CHAPTER 4
OTHER HUMAN RIGHTS
VIOLATIONS: THE UNATTENDED CATEGORIES

There are many degrees of violations of human rights in police custody which are lost sight of by many of the human rights activists and which are included here in the 'unattended categories'. In fact it is a large continuum. A critical scrutiny of the police work reveals that the police are very often committing violations of human rights like informal or arbitrary arrest of innocent people, excess use of force against the person arrested, unwanted handcuffing, humiliating the arrested person, using of filthy language, arbitrary denial of bail etc.

Arbitrary Arrest and Use of Excess Force

Arrest means deprivation of personal liberty. It is a serious invasion on the personal liberty of the arrested person. Indiscriminate arrests without any justification causes serious violation of human rights, and incalculable harms to the arrested person, such arrests may be necessary for the enforcement of criminal law. There is a need to make realistic approach in this regard.

Arrest is usually the preliminary stage of placing a person in police custody and it is therefrom that custodial violence arises. Hence it is inevitable that the arrest of a person is to be made strictly in accordance with the procedure established by law and also by ensuring that his rights as

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1 'Arrest' is not defined in the Code of Criminal Procedure, 1973. It is the deprivation of a person of his liberty by legal authority or at least by apparent legal authority., K.N. Chandrasekharan Pillai, R.V. Kelker's Criminal Procedure (1993), p. 53. Arrest under the English law is defined as “the restraining of the liberty of a man's person in order to compel obedience to the order of the court of justice, or to prevent the commission of crime or to ensure that a person charged or suspected of a crime may be forthcoming to answer it. To arrest a person is to restrain him of his liberty by some lawful authority", Earl Jowitt, The Dictionary of English Law Vol. I (1959), p. 152.According to new Encyclopaedia Britannica if arrest occurs in the course of criminal procedure the purpose of the restrain is to hold the person for answer to a criminal charge or to prevent him from committing an offence., 15th Edition, Vol. I, p. 540. Similarly in Corpus Juris Secondum it is stated: "In Criminal Procedure, an arrest is the taking of a person into custody in order that he may be held to answer for or be prevented from committing a criminal offence, 15th Edition, Vol. VI, p. 570.

guaranteed by law are safeguarded. It is to be permitted by law only in those cases where it necessarily serves a public purpose but not otherwise.\(^3\)

Under international human rights law, no one may be subjected to arbitrary arrest, detention or imprisonment.\(^4\) The police can arrest a person only if there is a charge of crime against him. One cannot be arrested only on a complaint or slight suspicion.\(^5\) According to Article 5(1) of the European Convention\(^6\) a person may be deprived of his liberty only in certain circumstances and that too only in accordance with a procedure prescribed by law.\(^7\)


\(^4\) Universal Declaration of Human Rights, Article 9 reads: "No one shall be subjected to arbitrary arrest, detention or exile." Article 9(1) of the ICCPR spells this out in greater detail: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law." The meaning of the word ‘arbitrary’ as used in Article 9 paragraph 1 in the Covenant is imprecise. It is unclear whether it means arrest against the existing provisions of law or in violation of the principles of natural justice., Srivastava, B.P., “Right Against Arbitrary Arrest and Detention under Article 9 of the Covenant as Recognized and Protected under the Indian Law”, I.J.I.L., Vol. 11 (1969) 29-56. The Human Rights Committee has taken the view that “the term ‘arbitrary’ is used in the Covenant in a wider sense. It is not synonymous with “against the law”, but “must be interpreted more broadly to include elements of inappropriate, injustice and lack of predictability,” Hugo van Alphen v. The Netherlands, (305/1988) (23 July 1990), Official Records of the General Assembly, Forty-fifth Session, Supplement No.40 (A/45/40), Vol. II, annex. IX, Sect. M. para 5.8. The term also includes the situation of detainees who are kept in detention after their release has been ordered by a judicial or other authority (Ana Maria Garcia Lanza de Netto, Beatriz Weismann and Alcides Lanza Perdomo v. Uruguay, (8/1977) (3 April 1980). Human Rights Committee, Selected Decisions under the Optional Protocol, International Covenant on Civil and Political Rights, Second to Sixteenth Sessions, Vol. I, p. 45)and those arrested with no criminal charge against them’ Daniel Monguya Mbenge et al. v. Zaire, (16/1977) (25 March 1983); Ana Maria Garcia Lanza de Netto, Beatriz Weismann and Alcides Lanza Perdomo v. Uruguay, (8/1977) (3 April 1980). Human Rights Committee, Selected Decisions under the Optional Protocol, International Covenant on Civil and Political Rights (Second to Sixteenth Sessions) (United Nations publication, Sales No.E.84.XIV.2) (hereinafter referred to as the 'Selected Decisions', Vol. I) P. 45, Vol.2, Seventeenth to Thirty-second Sessions (October 1982-April 1988) United Nations publication, Sales No.E.89.XIV.1). It follows from this that not only illegal arrest is arbitrary but even an arrest or detention which is in accordance with law may also be arbitrary. (Basing its interpretation upon this wider meaning of the term ‘arbitrary’ a committee established by the Commission on Human Rights defined arbitrary arrest’ as follows: “an arrest or detention is arbitrary if it is (a) on grounds or in accordance with procedure other than those established by law, or (b) under the provisions of a law the basic purpose of which is incompatible with respect for the right to liberty and security of person”, United Nations Study of the Right of Everyone to be Free from Arrest, Detention and Exile (1964); E/CN.4/826/Rev.1, p. 7.


\(^7\) One of the circumstances in which deprivation of liberty is permitted relates to the lawful arrest or detention of a person for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence. When arrest or detention of a person is considered necessary to prevent his committing an offence or fleeing after having done so, it will be in accordance with a procedure prescribed by law. According to the European Court, ‘a reasonable suspicion’ contemplates the existence of facts or information which would satisfy an objective observer that the person in question may have committed the offence., Fox, Campbell and Hartley case, judgment of 30 August 1990, European Court of Human Rights, *Series A* No.182, p. 169.
With a view to prevent the misuse of powers by the arresting authorities Principle 9 of the Principles on Detention requires the authorities to exercise only such powers which are granted to them under law. In fact, the law of arrest is one of balancing individual rights and those of individuals collectively. The question is how to strike the balance between these two conflicting interests.

No person can be deprived of his life or liberty except according to procedure established by law is the right enshrined in the constitutions of various countries in one form or the other. Constitution of India provides ample protection against arbitrary arrest or illegal detention through Art. 21. It is supplemented by Article 22, which provides certain procedural safeguards against arbitrary arrest or detention.

In this connection the Royal Commission felt that restrictions should be imposed on the power of arrest on the basis of the ‘necessity of

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2 It further lays down that the exercise of these powers shall be subject to a judicial or other authority. In other words the lawfulness of one’s arrest and detention must be judged by a competent court. This remedy is vital for protecting a person’s liberty from arbitrary arrest and detention. For judicial supervision of arrest and detention to be effective, accurate records of arrests must be kept. As it is also vital for the prevention of disappearances, Principle 12 of the Principles on Detention stipulates the following:
There shall be duly recorded:
a) The reasons for arrest;
b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
c) The identity of the law enforcement officials concerned;
d) Precise information concerning the place of custody.
Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.
3 In this regard Cardozo observed: “The question is whether protection for the individual would not be gained at a disproportionate loss of protection for society. On the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolvency of office. There are dangers in any choice. The rule of the Adams case [People v. Adams, 176, N.Y.315, 68 N6E.636 (1903)] strikes a balance between opposing interests. We must hold it to be the law until those organs of Government by which a change of public policy is normally effected shall give notice to the-courts that change has come to pass,” People v. Defore, 242 N.Y. 13, 24, 150 N.E. 583, 589 (1926), cited in Joginder Kumar v. State of u.P., (1994) 2 S.C.J. 230, p. 233.
In Re Fried, Judge learned Hand found: “The protection of the individual from oppression and abuse by the police and other enforcing officers is indeed a major interest in a free society but so is the effective prosecution of crime, an interest which at times seems to be forgotten. Perfection is impossible; like other human institutions criminal proceedings must be compromise.” ibid.
4 Article 21 provides: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”
5 See Appendix III.

