THE POWER OF POLICE IN RESPECT OF ARREST AND IT'S OUTCOME

SUBMITTED BY

M.GNANAM B.Sc.,B.L.,
ADVOCATE
6/69, Theerthagiri Nagar,
Palacode Town & Taluk,
Dharmapuri District, T.N. State
Cell: 9443455506
Mail ID: jb.gnanam@gmail.com

To,

THE COMMITTEE FOR LAW REFORMS

Sub: Removal of the Power of Arrest without warrant from the hands of Police

---

Arrest – is a judicious act

- **One must know how to judge before ever taking a judicious act**
- **What is it meant by 'judge' – To consider, especially as a result of careful thought; conclude; judged that the moment was right.**

Prevention is better than Cure.

Totally the Chapter V – Arrest of Persons (without warrant)

- **From provision Sec.41 – 60A about 29 Sections all deal with the power of arrest given to police.**
- **Ofcourse some may deal with some procedures which should be followed by police while making arrest.**
- **Some may deal with how to make records of arrest**
- **Some may deal with how to inform the higher governmental authorities regarding arrests.**
- **Some may deal with, what are to be informed to the arrested person, such as right to know the grounds for arrest, right to move an advocate of his choice, right to go on bail, right to be informed to his family or friends of his arrest.**
- **Some may deal with how the arrest is to be made**
- **Some may deal with how much necessary restraint can be used, while making arrest.**
- **Some may deal with how to, and where to arrest an escaped or rescued arrested person.**

Here we have to discuss about the whole chapter of arrest of persons section by section. But due to want of time and less importance of other provisions in comparison with Sec.41 – when police may arrest without warrant, I wish to concentrate on discussion only with the power of arrest given to police.

Now the question before us is, why should we take the "power of arrest to police" for discussion?

Because the power of arrest without warrant, any person by any police officer is such a huge, enormous, unbridled, unquestionable, unchecked and unaccounted power. No other authority or officer working in any other department like revenue or judiciary or taxation having such a power of arrest to police.

Because the power of arrest is used in majority cases arbitrarily, whimsically and capriciously, and sometimes vindictively against innocent persons.

Because with the power of arrest given to police they in respect of every crime or commission of an offence, start with arrest of a person whom the police suspects, and then leisurely go for investigation that is collection of evidence, and when suitable evidence is not available or could not get such evidence, they used to cook up some fake oral and documentary evidence, produce them in Court by not worrying about the result of conviction or acquittal. And when the suspected person who is facing trial after arrest, is able to engage a good lawyer, would come out successfully without punishment or imprisonment. Suppose the suspect who is charged is not so sound to engage a lawyer with good calibre, and fails to succeed the prosecution, have to suffer the punishment in jail, even though he is innocent.

Here, we have to see that as per our present Indian Criminal justice system, in specific the Criminal Procedure Code, both in theory and practice, every police station house officer in charge, or any police officer, in respect of every crime, they start with the ARREST of the suspect.

After arrest, the suspect is kept in Police (Station) custody for some time for preparing case records, then produced before the Judicial Magistrate, he in turn forward the suspect by remand to prison for judicial custody for days or months (depending upon the seriousness of the offence), then the suspect may come out on bail after spending money with the help of his family and relatives, after attending all the said formalities he may face trial for few years , and finally with the help of his lawyer may come out successfully without punishment, in a judgement by confirming the case is false and he is innocent.

In our Criminal justice system whether the offence or case against a suspect (person) is true or false he has to face all the above said ordeal of Arrest – Remand – Prison – Bail – Trial – Judgement. That means, in our system, every suspect of every small or serious offence, grave or not graver offence, whether the suspect is innocent or not, he has to suffer such pre-trial ordeal.

Pre Trial Ordeal

Arrest –

i. **by a sudden and uninformed arrest by police, in front of public and relatives the suspect loses all his image, reputation, status among the society of his area.**

ii. **the suspect has to suffer the harassment by police, from the time of arrest, on the way to police station, at the cell in police station and till the time of remand to prison for judicial custody through criminal court. (physical torture beating, abusive words mental torture).**

iii. **the suspect should be in prison (custody) for some days or months or longer till he come out on bail.**

Bail –

i. **a suspect who is arrested, and remanded to prison custody, has to spend money, search for a good lawyer, with the help of his family and relatives, to come out of the prison on bail (a temporary release from prison custody till the final judgement of court).**

Trial –

i. **after coming out on bail he has to attend the Court hearings, with the help of his lawyer, face the Trial, till the police / prosecution produces all its witnesses and records as evidence.**

I think, you now understand, in our Criminal justice system, our people the suspects whether they are innocent or not, have to suffer the pre-trial punishment like loss of image and reputation, torture by police, prison (stay) custody, spending of huge money by own or borrowing.

