



# AMENDMENT TO

# LAW OF

# ARREST

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**NO PERSON SHALL BE  
DEPRIVED OF HIS LIFE OR  
PERSONAL LIBERTY  
EXCEPT ACCORDING TO  
PROCEDURE ESTABLISHED  
BY LAW**

**Article 21**

Rajyanga Jeevana Mantra



## WHY CRIMINAL LAW?

The **main aim** of Criminal Law is:  
protecting **Right to Personal Liberty**,  
when it is being violated by others,  
to give **protection** to the weak and  
feeble against the powerful and  
strong,  
to give **protection to the peaceful**  
against the violent



## CR P C & LAW OF ARREST

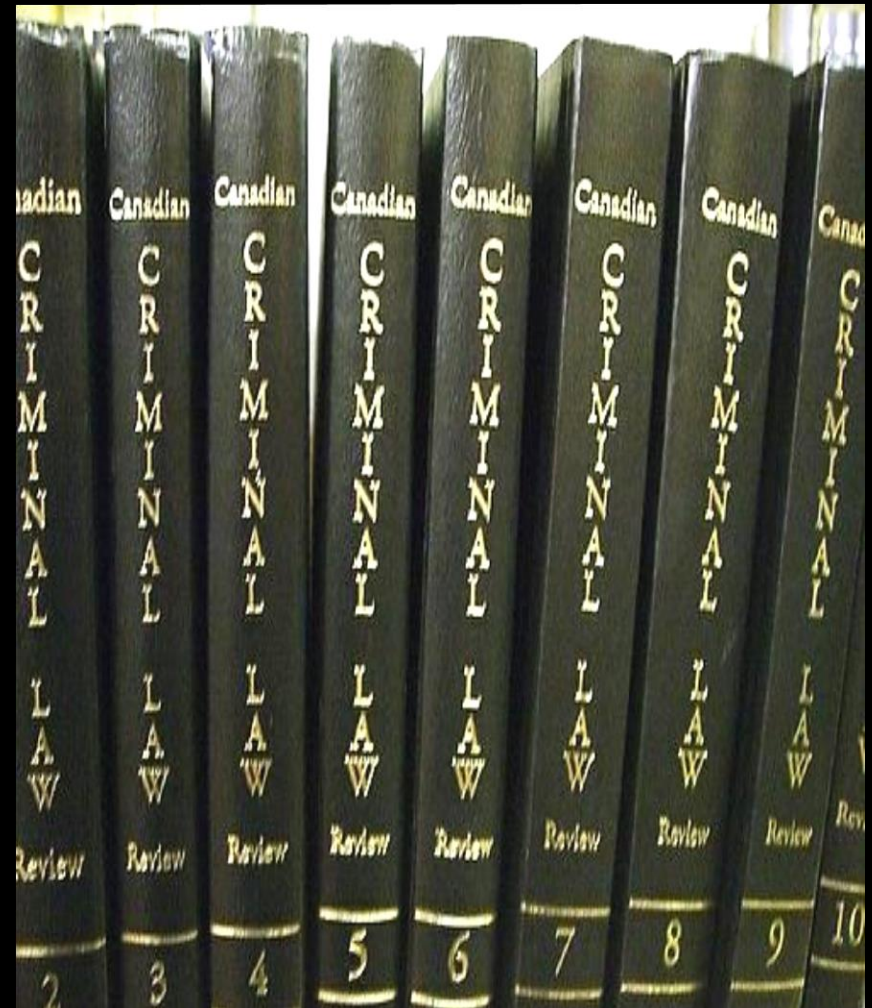
The CrPC came into existence in 1898 and several amendments were made in 1973.

However, the second major attempt by the Centre to overhaul the code has become controversial.

Every compulsion or physical restraint is not arrest, but it is when the restraint is total and deprivation of liberty is complete

There is more stress for human rights in the amended CrPC. Under section 41 of CrPC 1973, a police officer could arrest a person for a cognisable offence without an order from a magistrate and without a warrant.

