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DRAFT ARREST POLICY

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ABSTRACT :

An arrest occurs when a person is taken into custody because he or she is accused of committing a crime or infraction. It is carried out when someone has been detained for committing a crime. Following an arrest, standard protocols such as interrogation and investigation are carried out. It falls under the purview of the criminal justice system. The person is physically detained by the responsible authorities during an arrest operation.[1]

Illegal arrests and deaths in custody are a big concern in India. Any citizen of every country is given certain rights that are completely fair and without discrimination, but those same rights can be relinquished if a person is imprisoned or jailed for committing a crime. Although, an arrested individual has certain rights as well.

We, the people of India, have lost faith in the framework as a result of the deceitful legal system and the brutality of the police, there have also been several stories of savagery in detention thus it is urgent to try and correctly implement the issued regulations and recommendations, which would undoubtedly provide better results and save people from facing the brutality.

This study particularly focuses on arrest and the rights of an arrested person under the Criminal Procedure Code.

INTRODUCTION :

The abuse of the authority to apprehend residents that have been made available to the police is not a new story. Despite the fact that there have been numerous rulings that have portrayed particular regulations in addition to reviews by the law commission and police commission that address this specific issue, there is yet to be a single major alteration that could limit the police's ability to adhere to the standard of law and order. A settled recommendation of regulation for any demonstration in contradiction to individual freedom must be through fair treatment of regulation[2].

[1] https://en.wikipedia.org/wiki/Arrest

[2] Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248.

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Capture could be made on the basis of reasonable doubt, according to Section 41 (1) (b) of the Code of Criminal Procedure. There is no doubt about the ambiguity of this term because it is not intellectually conceivable to set a border and characterize reasonable doubt in dark letters. In this present circumstance, justice is a rampart against superfluous confinement and maltreatment of force and process[3]. The courts base their decisions on the police's preference for providing explanations and keeping track of documents over a rational or unbiased evaluation method.

The judge should mention outlandish captures in the request and prescribe disciplinary measures. The goal should be to strike a balance between upholding core liberty and preventing organized misconduct as the legal system falls apart.

ARREST :

The term "arrest" means "to remove a person of his liberty by legal power," according to the Black Law Dictionary[4]. The term "arrest" is not defined in either the Code of Criminal Procedure or any other major substantive statute. The commonly used term arrest refers to the deprivation of a person's personal liberty. In a legal sense, arrest refers to the taking of a person into custody by the power of law for the purpose of holding him to answer a criminal charge or stopping the commission of a punishable by law act. The Supreme Court defined arrest as "the act of being brought into custody to be legally charged with a crime" in the landmark decision R.R. Chari v. State of Uttar Pradesh.[5]

What Is the Purpose of Arrest?

One of the key aspects of a fair and free trial is that the trial takes place in the presence of the accused and that if the accused is proven guilty, he must be there to suffer his penalty. His presence could not be secured through any other means than detention and arrest.

There are numerous reasons behind the arrest that are intended to be met by detaining the accused, including the following:

- Ensure the accused's presence and participation in the proceedings.
- Obtaining the accused's correct name, residence, and other information.
- The arrest is also being carried out as a precaution.

[3] Bharat Chaugh, Role of magistrate in criminal investigation, 9 JDJA, Journal of DJA, 5-6 (2016)
[4] C.B Henry, Pg -110, Black Law Dictionary, 6th Ed.
[5] R.R. Chari v. State of Uttar Pradesh AIR 1962 SC 1573

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- To recapture a person in lawful custody who has eluded capture or attempted to elude capture.
- To eliminate roadblocks and impediments in the way of a police investigation
- To ensure a fair and impartial trial, as well as to eliminate the possibility of evidence tampering.

ARREST TYPES ACCORDING TO CrPC :

- Arrest without a warrant. Sections 41 and 42

  An arrest warrant is issued by the magistrate, and in cognizable instances, an arrest warrant is not required; police officers can arrest without a warrant during the course of an investigation into cognizable offenses, but in non-cognizable situations, the arrest can only be made once the warrant is granted by the magistrate.
- Arrest on a warrant

  There are circumstances and conditions in which detaining a person to restrain and prevent him from committing any illegal act is neither desirable nor practicable, and immediate permission of a magistrate and warrant is neither desirable nor practical.

