

Rights of Arrested Persons in India: A Constitutional, Statutory and Judicial Analysis

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Abstract

The power of arrest is among the most coercive instruments available to the State. While necessary for the maintenance of law and order, it directly interferes with personal liberty, dignity, and autonomy. In India, constitutional safeguards under Articles 20, 21, and 22 of the Constitution, coupled with statutory protections under the Code of Criminal Procedure, 1973 (CrPC), provide a comprehensive framework to regulate arrest. Judicial interpretation has significantly expanded these protections, transforming procedural guarantees into substantive rights rooted in human dignity. This paper undertakes a detailed academic examination of the rights of arrested persons in India, analysing constitutional provisions, statutory safeguards, and leading Supreme Court jurisprudence. It argues that although India possesses a strong normative framework, effective enforcement and institutional accountability remain critical challenges.

Keywords: arrest, personal liberty, Article 21 of the Constitution of India, Article 22, custodial violence, criminal procedure, constitutional remedies, India

1. Introduction

Arrest is not merely a procedural step in criminal investigation; it is a profound assertion of State authority over individual liberty. In democratic constitutionalism, such authority must be exercised within strict legal and moral limits. The Indian Constitution, adopted in 1950, consciously incorporated safeguards against arbitrary detention in response to colonial-era abuses, including preventive detention laws and custodial excesses.

The transformation of Indian constitutional law after the Emergency period (1975–77) marked a decisive shift in the understanding of liberty. The Supreme Court began interpreting fundamental rights expansively, particularly under Article 21, ensuring that arrest and detention procedures were not only legally authorized but also fair, just, and reasonable.¹ Arrest jurisprudence thus evolved from a narrow procedural inquiry into a broader human rights discourse.

The significance of arrest safeguards is also reflected in India's obligations under international human rights law. Article 9 of the International Covenant on Civil and Political Rights (ICCPR) prohibits arbitrary arrest and mandates prompt judicial review. Indian courts have frequently interpreted domestic law in harmony with such international commitments.

¹ Maneka Gandhi v. Union of India, (1978) 1 SCC 248

Research Methodology

This research adopts a doctrinal and analytical methodology, focusing primarily on constitutional provisions, statutory interpretation, and judicial precedents. It relies on qualitative analysis of Supreme Court decisions and authoritative commentaries. The study also incorporates limited comparative and human rights perspectives to contextualize Indian arrest jurisprudence.

The methodology is primarily descriptive, interpretative, and critical. It describes existing legal norms, interprets their doctrinal development, and critically evaluates their practical implementation.

Data and Sources of Data

This research is based on secondary data as it is doctrinal in nature including constitutional provisions, statutory enactments, reported Supreme Court judgments, law commission reports, and academic commentaries. The data is analyzed through interpretative reading, doctrinal synthesis, and thematic categorization of rights and safeguards.

Theoretical Framework

The theoretical foundation of this study rests on constitutionalism, due process theory, and human dignity jurisprudence. Arrest powers are examined within the framework of limited government, judicial review, and substantive fairness under Article 21.

2. Constitutional Safeguards under Articles 20, 21 and 22

Article 21 of the Constitution declares that no person shall be deprived of life or personal liberty except according to procedure established by law. Initially interpreted narrowly in *A.K. Gopalan v. State of Madras*², the provision was later expanded in *Maneka Gandhi* to require that such procedure be just, fair, and reasonable.³ This doctrinal shift fundamentally altered arrest jurisprudence, ensuring that legality alone was insufficient; procedural fairness became mandatory.

The Supreme Court's decision in *D.K. Basu v. State of West Bengal* firmly embedded custodial safeguards within Article 21.⁴ Recognizing the prevalence of custodial violence, the Court issued detailed guidelines to prevent abuse during arrest and detention. These included mandatory preparation of an arrest memo, the right to inform a friend or relative, medical examination of the arrestee, and maintenance of police records. The Court held that custodial torture is a direct violation of human dignity and therefore unconstitutional.

Article 22 provides additional protection. Article 22(1) guarantees the right to be informed of the grounds of arrest and the right to consult and be defended by a legal practitioner of one's choice. Article 22(2) mandates production before a magistrate within twenty-four hours of arrest. In *Joginder Kumar v. State of Uttar Pradesh*, the Court emphasized that arrest must not be routine or mechanical.⁵ It held that no arrest should be made merely because it is lawful to do so; necessity and justification must exist. The Court further required that relatives or friends of the arrested person be informed, reinforcing transparency and accountability.

