



# A Citizens' Guide to Understanding Arrest and Detention

A person can be arrested and detained for committing, or under suspicion of committing, an act or omission punishable by a law that is for the time being in force. It is necessary to know the legal procedure of, and safeguards on, arrest, detention, bail and redress mechanisms in order to understand the limits of police authority and rights of citizens during and after arrest.

days on the approval of magistrate if the accusation seems to be well founded and investigation cannot be completed within 24 hours (Criminal Procedure Code, Section 167(1) & 167 (2)).

5. No person shall be subjected to torture for extracting an evidence (Constitution of Pakistan, Article 14 (2)).
6. No woman can be kept in police custody overnight except for unavoidable circumstances. A magistrate can allow the detention of an accused woman in police custody, with reasons recorded in writing, only if she is involved in cases of murder or dacoity and interrogation of that woman may only be performed in prison in the presence of an officer of jail and a female police officer (Police rules, 1934, Rule 26.18-A. (2) and Criminal Procedure Code, 1898, Section 167 (5)).
7. Women being investigated, other than those arrested, cannot be detained at the police station for anytime longer than necessary to record information that they are willing to provide, while no such women, under any condition, shall remain with the police between sunset and sunrise (Police rules, 1934, Rule 26.18-A. (3)).
8. Any person arrested or detained by a police officer without warrant for cases other than those that are non-bailable, may submit a bail application to the police officer anytime or to the court during court proceedings and be released. The police officer or the court may, if they think appropriate, release the person without bail once he executes a bond without sureties (Criminal Procedure Code, 1898, Section 496).
9. Where bail is admissible, a woman should not be detained longer than is necessary for the production of the bond or sureties. No applications for remand to police custody shall be made without the special order of a gazetted officer (Police Rules, 1934, Rule 26.18-A. (1)).

the police officer who has committed excess and misconduct.

2. Court of law: A writ petition (Habeas Corpus) can be filed before the High Court under which the court may direct the police to produce the illegally detained person before the court of law and release him if found not guilty. Through a special order of the High Court, Sessions court may also be authorized to exercise these powers (Criminal Procedure Code, Section 491).
3. Legal Aid: In case the complainant does not have resources to hire a lawyer, he can seek assistance from Pakistan Bar Council (PBC). PBC is required to provide free legal aid to the poor and deserving in cases of illegal detention and abuse of power and authority by the police (The Pakistan Bar Council Free Legal Aid Rules, 1999)
4. Ombudsmen: Complaints against abuse of power by the police can also be lodged with Federal and Provincial Ombudsmen.
5. National Commission for Human Rights (NCHR): Establishment of NCHR is expected soon and, as per its enacted law, NCHR would have the power to inquire into complaints of human rights violation, including illegal arrest and detention, on its own or on petition filed by a victim or any person on his behalf. Furthermore, NCHR officials would be authorized to visit any place under the control of government where detainees are kept to ascertain whether their detention is legal, provisions of applicable laws are being observed and rights are being respected. (National Commission for Human Rights Act, 2012, Section 9(a)(1) and 9(c)).

## Redress against arbitrary arrest and detention

In case of arrest and detention that is illegal, following are the redress forums available to the aggrieved person:

1. Senior/ supervisory police officers: Complaints can be lodged with senior officers/ supervisor of



Centre for Peace and Development Initiatives

Published with support from:  
Friedrich Naumann  
STIFTUNG FÜR DIE FREIHEIT



European Union

The contents of this publication are the sole responsibility of CPDI and can under no circumstances be regarded as reflecting the position of the European Union and the Friedrich-Naumann-Stiftung für die Freiheit.

## What is arrest, why is it made and who can arrest?

Arrest can be defined as seizing and taking a person by legal authority. A person can be arrested for both cognizable and non-cognizable offences depending on the nature and gravity of offence. In case of cognizable offences, a police official can make arrests without a warrant or court's approval. Examples of cognizable offences are murder, rape and dacoity, while that of non-cognizable offences are mischief and simple hurt.

In non-cognizable offences, a police officer can arrest a person only after obtaining a court warrant. A private person can arrest another person if he, in his view, has committed a non-bailable and cognizable offence or if he is a proclaimed offender. But, he would have to hand him over to a police officer or take him to the nearest police station without unnecessary delay (Criminal Procedure Code, 1898, Section 59).