Why these all sorts of punishments a suspect has to face in India?

Actually a punishment imposed either of imprisonment or fine by a court of law, on the basis of clear cut, irrefutable evidence, after completion of trial is correct and justifiable.

But here in our criminal justice system, which allows the police to arrest any person without warrant, on complaint, or information or suspicion every such suspected person has to face and suffer the above said all sort of pre-trial punishments, whether at trial the court concerned gives a verdict of acquittal (as innocent) or conviction (as culprit) in respect of an offence, whether it is simple or graver.

Is it correct and justifiable? No. Definitely it is not.

Then where is the appreciation of constitutional right of every arrest of a suspect, protection declared under Article 21 – No one shall be deprived of his life or personal liberty except under procedure established by law.

Then what is meant by ARREST?

Arrest is nothing but total isolation of a person from his society.

Just like uprooting a grown plant from its natural environment and circumstance, by cutting and severing its roots, and placing it in an unfamiliar environment and circumstance as a caged animal.

The minute from the time of arrest, the person arrested by police, his right to move according to his will is restrained; so his liberty is taken away already as long as before he knows the reasons for his arrest when charge sheet is filed (after completion of collection of evidence) before the court of Law.

Is it not such unfortunate? An arrested suspect, in India gets to know about the offence and the supported collection of evidence, oral and documentary, only at Court, before the Trial is fixed, that would be after a time of several months or some years. When already an arrested suspect faces all kinds of pre-trial ordeal undergoes humiliation and harassment in the hands of police, loss of reputation, image etc. for a period of prison custody, all like a punishment even without confirming whether he committed such offence or not?

This is because of our FAULTY criminal justice system, which requires the police to arrest First and go for collection of evidence Next, in respect of a complaint registered as FIR by the police officer, who receives information of a commission of offence.

A police officer on receiving information about a commission of offence by a suspect –

i. **- immediately after the receipt of information not go for verification on the same, but simply register it as an FIR**
ii. **-once the information finds place in the FIR Book U/Sec.154 Cr.P.C, immediately it gives power to the police officer for arrest of the suspect, whose name is arraigned as offender in the said information.**

iii. **- whether the information came from a genuine or authentic person,**
-is there any enmity in existence to give a false information, in between the informant and the name of person informed, to suspect the information given might be for vindictive purpose.
-or otherwise really there is such an offence committed in a manner as narrated in the information
-No police officer is so educated or efficient to verify all the above said facts and circumstances before ever making an arrest of a suspect, whose name finds in FIR.

So, our Indian Criminal justice system, from the date when Cr.P.C 1898 was brought in force by the then colonial British rulers, is with the scheme of "Arrest the suspect first on information" and "go for investigation (Collection of evidence) next", in respect of the commission of offence by the alleged suspect.

This age old, barbaric, unscientific, illogical scheme of Arrest the suspect First and Go for investigation (Collection of evidence) Next, is still we are following, even after we liberated our country from the colonial Rule, got Independence, declared ourself as a Sovereign Democratic Republic country, with the enmasse support of 138 crore Indian People.

Yes, when the Cr.P.C 1898 was brought by the British Colonial Rulers, our Indian Public were slaves under British. During their rule to exploit the wealth and hard labour of Indian public, ruthlessly and without any resistance from any corner, the British Kingdom used its civil servants the police force with the support of 1898 Cr.P.C.

So, when this 1898 Cr.P.C the criminal procedure code was brought in force in support of Indian Penal Code and Indian Evidence Act the substantive laws, in the name of better Criminal law Administration in our Country, the police force was already in existence by a Police Act 1861, of the same British Ruler.

We know well, the Police Act of British kingdom, is still in use, without any basic or structural changes, but with a minor modification in title from British (Indian) Police Act into, Indian Police Act.

We know well, both the procedure code (1898 Cr.P.C) and Police Act, then in British Rule, till liberation in 1947 gave full-fledged and unbridled power of Arrest to Police to suppress and oppress the Indian public, whenever a resistance or protest symptom found among the public.

So, the police force was given with the power of arrest of any person, any time, at any place, only to serve the interests of British Imperialists, as sincere servants of their colonial Rulers.

So the police force in British Rule was, though most police personnel were employed from the Indian soil, after wearing khaki uniform, on the one hand they became the servants and friends of British, on the other hand they became the oppressors and enemies of Indian people.

So, then the relationship between British Police and the Indian public was never cordial, but always inimical.