Now, police cannot blatantly arrest people for cases ranging from economic offences and dowry harassment where the punishment is less than seven years.



## S 41 (BEFORE 2008)

S 41(1) Any police officer may **without an order** from a Magistrate and **without a warrant**, **arrest** any person-

a) who has been **concerned** in any cognizable offence, or

against whom a **reasonable complaint** has been made or

**credible information** has been received, or

a reasonable suspicion exists, of his having been so concerned; or



## HOUSE BREAKING

- b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any **implement of house-breaking**; or
- c) who has been **proclaimed as an offender** either under this Code order of the State Government; or
- d) in whose possession anything is found which may reasonably **suspected to be stolen** property and who may reasonably be suspected having committed an offence with reference to such thing; or

## OBSTRUCTING POLICE OFFICER

- e) who **obstructs a police** officer while in the execution of his duty, or who has **escaped**, or attempts to escape, from lawful custody; or
- f) who is reasonably suspected of being a **deserter** from any of the Armed Forces of the Union; or



S 41.

- h) who, being a released convict, commits a **breach of any rule made** under sub-section (5) of section 356; or
- i) for whose arrest any **requisition**, whether written or oral, has been received from another police officer, provided that the requisition specified the person to be arrested and the offence or other cause for which the arrest is to be made and it **appears there from that the person might lawfully be arrested** without a warrant by the officer who issued the requisition.

## FALSE NAME

Section 42, if a person commits an offence in the presence of a police officer or where he has been accused of committing a non-cognizable offence and refuses, on demand being made by a police officer to give his name and residence or gives false name or residence,



## RIGHT OF **ARRESTED**

Section 50 (which corresponds to clause (1) of Article 22 of the Constitution) creates an obligation upon the police officer **to communicate to the person arrested full particulars** of the offence for which he is arrested or other grounds for such arrest forthwith.



## RIGHTS OF ARRESTED

- S 50 also provides that where a person is arrested for a bailable offence without a warrant, the police officer shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.
- Section 51 provides for search of arrested person while section 52 empowers the police officer to seize offensive weapons from the arrested person.
- Sections 53 and 54 provide for medical examination of the arrested person at the request of the police officer or at the request of the arrested person.
- Section 55 prescribes the procedure to be followed when a police officer deposes his subordinate to arrest a person without warrant.

## CUSTODY LIMITED TO NEED

Section 56 (which corresponds to clause (2) of Article 22) of the Constitution, provides that the person **arrested shall not be kept in the custody** of a police officer for a longer period than is **reasonable** and that in any event such period **shall not exceed 24 hours** exclusive of the time necessary for the journey from the place of arrest to the magistrate's court.

## POWER OF DISCRETION

concerned in any cognizable offence, 41a  
any implement of house breaking. 41b  
stolen property “and who may be reasonably suspected.  
41d

reasonable complaint 41

“credible information” 41

generality of language and the consequent wide  
discretion give enormous power.

“reasonable”, “credible” and “reasonably”: These mean  
nothing.

## WIDE POWER UNDER S 151

Section 151 empowers a police officer to **arrest any person**, without orders from a Magistrate and without warrant, “if it appears to such officer” that such person is **designing** to commit a cognizable offence and that the commission of offence cannot be **prevented** otherwise.

## RISKS

It may be true that the satisfaction of the police officer contemplated by the expression “if it appears to such officer” is not subjective but is **objective** but in India, police officers making a wrongful arrest whether under **section 41 or 151**, are seldom proceeded against – much less punished. There are too many risks involved in doing so.

## SECURITY FOR PEACE

107 to 110 of the Code of Criminal Procedure. These sections empower the Magistrate to call upon a person, in situations/circumstances stated therein, to execute a bond to keep peace or to be on good behaviour.