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principle". The subject has also been thoroughly scanned in other advanced justice systems of the world. Police have a vast scope for exercise of powers affecting the rights and liberty of individual citizen. It affords vast scope for

13 This principle demands that powers of arrests should be exercised only in those cases in which it is genuinely necessary to enable them to execute their duty to prevent the commission of offences, and to investigate crime. The Royal Commission was of the view that such restrictions would diminish the use of arrest and produce more uniform use of powers. The Royal Commission Report on Criminal Procedure recommended the following criteria for the exercise of the power of arrest:

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;
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.,

In India, Third Report of the National Police Commission also suggested: "...An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

i. 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.

ii. The accused is likely to abscond and evade the processes of law.

iii. The accused is violent and is likely to commit further offences unless his movements are brought under restraint.


The Royal Commission also proposed: "To help to reduce the use of arrest we would also propose the introduction hereof a scheme that is used in Ontario enabling a police officer to issue what is called an appearance notices. That procedure can be used to obtain attendance at the police station without resorting to arrest provided a power to arrest exists, for example to be fingerprinted or to participate in an identification parade. It could also be extended to attendance for interview at a time convenient both to the suspect and to the police officer investigating the case ..." Sir Cyril Philips, Report of a Royal Commission on Criminal Procedure, (1981), p. 46, quoted in Joginder Kumar v. State of U.P., 1994 Cri. L.J.1981, pp. 1985-86 (SC).

14 For example, the Law Reform Commission of Australia has endorsed the principle arguing that whether the police should arrest or not, ought to depend not primarily upon the character of the offence but on the necessity of arrest as a means of enforcement in the particular situation. It should normally be the last resort. Law Reform Commission of Australia, Interim Report No.2, Criminal Investigation (1975) pp. 12-15, quoted in J.E.S. Fawcett, "Criminal Procedure and European Convention on Human Rights", John A. Andrew, Human Rights in Criminal Procedure – A Comparative Study (1982), p. 37.

15 Section 41 of the Code authorises any police officer to arrest any person, without an order from a Magistrate, who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned. Under the Code the powers with the police are the widest when a person is concerned or suspected to be concerned in any cognizable offence., See S.N. Sharma v. Bikan Kumar Tewari, A.I.R. 1970 S.C. 786. There is no requirement in the Code for guiding the police officer regarding whether or not arrest is necessary for investigation or there is an apprehension that he may not appear before the court or abscond or interfere in the investigation. It is sad to note that such a drastic power can be exercised by even the police constable who is a police officer under section 41 of the Code. It also shows the complete disregard to the sanctity of liberty in India. The law of arrest under the Code which incorporated the then English law has not been substantially changed in spite of the drastic changes in the English law of arrest. The English law has been subjected to periodical review to make it responsive to the democratic imperatives of the English society.
misconduct by police personnel in different ranks particularly at the operational level. 16

Arrest and imprisonment is in law the same thing. Any form of physical restraint is an arrest and imprisonment is only a continuing arrest. Officers in charge of police stations are to report to the District Magistrate all cases of arrest without warrant 17 

In making an arrest the police officer is required to actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action. 18

However the police have no power to detain anyone unless they charge him with a specified crime and arrest him accordingly. It is not an arrest where a person is called to a police station or taken to police station. 19 A person may be under unlawful detention but he is not under arrest unless he is formally arrested under the Code of Criminal Procedure. 20

The Supreme Court, in its zeal to prevent the indiscriminate arrests, directed that Director General of Police of all States in India shall issue directions that a police officer making an arrest should also record reasons for making the arrest. 21

16 The National Police Commission in its third report referring to the quality of arrests in India mentioned power to arrest by police in India as one of the chief sources of corruption in police. The report suggested that about nearly 60 per cent of the arrests were either unnecessary or unjustified and such unjustified police action accounted for 43.2 per cent of the expenditure of the jails., National Police Commission, Third Report (1980), pp. 30-31. During 1990 a total 28, 77,323 persons concerned with cognizable cases under I.P.C. were in custody or on bail at the investigation stage in the country., National Crime Record Bureau, Crime in India (1990), p. 125.


19 The law does not permit the police to take people into custody without effecting an arrest. The law is very specific about the reasons for arresting people. Taking into custody, for all practical purposes, means arrest and the place where they are detained is also the same meant for detaining the arrested. The psychological impact on the victim of arrest/taking into custody is almost the same. Socially too, a police arrest/taking into custody means one and the same thing. Both have penal significance socially, psychologically, financially, etc., James Vadackumchery, Indian Police - 2001: What Went Wrong Here? (1998), p. 54.


Thus, the procedural law is very efficacious and creates a right. However this right is more breached than observed and instances are plenty when the arrests are not made under the guise of interrogation and the persons are confined illegally and kept without any authority of law.

In India power of arrest is one of the chief sources of corruption in the police. Moreover as the National Police Commission suggested nearly 60% of the arrests were either unnecessary or unjustified and such unjustified police action accounted for 43.2% of the expenditure of the jail.

Arbitrary and informal arrest effected by police can be broadly categorized into three, viz; (i) Trial and Error Arrest (ii) Taking into custody of persons to teach them a lesson (iii) Unnecessary harassment and detention of witnesses.

Taking people into custody in an informal way for questioning and interrogation until-at last the police are able to find out and arrest the real criminals is called ‘Trial and Error Arrest’. These types of arrests are

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23 *National Police Commission, Third Report* (1980), pp. 30-31. But sadly no serious effort has been made so far to deal with this phenomenon. In sharp contrast, in England the police powers of arrest, detention and interrogation have been streamlined by Police and Criminal Evidence Act, 1984 based on the report of Sir Cyril Philips Committee [popularly known as Report of a Royal Commission on Criminal Procedure Command-papers 8092(1981)]. It is worth noting that:

"The Royal Commission on Criminal Procedure recognized that “there is a critically important relationship between the police and the public in the detection and investigation of crime” and suggested that public confidence in police powers required that these conform to three principal standards: fairness, openness and workability”, cited in *Joginder Kumar’s case, (1994) 2 S.C.J 230*, p. 233.

24 *Infra* n. 57, p. 191., In the pretext of having committed the offence, suspects are taken into custody in an informal way, they are detained in an illegal way, questioned in depth and then are shown to have been arrested on record and produced before the courts of law only after establishing that he has committed the offence. Here everything appears to have been done as per law, but in actuality, there take place violations of law. These kinds of informal arrest are made as a routine procedure in almost all criminal cases. The frequency of arrests in criminal cases makes the people to think that a criminal investigation is no investigation if the crime-doer is not arrested by the police. People insist for the arrest of the suspects, people interpret it as the inefficiency of the police. “Let the suspect suffer” seems to be the general attitude of the public.
violation of the statutory provisions, but seldom do people object to such illegal practices. ²⁵

According to the police standing orders in some States an informal arrest means "taking a person into custody by police without any legal formalities being followed". Many people are of the opinion that taking innocent people into custody while patrolling is nothing but only a misuse of authority by the police. ²⁶

Any suspect who is not yet accused of any offence or a witness can be summoned by the police officer. ²⁷ He may be, therefore, an accused. ²⁸ It is

²⁵ Though the law puts several limitations on the power of police to arrest or take person in custody, study discloses that 60% people believe that police can take anybody in custody at any time even without effecting arrest. (See also the Interview Schedule in Appendix XI)

²⁶ Study of cases of persons who were tortured to death in police custody would prove that some of them were not involved in any crime at all and they were killed not during an interrogation using third degree methods. They were taken into custody by police for no violations of law, but in connection with petition enquiries, or during the police patrols, etc. because they questioned the authority or power of police to arrest them, N.K. Jain, "Custodial Crimes - An Affront To Human Dignity", Human Rights Year Book (2000), p. 60.

²⁷ According to section 160 (1), an investigating police officer can by order require the attendance before himself of any person, if the following conditions are satisfied: (a) the order requiring the attendance must be in writing; (b) the person is one who appears to be acquainted with the facts and circumstances of the case: (c) the person is within the limits of the police station of the investigating police officer or is within the limits of any adjoining police station. However, proviso to section 160 (1) provides that a person below fifteen years of age, or a woman shall not be required to attend any place other than the place in which such person or women resides.