Article 20(3), which protects against self-incrimination, also plays a vital role. In *Selvi v. State of Karnataka*, the Supreme Court held that involuntary administration of narco-analysis, polygraph, and

² *A.K. Gopalan v. State of Madras*, A.I.R. 1950 S.C. 27

³ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁴ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

⁵ *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260.

brain-mapping tests violates Articles 20(3) and 21.⁶ The judgment underscored that investigative efficiency cannot override constitutional safeguards.

Thus, constitutional protections collectively ensure that arrest is not reduced to an instrument of oppression but remains subject to judicial oversight and human rights principles.

3. Statutory Safeguards under the Code of Criminal Procedure, 1973

The Code of Criminal Procedure, 1973 operationalizes constitutional mandates by detailing arrest procedures. Section 41 restricts the power of police to arrest without warrant. It requires reasonable suspicion and mandates that arrest be necessary for specific purposes such as preventing further offence, ensuring proper investigation, or preventing evidence tampering.

The Supreme Court strengthened these statutory protections in *Arnesh Kumar v. State of Bihar*.⁷ The Court observed widespread misuse of arrest powers, particularly in cases under Section 498A of the Indian Penal Code. It directed police officers to record reasons for arrest and required magistrates to ensure compliance before authorizing detention. This judgment marked a significant move toward reducing unnecessary arrests and protecting personal liberty.

Section 46 of the CrPC prescribes the manner of arrest and restricts excessive use of force. Section 50 mandates that the arrested person be informed of the grounds of arrest and of the right to bail in bailable offences. Section 57 reinforces Article 22(2) by prohibiting detention beyond twenty-four hours without judicial authorization.

These provisions reflect legislative intent to balance investigative necessity with civil liberties. However, their effectiveness depends on conscientious enforcement by police and vigilant scrutiny by magistrates.

4. Judicial Remedies, Compensation, and Accountability for Violations

The recognition of rights without corresponding remedies renders constitutional guarantees illusory. Indian constitutional jurisprudence has therefore emphasized not only procedural safeguards at the stage of arrest but also effective judicial remedies in cases of violation. The Supreme Court has developed a distinct doctrine of constitutional tort, allowing compensation for violations of fundamental rights arising from unlawful arrest, custodial violence, and illegal detention. This development marks a significant departure from traditional private law remedies and reflects a rights-based approach to State accountability.

In *Nilabati Behera v. State of Orissa*, the Supreme Court held that monetary compensation could be awarded in proceedings under Articles 32 and 226 of the Constitution for violation of fundamental rights.⁸ The case concerned custodial death, and the Court clarified that compensation in public law is distinct from damages recoverable under private tort law. The objective is not merely to redress individual harm but to vindicate constitutional rights and deter future violations. The Court observed that the defence of sovereign immunity is inapplicable in cases involving infringement of fundamental rights. This reasoning significantly strengthened accountability mechanisms for unlawful arrest and detention. The jurisprudential foundation for such remedies was laid earlier in *Rudal Shah v. State of Bihar*, where the petitioner had been kept in prison for fourteen years despite acquittal.⁹ The Supreme Court ordered

⁶ *Selvi v. State of Karnataka*, (2010) 7 SCC 263.

⁷ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

⁸ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.

⁹ *Rudal Shah v. State of Bihar*, (1983) 4 SCC 141.

compensation, holding that the right to constitutional remedies under Article 32 would be rendered meaningless if courts lacked the power to grant monetary redress. The judgment marked a watershed moment in transforming fundamental rights into enforceable guarantees backed by tangible remedies.

Judicial creativity further evolved in *Bhim Singh v. State of Jammu and Kashmir*, where a Member of the Legislative Assembly was unlawfully detained to prevent him from attending a legislative session.¹⁰ The Court awarded compensation, reinforcing the principle that deprivation of liberty without lawful justification violates Article 21. These cases collectively established that constitutional courts possess both the authority and the responsibility to provide effective remedies against unlawful arrest.

Another important dimension of judicial accountability concerns custodial torture and extrajudicial violence. In *D.K. Basu v. State of West Bengal*, the Court not only issued preventive guidelines but also held that failure to comply with these safeguards would invite departmental action and contempt proceedings.¹¹ The decision emphasized that transparency in arrest procedures such as maintaining arrest memos and notifying relatives—is essential to prevent abuse. Later jurisprudence has reinforced the need for CCTV surveillance in police stations and judicial scrutiny of remand proceedings as preventive mechanisms.

The right to legal aid further strengthens remedial protections. In *Hussainara Khatoon v. State of Bihar*, the Supreme Court highlighted the plight of undertrial prisoners languishing in jail for years without trial.¹² The Court declared that free legal aid is an essential ingredient of “reasonable, fair and just” procedure under Article 21. Without access to counsel, the arrested person’s ability to challenge unlawful detention is severely compromised. Legal aid thus serves as both a procedural safeguard and a remedial instrument.