So, now let us see an independent sovereign Democratic Republic country of India, which declared its own constitution some 70 years back, which uphold the principle of individual liberty and rule of law with articles like 14, 19, 21 etc. the relationship between our Indian police and the Indian Public, we understand through the media as well in our day to day practical life, the relationship is very same as during British rule. i.e. Not cordial but inimical with each other.

We may call the 'Attitude' of the present Indian police is same as 'Attitude' of the then British police which ruled up to 1947.

Any one has acquaintance with our criminal law justice system could easily understand the Attitude, the character the behaviour of the then British police, are still followed and nothing changed in Indian police. Attitude, character and behaviour.

<u>What we mean by police Attitude</u>-

- **That means how the British police viewed the general public of India. Yes their view was nothing but, every Indian born here in this country were a slave to the British rule. So, a slave has to obey the police and never got right to protest or challenge.**

<u>What we mean by character</u>-

- **The character of the British police was, thinking himself as a superior officer, so powerful to do anything he liked, otherwise how to rule the Indian public ruthlessly, through that serve his lord (British).**

<u>What we mean by Behaviour</u>-

- **The behaviour of the British police was so arrogant. That he need not respect the Indian public in general. He could obey the orders of his higher authority and not to serve the slave Indians.**

Even now after 70 years of Independence, our Indian police is acting with the same qualities of British police, towards the general Indian public.

With the same Attitude-Viewing the people as slaves

With the same character-Boasting his power to do any thing

With the same Behaviour-Arrogantly refuse to respect the people.

Though the British Imperialists had left in 1947, though we made a constitution to ourselves in 1950 saying the Indian Government is elected by the people, for the people and of the people and this Government is being run by the basic principle of Rule of Law,

The inherited qualities of British police were not changed with the Indian police.

Why it is so?

Because the 1898 Cr.P.C., which gave power of Arrest to police (British), to rule a colonial and slave country, was adopted absolutely without carrying out changes or amendments, to our Independent democratic country.

Of course we are not denying certain amendments were carried during 1952, 1955, 1973, 2005, 2009 etc... on the basis of some recommendations of Law commissions, and directions of apex court judgements like D.K. Basu Case and Joghinder kumar case.

These amendments were very small and minor, so negligible to make an impact to change the procedure code to suit our democratic republic. Those amendments or changes never affected the basic structure of procedure code, which gave enormous, unbridled and unaccountable power of arrest, and consequential proceedings. Like inquiry, investigation and filing of final report at court, without any interference even by court of law, at any stage of the proceedings.

To be specific, no amendment has ever touched the power of arrest given to police, even though for the past 70 years there were several reporting in local medias, about the arbitrary arrests made by police and in consequence fatal incidents like custodial tortures, custodial rapes, custodial deaths, fake encounters etc. all over India at several police stations irrespective of language, state, people.

The above said media reports were reflected in the Law commission reports and National police commission reports and in turn in innumerable judgments of High Courts and Supreme Court, deploring and reitering the police atrocities.

Though the High Courts and Supreme Court in their judgments gave directions taken care with the after effects of arrest of suspects by the police.

Ofcourse those judgments directed the Central and State governments to take steps how the records and what are the records to be maintained, after the arrest of a person and who are all to be informed, and how the arrested

person has to be informed of his right to approach an advocate and move for bail.

But you know, though these directions were advanced by the higher judicial authorities, with real motive and good intention of safeguarding the rights and liberties of the arrested person, in practice no police officer is adhering or following the safeguard procedures of the code while making arrest.

An innocent individual person's right to life and liberty is affected and violated, at the very minute when a police officer lays his hand over the person of such individual, in the name of arrest on the basis of some information, complaint or suspicion, and not by the after effect of arrests and consequences like torture, rape, death etc., as the law commissions and court judgments felt in their reports and directions respectively.

So, here in our analytical report, to enable the Criminal Law Reforms committee, we need to concentrate on the POWER OF ARREST to Police given in Cr.P.C.1973, Sec.41(1) (b), Sec.41(1) (b a) etc.

Ofcourse we don't want to interfere with the provision

Sec.41(1)(a) – which says – any police officer may arrest without a warrant any person – who commits in the presence of a police officer, a cognizable offence;

But, in respect of other provisions, especially Sec.41(1)(b) against whom

a reasonable complaint has been made, or

a credible information has been received, or

a reasonable suspicion exists,

that he has committed a cognizable offence punishable with imprisonment for a term which may extend to 7 years etc.

and Sec.41(1)(b a) against whom

a credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than 7 years or with death sentence,

and the police officer has reason to believe on the basis of that information that such person has committed the said offence.

