

LAW COMMISSION OF INDIA

CONSULTATION PAPER ON LAW RELATING TO ARREST

PART I

LAW OF ARREST

1.1 Chapter five of the Code of Criminal Procedure, 1973 deals with the arrest of persons. Section 41 is the main section providing for situations when Police may arrest without warrant. It reads as follows:

- “41. When police may arrest without warrant.- (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-
- a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or
 - b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or
 - c) who has been proclaimed as an offender either under this Code or by order of the State Government; or
 - d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
 - e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

- f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or
- g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or
- h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or
- i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specified the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

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

1.2 Section 42 specifies yet another situation where a police officer can arrest a person. According to this section if a person commits an offence in the presence of a police officer or where he has been accused of committing a non-cognizable offence and refuses, on demand being made by a police officer to give his name and residence or gives false name or residence, such person may be arrested but such arrest shall be only for the limited purpose of ascertaining his name and residence. After such ascertaining, he shall be released on executing a bond with or without sureties, to appear before a magistrate if so required. In case the name and residence of such person cannot be ascertained within 24 hours from the date of arrest or if

such person fails to execute a bond as required, he shall be forwarded to the nearest magistrate having jurisdiction.

1.3 Section 43 speaks of a situation where an arrest can be made by a private person and the procedure to be followed on such arrest. Section 44 deals with arrest by a magistrate. Section 45 protects the members of the Armed Forces from being arrested under sections 41 to 44. Section 46 sets out the manner in which the arrest should be made and section 47 enables the police officer to enter a place if he has reason to believe that the person to be arrested has entered into that place or is within that place. Section 48 empowers the police officers to pursue the offenders into any place in India beyond their jurisdiction. Section 49 however provides that “the person arrested shall not be subjected to more restraint than is necessary to prevent his escape”. Section 50 (which corresponds to clause (1) of Article 22 of the Constitution) creates an obligation upon the police officer to communicate to the person arrested full particulars of the offence for which he is arrested or other grounds for such arrest forthwith. It also provides that where a person is arrested for a bailable offence without a warrant, the police officer shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf. Section 51 provides for search of arrested person while section 52 empowers the police officer to seize offensive weapons from the arrested person. Sections 53 and 54 provide for medical examination of the arrested person at the request of the police officer or at the request of the arrested person, as the case may be. Section 55 prescribes the procedure to be followed when a police officer deposes his subordinate to arrest a person without warrant. Section 56 (which corresponds to clause (2) of Article 22) of the Constitution, provides that the person arrested shall not be kept in the custody of a police officer for a longer period than is reasonable and that in any event such period shall not exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the magistrate’s court. Of course if the magistrate permits the police officer to keep such person in his custody, he can do so beyond the period of 24 hours. Section 58 casts an obligation upon the

officers in charge of police station to report to the specified authorities of arrests made without warrant within their jurisdiction and of the fact whether such persons have been admitted to bail or not. Section 59 says that no person arrested by a police officer shall be discharged except on his own bond or bail or under the special order of the magistrate. Section 60, which is the last section in the chapter, empowers the person having the lawful custody to pursue and retake the arrested person if he escapes or is rescued from his custody.

1.4 Practical aspects of sections 41 and 42, CrPC.- A reading of the above provisions and, in particular, of Sections 41 and 42 shows the width of the power of arrest vested in police officers. Take for example, the ground in clause (b) of Section 41. It empowers a police officer to arrest a person who is in possession of “any implement of house breaking” and the burden is placed upon that person to satisfy that possession of such implement is not without “lawful excuse”. What does an “implement of house breaking” mean? Any iron/steel rod or any implement used by way-side repairers of punctured tyres can also be used for house breaking. Similarly, clause (d). Any person found in possession of stolen property “and who may be reasonably suspected of having committed an offence with reference to such thing.” What a wide discretion? Why, take clause (a) itself. The situations covered by it are: (i) a person who is “concerned in any cognizable offence”, (ii), a person against whom a reasonable complaint is made that he is “concerned in a cognizable offence”; (iii) a person against whom “credible information” is received showing that he is “concerned in any cognizable offence” and (iv) a person who is reasonably suspected of being “concerned in any cognizable offence”. The generality of language and the consequent wide discretion vesting in police officers is indeed enormous – and that has been the very source of abuse and misuse. The qualifying words “reasonable”, “credible” and “reasonably” in the Section mean nothing in practice. They have become redundant; in effect.

1.5 Wider powers of arrest under section 151, CrPC.- Added to these provisions are the preventive provisions in the Code of Criminal Procedure which empower the police to arrest persons. Section 151 empowers a police officer to arrest any person, without orders from a Magistrate and without warrant, “if it appears to such officer” that such person is designing to commit a cognizable offence and that the commission of offence cannot be prevented otherwise. We do not think it necessary to emphasise the width of the power. It may be true that the satisfaction of the police officer contemplated by the expression “if it appears to such officer” is not subjective but is objective but in India, police officers making a wrongful arrest whether under section 41 or 151, are seldom proceeded against – much less punished. There are too many risks involved in doing so.

1.6 Large number of persons arrested under sections 107 to 110, CrPC.- There is yet another category viz., sections 107 to 110 of the Code of Criminal Procedure. These sections empower the Magistrate to call upon a person, in situations/circumstances stated therein, to execute a bond to keep peace or to be on good behaviour. These provisions do not empower a police officer to arrest such persons. Yet, the fact remains (a fact borne out by the facts and figures referred to hereinafter) that large number of persons are arrested under these provisions as well. And we are speaking of vast discretion not in a civil service officer but in a member of armed force though technically speaking, it is also a civil service.

1.7 Constitutional protection.- Clause (1) of Article 22 of the Constitution which is one of the fundamental rights in Part III, declares that “no person who is arrested shall be detained in custody without having informed, as soon as maybe, on the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice.” Clause (2) of Article 22 says that every person arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding of course the time necessary for the journey from the place of arrest to the court of magistrate. The clause further

declares that no such person shall be detained in custody beyond the said period without the authority of a magistrate. Clause (3) of Article 22 however provides that clauses (1) and (2) shall not apply to an enemy-alien or to a person who has been arrested under any law providing for preventive detention.