## WRONG & ILLEGAL

Despite safeguards Cr PC & Constitution

the power of arrest is wrongly and illegally exercised in a large number of cases all over the country. (LCI)



## RIGHTS OF ARRESTED

Joginder Kumar v. State of U.P. (AIR 1994 SC 1349),

“The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

## BALANCING

The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first – the criminal or society, the law violator or the law abider; of meeting the challenge which Mr. Justice Cardozo so forthrightly met when he wrestled with a similar task of balancing individual rights against society's rights and wisely held that the exclusion rule was bad law, that society came first, and that the criminal should not go free because the constable blundered.

## STATECRAFT

“To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other is a perennial problem of statecraft.”

-Smt. Nandini Satpathy v. P.L. Dani  
AIR 1978 SC 1025 at page 1032,  
quoting Lewis Mayers,

## 60 % ARRESTS UNNECESSARY

The National Police Commission in its Third Report referring to the quality of arrests by the Police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails. (The figures given in the Report of the National Police Commission are more than two decades old. Today, if anything, the position is worse.)

## UK NECESSITY PRINCIPLE

The Royal Commission suggested restrictions on the power of arrest on the basis of the 'necessity principle'. The two main objectives of this principle are that police can exercise powers only in those cases in which it was genuinely necessary to enable them to execute their duty to prevent the Commission of offences, to investigate crime.

## ROYAL COMMISSION

The Royal Commission Report on Criminal Procedure – Sir Cyril Philips, at page 45 said:

“.... We recommend that detention upon arrest for an offence should continue only on one or more of the following criteria;

- a) the person's unwillingness to identify himself so that a summons may be served upon him;
- b) the need to prevent the continuation or repetition of that offence;
- c) the need to protect the arrested person himself or other persons or property;

## ROYAL COMMISSION

d) the need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and

e) the likelihood of the person failing to appear at court to answer any charge made against him.”

## ROYAL COMMISSION SUGGESTED

“To help to reduce the use of arrest we would also propose the introduction here of a scheme that is used in Ontario enabling a police officer to issue what is called an ‘**appearance notice**’.

Third Report of the (India) National Police Commission at page 32 also suggested:

“...**An arrest during the investigation of a cognizable case maybe considered justified in one or other of the following circumstances:**

## WHEN ARREST CAN BE MADE?

- 1) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.
- 2) The accused is likely to abscond and evade the processes of law.
- 3) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.
- 4) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

## RECORD REASONS

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines....”

## JOGINDER KUMAR CASE

1. An arrested person being held in custody is entitled, if he so requests to have one **friend relative** or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.
2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.
3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly. It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

## **DGS INSTRUCTED**

The Directors General of Police of all the States in India shall issue necessary instructions requiring due observance of these requirements. In addition, departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary, the reasons for making the arrest.”

## DK BASU CASE

- D.K. Basu v. State of West Bengal (AIR 1997 SC 610).
- should bear accurate, visible and clear identification and name tags with their designations.
- prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness
- shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed,

## BASU CASE

The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

## RIGHTS OF ARRESTED

- The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The “Inspection Memo” must be signed both by the arrestee and the police officer
- subjected to medical examination by a trained doctor every 48 hours during his detention
- The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board.

## PUNISHMENT

Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter. (SC in DK Basu case)

## LCI RECOMMENDED

Necessary to make appropriate legal provisions not only incorporating the said guidelines/directions but also making such changes in law as may be necessary to prevent abuse/misuse of the said power while at the same time ensuring that interest of the society in maintenance of peace and law and order is not jeopardized.

## IN UP IN 1998

While the total number of persons arrested/surrendered is around three lakhs, the number of persons arrested under “preventive provisions of law” is as high as 4,79,404. Obviously, the preventive provisions mean the provisions like sections 151, 109 and 110 CrPC and similar other provisions in local police enactments, if any. Another disturbing feature is the percentage of arrests made in relation to bailable offences. It is as high as 45.13%.

## AP MEDAK

Only in about 40% of the cases, charge-sheets are filed within the stipulated time limit of ninety days. Frequently the IOs seek extension of judicial remand of the accused. The IOs have to be educated in the need for expeditious completion of investigation and filing of charge-sheets.

