

duty of the Magistrate to inform you about this right when you are first produced in court.

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

RESISTANCE TO ARREST

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

- [Section 46, CrPC]

- [Section 42, CrPC]

REDRESS AGAINST ARBITRARY ARREST & DETENTION

Illegal detention is when you are arrested and kept in a police station without the registration of an FIR / case. Illegal detention is a serious offence and there are several legal remedies available to you. You may make a complaint against the police officer(s) who illegally arrested or detained you. You may also be eligible for monetary compensation.

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, the woman police officer must take the prior permission of a magistrate.

- Females can be searched by only another female with strict regard to privacy and decency.

- (Section 51, CrPC)

- Female suspects must be kept in a separate lock-up in the police station. They should not be kept where male suspects are detained.
- Female suspects have to be interrogated in the presence of female police officers.



You can:

- Register an FIR against the police officer who illegally arrested or detained you
- Meet or send a registered post complaining about the incident to the District Superintendent of Police or any other senior police officer; or
- File a complaint with the magistrate of the area.
- Make a complaint to the Police Complaints Authority in your state, if there is one;
- Make a complaint to the National Human Rights Commission or State Human Rights Commission if your state has one.
- Your family or friend can file a writ of habeas corpus for your release. This means they file 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 is filed when a person feels that his fundamental rights have been violated. On filing this petition, if the court thinks that there has been a violation of your fundamental right, 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 organization 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.

Presently we work in the following areas:

- ★ Police Reforms
- ★ Prison Reforms
- ★ Right to Information
- ★ Strategic Initiatives Programme
- ★ Reports to the Commonwealth Heads of Government Meeting (CHOGM)



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Police and You Know Your Rights



**Commonwealth
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Arrest and Detention

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.

CAN THE POLICE ARREST WITHOUT A WARRANT?

- ☛ Yes if you are accused of a cognizable offence then the police can arrest you without a warrant. For non cognizable cases the police cannot arrest you without a warrant.
- (Sec. 43, CrPC)

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 the court to do so. These offences are of a more serious nature like murder, rape, dacoity or rioting.

NON-COGNIZABLE OFFENCE

A non-cognizable offence is an offence in which a police officer has no authority to arrest without warrant. The police cannot investigate such an offence without the court's permission. These offences are of a trivial nature like cheating, fraud or forgery.

WHEN CAN YOU BE ARRESTED WITHOUT A WARRANT?

You may be arrested without a warrant if:



- ☛ You are involved in a cognizable offence such as murder, rape or dacoity, or you are suspected to be so involved, or a complaint has been received of such involvement by you;
- ☛ You possess any implement of housebreaking such as a crossbar, rod, or glass cutter without a valid excuse;

- ☛ You have been declared a proclaimed offender under law;
- ☛ You are in possession of stolen property;
- ☛ You obstruct a police officer in carrying out his / her duty;
- ☛ You have escaped or attempted to escape from lawful custody;
- ☛ You have been found guilty by a Court and have not turned yourself over to the police;
- ☛ Another police officer requests you to be arrested and specifies the offence for which you are being arrested;
- ☛ You are suspected of being a deserter from any of the Armed Forces; or
- ☛ You are a habitual offender.
- ☛ You cannot be arrested without a warrant if the alleged offence carries a punishment which is for seven years or less. Instead, you will issued a "notice of appearance" and can only be arrested if you do not appear before the police when summoned. However, the officer may still arrest you for an offence which carries a seven year or lesser period punishment if he is satisfied that this is necessary for proper probe or to prevent you from committing a further offence. He must first record these reasons in writing.
- (Section 41, CrPC)

ARREST & DETENTION: YOUR RIGHTS & DUTIES

If you are arrested, you have the right:



- ☛ To be informed of the grounds of arrest by the police. The police should also inform you of this right.
- [Article 22(1), Constitution; Section 50, CrPC]
- ☛ To be released on bail when arrested for a bailable offence. It is the duty of the police officer to inform you of your right to be released on bail.
- [Section 50, CrPC]

- ☛ To be produced before the nearest competent magistrate within 24 hours from the time of your arrest. This period excludes the time taken in journey.
- [Article 22(2), Constitution; Section 57 & 76, CrPC]
- ☛ To inform your relatives or friends about your arrest and the place of detention. It is the duty of the police to inform you of this right and also inform your relatives or friend about your arrest and detention. This information should be entered into a book at the police station.
- [Section 50-A, CrPC]
- ☛ To meet and consult a lawyer of your choice. You can consult a lawyer during interrogation but not throughout the interrogation period.
- [Article 21(2), Constitution; Section 41-D, CrPC]
- ☛ Not to be ill-treated, abused, or tortured while in custody. A police officer making an arrest is entitled to search you and place in safe custody all the articles seized from you. A receipt of such articles must be given to you.
- [Section 51, CrPC]

RIGHT TO MEDICAL EXAMINATION

- ☛ You can demand a medical examination of your body by a registered medical practitioner to disprove the commission of the offence alleged against you. It is the duty of the Magistrate to inform you of this right.
- [Section 54, CrPC]
- ☛ At the time of examination, the injuries found on your body should be recorded. The police officer who arrested you must prepare an Inspection Memo after the examination is over and this memo should be signed by you and the arresting officer, with a copy given to you.
- [Supreme Court judgement D.K. Basu vs. State of W. Bengal]
- ☛ You have the right to ask for a medical examination after every 48 hours during your detention in custody by a qualified and government-approved doctor.
- [Supreme Court judgement D.K. Basu vs. State of W. Bengal]

ADDITIONAL DUTIES OF THE POLICE

- ☛ The police officer who arrests you must bear accurate, visible and clear identification in the form of nametag with designation.
- [Section 41-B(a), CrPC]

The police officer carrying out the arrest must prepare a Memo of Arrest that should be signed either by a relative or friend of yours or a respectable person of the locality, the arresting officer and be countersigned by you. This Memo must have your name, the offences for which you are being arrested as well as the place, date and time of your arrest.
- [Section 41-B(b), CrPC]

- ☛ Copies of all the documents should be sent to the local area Magistrate for record.
- ☛ Details of every arrest and the place 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.
- ☛ Handcuffs are to be used only if a person is:
 - involved in serious non-bailable offences, has been previously convicted of a crime; and/or
 - is of desperate character- violent, disorderly or obstructive; and/or
 - is likely to commit suicide; and/or
 - is likely to attempt escape.
- ☛ The reasons why handcuffs have been used must be clearly mentioned in the Daily Diary Report. They must also be shown to the court.
- ☛ Once an arrested person is produced before the court, the police officer must take the court's permission before handcuffing her/him to and fro from the court to the place of custody
- ☛ The magistrate before whom an arrested person is produced must inquire whether handcuffs have been used. If the answer is yes, the officer concerned must give an explanation.

RIGHT TO LEGAL ADVICE

- ☛ If you are poor and cannot afford a lawyer you are entitled to be given free legal aid. This right begins from the time of your arrest. If you are not aware of this right it is the