Despite this progressive jurisprudence, challenges remain in ensuring effective enforcement. Compensation awards are often modest and delayed, and criminal prosecution of errant officials remains rare. Furthermore, victims of custodial violence frequently face evidentiary difficulties due to institutional solidarity and lack of independent investigation. Strengthening independent oversight bodies, ensuring prompt judicial inquiry into custodial deaths, and enhancing witness protection are essential to make judicial remedies meaningful.

In sum, the evolution of constitutional remedies in India reflects a transformative judicial philosophy that treats liberty as inviolable. By recognizing compensation, mandating accountability, and expanding access to legal aid, the judiciary has fortified the rights of arrested persons beyond mere procedural formality.

5. Contemporary Challenges, Structural Gaps, and the Way Forward

Notwithstanding the elaborate constitutional and statutory framework, the lived reality of arrest in India often reveals a troubling gap between doctrine and practice. Reports of custodial deaths, allegations of torture, and instances of arbitrary arrest indicate persistent structural weaknesses within the criminal justice system. The tension between investigative efficiency and individual liberty continues to define contemporary discourse on arrest powers.

One of the central concerns is the routine and mechanical use of arrest powers. In *Arnesh Kumar v. State of Bihar*, the Supreme Court observed that arrests are frequently made without adequate justification,

¹⁰ *Bhim Singh v. State of J&K*, (1985) 4 SCC 677.

¹¹ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

¹² *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369.

particularly in offences punishable with less than seven years of imprisonment.¹³ The Court directed police officers to record reasons for arrest and required magistrates to scrutinize such reasons before authorizing detention. While this decision sought to reduce unnecessary arrests, empirical evidence suggests inconsistent compliance. Institutional inertia and pressure to demonstrate investigative action often undermine adherence to safeguards.

Custodial violence remains another grave concern. Although D.K. Basu laid down preventive guidelines, enforcement depends largely on internal disciplinary mechanisms and judicial vigilance. The absence of an independent police complaints authority in several states weakens accountability. Moreover, victims of custodial abuse often come from marginalized socio-economic backgrounds, making access to justice more difficult.¹⁴

Overcrowding in prisons and prolonged pre-trial detention further exacerbate the situation. Undertrial prisoners constitute a significant portion of the prison population in India. Delays in investigation, charge-sheet filing, and trial proceedings result in individuals spending years in custody without conviction. Such prolonged detention undermines the presumption of innocence and contradicts the constitutional guarantee of personal liberty. The Supreme Court has repeatedly emphasized that “bail is the rule and jail is the exception,” yet lower courts frequently adopt a cautious approach in granting bail. Technological and institutional reforms offer potential solutions. Mandatory installation of CCTV cameras in police stations, digital recording of arrests, and biometric documentation can increase transparency. Judicial training programs emphasizing human rights jurisprudence can improve remand scrutiny. Additionally, strengthening legal aid services and ensuring immediate access to counsel at the time of arrest would empower detainees to assert their rights effectively.

Comparative perspectives also provide guidance. Jurisdictions such as the United Kingdom require prompt access to legal counsel under the Police and Criminal Evidence Act (PACE), while the United States mandates Miranda warnings informing suspects of their rights. Although India has developed its own constitutional safeguards, systematic awareness campaigns and standardized arrest protocols could enhance compliance.

Ultimately, reform requires a shift in institutional culture. Arrest should not be perceived as a routine administrative step but as a serious constitutional event involving temporary deprivation of liberty. Police officers, magistrates, and prosecutors must internalize that the legitimacy of criminal justice depends on strict adherence to due process.

The future of arrest jurisprudence in India will depend on bridging the gap between normative standards and ground-level implementation. Judicial pronouncements have laid a strong foundation; the task ahead lies in ensuring uniform compliance, strengthening oversight mechanisms, and fostering a rights-oriented criminal justice system.

Conclusion

The rights of arrested persons in India represent a dynamic interplay between constitutional guarantees, statutory safeguards, and judicial activism. Through landmark decisions such as D.K. Basu, Joginder Kumar, and Arnesh Kumar, the Supreme Court has transformed arrest law into a human rights-oriented framework grounded in dignity and accountability.

¹³ Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

¹⁴ D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

However, the persistence of custodial abuses reveals the gap between law and practice. Bridging this gap requires sustained institutional reform, vigilant judicial oversight, and societal commitment to constitutional values. Only then can the promise of Articles 20, 21, and 22 be fully realized, ensuring that arrest remains a regulated legal process rather than a tool of arbitrary power.