1.8 Misuse of power of arrest.- Notwithstanding the safeguards contained in the Code of Criminal Procedure and the Constitution referred to above, the fact remains that the power of arrest is wrongly and illegally exercised in a large number of cases all over the country. Very often this power is utilized to extort monies and other valuable property or at the instance of an enemy of the person arrested. Even in case of civil disputes, this power is being resorted to on the basis of a false allegation against a party to a civil dispute at the instance of his opponent. The vast discretion given by the CrPC to arrest a person even in the case of a bailable offence (not only where the bailable offence is cognizable but also where it is non-cognizable) and the further power to make preventive arrests (e.g. under section 151 of the CrPC and the several city police enactments), clothe the police with extraordinary power which can easily be abused. Neither there is any in-house mechanism in the police department to check such misuse or abuse nor does the complaint of such misuse or abuse to higher police officers bear fruit except in some exceptional cases. We must repeat that we are not dealing with the vast discretionary powers of a mere civil service simpliciter, we are dealing with the vast discretionary powers of the members of a service which is provided with firearms, which are becoming more and more sophisticated with each passing day (which is technically called a civil service for the purposes of Service Jurisprudence) and whose acts touch upon the liberty and freedom of the citizens of this country and not merely their entitlements and properties. This is a civil service which is being increasingly militarized, no doubt, to meet the emerging exigencies.

1.9 Balancing of societal interests and protection of rights of the accused.- We are not unaware that crime rate is going up in our country for various reasons which

need not be recounted here. Terrorism, drugs and organized crime have become so acute that special measures have become necessary to fight them not only at the national level but also at the international level. We also take note of the fact that quite a number of policemen risk their lives in discharge of their duties and that they are specially targeted by the criminal and terrorist gangs. We recognize that in certain situations e.g., like the one obtaining in Kashmir today, a literal compliance with several legal and constitutional safeguards may not be practicable but we must also take note of and provide for the generality of the situation all over the country and not be deflected by certain specific, temporary situations. We must also take note of the fact that very often it is the poor who suffer most at the hands of Police. Their poverty itself makes them suspects. This was said, though from a different angle, by George Bernard Shaw. He said “poverty is crime”. But nowadays, even middle classes and other well-to-do people, who do not have access to political power-wielders, also are becoming targets of Police excesses. We recognize that ensuring a balance between societal interest in peace and protection of the rights of the accused is a difficult one but it has to be done. We also recognize the fundamental significance of the Human Rights, which are implicit in Part III of our Constitution and of the necessity to preserve, protect and promote the Rule of Law which constitutes the bedrock of our constitutional system.

1.10 Guidelines laid down by the Supreme Court.- The effort of the courts, and in particular of the Supreme Court over the last more than two decades has been to circumscribe the vast discretionary power vested by law in Police by imposing several safeguards and to regulate it by laying down numerous guidelines and by subjecting the said power to several conditionalities. The effort throughout has been to prevent its abuse while leaving it free to discharge the functions entrusted to the Police. While it is not necessary to refer to all of them for the purpose of this working paper, it would be sufficient if we refer to a few of them (which indeed reaffirm and recapitulate the directions and guidelines contained in earlier decisions). In Joginder Kumar v. State of U.P. (AIR 1994 SC 1349), the power of arrest and its

exercise has been dealt with at length. It would be appropriate to refer to certain perceptive observations in the judgment:

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

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

The quality of a nation’s civilisation can be largely measured by the methods it uses in the enforcement of criminal law.”

This court in Smt. Nandini Satpathy v. P.L. Dani AIR 1978 SC 1025 at page 1032, quoting Lewis Mayers, stated:

“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.

Again in para 21, at page 1033, it has been 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. Since Miranda ((1966) 334 US 436) there has been retreat from stress on protection of the accused and gravitation towards society’s interest in convicting law-breakers. 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.... (Couch v. United States (1972) 409 US 322, 336). 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 humane justice.”

The National Police Commission in its Third Report referring to the quality of arrests by the Police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails. The said Commission in its Third Report at page 31 observed thus:

“It is obvious that a major portion of the arrests were connected with very minor prosecutions and cannot, therefore, be regarded as quite necessary from the point of view of crime prevention. Continued detention in jail of the persons so arrested has also meant avoidable expenditure on their maintenance. In the above period it was estimated that 43.2 per cent of the expenditure in the connected jails was over such prisoners only who in the ultimate analysis need not have been arrested at all.” (The figures given in the Report of the National Police Commission are more than two decades old. Today, if anything, the position is worse.)

The Royal Commission suggested restrictions on the power of arrest on the basis of the ‘necessity of principle’. The two main objectives of this principle are that police can exercise powers only in those cases in which it was genuinely necessary to enable them to execute their duty to prevent the Commission of offences, to investigate crime. 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 – Sir Cyril Philips, at page 45 said:

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

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

The Royal Commission in the above-said Report at page 46 also suggested:

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

In India, Third Report of the National Police Commission at page 32 also suggested:

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

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

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

It would equally be relevant to quote para 24, which reads as follows:

“The above guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some

investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave Station without permission would do."

The ultimate directions given, contained in paras 26 to 29, read as follows:

"These rights are inherent in Articles 21 and 22(1) of the Constitution and require to be recognized and scrupulously protected. For effective enforcement of these fundamental rights, we issue the following requirements:

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

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested persons found in the various Police Manuals.

These requirements are not exhaustive. The Directors General of Police of all the States in India shall issue necessary instructions requiring due observance of these requirements. In addition, departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary, the reasons for making the arrest.”

1.10.1 The next decision which may be usefully referred to is D.K. Basu v. State of West Bengal (AIR 1997 SC 610). It would be sufficient if we quote paras 36 to 40 which contain the final directions issued in the said decision. They read as follows:

“We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention, till legal provisions are made in that behalf, as preventive measures:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up,

shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Ilaqa Magistrate for his record.

10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
11. A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board.

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

The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.

These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the Courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

The requirements mentioned above shall be forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements on the All India Radio besides being shown on the National Network of Doordarshan and by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime

and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes.”

1.11 Need for providing statutory safeguards to prevent abuse of power of arrest.- Notwithstanding the above decisions – we may legitimately presume that the directions and guidelines contained were duly published by respective Directors General of Police of all the States and were brought to the notice of all the police officers – the complaints of abuse of power of arrest still continue unabated. Several instances of such exercise have come to the notice of each of us and to the notice of all responsible persons of the society. The Law Commission, therefore, thought that something more needs to be done to prevent the abuse and misuse of the power of arrest while at the same time not hurting the societal interest in peace and law and order. Indeed, both the decisions referred to above say expressly that the directions and guidelines issued/laid down therein are to be followed “till legal provisions are made in that behalf.” It is, therefore, necessary to make appropriate legal provisions not only incorporating the said guidelines/directions but also making such changes in law as may be necessary to prevent abuse/misuse of the said power while at the same time ensuring that interest of the society in maintenance of peace and law and order is not jeopardized.