A bailable offence is one where a person is legally entitled to bail, unless the prosecution can prove otherwise. Non-bailable offences are those where bail is granted only at the discretion of the court.

## Situations where police can arrest without a warrant

Any police officer may without an order of Judicial Magistrate and without a warrant arrest in following cases (Criminal Procedure Code, 1898, Section 54):

1. A person concerned in any cognizable offence or against whom a reasonable complaint is made, credible information received or a reasonable suspicion of having committed a cognizable offence exists;
2. A person who possesses any tool / device of house-breaking without valid excuse;
3. Any person declared a proclaimed offender under law;
4. A person who is suspected to be in possession of a stolen property;
5. A person obstructing a police officer in the performance of his duty;
6. Deserter from the Armed Forces of Pakistan;
7. A person who is either an offender under the Extradition Law or involved in an act though committed outside Pakistan, but if done here

constitutes an offence under the law of Pakistan;

8. Any released convict breaking any rule under Section 565 (3) of the CrPC;
9. A person for whose arrest order has been received from another Police Officer.

*An Officer-In-charge of a police station may, in like manner, arrest or cause to be arrested (Criminal Procedure Code, 1898, Section 55):*

1. Any person trying to conceal his presence under circumstances where he is believed to be doing so with a view to commit a cognizable offence;
2. Any person found within the limits of a police station with no apparent means of supporting himself or giving satisfactory account thereof;
3. Any person who is by repute a habitual robber, house breaker, thief or who by repute habitually commits extortion or puts therefor other persons in fear of injury.

## How is an arrest made?

1. Police can touch the body of a person and confine him while making an arrest, unless the person being arrested submits to the custody by word or action (Criminal Procedure Code, 1898, Section 46 (1)).
2. The person being arrested must cooperate with the police. But, if he resists arrest or attempts to escape, law permits the police officer to take all necessary measures, including the use of reasonable force, to make such arrest. (Criminal Procedure Code, 1898, Section 46 (2)).
3. The person arrested shall not be subjected to more restraint than necessary to prevent his escape (Criminal Procedure Code, 1898, Section 50).
4. To make an arrest, a police officer has the power to enter any place, including a person's residence, in order to conduct a search and may also break open the house in case his entry is resisted. In case the house belongs to a woman, a police officer must give adequate notice for such woman to withdraw before forcefully entering the apartment (Criminal Procedure Code, 1898, Section 47 and Section 48).
5. All arrests of women must be made by police officers not below the rank of Assistant Sub

Inspector (ASI) and in case where ASI is not available only a head constable can make such arrest in the presence of a responsible male relative and village/town officials (Police rules, 1934, Rule 26.18-A. (1)).

## Search of arrested person

1. A police officer can search an arrested person and place in safe custody all articles, other than necessary wearing apparel, found upon him if (Criminal Procedure Code, 1898, Section 51):
  - a. The person has been arrested under a non-bailable warrant.
  - b. The person has been arrested under a bailable warrant but he is unable to furnish security /surety for bail.
  - c. The person is arrested without warrant or by a private person under a warrant, and cannot legally be granted bail, or is unable to furnish bail surety.
2. A woman can only be searched by other woman with strict regard to decency (Criminal Procedure Code, 1898, Section 52).

## Rights of the arrested and detained persons

Rights of the arrested and detained persons are as follows:

1. Every person detained in custody has a right to be informed of the reason for his arrest as soon as possible; moreover, he has a right to consult and be defended by a legal practitioner of his choice (Constitution of Pakistan, Article 10. (1)).
2. Every person detained in custody is required to be produced in front of a magistrate within a period of 24 hours, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate. No person can be detained for more than 24 hours without the authority of the magistrate (Criminal Procedure Code, Section 61 and Constitution of Pakistan, Article 10 (2)).
3. The foregoing provisions of Criminal Procedure Code, 1898 and Constitution of Pakistan do not apply to any person who is arrested or detained under any law providing for preventive detention (Constitution of Pakistan, Article 10(3)).
4. A person can be detained for a maximum of 15