

Arrest in Criminal Cases

Arrest generally means to seize or capture. Legally, it refers to physical restraint by authorities due to an alleged crime or offense of quasi-criminal nature committed by a person. The Criminal Procedure Code (CrPC) empowers police officers to arrest accused individuals. However, this power is regulated to prevent arbitrary or unlawful arrests through provisions under the Indian Constitution and the CrPC.

Arrest as per Criminal Procedure Code

Section 46 of the CrPC ([Section 43 of the Bharatiya Nagarik Suraksha Sanhita \(BNSS\)](#)) authorizes a police officer or any person making an arrest to touch or confine the body of the person to be arrested unless they submit to custody by word or action. If the person forcibly resists or attempts to evade arrest, the officer may use all necessary means to effect the arrest. However, causing death during arrest is not permitted unless for offenses punishable by death or life imprisonment.

Regulation of Arrests and Custody

When a police officer arrests someone, if the investigation cannot be completed within 24 hours, the person must be produced before the nearest magistrate along with case records. The magistrate may remand the accused to custody for up to 15 days. Further police custody can be granted if needed for investigation. If no evidence is found implicating the accused, they must be released with directions to cooperate with the investigation.

For bailable offenses, police can release the accused on bail with adequate surety. For non-bailable offenses, the accused must be produced before the magistrate for bail consideration.

Types of Arrest under CrPC

1.

Arrest with Warrant:

Police require a warrant for arrest in non-cognizable offenses. Warrants must be written, signed by the court, and sealed. They remain valid until executed or cancelled (Section 70) sections like 72 to 83 cover warrants of arrest and their execution.

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Arrest without Warrant:

Police can arrest without a warrant in specified scenarios under Section 41, (35 of BNSS) such as when a person is involved in a cognizable offense, possessing stolen property,

obstructing police, or escaping custody. Section 42 allows arrest if a person refuses to give name/residence after committing or being accused of a non-cognizable offense.

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Arrest by Private Person:

Any private individual may arrest a person committing a cognizable, non-bailable offense or a proclaimed offender in their presence and must hand them promptly to police (Section 43).

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Arrest by Magistrate:

Magistrates can arrest offenders present before them or order arrests within their jurisdiction, subject to bail provisions (Section 44).

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Rights of an Arrested Person

The Constitution under Articles 21 and 22 and the CrPC guarantee rights to arrested persons, including:

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Right to be informed of grounds of arrest in a language understood

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Right to be produced before magistrate within 24 hours of arrest

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Right to remain silent and not self-incriminate

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Right to consult and be represented by a legal practitioner

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Right to free legal aid if eligible

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Right to give notice of arrest to a relative or friend

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Right to a fair and just trial

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Recent Legal Developments and Landmark Judgments

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In *Vihaan Kumar v. State of Haryana* (2025), the Supreme Court ruled arrest illegal when the accused was not informed of arrest grounds as required by Article 22(1) and Section 50 CrPC. The Court emphasized that failure to inform the accused or their relatives renders the arrest unlawful, mandating immediate bail even if statutory restrictions exist.

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The Karnataka High Court in *Edwin Thomas v. State of Karnataka* (2025) reaffirmed that procedural lapses in arrest can be grounds for bail if they violate fundamental rights, particularly under Article 21.

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The Supreme Court in *Radhika Agarwal v Union of India* (2025) clarified that CrPC safeguards apply equally to arrests by revenue/tax authorities, emphasizing evidence-backed arrests and adherence to constitutional safeguards.

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Section 41 of the CrPC continues to provide clear conditions for warrantless arrests to prevent misuse. Police must record reasons in writing if they opt not to arrest despite grounds.

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Recent rulings uphold that arrests solely based on suspicion without credible information or proper grounds are unlawful.

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Conclusion

The law on arrest under the CrPC and the Constitution ensures that while police have the power to arrest, these powers are checked to protect personal liberty. Recent Supreme Court decisions have reinforced the procedural safeguards and rights of arrested persons, emphasizing transparency, accountability, and respect for fundamental rights at every step of arrest and custody.

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