1.12 Empirical data collected on the relevant aspects of the law of arrest.- But before we could think of any specific measures in that behalf, we thought it necessary to obtain empirical data on the relevant aspects of the law of arrest so that it can form the basis for devising the measures to be recommended by us. Accordingly, the Law Commission wrote a letter dated 20.7.1999 (Annexure-I to this working paper), addressed to the Chairperson of the National Human Rights Commission stating that the Law Commission proposes to examine exhaustively the law relating to arrest and to suggest to the Government and the Parliament

appropriate changes required in the aforementioned provisions and that to enable the Law Commission to arrive at an appropriate conclusion, it must have relevant empirical data from all over the country. Accordingly, we requested the NHRC, “to constitute a committee of high police officials (retired or working) who shall select four districts in the country as case study and find out the number of arrests made by the police in that district in a given year without warrant, the number of arrests which were made without registering the crime, the number of cases in which the person arrested was released without filing a chargesheet and the length of his detention, the number of cases in which chargesheets were filed and the number of cases in which the prosecution resulted in conviction.” It was further stated in the said letter that “it would also be necessary to categorise the offences in connection with which the persons were arrested, the period of the detention in police and in judicial custody, the time taken for concluding the prosecution against them and if a person is kept in detention, the number of occasions on which he was not produced before the court on the dates of hearing. It would help us if any other relevant or incidental details or data which the committee may think relevant is also made available to us.” We stated that we would welcome any suggestions, ideas and recommendations which such body may record on the subject keeping in view the recommendations contained in the Police Commission Reports.

1.12.1 We are happy to say that the Chairperson of the NHRC Shri Justice M.N. Venkatachaliah, took immediate action on our letter and directed Shri D.R. Karthikeyan, DG (Investigation) of the NHRC to address all the Director Generals of Police/Inspector Generals of Police of all States in this regard. A large amount of material which was sent by the various DGPs/IGPs of the various States, pursuant to the letter of Shri D.R. Karthikeyan, has been communicated to us. We are indeed grateful to the NHRC for the highly valuable information made available to us and for the promptitude with which such information has been made available to us.

1.13 Data furnished by various States.- A brief reference to the data furnished by the various States would now be in order.

1.13.1 UTTAR PRADESH

According to the letter of Shri Hakim Singh, Headquarters, DGP (UP) dated 7.9.1999, the relevant particulars for the State of UP for the year 1998 are to the following effect:

1(a)	Total number of persons arrested (No. of persons arrested under substantive offences)	1,73,634
1(b)	Total number of persons who surrendered in various courts (substantive offences)	1,25,268
2	Total number of persons arrested under preventive provisions of law	4,79,404
3	Out of it, total number of persons charge-sheeted (substantive preventive)	7,48,440
4	Total number of persons dropped/released without filing chargesheet (substantive offences only)	29,124
5	How many persons ended in conviction – (Information not available).	
6	Percentage of arrests made in relation to bailable offences	45.13%

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

1.13.2 HARYANA

In this State, Panchkula district was selected for study and data has been furnished in respect of that district alone for the year 1998. According to the data furnished, the total number of arrests during that year was 2,048. Out of this total number, 248 persons were arrested in connection with crimes against persons, 232 for crimes against property, 160 for crimes against women, 218 in connection with accident cases, 89 for economic offences like cheating and fraud, 223 in connection with other offences under IPC, 672 under the State Excise Act, 119 for electricity theft and four persons under the Arms Act.

The letter dated 3.4.2000 furnishes slightly different figures but that does not appear to be very material. The number of arrests in bailable cases, according to this letter, is as high as 94%.

It is evident that a substantial number of persons were arrested for excise offences. The particulars of preventive arrests, if any, are not furnished nor the percentage of arrests in bailable cases.

1.13.3 MAHARASHTRA

In this State, particulars have been furnished in respect of two districts, namely, Pune rural district and Thane rural district. The particulars with respect to Pune rural district are the following:

1. Total no. of persons arrested (no. of persons arrested under substantive offences) – 8943.
2. Total no. of persons arrested under preventive provisions of law – 4933.
3. Out of it, total no. of persons chargesheeted – 8836.
4. Total no. of persons dropped/released without filing chargesheet – 93. It does not include persons arrested under preventive provisions of law.
5. Total no. of persons ended in conviction – 73.

6. Percentage of arrests made in relation toailable offences – 72.90%.

The particulars with respect to Thane rural district are to the following effect:

1)	Total no. of persons arrested	10,376
2)	Total no. of persons arrested under preventive provisions of law	7,566
3)	Out of it, total no. Of persons chargesheeted	10,345
4)	(A) Total no. of persons dropped/released without filing chargesheets	31
	(B) Total no. of persons dropped/released without filing chargesheets, who arrested under preventive provisions	--
5)	How many persons ended in conviction	394
6)	Percentage of arrests made in relation toailable offences	67.73% (7028)

It may be noticed that in case of both the said districts, the number of preventive arrests are unusually high. It is more than one-half of the number of arrests for substantial offence in the case of Pune rural and two-thirds in the case of Thane rural. Then again the arrests made in relation toailable offences are something ununderstandable. It is 72.90 and 67.73 per cent, respectively. (We are not referring to the number of convictions because we presume that the reference to number of convictions in that year may not be relatable to the total number of chargesheets filed during that year).

1.13.4 GUJARAT

In this State, a committee of eight officials headed by Addl. DGP, CID (Crime), was constituted to gather and supply the relevant information. Though the letter of the IGP, Gujarat dated 14.10.1999 states that Ahmedabad rural district, a

crime prone district was selected for study, the particulars furnished through a subsequent letter dated 24.2.2000 are with respect to the entire State of Gujarat. The total number of accused arrested during the year (1998?) is 1,13,489 out of which the persons arrested for causing hurt is 29,226, for rioting 12,823, for theft 8,364 and for house breaking by day and night (put together) 3,147. 42,150 persons were arrested under what is called the miscellaneous offences. The total number of persons arrested by way of preventive action “i.e. under sections 107, 109, 110 of CrPC and sections 56, 57, 122 & 124 of Bombay Police Act and under section 93 of the Prohibition Act” is a total of 1,89,722. In other words, the preventive arrests are far higher in number than the arrests made for committing substantive offences.