²⁸ Law Commission of India in its 84th report has recommended that it is necessary that in the case of girls below a certain age, say twelve years, who are victims of rape, there should be statutory provision to ensure that the girls must be interrogated by women. If a woman police officer is not available, the officer in charge of the police station should forward a list of questions to a qualified female, who would, after recording information as ascertained from the child victim will return the papers to the officer-in-charge of the police station. If necessary, further questions to be put to the child may be sent by the police to the interrogator. Law Commission of India, Eighty Fourth Report, pp. 15-16. The Law Commission further recommended that where the statement of a male person under the age of 15 years or of a woman is recorded by a male police officer, either as first information of an offence or in the course of an investigation into an offence, a relative or friend of such male person or woman and also a person authorised by such organisation interested in the welfare of women and children as is recognised in this behalf by the State Government by notification in an official gazette shall be allowed to remain present throughout the period during which the statement is being recorded. id., p. 18.

²⁹ The National Police Commission in its further report has explained that the persons who are normally summoned to police stations for being examined as witnesses feel greatly inconvenienced when they are asked to come to the police station repeatedly for being examined by different officers in the hierarchy. The Commissions recommended that if the witnesses are examined near the scene of crime, at the residence of the witnesses or at some convenient place nearly, this will help towards maintaining cordial relations between police and public in general, National Police Commission, Fourth Report, (1980), p. 4.

only the investigating officer who can summon any such person and not any other officer or Magistrate. An investigating officer shall invariably issue an order in writing in form 149 to any person summoned to attend the investigation and shall endorse on the copy of the order retained by the person so summoned, the date and time of his arrival at the summoned place and the date and time of his departure from the place to which he is summoned. The duplicate of the order shall be attached to the case diary. Police Manuals in some states even provide that no trouble shall be given to any person from whom enquiries are made and no person shall be unnecessarily detained. However the police officer has no authority to use force to compel attendance of such person; nor does he has any power to arrest or detain such witness. It may be noted that a Magistrate has no power to issue any process compelling a person to attend before a police officer.

Though the procedure to be followed by the police while effecting arrest is clearly stipulated in the Code of Criminal Procedure, quite often we see that the police personnel have to exercise their discretionary power. This does not mean that they are capable of having a judicious and detached attitude towards persons who are taken into custody. Even then the legal system is forced to permit the police personnel to exercise the discretionary power to meet the exigencies of the given situation. The failure of the police to comply with the various statutory requirements has compelled the judiciary to lay down guidelines for their conduct.

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95 The study reveals that the police is not at all following the procedure of issuing written summons to the witness or accused. 95% arrested persons and 50% police personnel explained that the usual practice is that the police constables either orally require/command the witnesses (including women) to appear before the investigating officers or take them by force in custody informally. (See also the Questionnaire in Appendix X and Interview Schedule in Appendix XI)

Jammu & Kashmir Police Manual, 1960, Vol. III, Rule 598, p. 9. The person thus summoned is bound to attend a police officer, if he fails to attend and disobeys such order he is liable under section 174 of Indian Penal Code.

Queen-Empress v. Jagendra Nath Mukerje, I.L.R., 24 Cal.320; See also M. N. Sreedharan v. State of Kerala, 1981 Cri. L.J. 119 (Ker. H.C.). However it is the duty of every person to attend if so required by the investigating police officer. Where such person intentionally omits to attend, he is liable to be punished under section-174, I.P.C.

Therefore it is highly essential that the human rights of the arrested person as guaranteed by law and as guide-lined by the Apex Court are to be meticulously followed during the process even in the case of arrest with warrant.  

During 1989 a total of 27,48,645 persons concerned with cognizable cases under IPC were in custody or on bail at the investigation stage in the country. Among them 1, 81,329 persons were released before trial for want of evidence. The corresponding figures in 1990 were 28, 77,323 and 1, 81,329 respectively. The figures in 2000 were 3274019 and 1, 41,021. These figures are sufficient to draw an inference that large numbers of persons are arrested without finding any credible information against them. These kinds of taking of people into custody without observing the procedure established by law and detaining them in police custody is nothing but lawless law enforcement. The custodians of law should not be the violators of law. Illegal custody by police can be considered only as "wrongful confinement".

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3 Usually in the case of arrest with warrant there is little chance for misuse of power by the police as the arrest is already subject to judicial scrutiny.


6 These also include persons in whose cases the investigations remained pending at the end of year 1999. Out of the total persons, who were under arrest, Police could lay charge sheets in 77.8 per cent; 43 per cent persons arrested were either released or freed by police before trial; 17.9 per cent persons remained under custody or on bail at the end of the year as Police Investigation could not be completed in their cases. The highest pendency percentage in the disposal of arrested persons was recorded in cases of 'counterfeiting' (42.9%) followed by 'Dacoity' (41.5%) and the lowest was observed in 'Sexual Harassment' (6.1%). In charge sheeting of arrested persons, police could establish the charge with as high as 92.9 per cent in 'Sexual Harassment', followed by 'Molestation' (87.5%) and 'Hurt' (87.1%). The lowest level of charge-sheeting in disposing arrested persons was witnessed in cases of 'Counterfeiting' (51.7%) as compared to national average of 77.8% for all Indian Penal Code. National Crime Records Bureau, *Crime in India* (1990), pp. 310, 347. In Kerala the corresponding figures in 2000 were 1, 75,763 and 2,973, Id. P. 347. See Appendix IX


Such arrests are accepted even by the top level police officers silently although they do not favour the procedure. Of course, the administration object to the practice, yet do not take any step to positively discourage the procedure. Of course, whenever custodial violence is reported they used inquire into the mode of taking the person under arrest. This sort of negative attitude to informal arrest is justified on the ground that it is done for the larger interest of the society.  

Wide powers given to a police officer to make arrests are required to be exercised with restraint even in the cases in which they suspect or have grounds to believe the involvement of a person in cognizable offences. Such arrests should be based upon the necessity principle. If in the circumstances of the case an accused is not required to be detained in custody, investigation should be carried out without making arrest. The necessity principle is being followed in other civilized countries and our Supreme Court has also made it obligatory on the police officer exercising his power to make arrest of a person to record reasons justifying the necessity of arrest.

The violation of human rights of an accused person by depriving him of his right to liberty can largely be prevented if the prescribed procedural safeguards are scrupulously followed by the police and the Magistrates at the initial stage of the criminal proceedings.

The impact has been that informally taking people into custody became almost an unquestioned strategy in police functioning. After taking people into custody in an informal way, the police are releasing them after

\[\text{\cite*{sehgal}}\]

\[\text{\cite*{supra}}\]

\[\text{\cite*{ibid}}\]
conducting an interrogation. In necessary cases, they are proceeding further by initiating legal action. Society too accepts the informal methods and it do not question the propriety before any forum. In due course, the practice became almost as a custom in police work. Experts view that the practice which received wide social acceptance is one of the prime reasons for the continuance of informal arrest in police subculture.

In foreign countries, arrest of a person is effected only after evidence against him is collected. The police get enough time to collect such evidence. The people and the politicians understand the difficulties connected with detection and arrest. But in India, everyone is impatient and the people, politicians, media and those in authority are not only interested to see that some suspects are arrested at the quickest time possible, but also to see that they are humiliated and interrogated in depth. The pressure exerted by them compels the police to take some people, guilty or otherwise, in custody. Everyone wants quick results in investigation but the policemen are not provided with anything that can aid crime-investigation. Naturally this leads to arbitrary arrests.

**Use of Excess Force**

Several laws, rules and instructions, have laid down the norms for the use of force by police. The Eighth U.N. Congress on the Prevention of Crime and Treatment of Offenders adopted certain basic principles on the use

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43 The study reveals that in spite of having knowledge of the provisions and procedure to ensure protection of rights of persons from indiscriminate and arbitrary exercise of powers by the police a good many people do not take serious note of the same. Those who are taking serious note of the same are not dared to challenge the same because they are afraid that they would be roughed up harshly by the police if they question the authority or power of police to effect such informal arrest.

44 If the police enter into a house, conduct a search (without legal authority) and take a person into custody, people do not question it, rather they may say that “the police have arrested so and so” and there ends the matter.