This code of criminal procedure, from the date when it was codified by the British to suit its interest and secure its welfare, in respect of the Arrest Power to police never met a change or a reform or a correction, though one cannot deny after 1947 Independence, to the place of British Rule, a democratic Republic Government came to Power.

In fact at present, our Country is being ruled by the Indian People themselves through their representatives. So, after our Independence, that too after the declaration of 1950 constitution, people are ruling the country. They are masters and no longer slaves as during British rule. So, now the duty of the civil servants including police are to obey their masters, and not to dominate and dictate their Masters (People).

You see, now it is not ridiculous to keep the same old code of criminal procedure, and allowed to function for these long 70 years or more, with such arbitrary provisions of Arrest, power given to police.

And when in all developed countries like America, France, Japan including Briton, the Power of Arrest to police is given by a warrant from court, through Criminal Prosecutors, that too not simply after receiving of information, but only after collection of evidence, completion of investigation, and submission of final report through criminal prosecutors, and why we a developing Country, not looked into those procedures to adopt them for the development of our Indian Criminal Justice system.

So, to our search, perusal and observation of other developed countries, their criminal justice system do not permit, or give power of arrest just on

receipt of complaint or information or feeling of suspicion on any person without warrant.

So what is to be done, to stop such arbitrary arrests done by our police using the same old criminal procedure code on this land?

We know well. Nothing will stop police from making arbitrary arrests, except by removing the power of Arrest without warrant, as prescribed in provisions Sec.41(1) (b) and Sec.41(1) (b a) of Cr.P.C. Really it will be a Historic act in the Indian Criminal justice system.

Yes, as in the developed countries, the power of arrest without warrant to police can be allowed only in cases which attract Sec.41 (1) (a) Cr.P.C, which deals with persons who commit a cognizable offence in the presence of a police officer.

In all other cases, which are prescribed in Sec.41(1) (b) and Sec.41(1) (b a) of Cr.P.C, giving power of arrest to police, on the basis either on complaint, or on information, either on reasonable suspicion or reason to believe, all should be removed, erased or stricken off from the statute book of Cr.P.C 1973.

For those cases, which are all defined in Sec.41(1) (b) and Sec.41(1) (b a) of Cr.P.C, either as punishable upto 7 years imprisonment or as punishable above 7 years upto death sentence the power for issuing warrant of arrest should be vested with the nearest Judicial Magistrate, on the appraisal of the connected Asst. Public Prosecutor of the area where the offence committed, after getting all relevant informations, oral and documentary evidences collected with possible scientific accuracy after completion of investigation from the police officer in whose police station house limit the crime has been reported.

Why the power of arrest without warrant should be removed from the hands of police except in respect of offences committed in the presence of a police officer?

Yes this small but serious step of removal of the power of arrest to police without warrant, in all other cases (except offence committed in presence of police) will miraculously stop all the maladies like false cases, custodial tortures, custodial rapes, custodial deaths, statistical convictions, fake encounters etc., from the historical pages of Indian Criminal justice system, very soon.

Yes, this removal of arrest Power only make the present Indian police system, to change its own attitude, character and behaviour to our expected humane standard.

SOME FACTS AND FIGURES (from various sources)

I. **As per Bureau of Police Research and Development on 01.01.2011, conviction rate of the year 2010 was only 40.7%. At the end of the year 2010 84.9% of IPC cases remained pending for trial in various criminal courts of the Country.**

This signifies the enormity of under trial criminal cases in various sub ordinate Courts in the Country. There are various factors responsible for this high pendency of under trial cases in the subordinate Courts.

It calls for total overhauling of the criminal justice system itself in order to provide justice to the accused and victims promptly and at a reasonable cost.

Low conviction rate is an indicator of inadequacies in the criminal justice system in general and investigation and prosecution in particular.

In order to win the faith of citizens in the criminal justice system, all its wings should contribute their efforts to improve the conviction rate.

Conviction rate in America as per US Department of Justice – 93%

Conviction rate in Japan 99%

JAPAN CRIMINAL JUSTICE SYSTEM

II. **Three basic features of Japan's system – Criminal justice characterize its operations.**

First the institutions – Police, Government Prosecutor's officer, Courts, and correctional organs – maintain close and cooperative relations with each other, consulting frequently on how best to accomplish the shared goals of limiting and controlling crime.

Second, citizens are encouraged to assist in maintaining public order, and they participate extensively in crime prevention campaigns, apprehension of suspects and offender rehabilitation programs.

Finally, officials who administer criminal justice are allowed considerable discretion in dealing with offenders.