We must however refer to the letter of the Addl. DGP (CID) Crimes, GS Ahmedabad, Shri G.C. Raizar, dated 8.10.1999 in as much as it contains certain useful information and suggestions. Para 1 of the letter says that the power to arrest without warrant in cognizable offences falling under parts 1 to 5 of the IPC should continue to be available to police officers. Para 2 says that while the power of arrest is wide ranging, they have to be exercised in such a manner as to avoid unnecessary harassment to the people. After the judgment of the Supreme Court in D.K. Basu, it is said, the abuse of the said power has drastically come down. Paras 3 & 4 state that the police should have the power to arrest without warrant where the offence is committed in their presence and also where a large quantity of stolen property, contraband goods or illicit weapons etc. are found in the custody of a person. Para 5 says that the power of arrest without warrant should be available to police only in important cases. Paras 6, 7 & 8 may be extracted in full having regard to their relevance.

“6. As mentioned above, police should not have unlimited powers of arrest but at the same time looking to the present social structure and ground realities, this may cause dissatisfaction among the public especially in view of the following reasons:

- (a) If somebody commits an offence and police does not arrest him immediately, people may have their own presumption about the police credibility with regard to the effective working of the police force particularly, when the process of obtaining a warrant is not so simple and easy. It is an undisputable fact that, under the present system, obtaining of a warrant will take long time in most of the cases.
 - (b) Except in very serious cases, the accused person should be arrested and produced before the court only at the time of charge-sheeting the case in the Court of Law, as is being done at present by the CBI and anti-corruption agencies. (? sic.).
7. The Committee is of the view that more and more powers are being given to the police under various social and economic laws including the power of arrest. This should also be reviewed in the light of increasing allegations of misuse of power by the law enforcement agencies.
8. It is also felt that the unlimited power of arrest given to the police under section 151 CrPC also needs to be reviewed.”

The suggestions do merit consideration.

1.13.5 ANDHRA PRADESH

In the State of AP, the district of Medak was chosen as a test case for study in the State. The Committee constituted for the purpose has made the following relevant observations while furnishing the relevant statistics. They are:

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

- 2) A number of accused granted bail by the courts have not been able to avail the facility since they are unable to produce proper sureties. They continue to languish in judicial remand. No legal aid is being provided to them.
- 3) “Though the number of arrests made without registering cases is of high proportion (3746 out of 8889 of arrests, i.e. roughly 42.14%), as many as 3164 are under preventive sections of law (108, 109, 110 and 151 CrPC). All these accused either were bound over by a magistrate within the stipulated time or who were released by the police agency itself. Hence, it is difficult to say that the power of arrest is not exercised with circumspection.”
- 4) The daily allowance provided for food etc. to the arrested persons is too meagre. Even this amount is not being drawn regularly from the treasury.
- 5) In 30% of the cases (54 out of 172), the accused are not being produced before the court for various reasons.
- 6) On several dates of hearing when the accused were produced before the court the cases were adjourned, or the accused was not examined or the witnesses were not examined for one or the other reason.
- 7) “With the present quantum of work load on various courts in the district, the trial of cases is inordinately delayed (statistics in table 10). Increase in the number of courts, enhancing the scope of compoundable offences and limit on the number of adjournments could be the solution to the problem.”
- 8) It would be appropriate if the courts hold their sittings in the jail premises itself which would solve the problem of insufficiency of escort personnel. Such a measure was experimented within Hyderabad city three years back with considerable amount of success.
- 9) For serious crimes like dacoities, robberies, economic crimes and gender crimes etc., special courts may be established to facilitate expeditious disposal of those cases.”

So far as the statistics go, they disclose that out of 8889 arrests, 1209 and 418 are under sections 109 and 110/108, CrPC. As already stated, the number of arrests

made without registering the crime is 3746. In the IPC offences, the arrests for rioting and hurt cases are the largest being 1052 and 1653 respectively. Arrests under Gambling Acts and Excise and Prohibition Acts are 277 and 151 respectively.

The facts and figures furnished from this State disclose that a large number of arrests were made without registering a crime (more than 42%) and that “preventive arrests” are quite substantial. A special feature of this state is the inability of producing the accused before the Court on the dates of hearing, which has led the police to suggest the venue of trials to jails. The phenomenon of frequent adjournments when the accused is produced and the witnesses are also ready, is also emphasized.

1.13.6 BIHAR

The particulars furnished by the DGP Bihar appears to pertain to the district of Muzaffarpur. The total number of arrests during the year 1998 in the said district for substantive offences was 3,322. The arrests under preventive provisions of law is stated to be 560. The percentage of arrests made in relation to bailable offence is stated to be 34.66%. By a subsequent letter dated 30.5.2000, the DGP, Human Rights, Bihar has furnished the particulars with respect to the entire State (?). According to this letter, the total number of arrests is 2,38,613. The particulars of preventive arrests however have not been furnished. It is stated that the percentage of arrests made in relation to bailable offence is 13.90%.

1.13.7 ORISSA

In this State, the district of Khurda was selected for the purpose of study. According to the particulars furnished under the letter dated 15.1.2000, the total number of arrests for substantive offences in the said district for the year 1997 was 4,616. 73 persons were arrested under preventive provisions of law. The number of persons against whom chargesheets have been filed is stated to be 2,299. By a letter dated 1.5.2000, the DIG of Prisons, Orissa has furnished the following particulars

with respect to prisoners in the State of Orissa. The total number of prisoners as on 31.3.2000 is 10,765. The total number of undertrial prisoners as on the said date is 7,823. It is also stated that pursuant to the directions of the Supreme Court with respect to release of undertrial prisoners, 44,480 prisoners have been released on bail up to 30.11.1999.

In spite of release of a large number of accused (undertrial prisoners) pursuant to the orders of the Supreme Court, the number of undertrial prisoners is as high as 3/4th of the total number of prisoners. One can only imagine the position before the orders of the Supreme Court.

1.13.8 KARNATAKA

Belgaum district was selected for the purpose of study as it is stated to be a crime-prone district. The particulars furnished relate to the year 1998. The number of arrests made during the said year without warrant is 10,368. The number of preventive arrests is 2,262. The percentage of arrests made in relation to bailable offences is as high as 84.8%. Towards the end of his letter, the DGP states that police is adhering to the provisions of law strictly and that the enhanced awareness of their rights among the people, the presence of social and service organisations and the spread of literacy has led the police to obey the laws.