  In the case of Bhawoo Jivaji v. Majlis Dayal,[6] it was determined that the circumstances set forth in Section 41 of the Code of Criminal Procedure are not of exhaustive nature. Other statutes, such as the Arms Act and the Explosives Act, provide police officers the authority to arrest anyone without a warrant.
- Arrest by a private person (Section – 43)

  Any private person may arrest without a warrant, according to Section 43 of the Criminal Procedure Code, where any individual —
  - In his presence, commits a non-bailable and cognizable offense.
  - The individual is a known criminal.

  This section of the law is intended to aid the forces in charge of preserving law and order and enforcing the law, as well as to ensure the immediate safety of people and property.
- Arrest by Magistrate (Section – 44)

  Any magistrate, whether executive or judicial, has the authority to arrest or order the arrest of another person when:
  - In his or her presence, an offense is committed.

[6] Bhawoo Jivaji v. Malji Dayal, 1966 (http://www.casemine.com/judgement/in/56b4940a607dba348f0093c4)

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- In his local jurisdiction, an offense has been committed.

This section of the Criminal Code grants magistrates special authority, which is particularly desired in their hands.

WHAT IS THE PROCEDURE FOR MAKING AN ARREST?

Unless a person is willing to submit himself or herself to a police officer, an arrest is made by physically touching or confining the person's body. If the accused attempts to resist arrest, the police officer has the authority to use all means necessary to ensure his or her arrest. The phrase "secure all means" includes the use of a revolver, however, it is limited to circumstances in which the offender is accused of crimes penalized by imprisonment for life or death. The C.r.P.c Amendment Act of 2005[7] made a special provision for women, stating that no woman shall be arrested after sunset and before sunrise and that where special and exceptional circumstances exist, the woman police officer shall obtain the permission of the Judicial Magistrate First Class, under whose jurisdiction the commission of a crime or the detention is to be made, by filing a written report.[8]

WHY ARE THE ACCUSED PERSON'S RIGHTS CRUCIAL?

Every human being is born with some fundamental rights, such as the right to life and the right to freedom, and others.

In India, the judicial system is based on the principle of "innocent until proven guilty." An illegal arrest can be a breach of Article 21 of the Indian Constitution[9], which stipulates that "no human shall be denied of his right to life and personal liberty unless if established by law," which means that the procedure must be fair, clear, and not arbitrarily or oppressively applied. Indeed, the privileges of a detained individual are recognized in the Indian Constitution as a Fundamental Right.

As a result, the accused have been granted some legal rights, and the general thinking behind these rights is that the public authority has provided huge assets for the arraignment of persons, and as a result, the accused are entitled to some protection from the abuse of those powers by the public authority.[10]

[7] Sec 46(4), CrPC Amendment Act, 2005.
[8] Section 48 cr.p.c
[9] Art 21, The Constitution Of India.
[10] https://indiankanoon.org/doc/1475436/

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In the leading case of Kishore Singh Ravinder Dev vs. the State of Rajasthan[11], It was stated that in India, spiritual, evidential, and procedural norms have made comprehensive measures to protect the freedoms of the accused, as well as his pride as a person, and to provide him with the benefits of a just, fair, and unbiased road.

ARRESTED PERSON'S RIGHTS :

A person who is arrested has numerous rights, and those rights impose obligations on either party with whom they should defend their rights.

1. Notified of the reasons for arrest - The person detained must be notified of his reason for arrest and right to bail – Under Section -50, anyone apprehended without a warrant must be informed of his reason for arrest, and compliance with this section is mandatory.
2. No Unreasonable Restrictions- Any unreasonably imposed restrictions on the arrested individual should be avoided. An arresting officer will not employ more restraint than is necessary to prevent him from fleeing or eloping. A special order for handcuffing must be obtained from the magistrate if the arrest is made without a warrant.
3. In the case of Prem Shankar Shukla v Delhi Administration (1980), the court stated that *"handcuffs are prima facie inhuman, irrational, and at first blush arbitrary in the absence of fair procedure and objective monitoring[12]".*
4. Information to a nominated person- According to Section 50-A, it is mandatory for the person conducting an arrest to notify a nominated person of the arrest.
5. Right to a Medical Exam- According to Section 54 of the Criminal Procedure Code, a person detained may have himself/herself examined by a Medical Practitioner. In Sheela Barse v State of Maharashtra, (1983)[13], the Supreme Court stated that it is the obligation of the magistrate to tell the person arrested about his right to Medical Examination. According to Section 54(2), the report of such examination shall be supplied by registered by the medical practitioner either to the arrested person or to the person chosen by that arrested person.
6. No detention for more than 24 hours- Section 56 of the Criminal Procedure Code mandates that everyone apprehended be brought before a magistrate as soon as possible.

