Reforms)
- ✦ Access to Information
- ✦ International Advocacy and Programming



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