1.13.9 KERALA

According to the letter of the IGP, state Crime Records Bureau, the total number of arrests under cognizable crimes under IPC and SLL is 1,64,035. The number of persons arrested under preventive provisions is 5,884. The percentage of arrests made in relation to bailable offences is 71%.

1.13.10 ASSAM

Jorhat district was selected for the purpose of study in this State. Among the IPC offences, the largest number of arrests were made for the offence of theft. It is

239 out of a total of 1,351. The percentage of arrests for bailable offence is not furnished.

1.13.11 DELHI

South-West district of Delhi was selected for the purpose of study by the Delhi Police. According to the information furnished, the total number of persons arrested without warrant during a year is 6,869. A majority of arrests appear to have been made for offences against property like robbery, burglary and theft. The number of persons arrested for rioting is also substantial. According to another statement furnished, out of 3,772 cases chargesheeted, 727 ended in conviction. In other words, as against 6,266 persons chargesheeted, 988 were convicted. It is however not clear whether these particulars pertain to one year or on what basis they were tabulated.

1.13.12 HIMACHAL PRADESH

Kangra district was selected for the purpose of study in the State. The total number of arrests made during the year 1998 is stated to be 3,932. 1,237 arrests were made for petty crimes. The arrests made for rioting (147, 148 and 149) is stated to be 686. The arrests made under the Excise Act are as high as 904. The percentage of arrests made in relation to bailable offences is 63.12%. According to another letter from the DGP, Shimla the percentage of arrests made in relation to bailable offences for the entire State is 65%.

1.13.13 CHANDIGARH

In this Union Territory the preventive arrests are as many as 4,286 as against 2,215 persons arrested for substantive offences (1,856 under IPC and 359 under local and State laws). The percentage of arrests made in relation to bailable offences is 47.35% in respect of IPC offences and 87.18% under local and State laws.

1.13.14 MANIPUR

In this State, the district of Lunglei was selected for the purpose of study. Very elaborate and individual case-wise particulars have been furnished for this State. From the statements furnished it appears that most of the arrests made were under preventive provisions or under local Acts.

1.13.15 MIZORAM

The percentage of arrests in bailable offences is 50% in this State.

1.13.16 TRIPURA

In this State also, the preventive arrests are very large compared to the arrests for substantive offences.

A comprehensive statement of persons arrested for substantive offences and under preventive provisions, number of persons chargesheeted, persons released without filing a chargesheet, the number of persons convicted and the percentage of persons arrested in bailable offences is separately furnished as Annexure-II.

PART II

BROAD FEATURES DISCLOSED THROUGH THE DATA

2.1 The particulars furnished by various States referred to in Part One disclose the following broad features – (We are also offering our comments with respect to each feature):

1. The number of “preventive arrests” is unusually large. Preventive arrests evidently means arrests made under sections 107 to 110 and 151 CrPC and under local Police enactments containing similar provisions.

While the break-up between arrests made under section 151 and sections 107 to 110 is not given, we have to recognize that there is a qualitative difference between them.

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

The material furnished does not show in how many cases of arrest in bailable offences, the accused were immediately released on bail by the Police and in how many cases, they were detained in custody and if detained, for how long. Figures of accused in bailable cases, who remained in custody/bail for their inability to furnish the bail, are also not furnished. Only the State of A.P. refers to this aspect without, of course, furnishing the number of accused so remaining in jails.

3. The percentage of undertrial prisoners in jails is unusually large.

The reasons for this may be the delays in concluding the trials in criminal courts, the rigidity of the present law of bail and in some cases, the inability of the accused to furnish bail. In this connection, a fact which has been brought to our notice by a retired DGP relates to the casualness with which

the rights of the prisoners are being dealt with by the jail authorities as well as the criminal courts. The Supreme Court directed in two cases 'Common Cause, A Registered Society' v. UOI ((1996) 4 SCC 33) and 'Common Cause, A Registered Society' v. UOI (1996 (6) SCC 775) that undertrial prisoners whose cases have been pending beyond a particular period should be enlarged on bail or on personal bond. These directions applied not only to cases pending on the dates of those orders but were also effective prospectively. As and when the case of a particular prisoner fell within one or the other direction given in those cases, he has to be released. For this purpose, both the criminal courts and the jail authorities should be vigilant and cooperate with each other. They must constantly monitor the facts of each undertrial prisoner. But this is not being done either because jail authorities do not furnish full and relevant particulars or because the court also does not look into these matters. This may be an additional contributing factor.

4. Many of the undertrial prisoners who were granted bail are unable to avail of the said facility because of their inability to furnish sureties or to comply with the conditions for release.

This is a phenomenon which is digging the Indian jails since long number of years in spite of a number of judgments of the Supreme Court.

5. The number of arrests for petty offences is substantial, if not more than the arrests made for serious offences.

This is a serious problem which calls for our attention. It is probably this factor which made the Police Commissions to observe that a large number of arrests are unnecessary.

6. While there is no clarity about the percentage of convictions in the particulars furnished by various States, it is clear beyond doubt that the percentage of conviction is very low in many of the States.

This is a very grave problem in our country. In some States like U.P., no trial is allowed to take place until one or more important witnesses are won

over. Until then, constant adjournments are asked for and the situation is such that the Presiding Officers are not able to do anything to rectify this situation. A murder trial hardly proceeds to trial on the date it is posted.

7. The said material fully bears out the statement made in the Third Report of the National Police Commission to the fact that of the arrests made, 60% were either unnecessary or unjustified and that such unjustified Police action accounted for 43.2% of the expenditure of the jails (referred to in Joginder Kumar v. State of U.P.). And those are 20-year old figures. Position today cannot be better, if not worse.