45 The police being moved by the pressures exerted on them and in their helpless ‘overenthusiasm’ to get a confessional statement at the earliest, they may resort to all sorts of coercive tactics to get the desired results by the quickest way possible. Necessarily, human rights violations take place and principles of victimology get violated. The police functionaries therefore want that the people too are educated to tolerate the necessary delay which may invariably occur during police interrogation., infra n. 71, pp. 127-128.
of force by law enforcement officials. But it is quite unfortunate that these principles are often being violated by the police which can be clearly seen in almost all arrests effected by the police. In Britain there is a principle which says that force should be a last resort for the police. That means a police officer should do every thing within his power to handle a situation through persuasion. These ideals are reflected adequately by section 49 of the Code of Criminal Procedure.

Police are charged with the use of excessive force, assaults of innocent people etc. while effecting arrest. Although some of the charges are exaggerated, it cannot be denied that the use of force by the police while effecting arrest clearly exceeds the demands of the situations.

Persuasiveness must precede use of force. Some police officers find this concept very difficult to digest; they get offended if anyone shows disrespect or resists them. Thus use of force by abandoning persuasiveness has become a natural instinct. Force should not be used as a mere retribution against the words and deeds of the arrested person.

**Failure to Notify the Arrest**

Police shall inform the arrested person when he is brought to the police station about his rights. Every detinue is entitled to know the reasons

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46 U.N. Code of Conduct for Law Enforcement officials, Article 2 reads: "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain upholds the human rights of all persons."


48 NHRC Guidelines also require that as a rule use of force should be avoided while effecting arrest, See Appendix III

49 Many commissions of enquiry instituted by the governments show that the public charges are not altogether baseless. The study also reveals the same point. (See also the Questionnaire in Appendix X and Interview Schedule in Appendix XI)

50 Supra n. 47, p. 30. Similarly Section 51(1), Code of Criminal Procedure provides that searches of the person arrested must be done with due respect to the dignity of the person, without force or aggression and with care for the person's right to privacy. However the field study discloses that the police often use aggressive means and third degree methods in connection with the process of search. (See also the Interview Schedule in Appendix XI) Section 51(2), Code of Criminal Procedure provides that searches of women should only be made by another woman with strict regard to decency. The field study discloses that police do not follow this principle.
why he is detained in custody. He is also entitled to be informed of his rights while he is in custody. Similarly a detinee is entitled, if he so desires, to have one friend, relative or other person who is known to him or likely to take an interest in his welfare be told about the arrest and the place of detention. Although official may exercise control over a detinee correspondence to effect the orderly administration of the place of detention, such control must be subject to safeguards against arbitrary application.

England's Criminal Law Act of 1977 provides that without delay or more delay than is necessary for procuring of just apprehension of other offenders or prevention of crime, a person held in police custody is entitled to have one person, reasonably named by him, informed of his whereabouts.

Rule 92 of the Standard Minimum Rules requires that such detainees should be given all reasonable facilities for communicating with his family and friends and for receiving visits from them. The relevant Rule contemplate only those restrictions and controls on the detinee's right to communication with family and friends which are necessary for the security and good order of the place of detention and for serving the purposes of administration of justice. Visits by family members should take place with the minimum restriction compatible with the good order of the place of detention and the need to avoid destruction of evidence. Rule 44(1) of the Standard Minimum Rules requires police to immediately inform the spouse if the person in their custody is married or any near relative of his death or serious illness or serious injury in custody. Authority is also required to inform the relatives of results of the investigation required by the international standards on supervision of places of detention any time the death of detained person occurs. Field study shows that if the arrested person is from outside the district or state, the police usually send a telegram and the matter ends there. They do not make any follow up action to enquire into whether they have received the intimation. Field study also discloses that usually the police do not properly inform the friends and relatives of the persons arrested where the interrogation is taking place. Even though the Supreme Court has directed through D.K. Basu's case, [1997(1) S.C.C. 416] that the police should communicate the information regarding the arrest and places of detention to the police control rooms at District/State Headquarters, the field study discloses that the police do not strictly follow this direction. (See also the Questionnaire in Appendix X and Interview Schedule in Appendix XI) In many cases the police take the person in custody as a suspect. After interrogation, if it appears to the police that the arrested person has any involvement in the case then only they record the arrest and make intimation.

Safeguards against arbitrary interference with detainees correspondence is also contained in Principle 15 of the Principles on Detention which provides as follows: "Notwithstanding the exceptions contained in Principle 16, paragraph 4 (of the Principles on Detention, relating to delaying notification of family members when exceptional needs of the investigation require such delay), and Principle 18, paragraph 3 (requiring that access of a detained person to counsel be suspended only in exceptional circumstances), communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days" quoted in Chandra Mohan Upadhyay, Human Rights in Pre-Trial Detention (1999), pp. 17-18.

Police and Criminal Evidence Act, 1984, section.56(1) reads: "where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable, except to the extent that delay is permitted by this section, that he has been arrested and is being detained there."
The existing statutory Indian law does provide for notification of the arrested person, i.e. there are some special circumstances where there is a statutory duty of the police to notify the arrest. These circumstances are given in Section 13(a) of the Juvenile Justice (Care and Protection of Children) Act, 2000, Section 58 of the Code of Criminal Procedure, 1973 and Rule 229 of the Procedure and Conduct of Business in Lok Sabha.

The Supreme Court in Joginder Kumar v. State of U.P., held that whenever a public servant is arrested, that matter should be intimated to the superior officers, if possible, before the arrest and in any case immediately after arrest. It should be done immediately after the arrest is affected. It shall

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*The Juvenile Justice (Care and Protection of Children) Act, 2000, section 13(a) reads: the parent or guardian of the child, if he can be found, of such to be present at the children’s court before which the child will appear.

Section 58 of the Code of Criminal Procedure, 1973 states that officers in charge of police station shall report to the District Magistrate or, if he so directs, to the Sub-Divisional Magistrate, the cases of all persons arrested without warrant, within the limit of their respective stations whether such persons have been admitted to bail or otherwise.

When a member is arrested on criminal charge or is detained under an executive order of the Magistrate, the executive authority must inform without delay such fact to the speaker. As soon as the arrest, detention, conviction or release is effected intimation should invariably be sent to the Government concerned concurrently with the intimation sent to the speaker/chairman of the Legislative Assembly/Council/Lok Sabha/Rajya Sabha. This should be sent by telegrams and also by post, referred in Joginder Kumar v. State of U.P., 1994 Cri. L.J. 1981, p. 1985.

The court also laid down guidelines regarding notification of arrest by the police. It held that right of the arrested person to have someone informed and to consult privately with a lawyer are inherent in Articles 21 and 22(1) of the Constitution and require to be recognised and scrupulously protected. For effective enforcement of these fundamental rights, the Supreme Court issued the following directions:

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 to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

2. The police shall inform the arrested person when he is brought to the police station of this right.

The Court further observed that the above mentioned requirements are in addition to the rights of the arrested persons found in the various Police Manuals. It was made clear that requirements are not exhaustive and should therefore be supplemented by departmental instructions and directed the Director General of Police of all the States in India to issue necessary instructions requiring due observance of these requirements. It is also necessary to insist through departmental instruction that the arresting police officers record the reasons for making arrest in the case diary, id., p. 1987.
be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.59

The judgment in Joginder Kumar's case60 and the above guidelines show the concern of the Supreme Court about the terrible situation of violations of human rights by the police in India. Though appropriate measures have been taken by the Supreme Court to protect the individuals against indiscriminate arrests, yet, concrete steps have not been taken so far for the proper implementation of these rights. Such beneficial rights can be secured only by strictly and practically respecting the human rights of arrested persons and by humanising the attitude and functioning of the police. This highlights the need for including human rights as a compulsory part of the training of police personnel.

