

The Constitution and laws guarantee a number of rights to citizens, even when they are arrested in criminal cases. It is important for you to know the circumstances under which you can be arrested and what your rights during and after arrest are.

Who can make an Arrest?

- * A police officer may arrest a person either with or without a warrant depending on the nature and gravity of the offence.
- * Even a private person can arrest another person who in his presence commits a non-bailable, cognizable offence or is a proclaimed offender and then hand him over to the police. —(Sec 43, Cr.P.C.)

Who can be arrested without a warrant by the police?

Any person who:

- * has been involved in a cognizable offence or is suspected to be so involved or against whom a complaint has been received of such involvement;
- * possesses any implement of house-breaking without valid excuse;
- * has been declared a proclaimed offender under law;
- * is in possession of stolen property;
- * obstructs a police officer in carrying out his/her duty;
- * has escaped or attempts to escape from lawful custody;
- * is suspected of being a deserter from any of the Armed Forces; and

- * is a suspect or a habitual offender and needs to be bound down for good behaviour.

Arrest and Detention- Your Rights and Police Duties

Every arrested person has a right:

- * to be informed of the grounds of arrest by the police. The police should also inform the arrested person of this right.

—(Art. 22 (1), Constitution; Sec. 50, Cr.P.C.)

- * to be released on bail when arrested for a bailable offence. It is the duty of the police officer to inform him of his right to be released on bail.

—(Sec. 50, Cr.P.C.)

- * to be produced before the nearest competent magistrate within 24 hours from the time of his arrest. This period excludes the time taken in journey.



—(Art.22(2), Constitution Sec; 57& 76, Cr. P.C)

- * to inform his relative or friend about his arrest and the place of detention. It is the duty of the police to inform the arrested person of this right and also inform his relatives or friend about his arrest and detention.

—(S.C. judgement D.K.Basu v. State of West Bengal)

- * to meet and consult a lawyer of his choice. The arrested person can

consult a lawyer during interrogation also but not throughout the interrogation period.

—(Art.22(1), Constitution; S.C. judgement D.K.Basu v. State of West Bengal)

- * not to be ill-treated, abused or tortured while in custody during interrogation and investigation.
- * not to be subjected to more restraint than what is necessary to prevent his escape. —(Sec.49, Cr.P.C)

A police officer making an arrest is entitled to search the arrested person and place in safe custody all the articles seized from him. A receipt of such articles must be given to the arrested person.

—(Sec.51, Cr.P.C)

Right to Medical Examination

- * Every accused person can demand a medical examination of his body by a registered medical practitioner to disprove the commission of the offence alleged against him. It is the duty of the Magistrate to inform him of this right. —(Sec.54, Cr.P.C)



- * At the time of examination, the injuries found on the body should be recorded. It is necessary to prepare an Inspection Memo after the examination is over and this Memo should be signed by the arrested person and the police officer making

the arrest.

—(S.C. judgement D.K.Basu v. State of West Bengal)

- * Every arrested person has the right to be medically examined after every 48 hours during his detention in custody by a qualified and government-approved doctor.

—(S.C. judgement D.K.Basu v. State of West Bengal)

Additional Duties of the Police

—(S.C. judgement D.K.Basu v. State of West Bengal)

- * The police officer carrying out the arrest must bear accurate, visible and clear identification in the form of nametag with designation.

Special Rights of Women

- * Females can be searched by only another female with strict regard to privacy and decency. —(Sec.51, Cr.P.C)
- * Female suspects must be kept in a separate lock-up in the police station. They should not be kept where male suspects are detained. —(S.C. judgement Sheela Barse v. State of Maharashtra)
- * When a female is arrested for a non-bailable offence, even if the offence is very serious (punishable by death penalty even), the court can release her on bail. —(Sec.437, Cr. P.C)

- * The police must *record in a register* the identity of all police officials who conduct the interrogation of the arrested person.
- * The police officer carrying out the arrest must prepare a *Memo of Arrest* that should be signed either by a relative or friend of the arrested person or a respectable person of the locality and be countersigned by the arrested person. This Memo must have the date and time of arrest.
- * *Copies of all the documents* should be sent to the *local area Magistrate* for record.
- * Details of every arrest and the place of detention of the arrested persons should be given to the State and District Police Control Room within 12 hours of the arrest. This information should be displayed clearly on the notice board of the Control Room.
- * The police officer making the arrest should not hand cuff any person routinely. The arrested person should not be handcuffed except where,
 - there is a clear danger of his escape or attempt to escape;
 - he is so violent that he cannot be kept in custody unless his movement is stopped.

Right to Legal Aid and Advice

- * Every poor accused is entitled to be provided with free legal aid. This right



begins from the time of his arrest only. If he is not aware of this right it is the duty of the Magistrate to inform him about this right when he is first produced in court.

—(S.C. judgement *Khatri & Others v. State of Bihar and others*).

- * It is the duty of the police to immediately inform the nearest legal aid committee about the arrest of an accused seeking legal aid.

—(S.C. judgement *Sheela Barse v. State of Maharashtra*)

Resistance to Arrest

- * Never resist arrest forcibly.
- * The police officer or other person making the arrest is empowered to use all means necessary to effect arrest, including use of force.

—(Sec. 46. Cr.P.C).
- * Do not refuse to give your name and address or give false name or address to the police. You can be arrested by the police officer for doing so.

—(Sec.42. Cr.P.C).

Redress against arbitrary arrest and detention:

If any person has been arrested and detained illegally or wishes to make a complaint against any wrongful act by the police, he can complain to the:

- * Superintendent of Police of that district and other senior police officers;
- * court; and
- * State Human Rights Commission/ National Human Rights Commission

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 educates on human rights issues and advocates for greater adherence to human rights standards.

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Police and You

Know Your Rights



Arrest
&
Detention