PART III

PROPOSALS TO AMEND THE CODE OF CRIMINAL PROCEDURE, 1973

3.1 The Code of Criminal Procedure classifies the offences mentioned in the IPC into four broad categories, namely, (1) bailable and non-cognizable offences; (2) bailable and cognizable offences; (3) non-bailable-cognizable offences and (4) non-bailable-non-cognizable offences (e.g., sections 466, 467 (first part), 476, 477 and 505 (first part) etc.) (There is a fifth category of offences e.g., sections 116 to 120, where the cognizability and bailability/non-bailability depends upon the nature of the main crime. This category travels along with the main crime and will be dealt with accordingly.) In the light of the recommendations of the Third Report of National Police Commission and the ratio and the spirit underlying the decisions in Joginder Kumar and D.K. Basu and the decisions of the Supreme Court on the significance of personal liberty guaranteed by Article 21, a question arises whether would it not be advisable to amend the Criminal Procedure Code providing that:

- (1) No person shall be arrested for offences which are at present treated as bailable and non-cognizable; in other words, a court shall not issue an arrest warrant in respect of these offences. Only a summons to be served through a court process-server or by other means (but not

through a policeman) may be issued. For this purpose, the very expression “bailable” may have to be changed. The expression “bailable” implies an arrest and an automatic bail by the police/court. There appears no reason to arrest a person accused of what is now categorized as bailable- non-cognizable offences. It is true that in case of non-cognizable offences, police cannot arrest without warrant as would be evident from clause (a) of section 41 but there are other clauses in section 41 which may empower this. For example, clause (b) provides that any person found in possession of “any implement of house breaking” is liable to be arrested unless he proves that there is lawful excuse for such possession. Instead of calling/categorizing them as “bailable offences”, they can simply be categorized as non-cognizable offences and it must be expressly provided that no arrest shall be made by the police in case of these offences and no court shall issue an arrest warrant either. The court may issue a summons to be served in the manner indicated above. Annexure-III to this consultation paper sets out such offences, along with a description of the offences, for easy reference.

- (2) In respect of offences at present treated as bailable and cognizable (mentioned in Annexure-IV), no arrest shall be made, but what may be called an “appearance notice” be served upon the person directing him to appear at the Police Station or before the magistrate as and when called upon to do so, unless there are strong grounds to believe - which should be reduced into writing and communicated to the higher Police officials as well as to the concerned magistrate - that the accused is likely to disappear and that it would be very difficult to apprehend him or that he is a habitual offender. (In case of the latter ground, material in support of such ground shall be recorded.) Accordingly, the expression “bailable” shall be omitted in respect of these offences and they should be termed simply as cognizable

offences. Section 41 may be amended appropriately to provide that in case of these offences, no arrest shall be made except in the situation mentioned above. Certain offences “excluded” from this annexure shall continue to be treated asailable-cognizable.

- (3) In respect of offences punishable with seven years imprisonment or less which are mentioned in Annexure-V (from which annexure, offences punishable under sections 124, 152, 216-A, 231, 233, 234, 237, 256, 257, 258, 260, 295 to 298, 403 to 408, 420, 466, 468, 477-A and 489-C, have been excluded) – and which are at present treated by the Code of Criminal Procedure as non-ailable–cognizable offences – should be treated asailable-cognizable offences and dealt with accordingly. So far the offences excluded from this category are concerned (namely, offences punishable under section 124 and others mentioned above), they shall continue to be treated as non-ailable-cognizable, as at present.
- (4) In respect of non-ailable-cognizable offences punishable with more than seven years imprisonment, no change is proposed in the existing law.
- (5) So far as non-ailable-non-cognizable offences punishable up to seven years are concerned, they are placed in the category of offences in Annexure-V, having regard to the nature of offences, though they are treated by law as non-cognizable.

3.2 General principles to be observed in the matter of arrest.- The following general principles shall be observed in the matter of arrest for offences (other than those offences for which the punishment is life imprisonment or death but not offences where the punishment can extend up to life imprisonment) shall be followed:-

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

In this connection, reference may be made to section 157 of Code of Criminal Procedure which says that where a police officer proceeds to investigate the facts and circumstances of a case (on receiving information about commission of an offence), he shall arrest the offender, only where it is “necessary”. Sub-section (1) of section 157, insofar as relevant reads as follows:

“(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender....”

3.2.1 Merely on suspicion of complicity in an offence, no arrest to be made.- The law must provide expressly, by amending section 41 and other relevant sections, if

any, that merely on the suspicion of complicity in an offence, no person should be arrested. The Police Officer must be satisfied prima facie on the basis of the material before him that such person is involved in a crime/offence, for which he can be arrested without a warrant. In this connection, reference may be made to the decision of the European Court of Human Rights in Fox, Campbell and Hartley v. U.K. delivered on 30th August, 1990 declaring that section 11 of Northern Ireland (Emergency Provisions) Act, 1978 is violative of Article 5(1) of the European Convention on Human Rights. The section empowered a police officer to arrest a person if he is “suspected of being a terrorist”. The Court (by majority) held that mere suspicion, however bona fide held, cannot be a ground for arrest. Pursuant to the decision, the aforesaid words were replaced by the words “has been concerned in the commission, preparation or instigation of acts of terrorism”. This decision is in accord with the modern concept of human rights, which are implicit in Part III of our Constitution.

3.3 Statutorily incorporation of safeguards contained in D.K. Basu’s case.- It is equally necessary to give legislative recognition to the safeguards contained in the decision of the Supreme Court in D.K.Basu. The safeguards to be incorporated (being No.1 to 11) have been set out hereinabove.

3.4 Representatives of registered NGOs to be entitled to visit police stations.- A common complaint often heard in this connection is that quite often a person is detained in Police custody without registering the crime and without making any record of such detention/arrest. Persons are kept for number of days in such unlawful custody and quite often subjected to ill-treatment and third-degree methods. To check this illegal practice, there should be a specific provision in the Code of Criminal Procedure creating an obligation upon the officer in-charge of the Police Station to permit representatives of registered non-government organizations to visit the Police Station at any time of their choice to check and ensure that no persons are kept in the Police Stations without keeping a record of such arrest and to ensure

further that the provisions of the Constitution and the Code of Criminal Procedure are being observed. For this purpose a procedure must be devised for registration of genuine NGOs and a record must be kept of their representatives.

3.5 Necessity to increase compoundability of offences and incorporate the concept of plea bargaining.- It is equally necessary to increase the number of compoundable offences. It must be remembered that quite a few offences in the IPC are essentially of civil nature. There must be a massive de-criminalisation of law. The concept of plea bargaining, which has been recommended in the 154th Report of the Law Commission (on Code of Criminal Procedure), should be incorporated in the Code. Indeed, early steps need to be taken upon the said Report.

3.6 No arrest should be made under sections 107 to 110, CrPC and under similar provisions.- So far as proceedings under sections 107 to 110 CrPC are concerned, no arrests should be made. Police must be empowered to take if necessary a personal interim bond to keep peace/for good behaviour from such persons. This should be extended to all similar offences under the local Police Acts. We are not proposing for the present any change in section 151 of Code of Criminal Procedure.