A similar duty has been cast by the Supreme Court on police in India in Sheela Barse's case61 where it has directed that as soon as a person is arrested the police must immediately obtain from him the name of any relation or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform about his arrest.62 These directions are valuable safeguards for protection of the human rights of the arrested persons. 'Picking up' the accused to unknown places for interrogation and non-disclosure of their whereabouts to his friends or

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59 Field study reveals that 100% Magistrates are not asking the arrested persons whether they have been informed of the ground of arrest at the time of arrest. However 65% Magistrates are asking the general question to the persons produced before them by the police, "Do you have any complaint against the police?" 93% of the respondents who were accused persons are considering this only as a formal question. In 61% cases of oral complaints made by the accused against police no care or consideration is given by the Magistrates. 55% Magistrates subscribe to the view that almost all such complaints are not genuine. In 11% of such oral complaints the Magistrates are asking such complainants to give the complaint in writing and then directing the bench clerks to call the case after a while. 8% Magistrates are calling such persons beside and are patient to hear them. But no case of taking any action against the police is found for non compliance of legal formalities of arrest by the police. (See also the Questionnaire in Appendix X and Interview Schedule in Appendix XI)

60 Supra n. 57.


62 Id. p. 382.
relatives even on enquiry are quite common. Field study shows that the police do not inform the arrested persons of the ground of arrest. They do not follow the procedural formality even while arresting well educated people. These legal practices throw light over the unscrupulous attitude of the police. 63

The Supreme Court in Nandini Satpathy v. P.L. Dani 64 found:

"The paradox has been put sharply by Lewis Mayers: "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. The pendulum over the years has swung to the right". 65

The Court further observed:

"We have earlier spoken of the conflicting claims requiring reconciliation. Speaking pragmatically, there exists a rivalry between societal interest in effecting crime detection and constitutional rights which accused individuals possess. Emphasis may shift, depending on circumstances, in balancing these interests as has been happening in America."

Referring to the current trend in America the apex court noted since Miranda 66:

(T)here has been retreat from stress on protection of the accused and gravitation towards society's interest in convicting law-breakers.

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63 In D.K. Basu's case [1997(1) S.C.C. 416] the Supreme Court made it clear that where the next friend or relative of the arrestee lives outside the district, then the police notify the place of arrest and the time to the friends or relatives of the arrested person through the Legal Aid Organization in the district and the police station of the arrested. (See appendix III). But no effort has been made so far to find out such organizations in all the police station limits. So such a direction still remains in paper.
64 A.I.R. 1978 S.C. 1025
65 Id., p. 1032
66 (1966) 384 U.S 436, id., p. 1033
currently, the trend in the American jurisdiction according to legal journals, is that 'respect for (constitutional) principles is eroded when they leap their proper bounds to interfere with the legitimate interests of society in enforcement of its laws...\(^67\)

In this backdrop the court observed: Our constitutional perspective has, therefore, to be relative and cannot afford to be absolutist, especially when torture technology, crime escalation and other social variables affect the application of principles in producing human justice,

**Unnecessary Handcuffing**

It is an axiom of the criminal law that a person alleged to have committed an offence is liable to arrest. Persons accused of non-bailable offences punishable with 3 years or more imprisonment, previous convicts, desperate characters, violent, disorderly or obstructive, those who are likely to commit suicide or who may attempt to escape are commonly allowed by various police laws\(^68\) to be routinely handcuffed on arrest. But this power of handcuffing a person is not absolute. It is subjected to many restrictions by the legislation, court decisions and the Police Rules of each state.\(^69\) The person arrested must not be subjected to more restraint than is necessary to prevent escape.\(^70\)

Thus the law is against handcuffing although it permits the same in unavoidable conditions. Unnecessary handcuffing or handcuffing for the purpose of humiliating people is also considered to be a human rights violation.\(^71\)

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\(^68\) Such as Rule 26.22 of Punjab Police Rules, 1934.

\(^69\) Rule 26.24 of the Punjab Police Rule, 1953, Volume 1 provides:

An undertrial prisoner shall not be handcuffed on his way to and from the court house unless-

(a) he is accused of murder;

(b) he falls within Rules 26.23(b), (c), (d), (e) & (f);

(c) he is likely to attempt to escape;

(d) he is likely to be the subject of an attempt at rescue; he is likely to attempt to commit suicide.

\(^70\) Section 49 of the Code of Criminal Procedure, 1973 puts down that no one shall be subjected to more restraint than is necessary to prevent his escape.

In *Prem Shankar Shukla v. Delhi Administration* the court held that handcuffs should be used in the 'rarest of rare cases' and they were to be used only when the person was 'desperate', 'rowdy' or the one who was involved in non-bailable offence. There should ordinarily be no occasion to handcuff persons occupying a good social position in public life, or professionals like jurists, advocates, doctors, writers, educationalists, and well-known journalists. This is at best an illustrative list; obviously it cannot be exhaustive. It is the spirit behind these instructions that should be understood. Justice Krishna Iyer has observed that 'handcuffing is *prima facie* inhuman and, therefore, unreasonable'.

An arbitrary or excessive exercise of the power would therefore be violative of the right to personal liberty. A person should be handcuffed only when there is apprehension of his escape and this apprehension must be based on reasonable ground and must not be arbitrary. The indiscriminate handcuffing of people – including political prisoners and *satyagrahis* – has raised voice in Parliament and State Assemblies in the past. Generally there is no need for handcuffing judicial officers, religious leaders, social leaders, well-known social workers, political leaders, educationists and persons occupying better positions in public life. Arrest should be legal and there should not be any occasion to have informal arrests of people. Informal arrest can be considered only as abduction or kidnapping. Handcuffing in routine is violation of Art. 21. It is permissible only in extreme cases where safe custody is otherwise not practicable and reasons are recorded for doing so and court's approval is obtained. In case the court does not grant approval, handcuffs must at once be removed. This will avoid undue insult, humiliation, harassment and reputational loss in false cases and will be a safeguard for the

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8 Id., p. 1541.
9 Ibid.
10 Where in extreme cases, handcuffs have to be put on the person, the escorting police personnel must record contemporaneously the reasons for doing so. Otherwise, under Art.21, the procedure will be unfair and bad in law. The minions of the police establishment must make good their security recipes by getting judicial approval A.I.R 1980 S.C. 1535, 1543.
right to personal liberty. Reckless handcuffing and chaining in public is a slur on our culture. But it is highly sarcastic that the Apex Court's rulings and the Home Ministry's instructions\(^{76}\) with regard to the use of handcuffs and fetters have not influenced the working of the present police.\(^{77}\) Notwithstanding the law and policy prohibiting the use of handcuff as a matter of routine by the police, the practice goes unabated. Handcuffs on the arrested persons, are common sight in court premises, police stations and even on roads, making most of them feel shy and humiliated. This has been strongly condemned by the apex court in a series of cases.\(^{78}\) An arrested person stands punished by this humiliation itself, even though the court may subsequently acquit him.\(^{79}\)

**Fictitious Memo of Arrest**

In 1996 the Supreme Court in its landmark decision directed that memos of arrest should be prepared at the time of arrest which should be attested by at least one witness and countersigned by the arrestee. The memo of arrest should also include the time and date of arrest.\(^{80}\) But in most of the cases these guidelines are not strictly followed. In many cases arrest memos do not contain the signature of witnesses to the arrest. When lawyers bring it to the notice of Magistrates, they usually express their helplessness and advice lawyers to file contempt petitions.\(^{81}\)

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\(^7\) Notification No.11017/15/88/G.P.A.-2, dated 2 Nov. 1988, Ministry of Home, Union of India

\(^6\) The handcuffing of a Chief Judicial Magistrate and a Delhi lawyer shows that even persons like them are not spared by the police. Therefore the need of hour is to educate the police personnel not only about the various provisions of the Indian Penal Code and Code of Criminal Procedure but also with Constitutional provisions designed to protect fundamental rights of the accused, and the rulings of the apex court. It is equally necessary that the Government gives clear message that police personnel responsible for the illegal use of handcuffs and fetters will not be spared. As the success of the apex court's verdict depends to a great extent on how the Magistrates exercise their power, they should perform their functions diligently and conscientiously.