III. **The United States Criminal Justice system: A Brief overview – By Professor Paul Marcus (1996):-**

Initiating the prosecution – Prosecuting Attorney – This individual normally serves in an elected capacity. She has considerable discretion as to whether to proceed with evidence obtained by police investigation and how to move forward. If the attorney decides not to prosecute the process normally ends. Generally, victims of crime cannot appeal the decision nor can the police. In most states, if the prosecutor believes there is sufficient evidence, she can simply file a complaint against the accused. That individual is then arrested and brought before a judge to determine if enough evidence is present to hold the person over for a trial.

IV. **What happens during a Criminal Case (USA – Michigan's Criminal Justice system).**

Police Investigation:

Investigation may include interviewing victim, witnesses, suspects, collecting physical evidence; visiting, viewing, photographing, measuring crime scene; identifying suspects, through line – ups… etc.

Police make an arrest (or Request a Warrant)

When a crime is committed in a police officer's presence... or the officer has probable cause to believe that certain misdemeanours or any felony was committed that the officer did not see happen... an officer may arrest a suspect on the spot without an arrest warrant. The officer will later submit a charging / warrant request to the Prosecuting Attorney, suggesting potential charges to be authorised.

Warrant / Charging Request Reviewed by Prosecuting Attorney

Most cases begin with a warrant request. This is generally the first time that the prosecuting attorney's office is involved in a case, unless a prosecutor received a search warrant or visited the crime scene. At this stage, the prosecutor determines whether a person should be charged with crime and, if so, what the crime should be. The prosecutor must thoroughly review all reports and records concerning the case, including witness statements. The prosecutor also reviews the suspect's prior criminal or traffic record. Occasionally, the reviewing Prosecutor sends the case back to the police to conduct additional investigation.

Warrant issued

The Prosecutor can issue a charge if he or she reasonably believes that probable cause exists that the suspect committed the offence. But, most reviewing Prosecutors apply a higher standard whether the charge can be proved beyond a reasonable doubt at trial with the informations known at that time.

V. Role of Prosecutor in:

French Criminal Justice system

(HEUNI, The European Institute of Crime Prevention and Control, Affiliated with the United Nations)

- **Hence, in Criminal case, the French law grants Prosecutors not only the right to initiate Criminal proceedings but also to exclusively carry out the Prosecution in Law Courts.**
- **Their recruitment is done through the National Public competition examinations. Exclusively fresh law graduates are eligible to appear for that examination. Hence those prosecutors are recruited irrespective of any political interference, only on merit.**
- **Also, while studying comparative Criminal law and specifically studying Reforms as suggested by justice Dr.Malimath in his famous report Reforms in Criminal Justice System 2003 Vol. He had specifically mentioned about the merits the inquisitorial criminal justice pattern which is followed in France.**
- **As per the report titled Comparative Criminal justice by Fransic Pake (P.No.22), 90% of the defendants are found guilty by French Courts.**
- **The Prosecutors play main role in the investigation process in a pre-trial phase.**
- **However, they are fully empowered to interrogate witnesses and upon suspicious circumstances, the Prosecutor conducts searches and seizures of the case. Hence the prosecutors yield control over the police during pre-trial proceedings. Prosecutors are armed with this controlling power for investigation and also for framing charge. This controlling power is free from any judicial intervention.**
- **The fate of the case depends upon the stand of the Prosecutor in France. It leads to determination of the final decision of the case and rights of defendant is involved in the case.**

- **To prosecute or not to prosecute depends upon the prosecution and not the Judge in French Criminal Laws. Under the Ministry of Justice, the French Prosecutors develop their Life time career as a Prosecutor.**
- **The District Prosecutor has discretion to issue warrant to bring before him any person suspected of having committed offence. Generally in case of flagrant felon this power can be used by District Prosecutor who is empowered to visit the spot of the crime along with experts to identify the nature of the crime and the circumstances in which death occurred.**
- **The Prosecutor, police and the Trial Judge work hand in hand. This results into the efficient law enforcement. The Prosecutor dominates both the investigation and prosecution of offences. Prosecutors carry out the statutory functions effectively.**
- **He can extend the police custody for 24 hours with his written authority. However, the accused must be personally produced before the District Prosecutor. He can appoint the medical examiner to examine the accused. The District Prosecutor enjoys all the powers of an Investigating Judge in the Crime Procedure code in France.**

Withdrawal of Prosecution

- **If the prosecution agency is of the opinion that continuation of proceedings is a waste of time or if the caution given to the offender is more than enough, instead of conducting full trial, the case can be terminated by Prosecutors.**
- **Under Article 41, of the code of Criminal Procedure the Prosecutor can bring before the offender duties imposed by law, can order the offender to make good the damage or can, with the consent of the parties, commence mediation proceedings. The prosecutors are authorized to conditionally dismiss the case if the offender admits the guilt and is ready to pay the compensation and costs, or surrender the vehicle or is ready to work for community at least for six months.**
- **The District Prosecutor in France can encourage the Mediation between parties to the case if the parties give their consent for the same. This**

reduces the burden of the Court cases. Expediency Principle is adopted by the French Criminal Procedure Law. The Prosecutors have discretionary power to dismiss criminal cases. This practice has been widely used in France. As per the survey conducted in 1993 around 70% cases were discontinued for non-prosecution. Upon certain conditions like imposition of fine with paying damages by keeping the court in picture, the matter can be disposed off. However this is not be applicable if the punishment for the offence is more than 7 years imprisonment.