3.7 Bail should be granted as a matter of course except in the serious offences and in certain circumstances.- In respect of all offences except the serious offences like murder, dacoity, robbery, rape and offences against the State, the bailable provisions should be made liberal and bail should be granted almost as a matter of course except where it is apprehended that the accused may disappear and evade arrest or where it is necessary to prevent him from committing further offences. The provisions in Cr.PC relating to grant of bail may be amended suitably.

3.8 No arrest or detention for questioning.- It is also necessary to provide that no person shall be arrested or detained by police merely for the purpose of questioning.

Such arrest or detention, it is obvious, amounts to unwarranted and unlawful interference with the personal liberty guaranteed by Article 21 of the Constitution.

3.9 Ensuring the safety and well being of the detainee is the responsibility of the detaining authority.- It should also be provided by law expressly that once a person is arrested, it is the responsibility of the arresting and detaining authority to ensure the safety and well being of the detainee. The recommendation of National Police Commission regarding mandatory medical examination of the arrested person deserves implementation. In this connection, the decision of A.P. High Court in Challa Ramkonda Reddy v. State of A.P. (AIR 1989 AP 235) – which has recently affirmed by the Supreme Court in AIR 2000 SC 2083 - and the examples given therein, wherein the State would be liable for damages for the negligent or indifferent conduct of police/jail authorities should be kept in mind. To put briefly, take a case where a person is arrested for simple theft or simple rioting; he is a heart patient; he is not allowed to take his medicines with him at the time of his arrest and no medicines are provided to him in spite of his asking and he dies. Or a case, where such a person (though carrying his medicines) suffers a heart attack and no reasonably prompt steps are taken for providing medical aid to him by the concerned authorities and he dies. It is obvious that had he not been arrested, his family and friends would have taken care of him. Should he die for want of medical help, only because he has been arrested and detained for a minor offence. It would be too big a punishment. In such cases, State would be liable for damages.

3.10 Custody record to be maintained at every police station.- The law should also provide that every police station maintain a custody record (which shall be open to inspection by members of Bar and the representatives of the registered NGOs interested in Human Rights) containing the following particulars among others:

- a) name and address of the person arrested/detained;

- b) name, rank and badge number of the arresting officer and any accompanying officers;
- c) the time and date of arrest and when was the person brought to police station;
- d) reasons/grounds on which arrest was effected;
- e) was any property recovered from or at the instance of the person arrested/detained; and
- f) names of the persons (friends or relatives of the person arrested) who were informed of the arrest.

It may be clarified that the safeguards mentioned above are in addition to those required to be provided by the decision of the Supreme Court in D.K. Basu which must be given legislative recognition by making necessary amendments.

3.11 Tortious liability of State.- Another aspect, which needs notice in this behalf is the decision of the Supreme Court in Kasturlal v. State of U.P. (1965 SC 1039). In this case, the gold recovered from the person arrested was kept in the Malkhana of the police station but was misappropriated by the concerned police officer. The person arrested was released but the gold could not be restored to him. When the person filed a suit for recovery of the gold or its value, he was non-suited by the Supreme Court on the ground that no suit lies in respect of tortious acts of government servants which are relatable to sovereign powers of the State. This was so held relying upon Article 300 of the Constitution which preserves the right and liability of the State to sue and be sued obtaining prior to the commencement of the Constitution. Indeed, Article 300 says that the said rule shall continue until a law is made by the Parliament or the State Legislature, as the case may be, laying down the situations in which the State shall be liable for the tortious acts of its servants and where it shall not be liable on the ground that that act was done in exercise of the sovereign powers of State. The distinction between sovereign and non-sovereign

functions also needs to be clarified in view of the conflict between the judgments of the Supreme Court.

3.12 Strict compliance with section 172, CrPC called for.- Sub-section (1) of section 172 of the Code of Criminal Procedure requires that (1) “every police officer making an investigation under this chapter shall day-by-day enter his proceedings in the investigation in a diary setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained through his investigation”. Inasmuch as such diary would also record and reflect the time, place and circumstances of arrest, it is necessary that the provisions of this sub-section should be strictly complied with. In this behalf, however, it would be relevant to notice the following observations of the Supreme Court in Shamshul Kanwar v. State (AIR 1995 SC 1748) where the court pointed out the vagueness prevailing in the country in the matter of maintaining the diary under section 172. The court referred, in the first instance, to the fact that in every State there are Police Regulations/Police Standing Orders prescribing the manner in which such diaries are to be maintained and that there is no uniformity among them. The court pointed out that in some States like Uttar Pradesh, the diary under section 172 is known as ‘special diary’ or ‘case diary’ and in some other States like Andhra Pradesh and Tamilnadu, it is known as ‘case diary’. The basis for distinction between ‘special diary’ and ‘case diary’, the court pointed out, may owe its origin to the words “police diary or otherwise” occurring in section 162 CrPC. The court also pointed out that the use of expression “case diary” in A.P. Regulations and in the Regulations of some other States like J&K and Kerala may indicate that it is something different than a “general diary”. In some other States there appear to be Police Standing Orders directing that the diary under section 172 be maintained in two parts, first part relating to steps taken during the course of investigation by the police officer with particular reference to time at which police received the information and the further steps taken during the investigation and the second part containing statement of circumstances

ascertained during the investigation which obviously relate to statements recorded by the officer in terms of section 161 and other relevant material gathered during the investigation. In view of this state of affairs, the Supreme Court suggested a legislative change to rectify this confusion and vagueness in the matter of maintainance of diary under section 172. It is therefore appropriate that section 172 be amended appropriately indicating the manner in which the diary under section 172 is to be maintained, its contents and the manner in which its contents are communicated to the court and the superior officers, if any. The significance of the case diary has in its relevance as a safeguard against unfairness of police investigation. (See this decision of the Delhi High Court in Ashok Kumar v. State (1979 Cr.L.J. 1477)). Such an amendment would also go to ensure that the time, place and circumstances of the arrest of an accused are also properly recorded and reflected by such record, which is indeed a statutory record.

3.13 We may conclude this consultation paper with the thought articulated by Shri Justice M.N. Venkatachaliah, the then Chairperson of N.H.R.C. that “power to stop, search, arrest and interrogate are exercised against a person who may turn out ultimately to be innocent, law-abiding citizen. Arrest has a diminishing and demoralizing effect on his personality. He is outraged, alienated and becomes hostile. But then a balance has to be struck between the security of the State (and the societal interest in peace and law and order) on one hand and the individual freedom on the other.”

Your views on the aforesaid proposals are invited.