A number of accused granted bail by the courts have not been able to avail the facility since they are unable to produce proper sureties. They continue to languish in judicial remand. No legal aid is being provided to them.

“Though the number of arrests made without registering cases is of high proportion (3746 out of 8889 of arrests, i.e. roughly 42.14%), as many as 3164 are under preventive sections of law (108, 109, 110 and 151 CrPC).

## ARRESTS & KINDS

The number of “preventive arrests” is unusually large.

The percentage of arrests in bailable offences is unusually large ranging from 30% to more than 80%.

The percentage of undertrial prisoners in jails is unusually large.

Figures of accused in bailable cases, who remained in custody/bail for their inability to furnish the bail, are also not furnished.

## UNDER TRIAL

'Common Cause, A Registered Society' v. UOI ((1996) 4 SCC 33) and 'Common Cause, A Registered Society' v. UOI (1996 (6) SCC 775) that undertrial prisoners whose cases have been pending beyond a particular period should be enlarged on bail or on personal bond.

## KINDS OF OFFENCES CRPC

(1) bailable and non-cognizable offences; (2) bailable and cognizable offences;

(3) non-bailable-cognizable offences and (4) non-bailable-non-cognizable offences (e.g., sections 466, 467 (first part), 476, 477 and 505 (first part) etc.)

There is a fifth category of offences e.g., sections 116 to 120, where the cognizability and bailability/non-bailability depends upon the nature of the main crime.

## LCI RECOMMENDED

No person shall be arrested for offences which are at present treated as bailable and non-cognizable; in other words, a court shall not issue an arrest warrant in respect of these offences. Only a summons to be served

There appears no reason to arrest a person accused of what is now categorized as bailable- non-cognizable offences.

In respect of offences bailable and cognizable no arrest shall be made, but what may be called an “appearance notice” be served the expression “bailable” shall be omitted in respect of these offences and they should be termed simply as cognizable offences.

## SUGGESTED

In respect of offences punishable  
with seven years imprisonment or  
less

should be treated as bailable-  
cognizable offences and dealt  
with accordingly

Offences u/s 124, 152, 216-A,  
231, 233, 234, 237, 256, 257, 258,  
260, 295 to 298, 403 to 408, 420,  
466, 468, 477-A and 489-C shall  
continue to be treated as non-  
bailable-cognizable.

In respect of non-bailable-  
cognizable offences punishable  
with more than seven years  
imprisonment, no change is  
proposed in the existing law.

## GENERAL PRINCIPLES

Arrest shall be effected (a) where it is necessary to arrest the accused to bring his movements under restraint to infuse confidence among the terror-stricken victims or where the accused is likely to abscond and evade the process of law; (b) where the accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint or the accused is a habitual offender and unless kept in custody is likely to commit similar offences again; (c) where the arrest of the persons is necessary to protect the arrested person himself; or (d) where such arrest is necessary to secure or preserve evidence of or relating to the offence; or (e) where such arrest is necessary to obtain evidence from the person concerned in an offence punishable with seven years or more, by questioning him.

Merely on suspicion of complicity in an offence, no arrest to be made  
Statutorily incorporation of safeguards contained in D.K. Basu's case

## SUGGESTED

Representatives of registered NGOs to be entitled to visit police stations.-

Necessity to increase compoundability of offences and incorporate the concept of plea bargaining.-

No arrest should be made under sections 107 to 110, CrPC and under similar provisions

Bail should be granted as a matter of course except in the serious offences and in certain circumstances

No arrest or detention for questioning.-

Ensuring the safety and well being of the detainee is the responsibility of the detaining authority.-

Custody record to be maintained at every police station

Tortious liability of State.-

Strict compliance with section 172, CrPC called for: shall day-by-day enter his proceedings in the investigation in a diary setting forth the time at which the information reached him

## VIOLATION OF HR

European Court of Human Rights in *Fox, Campbell and Hartley v. U.K.* (30th August, 1990) declared that section 11 of Northern Ireland (Emergency Provisions) Act, 1978 is violative of Article 5(1) of the European Convention on Human Rights.