- **In order to limit the Prosecutorial discretion in the pre-trial proceedings as per 15 June 2000 Law investigation must be carried out within 6 months period.**
- **The accused is presumed to be innocent, and it is responsibility of the Judge to discover the truth.**
- **The code of Criminal Procedure originally was designed to prevent the single official from dominating a criminal process, by dividing authority among the three officers viz. Prosecutor, examining magistrate, and Trial Judge.**
- **The Trial normally takes place on the same day when the defendant first appears in the court although he has a right to continue for at least five days to engage a lawyer to prepare his defence.**
- **In criminal proceedings, general rule is that the burden of proof lies on the Prosecution. Even if the accused pleads guilty, the burden of proof lies on the State Counsel.**
- **The accused gets benefits of doubt if the case is not proved by the prosecution party.**
- **The Prosecutors bring before the court evidence for and against the victim. Though the Prosecutors are pleaders of the victim, they are required to bring the facts before the Courts from all angles.**

Conclusion:

The prosecutors collect the most relevant and admissible evidence through periodical guidance to the police. They are authorised to decide the extent of custody. They are also empowered to withdraw the prosecution if there is no point in continuing the case. Due to synchronisation between police and prosecution at pre-trial phase, the prosecutors can prove the guilt of an accused in the law courts effectively. They are appointed on the basis of court system in France, and each court is given the Specific offence. The prosecutor's duties, powers, functions, privileges are specifically defined under the code of Criminal Procedure, 1958. To present interest of the victims in superior Courts in appeal. The Prosecutors are recruited through National competitive examination and rigorous training in law courts.

Hence, their work at pre-trial, trial and post-trial phases is effective and it contributes to the crime control level in France. The Ministry of justice is the superior authority who regulates and controls the Prosecutors work. They are not bound to follow suggestions made by the Ministry of Justice each and every time. Suggestions made by the Ministry of Justice are recommendatory and not mandatory.

VI. Training and Qualification of Indian Police:

(as submitted by R.K.Raghavan IPS – former Professor and General of Director of Police – to WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEM – on behalf of India.)

There are different recruitment regulations for the constabulary, Sub-Inspector / Inspector and Asst. Superintendent (ASP) / Deputy Superintendent (DSP) levels.

While the minimum educational qualification for the constabulary and Sub-Inspector / Inspector is a High School diploma, an Undergraduation College Degree is required for entry into ASP and DSP level.

Physical requirements include a minimum height of Five feet five inches, good eye-sight, and minimum attainments in a physical efficiency test consisting of running, jumping, climbing and throwing.

Psychological tests are not yet used in a majority of forces.

Superintendents of Police (SP) are recruited every year by the Union Government on the basis of a national competitive exam and are appointed into what is known as the Indian Police Service. Superintendents of Police are trained at the National Police Academy, Hyderabad, for about a year. In such the Criminal Justice system in India is a legacy of the British System.

After going through the deliberations made in respect of various developed countries' criminal justice system, and finally the Indian Police training and qualifications, and practice we find that our Criminal Justice system is lagging far, far behind about 50 years back, in its proceedings as in an undeveloped, remote, illiterate African Country.

In 2018 September, great Historian Romila Thapar while briefing to a news conference, regarding the practice of arrest by our Police told – "the arrest of an individual should be the last step taken by the police after the completion of an investigation, and not the first step of "fishing expedition".

Yes our police people, immediately after the receipt of complaint or information, either on the existence of a reasonable suspicion against a person or the existence of a reason to believe against a person , (yes everything to his subjective satisfaction) the very first step taken by them for investigation is Arresting the suspect.

Really for what, police is making arrest of a person?

Yes, the police wants to FIX the offender first in respect of an offence in connection with the complaint or information made to police and then go for investigation or collection of evidence, to substantiate that the person arrested is the only person responsible for the crime committed and non-other than him.

