

RIGHTS ON ARREST AND DETENTION

This brief note lists the legal rights guaranteed to every arrested person. These are contained in the Constitution of India and the Code of Criminal Procedure, 1973 (CrPC). The police are bound to uphold these rights. In fact, compliance with them forms part of the lawful procedure to arrest.

WHEN DO THE POLICE NEED A WARRANT TO MAKE AN ARREST?

Police are allowed to arrest a person **without** a warrant if s/he is accused of a cognizable (more serious) offence. If a person is accused of a non-cognizable (less serious) offence, the police must have a warrant to arrest. The First Schedule to the CrPC classifies offences under the Indian Penal Code as cognizable or non-cognizable.

Special procedure for cognizable offences punishable up to 7 years

There is a special procedure if someone is accused of a cognizable offence punishable by seven years or less. A police officer can arrest a person for these offences only if s/he is satisfied that this is necessary for proper investigation, or to prevent the person 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 the person or not, and must record the reasons in writing. If the person is not arrested, but the police want to question them for further information, the police officer will issue a "notice of appearance" instead of taking them into custody. The person must appear before the police for questioning whenever summoned under the notice.

THE FULL GAMUT OF RIGHTS ON ARREST 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 the arrested person of the right to be released on bail and that s/he may arrange for sureties [Section 50, CrPC]. If s/he cannot afford bail, they will be discharged on executing a bond without sureties for their 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 the arrest and the place of detention. It is the duty of the police to inform the arrested person of this right, and also to inform the relative or friend about the arrest. This information should be entered in a designated register at the police station. [Section 50A, CrPC]
- To meet and consult a lawyer of the arrested person's choice. The arrested person 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 and Section 24, Indian Evidence Act]

RIGHT TO MEDICAL EXAMINATION

- The arrested person 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. The report of the medical examination should mention any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks of violence may have been inflicted. The arrested person, or a person nominated by him/her, must be given a copy of the report of the medical examination by the doctor. [Section 54, CrPC]
- If the arrested person requests, any injuries found on his/her body should be recorded in an "Inspection Memo" by the arresting officer. This memo should be signed by the arrested person and the arresting officer, with a copy given to the arrested person. [Supreme Court judgment, *D.K. Basu vs. State of West Bengal*]
- The arrested person has the right to ask for a medical examination every 48 hours during 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 the arrested person's name, the place, date and time of your arrest. This should be signed either by a relative or friend of the arrested person, or a respectable person of the locality (where the arrest is made), as well as the arrested person and the arresting officer. [Section 41B(b), CrPC and *D.K. Basu vs. State of West Bengal*]
- An arresting officer can search an arrested person and place all the articles seized from him/her in safe custody. A receipt of the seized articles must be given to the arrested person. [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*]
- The names and addresses of all arrested persons, along with names and designations of arresting officers, are to be displayed on the notice board of every district Police Control Room. The Control Room at police headquarters shall maintain a public database of arrested persons and the offences charged. [Section 41C, CrPC]
- Details of every arrest and the location of every arrested person should be given to the 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*]
- 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 feel the arrested person must be handcuffed to travel to court,

he/she 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 AID

- If the arrested person cannot afford a lawyer, s/he is entitled to free legal aid. This right begins from the time of arrest. If the arrested person is not aware of this right, it is the duty of the Magistrate to inform him/her of this right when they are first produced in court. [Supreme Court judgment, *Khatri (II) vs. State of Bihar*]
- It is the duty of the police to immediately inform the nearest legal aid committee about the arrest of a person seeking legal aid. [*Sheela Barse vs. State of Maharashtra*]

Section 60A, CrPC

Arrest to be made strictly according to the Code. —No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.

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IN CASE OF UNLAWFUL/WRONGFUL ARREST, WHAT REMEDIES ARE AVAILABLE?

- If a person is not produced before a Magistrate within 24 hours of your arrest, or cannot be located at any point while you are in custody, their family or a friend can move a writ of habeas corpus to the High Court, who will order the local police to produce the detained person before them
- If the person is produced before a Magistrate within 24 hours of arrest, they can file a bail application before the Magistrate at first production. If it is dismissed, the person has recourse to file for bail before the Sessions Court and High Court. They can also file a complaint with the Magistrate.
- Make a complaint to the State Human Rights Commission, if the state does not have one, complain to the National Human Rights Commission
- Make a complaint to a Police Complaints Authority, if there is one in the state. These are special bodies in states that look at complaints from the public about the police.
- Seek compensation under the Constitution for violation of fundamental rights
- Seek quashing of the case against the arrested person by filing a writ petition before the High Court

Preventive arrest under the CrPC

The CrPC distinguishes between preventive arrest and arrest. Section 151 of the CrPC allows the police to carry out preventive arrest (without a warrant from a Magistrate) to detain an individual to prevent him/her from committing a crime. Preventive arrest under this Section can be carried out on the basis of two conditions: 1) the police officer knows the suspect is going to commit a cognizable offence; and 2) only if it appears to the police officer that the commission of the offence cannot be otherwise prevented (unless the person is detained).

Detention under S. 151 cannot exceed 24 hours. If the suspect is to be detained in custody beyond 24 hours, the detention is no longer under S.151; s/he must be detained under a relevant, applicable legal provision(s). If no provision applies, s/he must be released from custody. All these conditions must be fulfilled for the preventive arrest to be lawful.

Under the CrPC, the only Sections under which preventive action to detain a person can be taken, based on the orders of an Executive Magistrate or the police (no judicial sanction is required), are Sections 107 and 151. Both are usually invoked together.

For more information, please email: chripoliceprog@humanrightsinitiative.org



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