\(^7\) D.K. Basu v. State of West Bengal [1997(1) S.C.C. 416]

\(^1\) In its order the Supreme Court said that police failing to comply with its order would be rendered liable to departmental action and to be punished for contempt of court.
New methods have been developed in the police stations to subvert the directions of the Apex Court in this regard. Police have created a nexus between the anti-socials and politicians. When an arrested person is produced in court, a fictitious memo of arrest is enclosed with the forwarding papers in which the name of one of the members of this nexus is usually included. In some of these cases no such person may be existing. As a result, none of the arrested person or witness of the arrest is served with the memo of arrest, but all judicial officers are provided with a copy of such a memo along with the person forwarded to the court.\textsuperscript{82}

Though Supreme Court has given directions for in \textit{D.K.Basu’s} case issuing custody memo to the people whom the police want to take into custody. Some police officers think that the directives of the Court are likely to cause delay in police work in many ways. The fear is baseless.\textsuperscript{83}

\textit{Failure to Inform the Ground of Arrest}

An arrested person should be made aware of the grounds of his arrest in order to make him capable of defending himself and take necessary measures for his own release if he finds that such grounds are invalid. The right to know the grounds of arrest also affords him an earlier opportunity to remove any misunderstanding in the mind of the arresting police officer and to rescue himself by resorting to certain judicial remedies. Article 9(2) of the

\textsuperscript{82} See also Amnesty International, \textit{The impact of violence against women}, pp. 11-12.

\textsuperscript{83} See the American law: "If a law enforcement officer stops any person who is a suspect or has reasonable cause to suspect that he may have committed a crime, the officer shall warn such person as promptly as is reasonable under the circumstances, and in any case before engaging in any questioning - i) that such person is not obliged to say anything, and anything he says may be used as evidence against him; ii) that within twenty minutes, he will be released unless he is arrested; iii) that if he is arrested, he will be taken to a police station where he may promptly communicate by telephone with counsel, relatives or friends and that he will not be questioned unless he wishes, and that if he wishes to consult a lawyer or have a lawyer present during questioning, he will not be questioned at this time, and that after being taken to the station-house a lawyer will be furnished to him prior to questioning if he is unable to obtain one", James Vadackumchery, \textit{Crime Police and Correction} (1998), pp. 128-129.
The right to know the grounds of arrest affords an opportunity to an arrested person to secure his release by having recourse to different judicial remedies. However, this right is more breached than honoured by the police. The crusaders of human rights have evolved innovations to make this right real and enforceable by providing additional safeguards against utter disregard of the police towards a person's liberty. There is no gainsaying the fact that human rights relating to personal liberty and dignity of a person can be protected only if the lawful procedure stipulating arrest is faithfully and honestly followed by the police. This call for awareness of the police regarding human rights enshrined in Part III of the Constitution and supplemented and strengthened by the Higher Judiciary from time to time.

Principle 10 of the Principles on Detention reiterates the principle laid down in Article 9(2) of the Covenant. Principle 13 of the same instrument extends the notification requirements to the detained person's rights and the means and procedure for availing them. The notifications requirement is also emphasized by the European Commission of Human Rights. This right is well recognized in almost all the legal systems of the world.

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84 Article 9(2) of the ICCPR reads: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him". Thus the Covenant contemplates a two stage notification, firstly, at the time of arrest and secondly, as soon as the charge is framed.

85 Principle 10: "Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him".

86 Principle 13: "Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights".

87 According to Article 5(2) of the European Convention, anyone who is arrested must be "informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him".

88 In England Section 56(1) of the Police and Criminal Evidence Act, 1984 provides for such duty on the arresting authority, which reads: "Where a person has arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there". See also Michael Zander, The Police and Criminal Evidence Act 1984 (1985), pp. 69-71.
In India, this is a newly propounded duty of the police as an essential concomitant of right to life and liberty enshrined under Article 21 of the Constitution. Article 22 (1) of the Constitution lays down that an arrest will be illegal if the arrested person has not been communicated grounds of his arrest. Analogous provisions are contained in Section 50 of the Code of Criminal Procedure.

Similarly, when a person is to be arrested under a warrant, Section 75 of the Code requires that the police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required shall show him the warrant. The same requirement to notify the grounds of arrest is provided under Section 55 of the Code where a police officer deputes any officer subordinate to him to arrest a person.

In spite of the above provisions, it is difficult to ensure protection of the rights of the arrested persons from the indiscriminate and arbitrary exercise of powers by the police. This has been amply demonstrated by frequent intervention of the Supreme Court against capricious and arbitrary arrests and its timely directives regarding performance of duty by police officer while effecting arrest. In Sheela Barse v. States of Maharashtra, the

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9 Article 22(1): "No person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest nor shall be denied the right to consult, and to be defended by a legal practitioner of his choice."

9 See Appendix III. The Section provides two things, namely: (i) the person arrested without warrant should immediately be intimated the full particulars of the offence and the grounds for such arrest; and (ii) in the case of bailable offence, he should be informed (a) that he is entitled to be released on bail and (b) that he may arrange for sureties on his behalf. This requirement is not dispensed with if he is admitted to bail.

9 Section 75 of the Code of Criminal Procedure: "The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and if so required, shall show him the warrant."

9 Section 55(1) of the Code of Criminal Procedure: "When any officer in charge of a police station or any police officer making an investigation under Chapter XII requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made and the officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

Supreme Court has taken serious note of non-disclosure of grounds of arrest and issued directions that, "whenever a person is arrested by the police without warrant he must be immediately informed of the grounds of his arrest and in case of every arrest, it must be made known to the person arrested that he is entitled to apply for bail".  

Though the law puts several limitations on the police power of arrest or taking people into custody, police personnel generally do not disclose the reason for the arrest at the time of arrest. Moreover nobody or a good many do not ask the police why they are arrested. The reason for it is that the people know that the response to their questions may be a slap followed by calling of epithets because the present police culture makes them to believe that the arrestees are expected to obey and not to question the authority of police. If the arrested person is not influential or is not aware of his rights or is otherwise incapable of getting his rights established, he has to remain in police custody for a period decided by the police.

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* Id. p. 382.
* Field study shows that in 60% arrests, the arrested persons were not informed of the ground of arrest at the time of arrest and in 30%, of the arrests the arrested persons were informed of the ground of arrest only at the police station. (See also Interview Schedule in Appendix XI).
* Field Study discloses that if a person refuses to get into the back seat of the police jeep (usually persons who are taken into custody by police especially those who are economically or socially backward are asked to sit only in the floor of the jeep in between the two back seats), when they are asked to do so, filthy expressions, a few kick and throwing into the jeep are the usual results. 70% of the respondents who were arrested by the police opined that if the arrested person or his relatives or well wishers persists in questioning the police or puts questions on the ground of arrest, such questions produces heat and the usual reply would be a cruel look or a filthy expression or a casual reply that "everything will be explained after arriving at the station". Some respondents opined that if the enquiry of the ground of arrest has the colour of questioning the authority of police such enquiry may hurt the "uniform ego" of the police and the usual reply would be beating of the person making such enquiry. The incidents of custodial torture and custodial death which the people usually hear and read in the media prevent them from putting more questions about the propriety of the power of arrest and about the ground of arrest. (See also Interview Schedule in Appendix XI).
* Field study discloses that 60% of the persons who are taken into custody and detained are asked to leave the station without taking bail and without subjecting them to any further legal actions. Such detained persons are also not having any grievance as they relieved without taking any case against them. (See also Interview Schedule in Appendix XI).
Arbitrary Denial of Bail

There is now a great deal of consensus that pre-trial detention should be avoided and some other substitutes for confinement should be devised. There are several compelling reasons why pre-trial detention should be avoided. Imprisonment before conviction has a punitive content and even those who are guilty should not be punished before they have been convicted. Economic crisis in the family of the detainee, who usually are from economically backward situations, is another argument in favour of the release of the detainee on bail by the police. Detention, even for a short span of time is bound to cause disruptions in his private life. It an arrested person is released by the police on bail he will have a better morale just because he has the support of his family and friends.

Section 50(2) of the Code of Criminal Procedure guarantees this right to an arrested person. First proviso to sub-section (1) of Section 436 gives discretionary power to the officer in whose custody a person is or the court to discharge the accused on bond without sureties for his appearance.