How is it possible for a police officer, even without verifying the veracity of complaint, even without verifying character and behaviour of the complainant who gave such complaint, even without visiting the place of crime, taking photographs of the scene of the crime, even without talking to the people belong to in and around the place of the crime, even without getting statements from witnesses who are acquainted with the facts and circumstances of the crime, even without bringing the concerned experts to the scene of crime and getting opinion, FIX an offender, and arrest him in connection with the offence complained or informed?

Yes, it is possible. Our code of Cr.P.C 1973 allows the police to do so. To their whims and fancies, the police can make any one as offender and arrest, in anybody's complaint or information, if he (police) is satisfied to do so. No power on earth can stop him (police) from doing so.

In India, though majority criminal cases are true to facts, but due to wrongly fixed offenders and arranged or cooked up evidence and witnesses, meet failure at trial before court of law.

But in other criminal justice system followed in developed countries (USA, Briton, France, and Japan) where every police action is controlled, supervised, guided and dominated by the Government Prosecutors, and where every arrest is preceded by proper, reasonable, scientific investigation and collection of evidence find more convictions and less failures.

There was a net joke roaming, in the internet media recently, in respect of the efficiency of Indian Police in Criminal Investigation. The said joke goes

to tell the story this way. Yes, on a day fixed by an International Team of Experts, asked USA police, Scotland Yard Police, Russian Police and Indian Police to assemble before them, in a Forest somewhere in India. Same way on that particular day by 10.00 AM all 4 Countries Police with their respective uniform assembled before the Team Experts to face the challenge to be announced to them. The challenge given to them was, every country police has to go into the Forest in four different directions and find a Lion, secure and bring before Team Experts, using their own investigation knowledge and efficiency, and who comes first with a Lion will be awarded as Great, and who comes second with a Lion will be awarded as Best, and who comes third with a Lion will be awarded as Good, and who comes last with a Lion will be awarded as Bad. The time fixed for competing investigation of a Lion, only 2 hours from start. Exactly by 10.30 AM, all the four countries police were allowed to go for an investigative search of Lion in the Forest.

Yes, to everybody's surprise, within half an hour the British Scotland yard police brought a Lion and stood before the Team Experts.

Next came the US police within forty five minutes with a Lion and stood in front of the Team Experts.

Thirdly the Russian police within Fifty minutes came with a Lion and stood in front of the Team Experts.

Finally, the Team Experts were waiting and waiting for the successful arrival of Indian Police with a Lion, at least within the time limit given as 2 hours. But, alas they did not turn even after 4 hours. All losing their patience including the other 3 Countries Police, gone into the forest in search of the Indian Police with a 4th Lion. Oh, they got the sight of Indian Police struggling with an animal tied to a tree, while reaching inside the forest. After a close reach and finding with the seizure of Black Bear, and hearing of a threatening voice of Indian police-

"Hey Bear… hear us. You have to admit before the team Experts as you are a lion." "If you don't admit as lion, we will beat you to death… Okay."

The Black Bear with the suffering of beating with sobbing and told to the Indian police-

"Sir... please don't beat me. I am only... Bear. How can I say falsely as I am a lion, release me ... Sir."

The whole Team Experts and other 3 countries police got shocked and stunned, at the sight of the Indian police torturing the Black Bear to call itself as lion.

Of course, it is a joke in general to laugh about. But, please think about the fate of our criminal justice system.

Really this joke is a crude form of comment, in respect of the method of arrest and investigation. Otherwise, this joke is an assessment and opinion of our general public, with regard to the arrest and investigative efficiency of our Indian police.

It would be better, if I write here the real life story of ISRO Scientist Nambi Narayanan which could be more appropriate to prove the validness of the above said Joke theory.

Nambi Narayanan is a famous ISRO scientist was arrested on 30 Nov. 1994, and charged along his colleague D.Sasikumaran another scientist, one K. Chandrasekar an Indian agent for Russian space Agency, one S.K. Sharma is a contractor for ISRO as an Industrialist, with two Maldivian ladies Mariam Rasheeda and Fauzi Hassan (Who were unconnected with ISRO) in the name of conspiracy and espionage, and for having sold India's rocket science to an enemy country.

This case was registered at Vanchiyoor police Station (at Kerla), at the instance of one inspector Vijayan, special Branch, Trivandram city. Just because this Inspector when approached by Marian Rasheeda before returning to Maldives with flight tickets, he seized the flight tickets, and when she refused to do any sexual favours to this inspector to punish her, falsely charged for overstay under foreigners Act, 1946 and sent her to prison.

Then using the names of these two Maldivian ladies, the inspector Vijayan falsely created a great Espionage and conspiracy case against ISRO scientist Nambi Narayanan and others, then initiated the Vanchiyoor police to register a FIR.