S 11 empowered a police officer to arrest a person if he is “suspected of being a terrorist”.

The Court (by majority) held that mere suspicion, however bona fide held, cannot be a ground for arrest.

Pursuant to the decision, the aforesaid words were replaced by the words “has been concerned in the commission, preparation or instigation of acts of terrorism”.

## 2005 AMENDMENT

The *Code of Criminal Procedure (Amendment) Bill, 2005*, to quote the Home Minister, would make the law *more humane, more scientific and more effective.*

*providing for prompt arrest of an accused after rejection of his anticipatory bail, confiscation of the property of an accused who has repeatedly evaded court process and the powers of a Magistrate to recommend to the prosecution to file an appeal in a criminal case even if the offence is not of a serious nature, even though in our country, jumping bails, evading trial by not appearing before the court and ineffectual prosecution is the norm!*

Section 51 provides that any person held in custody by the police, shall be *entitled to have one person of his choice informed of his arrest and place of detention* so that he can arrange for adequate assistance during investigation and trial.

## ABUSE FLOWING FROM WORDING

Reason for abuse of power of ARREST is the manner in which the source of this power i.e. the Criminal Procedure Code is worded.

S 41(1) provides that a police officer may arrest a person (a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned.

The first part being concerned in a cognizable offence, is totally objective, But in the remaining portions, one finds a combination of objective facts coupled with a certain amount of subjective evaluation.

The objective element is highlighted by its repeated use of adjectives, such as 'reasonable' or 'credible'. But it is not necessary to establish objectively that the person proposed to be arrested has been concerned in a cognizable offence.

## REDEFINING POLICE ROLE

Criminal Procedure Code (CrPC) amendment Bill, 2008 by the Parliament police role in arresting a person has been redefined and restricted. **Indian Parliament passed the law with no debate.**

Law Commission 177th report suggested changes related to power of arrest to check sanctity of Fundamental rights.

## PURPOSE OF CHANGES IN S 41

Do away with preventive arrests merely on grounds of suspicious behaviour.

Follow a different procedure for the arrest of those committing crimes with a maximum punishment of seven years (called summons cases) and those committing crimes that carry sentences longer than seven years (warrant cases). The laws applied in the former should be less stringent and bail made easier.

Only a registered government medical practitioner must examine all arrested.

All witness statements should be recorded before a judicial magistrate.

Police officials of the rank of sub-inspectors or above alone should be given the power to arrest.

All arrests must be recorded on video.

## 41 A

Section 41A: the police officer should issue a notice summoning suspects and can arrest them only if they do not appear or accept the notice.

Police cannot arrest a person involved in a non-cognisable offence without a warrant.

Names of arrested persons should be displayed on the notice boards of police control rooms in all districts.

## ESSENCE OF CHANGES

It prevents the police in normal cases from arresting the accused unless the crime was committed in front of a police officer, or if the police believe that the accused being out of prison could affect investigations. In all other cases, the accused will be presented with a notice to be present, and only if the person does not present himself / herself, then the arrest will happen.

## OFFENCES, LESS THAN 7 YRS JAIL

Seven years or less is the maximum penalty for a host of offences, including attempt to commit culpable homicide, robbery, attempt to suicide, kidnapping, voluntarily causing grievous hurt, cheating, outraging a woman's modesty and death caused by negligence.

The amended Section 41 of the Cr.P.C. says: “No person concerned in a non-cognisable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned shall be arrested except under a warrant or order of a magistrate.”

However, arrest can be made without

## 2008 CHANGES

The provision says the police, instead of arresting the accused, will be obliged to issue him/her a “notice of appearance” for any offence punishable with imprisonment up to seven years. The person can be arrested only if he/she does not appear before the police in response to the notice.

The amended law says a police officer who is making an arrest will have to bear his identification badge or tag. Besides, a memorandum of arrest shall be prepared, witnessed and countersigned. The person arrested shall be told that he/she has the right to inform a relative or friend.