Unless a crime is non-bailable, the police can release the arrested person on bail and so it is his right to be released on bail. Instead of bail, he can even be released on a personal bond if the police officer considers it to be enough. In the case of bailable offences to which Section 436 applies, a police officer has no discretion at all to refuse to release the accused on bail, so long as the accused is prepared to furnish surely. Where an offence is non-
bailable, as per section 436 (1) of the Code of Criminal Procedure, the granting of bail shall depend upon the discretion of the officer-in-charge of the police station or the Court. But the power of discretion given to the police officer is very often not exercised by him judicially. Code of Criminal Procedure also contains provisions regarding release of a suspect on recognizance\(^{102}\) even in non-bailable cases.\(^{103}\)

When any person accused of or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station and if it appears to such officer at any stage of the investigation that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but there are sufficient grounds for further inquiry into his alleged guilt, then, according to Section 437(2)\(^{104}\), the accused shall, subject to the provision of Section 446A\(^{105}\) and pending such inquiry, be released on bail, on the discretion of such officer or court on

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\(^{102}\) In many countries recognizance is used to avoid pre-trial detention in case of petty offences. Recognizance is a kind of bail in which the accused is not required to give surety for his release. In this form of bail suspects are required to give a bond for appearance before a court when his case comes to trial., Chandra Mohan Upadhyay, *Human Rights in Pre-Trial Detention* (1999), p. 99.

\(^{103}\) Section 437 gives the court or a police officer power to release an accused person on bail even in non-bailable offences. But such person shall not be released on bail if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life. Such person shall also not be released on bail if the offence is cognizable and the accused had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence. But in view of first proviso to sub-section (1) a person (i) under the age of sixteen years, or (ii) a woman or (iii) a sick or (iv) infirm person may be released on bail even if the offence charged is punishable with death or imprisonment for life or the accused is a previous convict of the category stated above.

\(^{104}\) Code of Criminal Procedure, Section 437(2) reads: "If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall subject to the Provisions of Section 446-A and pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided."

\(^{105}\) Code of Criminal Procedure, Section 446 A reads: "Without prejudice to the provisions of section 446, where a bond under this code is for appearance of a person in a case and it is forfeited for breach of a condition-

a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition: Provided that subject to any other provision of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient.
the execution by him of a bond without sureties for his appearance. However
the police is reluctant to release the suspected persons eventhough they are
confident that such a release will not adverse effect the interest of criminal
justice system.

The police normally refuse to grant bail in many cases mainly
because the police officer does not want to take the risk. Due to the laziness or
irresponsibility of the police officers many accused who are having permanent
residence etc. are refused bail in the police stations and unnecessarily they
spend twenty four or more hours in the police custody and they get bail only in
the court. Thus the system of granting bail in the police station has to be made
liberal especially in the cases of persons accused of less serious offences. At
the same time there is also chance for corruption and bribery, because of the
discretionary powers of the police to grant bail. Just because an accused pays
some bribe to the police, he will be released on bail in the police station itself.
Therefore, it is recommended that judicial supervision is essential over this
issue.

Using of Filthy Language and Character Assassination.

Code of Conduct for the police lays down that ‘a police officer
shall be deemed to have committed abuse of authority if he is uncivil to any
member of the public’. But there is a lack of appreciation of this principle
among the policemen. 106 Vulgar language, epithets and filthy expressions are
regularly uttered by police personnel while effecting arrest. 107

106 Resolution of Kerala State Human Rights Commission dated 4th July 2002 also suggests that the
persons in custody shall not be abused or mocked at. (See Appendix III) While discussing
practices of extortion, oppression and unnecessary severity seen in the police force, the Indian
Police Commission of 1902-3 wrote: ‘What wonder is it that the people are said to dread the
death? ’ Though more than hundred years have now elapsed after they have said so, the study
proves that the situation continues to be the same even today., Alphonse L. Earayil, James
107 95 % of the respondents subscribed this view. (See also Interview Schedule in Appendix XI).
If people belonging to uncivilized area speak filthy language there is justification. But police personnel most of whom are hailing from civilized family background is also using this language to those even from civilized family set up.\(^{108}\)

Police personnel of lower rank are enthusiastically using epithets and indecent expressions on people in their custody. New entrants into the service who are having academic qualifications are also not exception to this.\(^{109}\)

The humiliating indecent expressions used by the police are mostly related to sex-organs and sex-aberrations of the mother of the persons.\(^{110}\)

Using filthy words has become a common trend among the police but hearing such expressions creates a bad feeling among the public. The pain so caused lasts long and is unforgettable. Even though the suspect may turn out to be innocent after interrogation, the pain caused to him by the use of filthy words by the police cannot be wiped off.\(^{111}\)

Reports have shown that police all over the world use filthy language. In some countries such use depends upon selectiveness and discrimination of

\(^{108}\) 70% of the respondents from police personnel/ officers subscribed to the view that generally people will immediately obey them only if they use vulgar abuses in loud voice. (See also Questionnaire in Appendix).

\(^{109}\) Field study reveals that most of the police personnel who are regularly using filthy language while on duty are not using the same while they are in the relatives’ or friends’ circle. Psychologists opined that as every human being police personal is also having a multiple personality. Police personnel in uniform especially when they are having a feeling in their mind that there is a force behind them get a distinct personality which drives them to speak indecently to the people. (See also Questionnaire in Appendix X).

\(^{110}\) Field study indicates that the filthy expressions usually used by police personnel against male arrestees include rascal, thayoli (mother fucker), pulayadimon (son of the woman who had sexual intercourse with a man belonging to scheduled caste), pundachimon (son of prostitute), bastard, scoundrel, son of dirty bitch, son of beggar etc. and those used against female arrestees include koottachi or thevidissi (means prostitute), pulayadimol (daughter of the woman who had sexual intercourse with a man belonging to scheduled caste), pundachimol (daughter of prostitute), dirty bitch, daughter of bitch, daughter of beggar etc. (See also Interview Schedule in Appendix XI).

\(^{111}\) Every language is good, but the tongue is not. There are two locks for every tongue and they are the teeth and lips. There is a third and stronger lock too and that is the ‘determination’ not to use the tongue to speak vulgar things and utter filthy expressions., supra n. 19, p. 20.

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police. In those countries such language is not used everywhere—especially in public. Similarly they do not use them against everybody as they respect human dignity. But in India use of filthy language has become a sort of privilege to police and they use it indiscriminately everywhere.\(^\text{112}\)

The police due to several reasons use filthy language. The origin and development of a filthy police sub-culture from the British past is considered to be one of the main reasons for the continuation of the same sub-culture even today. The British rulers induced the Indian police personnel to look at the Indian people as enemies. They encouraged the police personnel to be as nasty as they could when they interacted with the people. Defective training system plays a major role in making the police to use filthy language.\(^\text{113}\) The imperfect understanding and appreciation of the scientific methods of investigation have paved the way to make them to think that discourtesy pays well in police work.

Uttering indecent words in public is an offence.\(^\text{114}\) But when it comes from the police personnel in uniform, it no more tends to remain as an offence. But very few people move the higher authorities or courts with legal proceedings against the use of filthy language by the police because they apprehend that the court may be either prejudiced or may neglect it as a trifle. Moreover such proceedings may invite further problems and unnecessary expenditure.\(^\text{115}\) This helpless attitude of the public is a license to the police to

\(^{\text{112}}\) Ibid.

\(^{\text{113}}\) See cases like Kishan Singh \{1981\} Cr. L.J. 17; Niranjan Singh \{1980\} Cr. L.J. 426; Nandini Satpathy \{1978\} Cr. L.J. 968\} It is highly interesting to note that in the Police Academy usually the trainees are addressed by their instructors with epithets. This practice is followed not in class rooms but in parade grounds. In the grounds the instructors are giving relief to the cadets by saying obscene stories. On hearing such foul words, the trainees used to suppress their feelings against the instructors. On completion of training and it has been noticed that the suppressed trainees spoke filthy language to the people whenever they face some frustrations during their interaction with them.

\(^{\text{114}}\) Under section 290 of Indian Penal Code and section 51A of Kerala Police Act. (See Appendix III).

\(^{\text{115}}\) 92\% of the respondents who were arrested by the police admitted that they are afraid of complaining against the misbehaviour of police personnel. They think that they have no way other than tolerating the indecent behaviour of a man with muscle and authority because if they question the authority of police the filthy words may be followed by fists. (See also Interview Schedule in Appendix XI).
employ filthy language. The tolerating and encouraging attitude of the higher authorities also favours the development of this sub-culture. Vulgar expressions regularly used by the police along with threat give instant results in many occasions.