ANNEXURE-I

JUSTICE
INDIA
B. P. JEEVAN REDDY
BHAWAN

LAW COMMISSION OF
SHASTRI

Chairman, Law Commission of India

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D.O.No. PPS/CLC(JR)/99
1999

July 20,

Dear Shri Justice Venkatachaliah,

Section 41 of the Code of Criminal Procedure, 1973 empowers any police officer to arrest any person, without an order from a magistrate or without a warrant – “(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or (b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or ... (d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing. Sub-section (2) vests the power to arrest any person specified in section 109 and 110 of the Code in any officer in-charge of the police station. Section 46 prescribes the mode of arrest, while Section 47 empowers any police officer to search any place where he has reason to believe that any person to be arrested has entered into, or is within that place. Section 50 of course creates an obligation on police officer arresting a person without warrant to communicate to the person forthwith full particulars of the offence for which he is arrested or other grounds for such arrest. Section 51 empowers the police officer to search a person arrested. Section 53 and 54 provide for examination of the accused by a medical practitioner at the request of the police officer and at the request of the arrested person respectively. Section 56 and 57 (as well as section 50) which have been enacted to accord with the protection provided by clause 1 of article 22 of the Constitution provide that the police officer arresting a person without warrant shall produce him before a magistrate as soon as possible, and without unnecessary delay, and that such period of arrest shall not exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the magistrate’s court. There are several other provisions of law both in the Code of Criminal Procedure and several other enactments which empower the police officer to arrest a person without a warrant.

2. The power to arrest a person without a warrant on reasonable suspicion or under the belief that he is concerned in any cognizable offence is an awesome power vested in one of the civil services – probably the only armed civil service in our polity. Inasmuch as this power, vast as it is, is liable to misuse and has been very often misused, the Supreme Court and the High Courts have, on several occasions, explained the true content and spirit of the said provisions and have laid down the guidelines governing and regulating the exercise of the said power. Even so, the misuse and abuse of the said power remains practically unabated. Several instances have come to light where there has been a gross misuse of the said power to the great detriment of the life and liberty of the citizens. Indeed, a certain section of the public holds the view that this power requires to be drastically curtailed. According to them the power to arrest should be restricted to major crimes like murder, dacoity and to habitual offenders and that in all other cases the arrest can be effected by the police only under a warrant of arrest issued by the court. There is, of course, the other view that the rising crime rate makes it necessary to vest such discretionary power in the police. These are all questions which we propose to examine exhaustively and to suggest to the Government and the Parliament the appropriate changes required in the aforesaid provisions and other like provisions in other enactments. The law respecting bail shall also be a component of this study.

3. To enable us to arrive at a proper conclusion on the aforesaid question, we must have empirical data collected by an expert body. In the course of discussions which I had with you on Sunday, you had suggested that it would be possible for the Human Rights Commission to constitute a committee of high police officials (retired or working), who shall select four districts in the country as case studies and find out the number of arrests made by the police in that district in a given year without warrant, the number of arrests which were made without registering the crime, the number of cases in which the person arrested was released without filing a charge-sheet and the length of his detention, the number of cases in which charge-sheets were filed and the number of cases in which the prosecution resulted in conviction. It would also be necessary to categorise the offences in connection with which the persons were arrested, the period of the detention in police and in judicial custody, the time taken for concluding the prosecution against them and if a person is kept in detention, the number of occasions on which he was not produced before the court on the dates of hearing. It would also help us if any other relevant and incidental details and data, which the committee may think relevant, is also made available to us.

4. The Law Commission of India would be grateful if you can appoint an expert committee and make data collected by them and findings recorded by them available to us. We would also welcome any suggestions, ideas and recommendations which such expert body may record on the above subject keeping in view the recommendations contained in the Police Commission Reports.

With warm regards,

Yours sincerely,

Sd/-

(Justice B.P. Jeevan Reddy)

Shri Justice M.N. Venkatachaliah,
Chairperson,
National Human Rights Commission,
1st Floor, Sardar Patel Bhawan,
Parliament Street,
New Delhi

ANNEXURE-II

STUDY OF ARRESTS

Sl.No.	Name of the State	Total No. of person arrested under substantive offences	Persons Arrested Under Preventive Provision	Persons Charge-Sheeted	Persons Dropped Without Chargesheet	Persons convicted	% of persons arrested in bailable offences	Per arr und Pre Pro Per Dro Wi Fil (In per
1.	Arunachal Pradesh	744	185	545	38	06	59.47	20.
2.	Uttar Pradesh	173634	479404 125268 Surrendered in Court	748440	29124	390507	45.13	4.8
3.	Goa	2938	1383	4005	257	319	61.02	18.
4.	Haryana	2048	483	1399	13	490	94	2.6
5.	Mizoram	3942	246	2491	54	1683	55	21.
6.	Pondicherry	3898	7348	3824	31	1457	50.8	.42
7.	Nagaland	47	125	146	26	05	193 (persons)	20.
8.	Delhi	57163	39824	78581	8904	34436	50	22.
9.	Manipur	708	1145	15 cases	534	2 cases	Not Furnished	46.
10.	Kerala	164035	5884	157135	4582	35505	71	77.
11.	Assam	1351	58	859	427	23	90	-
12.	Karnataka	10368	2262	10353	15	2394	84.8	.66
13.	Rajasthan	249084	26109	247469	69	NIL	-	.26
14.	Tripura	6560	25499	6149	5183	4579	9.2	20.
15.	Orissa	4616	733	2299	234	34	-	31.
16.	Gujarat	297939	189722	480611	1710	117805	99.75	.90
17.	West Bengal	49655	207625	32746	16820	1072	-	8.1

18.	Sikkim	755	23	510	NIL	296	113	-
19.	Laksha-Dweep	06	NIL	06	NIL	NIL	66.67	-
20.	Daman & Diu	569	111	350	14	336	89	12.
21.	Bihar	238613	-	211188	22158	12546	13.90	-
22.	Chandigarh UT	2215	4286	6032	165	895	53.81	3.8
23.	Maharashtra	23675	18366	40583	1469	350	61	7.9
24.	Andaman & Nicobar	2579	721	2471	17	1874	95.81	2.3
25.	Andhra Pradesh	249328	85850	259881	39205	13246	36.59	45.
26.	Madhya Pradesh	476281	354242	518658	12399	139379	89	3.5
27.	Himachal Pradesh	20172	6145	26225	417	2127	69	6.7
28.	Dadar & Nagar Haveli	NIL	NIL	NIL	NIL	NIL	NIL	NIL