It mandates the State government to

## COMPENSATION

The law provides for payment of compensation to victims for illegal arrest and police harassment. Every State in coordination with the Centre should prepare a scheme for providing funds for compensation to the victim or his/her dependants who suffered loss or injury as a result of the crime and who require rehabilitation.

## TO EASE THE JAILS

The new law was apparently driven by the need to ease overcrowding in jails and to prevent wrongful arrest. In several cases, citizens and lawyers had complained that Indian police arrested 'suspects' in criminal investigations simply to extract bribes from them - or locked up all possible suspects while investigating. Arrestees with no involvement in crime would spend months in jail before they got a hearing.

## WHY

prevent “capricious” “whimsical”  
arrests made by the police.

prevent (or minimise)  
harassment and extortion  
by the police,

Not allowing arrest as a  
first step has the  
important consequence  
that the routine “third  
degree” treatment that the  
police metes out to

suspects, who are arrested,

## POWER TO ARREST NOT REMOVED

This change does not take away the power of arrest in absolute manner, rather it requires for arresting a person.

The manner should be reasonable and proportionate.

It is also mandatory for the Investigating Officer to record reasons of arrest so that it can be helpful in the subsequent judicial scrutiny.

Former Chief Justice K G Balakrishnan and Justice P Sathiasivan made an

## REDUCE ILLEGAL DETENTIONS

Civil rights activists argue that the new amendments will eliminate the chances of illegal detention and custodial torture.

Lawyers contend this facilitates the criminals and they would misuse it in the guise of personal liberty

Police say it will embolden criminals and create a law and order problems.

## THE PROBLEM

the new law could turn out to mean a complete perversion of justice. Consider, for instance, that many serious crimes have a sentence of seven years or less — these include kidnapping (seven years), extortion (less than seven), rash and negligent driving (two years), culpable homicide not amounting to murder (seven), and dowry harassment (up to three years). Is it really desirable that someone suspected of such crimes

## REPERCUSSIONS

The wealthy can make use of this  
loophole to escape and the poor  
would be arrested

lawyers have opposed the amended  
Section 309 of the CrPC saying that  
it takes away some rights of the  
accused

## NGO AGAINST LAWYERS

Non Government Organization  
“Save Indian Family” said that the  
present scenario suggests that  
lawyers are hijacking government  
only for their personal commercial  
interest. Moreover, in any policy  
making, common man has no say at  
all and there is no place for the  
interest of common man.

## CHANGES IN 2010

Made it compulsory for police officers to issue a notice if an accused in the case is not to be arrested as it was at the discretion of the police officer to give a notice.

Mandatory for police officer to give reasons for arrest in black and white.

41 AFTER 2008, 2009, 2010

Section 41 (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person

(2) Against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion

## CONDITIONS FOR ARREST

The police officer has a reason to believe on the basis of such complain information, or suspicion that such person has committed the said offence

The police officer is satisfied that such arrest is necessary-

To prevent such person for committing such offence further, or

proper investigation of the offence, or

To prevent such person from causing the evidence of the offence to disappear or tampering with such in any manner, or

To prevent such person from making any inducement, threat or

## ARRESTING FOR OFFENCES (7 YRS +)

41 (1) ba) person against whom info has been received that he has committed a cognizable offence punishable with imp to more than 7 yrs or with death, and police officer has reason to believe that he has committed the said offence

- c) proclaimed offender
- d) possessing stolen property
- e) obstructed police officer
- f) Suspected deserter of armed forces
- g) committed offence out of India (to be extradited)

**S. 41(2) (ADDED IN 2009)**

2. Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in **section 109 or section 110.**”



# COMPLAINT

## NOT ENOUGH

Therefore, the police **cannot** arrest merely on the basis of reasonable complaint.

The police must have reasons to suspect that such **person has committed** the said offence.