The defective personality and behaviour patterns find expression in the use of filthy expressions. There is a misconceived notion among the police personnel that the police should show undesirable personality traits and indecent expressions in their verbal transactions in order to become 'police'. They should realize that to keep up a good relationship with the public their talk should be decent. Human rights oriented training, giving priority to socialization of police personnel and effective supervision by superior officers having better values and behavioural convictions are the possible means to check this menace.

Very often, police tries to encroach the functions of the judiciary to prove the innocence or guilt of the suspect. In order to exert a judicial power, which they do not actually possess, they exercise a pseudo authority by permitting press photographers to take photos of the arrested persons and publish them. Though some police personnel try to justify their acts by saying that such types of publication can have deterrent effects and that general public can take precaution against such persons, human rights activists cannot agree with this view. For this purpose the offenders can be classified into two kinds; hardened criminals who are habitual offenders and those who are forced by circumstances to commit an offence but are not at all dangerous.

116 Many police officers and even many educated people who have a perverted ego concept says that a police man who does not use some force or threat of force against even innocent people in his jurisdiction or who does not use some abusive words to people does not get the approval of the public as a good law enforcement officer. Many of them even expressed the view that such people who are unable to use filthy words and indecent expressions should not come to the field of police.

117 Study reveals that in 20% arrests, the photographs of arrested persons were allowed to be published by the media. Among them only 2% persons were convicted by the court. (See also Interview Schedule in Appendix XI).
the society. If interest of the society is the criteria for such publication then
the second category of arrested persons are victimised by the police hands118

Policemen take the arrested person to court by public transport
vehicles, by auto-rikshas, by parallel transport services or privately operated
transport services. To long distances, they are taken by rail and in all such
situations, the passengers do not like to travel with persons who are handcuffed.
Sometimes, the escorting police men may carry 303 rifles with them.

The suspect is taken in police jeeps back of which is open. Usually
the suspect is allowed to sit only on the floor of the jeep in between the seats.
The back portion of the jeep is always open which causes insult to him. When
asked about this, many police personnel justified that there is chance of the
suspect attacking the driver of the jeep if he is allowed to sit in the seat of the
jeep.119 In foreign countries arrested persons are taken to court and police
stations in special vehicles. Those vehicles have automatic locking system to
guarantee protection of the persons in police custody.120

Fabrication of Evidence against Persons in Custody

The simplest way for the police to destroy the social prestige of
anybody is to implicate him in a false case. The police are again blamed for
registering false cases and sometimes they do so as desired by unjust forces or
unscrupulous people. Instances are not rare that even officers of the Indian
Police Service are blamed for registering false cases against people with

118 The Field Study reveals that among those whose personal details or photographs were published
by the media only 2-5 % belonged to the first category and the remaining large majority belong to
the second category. Even among those belonging to the first category 95% persons are convicted
and sent to jails for such a long period that by the time they are released people may forget their
faces and sometimes their stories and so the justification of welfare of the society has not much to
do in this regard.
119 Police personnel stated that there are many instances to show that the police party is attacked when
suspects are taken to police stations.
120 Supra n. 83, pp. 134-135.
whom they have unpleasant relations. This is nothing but misuse of authority and surely miscarriage of justice.\textsuperscript{121}

The Chairman of the National Police Commission has once opined:

When we went round throughout India we found that they (Police) were certainly not the servants of the people. In the police stations complaints were recorded not according to what a complainant reports but what the leaders or bigwigs desire. Even the suspect’s names were changed and in a number of cases there was no registration because if the complaint was registered some people might be involved which did not suit the local bigwigs. So the whole idea of the National Police Commission was to produce a force that was an ideal one, that was motivated and was freed from interference by political bodies, political heavy weights. Extraneous forces had to be eliminated before the police could do its duty.\textsuperscript{122}

Instances are there judgments are not pronounced in cases which have been dragging for decades and the accused are exposed to many hardships. When finally the accused are acquitted of the charges, honourably, the position goes from bad to worst.\textsuperscript{123}

\textsuperscript{121}A simple hurt can be interpreted as an act of voluntarily causing hurt or even an attempt to murder. Punishments to the crime vary depending upon the interpretation that is given to the act. 'Beauty lies in the beholder's eye' - this principle applied in the interpretation of crimes takes away the objectivity in identifying and analyzing crimes. They can drop the case at the end of investigation, by stating that the charge is against fact. But the suspected must have suffered enough by the time the proceedings for dropping the investigation is initiated. Since the criminal justice system permits this sort of miscarriage of justice to be committed by police without having any accountability for the injustice the police commit, people suffer the damages as their fate. Victimological researches now advocate for sanctioning compensation to victims of police action in all cases in which the proceedings get dropped by some reason or another.


\textsuperscript{123}As acquittal for the accused means either that he is unnecessarily put into trouble by the police and prosecutor or he is charge-sheeted with the support of insufficient evidence to prove his guilt. So in the cases in which the accused is acquitted with benefit of doubt, miscarriage of justice takes place as he is made the victim of legal action which is deemed to be unjustifiable in all respects, N. K. Jain, "Custodial Crimes- An Affront to Human Dignity." Human Rights Year Book (2000), p. 61.
The investigating official is quite often, the first person to reach the scene of occurrence and to make a factual record of situation. He may get the best and perhaps the last opportunity to recover certain important information or pieces of evidence which lead to detection of the criminal. He may also get the opportunity to see the immediate reactions of the victims, witnesses or suspects. Hence the reports and statements are to be prepared by the police with utmost care.\textsuperscript{124} This becomes, for the future, the basic document which will help in investigation, interrogation, inference etc. The report writer must be ever mindful of presenting the facts accurately, clearly without any flaw or negligence.\textsuperscript{125} But there are instances where the police were accused of having wrongly recorded statements of witnesses, manipulating reports, fabricating evidence etc.

They resort to these unfair practices for the purpose of making the case strong or weak according to their interest in the case.\textsuperscript{126} Majority of the respondents in the interview finds that manipulation of records is

\textsuperscript{9} 14th Report of Law Commission suggested that the discretion allowed to a police officer to record or not to record the statement of a witness orally examined by him is in such unrestricted terms that the whole purpose of section 173 (which requires copies of such recorded statements to be given to the accused) could be defeated by a negligent or a dishonest police officer. It, therefore, recommended that the police officer should be obliged by law to reduce to writing the statement of every witness whom the prosecution purpose to examine at the trial Law Commission of India, \textit{Fourteenth Report}, Vol.2, pp. 754-755. This view was accepted in the thirty seventh Report of Law Commission and as such it suggested further that the statement of every witness questioned by the police under section 161 must be recorded. Law Commission of India, \textit{Fortyfirst Report}, para 437(a), p. 118. But the 41st Report of Law Commission, however, declined to accept the above mentioned recommendations on the ground of practical difficulties faced by the investigators owing to the increase of burden on them. Law Commission of India., \textit{Thirty Seventh Report}, para 14.9, pp. 69-70. Sub-section (2) of section 161 requires every person examined by the police officer to answer every question put to him. The sub-section, however, avoids saying that the person examined must answer those questions "truly". (There was no legal obligation to speak the truth under the old Criminal Procedure Code.)


\textsuperscript{11} 60 % respondents stated that the police freely added imaginary things to fill up the lacunae in evidence. Altering or suppressing or substituting real or imaginary things in police records are the usual ways of manipulation of records by the police. Even in cases of custodial deaths in police stations, the police do such manipulations and they do such things to escape from being caught. (See also Questionnaire in Appendix X and Interview Schedule in Appendix XI).
proportionate to the intensity of influence exerted on police. When imaginary things are mixed with real facts, it paves way for flaws in the chain of evidence. Manipulations are done by the police secretly and the accused comes to know of this only later which creates many difficulties to him in proving his innocence.

Though wide powers are given to the police under the Code of Criminal Procedure; they should be made aware that they should exercise their powers with utmost restraint within a democratic setup. Under our laws decency of behaviour has been assured even by arming the accused with a number of basic human rights. But they can never be preserved, unless we have a police which can act fairly, honestly, humanely without exceeding the limits of law. 

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Most of the respondents who were accused in criminal cases opine that every step during the investigation involves money.