[11] Kishore Singh Ravinder Dev vs. State of Rajasthan 1981 AIR 625 SCC (1) 503.
[12] Prem Shankar Shukla v Delhi Administration AIR 1980 SC 1535.
[13] Sheela Barse v State of Maharashtra, AIR 1983 SC 378

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7. Consultation with a Legal Practitioner- Both the Indian constitution and the Code of Criminal Procedure acknowledge the right to consult with a legal practitioner of one's choice, who is available from the time of the arrest.

Other rights include the Right to Free Legal Aid, which is part and parcel of Fundamental Rights, Article 21, and Directive Principles of State Policy, Article 39(a), as well as the Right to Compensation to victims of unlawful arrest, as established in Nilbati Behera v State of Orissa (1993)[14], in which the supreme court held that victims of unlawful arrest and detention have a right to compensation. Females are given special protection in light of Sheela Barse v State of Maharashtra 1983 and a few clauses of CrPC.

In Joginder Kumar v State of Bengal[15], the Supreme Court established rules.

- While in custody, a person has the right to inform one friend, relative, or another person that he has been detained and where he is being held.
- The police officer has the responsibility of informing the detained individual of his rights.
- It was necessary to keep track of who had been notified in a diary.

SUGGESTIONS :

1. The efforts of the judiciary and committees to reform the Indian police system and establish accountability are failing terribly. The foundation for restoring public trust and effective policing is the improvement of police accountability and honesty.

2. The CrPC must integrate court-issued directions addressing arbitrary police powers.

3. Inspections will be conducted at regular intervals by the advisory panel, which will be independent of the jail administration. The National Human Rights Commission's role should be expanded, and the Right to Information Act of 2005 should be applied to the jail administration.

4. The presence of the accused's counsel during questioning would limit the likelihood of police using third-degree procedures during the investigation.

CONCLUSION :

[14] Nilabati Behera vs State Of Orissa And Ors,1993 AIR 1960, 1993 SCR (2) 581.
[15] Joginder Kumar v State of Bengal (1994) 4 SCC 260

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The police in a democratic country are held accountable to the public for their actions. The two pillars of good policing are the protection of people's basic rights and adherence to the law. The police's obligation to use force to prevent increased violence and disorder involves the important problem of police abuse and misuse of force. The National Human Rights Commission has proposed the establishment of a District Complaint Authority to investigate public complaints about police misconduct[16].

The purpose of an arrest is to restrict the accused person's movement and assure his presence during the trial as well as his availability at the time of sentencing. Because the right to life and liberty is guaranteed under Part 3, Article 21 of the Indian Constitution, the power of arrest must be exercised with caution.

When people are imprisoned, they do not lose their humanity. In order to prevent convicts from becoming victims, the Supreme Court of India, as well as numerous other Indian courts, have confirmed this position in a number of cases. They're also placed in a decent rehabilitation facility to help them mature and improve as humans. Arrested person's rights must be taught by the central and state governments so that they are not abused by the ones inside the prison.

We, the people of India, have lost faith in the framework as a result of the deceitful legal system and the brutality of the police. There have also been several stories of savagery in detention, leading many to believe that the denial of basic human rights to detainees has become the norm these days. The Supreme Court of India's requirements in D.K. Basu v/s West Bengal is not being effectively implemented, thus it is urgent to try and correctly implement the issued regulations and recommendations, which would undoubtedly provide better results, resulting in a reduction in the number of illegal arrests and deaths in custody.

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[16] SEN SANKAR,52(2) Police Accountability & Civilian oversight, SVP National Police Academy Journal, 70-76, 2000.

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