Moreover, the police officer who is making arrest **must satisfy that such arrest is necessary** to prevent such person from committing any offence; or for proper investigation of the offence; or to prevent such person from causing the evidence of the offence to disappear or

## NOTICE OF APPEARANCE

(Added in 2009) S 41A (1)  
Police officer **shall** ('may'  
is replaced by shall 2010)  
in all cases where the  
arrest of a person is not  
required under 41(1) issue  
a notice of appearance  
directing the person  
suspected to commit  
cognizable offence to  
appear.

(2) It shall be duty to  
comply.

(3) If complied shall not

## 2008 ADDITIONS

The 2008 Act has inserted new sections 41A, 41B, 41C and 41D.

Section 41A requires the police to issue a notice to appear if the arrest of the person is not required under the provisions of sub-section 1 of section 41.

Section 41B lays down the requirements to be followed by the police-officer while making arrest. Every police officer while making an arrest shall bear an accurate, visible and clear identification of his name which will facilitate easy identification.

At the time of the arrest, the police are required to prepare a memorandum of arrest which shall be attested by at least one respectable

# PROCEDURE & DUTIES OF

## POLICE

Every police officer while making an arrest shall- (a) bear an accurate, visible and clear identification of his name which will facilitate easy identification; b) prepare a memorandum of arrest which shall be – (i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made; (ii) countersigned by the person arrested; and

## RIGHT TO INFORM RELATIVE

(c) inform the person arrested, unless the memorandum is attested by a member of his family; that he has a right to have a relative or a friend named by him to be informed of his arrest.

## 41C

Section 41C as inserted by the amendment provides the establishment of control rooms in every district and at state level, which shall display the names and addresses of the persons arrested and the name and designation of the police officer who made the arrests on the

## 41D

Section 41D gives the statutory right to arrested person to meet an advocate of his choice during interrogation. When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, although not throughout interrogation.

## 42. ARREST ON REFUSAL

(1) When a person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and his residence or gives a name or resident which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and

Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India.

(3) Should the true name and residence of such person not be ascertained within 24 hours from the time of arrest or should he fail to execute the bond, or

## 151 TO PREVENT

(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested shall be detained in

## S 46 SHALL NOT TOUCH WOMAN

The 2008 Act added a new proviso in section 46 of CrPC which provides that where a woman is to be arrested; her submission to custody on an oral intimation of arrest shall be presumed unless the circumstances indicate to the contrary. The police officer shall not touch the

## S 54 MEDICAL EXAMINATION

The 2008 Act substitutes the provisions of Section 54 with new provision for medical examination of arrested person. Sub-clause (i) makes it mandatory to conduct medical examination of the arrested person by a medical officer in the service of Central or State Governments and in case the medical officer is not available by a registered medical practitioner soon after the arrest is made.

If a person is arrested, the following provisions apply:

## RECORD OF MEDICAL EXAMINATION

Sub-section (2) requires the medical officer to prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

A copy of the report of such examination shall be furnished by the medical officer to the arrested person.

The 2008 Act also inserted a

# STATEMENT OF RAPE

The 2008 Act adds a proviso in sub-section (1) of section 157 of the principal Act which stipulates that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

## 161(3) VIDEO RECORDING

A proviso is added in sub-section (3) of section 161 which provides that statement made under this sub-section may also be recorded by audio-video electronic means. Sub-section (1) of section 164 of the principal legislation gives the power to Metropolitan Magistrate or Judicial Magistrate to record confession or statements in the course of an investigation.

## RECORDING CONFESSION

The 2008 Act provides that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence. A proviso is also added in Sub-section (1) of Section 275 which provides that evidence of a witness under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence. Section 275 deals with the recording of statements in warrant-cases by the magistrate.

## S 309; RAPE CASES

Section 309 of CrPC gives the power to the court to adjourn the proceeding for a future date. The 2008 Act has added a new proviso in sub-section (1) of Section 309 of the Code. It provides that when the inquiry or trial relates to an offence under sections 376 to 376D of the IPC, the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses.