Simply by registration of a FIR on false and vague espionage case Nambi Narayanan was got arrested, then in the name of inquiry and interrogation, he was beaten, tortured like a third rate criminal with a third degree method, respectively by local police, by special branch, by central IB, and by Central RAW police people. His interrogation was continued at a stretch for 30 hours nonstop, that too in his standing position. He was not allowed to sit down either on a chair, or on floor, because the police felt, he was "anti-National, who betrayed the mother land India by selling Rocket science and doing espionage work for Pakistan, an enemy country."

After hearing the news the whole family became collapsed. Nambi Narayanan's wife, son and daughter were looked and defamed very badly by the society around them, as they were "anti-nationals."

Finally, when the case was handed over to Central CBI, a top rank officer of CBI, after his fair and proper investigation through searching and perusing ISRO documents and files and enquiring ISRO and other connected people including public of that area secretly, came to a conclusion that the Vanchiyoor police station FIR of espionage and conspiracy case was simply a hoax. There was no such occurrence at all, never a rocket science was sold or transferred and which could not be transferred, since Rocket science could be only developed by scientists of a country after long research and development, by investing several minds, technologies and years. This was reported to Kerala Government by the CBI. Then after more than 50 days of police and prison custody Nambi Narayanan was released on Court Bail Order, and returned home.

There at home, his return from jail was not a moment to celebrate, because his wife became insane after hearing the news of arrest and police

custody of her husband, on the FIR of espionage as Anti-National. He had to take his wife to mental hospital to treat her illness.

He became frustrated, not only of his espionage case, but also due to the bad reporting of the case by the media people as voice of police authority, in all local national and international News Papers. With all indignities he faced for the days from arrest, though he was an international fame Scientist, on a particular day at home, he called his children to come near. He told them, "Children I want to commit suicide. There is no meaning to continue my life. When the police have charged me with such a false and heinous crime of espionage as Anti-National. I have not committed any wrong. What do you say?'

After a few calm minutes, his daughter got enraged and told him, "what are you saying father…. You want to die1! Then you want to leave us as children of Anti-National. No father. You need not die. You fight. Let us fight in Court, either at High Court or at Supreme Court to remove the false charge of espionage as Anti-National in the FIR of Vanchiyoor police Station."

Nambi Narayanan was consoled by the words of his daughter. He started his battle before higher Courts. Finally after a long 24 years of battle, he won at Supreme Court to remove the stigma of espionage case in FIR of Vanchiyoor Police station as false and ficitious.

Ofcourse, in the case of Nambi Narayanan having such personality and status, an International famous Space Scientist, having some intellectual contacts some financial support could have fought a battle for 24 years against a false espionage case of Vanchiyoor Police FIR upto Supreme Court and got success in proving his innocence and got 50 Lakhs Rupees as compensation, recently an additional compensation of rupees One Crore.

But is it possible in a case of ordinary people. Say about the plight of a common man in a false FIR. When the said common man has no financial support or relatives to help from his society means he has to languish in jail. His family members may be thrown to street.

As evidence and proof, let us see here from daily Newspapers how the ordinary common man, sometimes middle class, and even well to do people are also affected by wrongful arrest, remand in prison by the whimsical police authority, on the basis of false (FIR) and baseless cases, at some police station at any part of Tamil Nadu or any state in India.

Finally I arrived the following suggestion –

i) **The Arrest Power of Police without warrant prescribed in provisions Sec.41 (1) (b) and Sec.41 (1) (b a) should be repealed from Cr.P.C 1973, totally.**

ii) **The same shall be vested with the Judicial Magistrate, having jurisdiction of the area where the offence committed, for issuing warrant of Arrest, after submission of relevant records of evidence and final report, by the concerned SHO through the respective Asst. Public Prosecutor.**

iii) **That from registering of FIR on complaint or information, and commencing of investigation and collection of evidence and submission of final report for seeking warrant of arrest, everything should be done by the SHO or the investigating Police officer under control, supervision and direction of the Asst. Public Prosecutor of that area, where offence committed.**

Sir,

The respectful Committee Members for Criminal Law reforms, this is my concept, regarding Arrest Power to Police. Arrived after my long experience of 45 years as a lower Courts (Judicial Magistrate, District Sessions etc.) criminal side Advocate, and serious research of other Countries Criminal Justice Systems.

If the Committee takes this concept of removing the Arrest Power from the hands of Police and vesting the same with the hands of Magistrate Courts concerned, through Govt. Prosecutors, as its own and recommends for making BILL and in turn amendment of CrPC 1973, will definitely create New History both in our Criminal Justice System and consequently our Great Indian Civilization. Thanking you.

Yours Sincerely.
M.GNANAM B.Sc.,B.L.,
Advocate.