## ADJOURNMENT RESTRICTED

A proviso is inserted in sub-section (2) which provides that no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party. The fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment and where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

## IN CAMERA TRIAL

Sub-section (2) of Section 327 provides the cases (mostly sexual offences) in which the trial shall be conducted '*in camera*'. The 2008 Act added a proviso to this sub-section which provides that '*in camera*' trial shall be conducted as far as practicable by a woman Judge or Magistrate. A proviso is also added to sub-section (3) which states that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.

## VICTIM COMPENSATION

Section 328 of the CrPC lays down the procedures to be followed by the court in case of accused being lunatic.

The 2008 Act has inserted a new section 357A which provides the mechanism to provide compensation to the victim. Every state government in consultation with the central government shall prepare a scheme for providing compensation to victim or his dependents who have suffered loss as a result of the crime and who require rehabilitation. The District Legal Service Authority or the State Legal Service Authority shall decide the quantum of compensation after the recommendations made by the court.

The amendment to Sec.372 provides that the victim shall have a Right to Appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation.

## OTHER CHANGES

The amended CrPC directs that the police should question rape victims below the age of 18 in the presence of their parents or a social worker of the locality.

police should investigate cases relating to rape of children within three months from the date on which the first information report was filed.

trial in rape cases should be conducted 'in camera' and that the judge or magistrate should be a woman as far as possible

bars courts from granting adjournments in rape cases without specifying the circumstances

## FOR VICTIMS

The amended code also addresses the recent trend of witnesses being forced to turn hostile by the accused parties, who are influential, rich and powerful.

It points out that victims are the worst sufferers in a crime and they don't have much role in court proceedings.

They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system

## STANDING COMMITTEE

July 2010. The Parliamentary  
Standing Committee on home affairs  
has given its nod to the Code of  
Criminal Procedure (amendment)  
Bill, 2010

Prof N.R. Madhava Menon has  
submitted a report to the  
government containing the national  
criminal justice draft policy.

Later the bill was passed and notified  
in September 2010

## S 358 COMPENSATION

S 358 provided for compensation not exceeding Rs 100 each of the arrested persons when a person causes their arrest through police.

## ARREST, WHY?

Arrest is not a mode of punishment, but a tool for effective investigation and prosecution.

If arrest is not 'necessary' for achieving these objectives, it shouldn't take place.

The normative reason is that the fettered power to arrest will fail to deter criminals and result in increased lawlessness. It is surprising to see lawyers forgetting the foundational rule of their own trade — presumption of innocence.

That the police, in practice, use their power of arrest and subsequent heavy-handed interrogation is used to 'solve' cases or to coerce 'settlements' does not detract from the fact that we are dealing with suspects, not convicts. Many countries manage a far more efficient policing system without using the process itself as punishment. In any case, the power to arrest has not been done away with — only due process requirements of necessity and recorded reasons have been imposed in certain cases.

## CYNICAL REASON MISPLACED

Now to the cynical reason — the reduced number of arrests will mean fewer bail cases. The question suddenly becomes that of lawyers who make a living out of bail applications. But the worry is misplaced. The rationalised section 41, read with the new section 41A, imposes several constraints on the power to arrest.

We suddenly have a new, sizeable category of arrests which will be ‘illegal’ under the new provisions, including arrests of non-suspects, arrests made without reasonable belief that the person has committed the offence, arrests which are not necessary, those without recorded reasons and those made without giving due notice. These new grounds of illegality may be invoked before courts for arrests already made as well for impending arrests. This whole new stream of litigation may more than make up for the drop in bail cases.

## DUE PROCESS NORMS

Given the nature of our police force, one can safely predict systemic violations of these due process norms. One even suspects a perverse institutional effect in that the police may now charge suspects with offences inviting punishments higher than seven years even when it is not merited, only to make sure they can be arrested. The amendment is well-meaning.

## POLICE REFORMS

But without systemic police reforms establishing the necessary institutional environment, their translation into practice is dubious.

In the meantime, our lawyers can be certain that there will be enough violations of these due process norms to keep them in business.



Thank

YOU

