



**FACTORS INFLUENCING ARREST DISCRETION OF POLICE IN INDIA;
A SOCIO-LEGAL STUDY OF INDIAN POLICE**

BRIEF OUTLINE FOR THE STUDY

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Introduction:

Of the many duties performed by police, the arrest of suspect remains at the core. The legitimacy of coercive powers of detention, arrest and search come about by virtue of a sovereign government that is bound by social contract with its citizens. The state monopoly on the legitimate use of coercive force is derived from such social contract. As agents or representatives of the government, police are expected to uphold the obligations of social contract (Bernice, 2011). Because, it is argued that the “authority of police is derived from the people through the social contract. The power is held in public trust” (Moll, 2006). The police authority is a creation of such social contract to preserve life, liberty and pursuit of happiness of majority in the society by keeping the criminal and deviant elements at bay. Arrest is one such legitimate authority of police which is subject matter of intense debate and controversy since the creation of modern police in the mid-nineteenth century. Law makers and courts across the globe have been working over a century now with new laws and rulings on how to regulate this power and put restraints on the decisional latitude of police with more accountability.

Interestingly, only in the mid-twentieth century legal scholars and academics “discovered” that this wide decisional latitude is at the heart of police functioning. Whether to arrest or not and to let off with warning, whether to detain a person on suspicion and search, whether stop a vehicle for over-speeding are decisions governed by police officer’s discretion on the spot and at that moment. Furthermore, it was also found that police use a much higher amount of discretion than most other criminal justice officials. This is because police are the first point of call acting as “gate-keepers” of any criminal justice system (Halliday, 2009). But discretion is never unfettered. While statutes, codes, departmental guidelines, etc. provide directions for addressing the issues, most situations will require police to use discretion based on professional judgements and standards. But the exercise discretion should be fair, just, and reasonable and meant for the public good. Flexibility and discretion have the potential risk of delivering injustice and abuse of power (Fisk, 1974).

Research by police scholars and social scientists and literature study establishes that factors like situational, organisational, individual/attitudinal, and environmental determinants are at the forefront of influencing discretionary decision on behalf law enforcement (Gaines & Kappeler, 2003, Groeneveld, 2005, Hidayet, 2011). There are several components under each determinant that influence arrest discretion behaviour of the police.

Research Problem and Objective:

The research objective is to study the factors influencing the arrest discretion behaviour of police in India while making arrests without warrant in the post amendment period of arrest law. Following recommendations of the 177th Report of Law Commission of India (2001) the provisions of arrest without warrant were amended in the Criminal Procedure Code of India (CrPC) in the year 2009. The provisions of arrest without warrant by police continued as such in the procedural law since 1898 even after India adopted a written Constitution after independence in 1950. The Constitution guarantees that “no person shall be deprived of his life and personal liberty except according to the procedure established by law”. The

Supreme Court of India in Maneka Gandhi case (1978)¹ ruled that the procedure established by law must be “right, just and fair and not be arbitrary, fanciful and oppressive”. Any law not conforming to the “reasonableness” of Maneka Gandhi can be struck down as unconstitutional. The Law Commission argued that the language of the provisions of arrest without warrant enjoined in Sec 41 of the CrPC (pre-amendment) falls short of reasonableness as constructed in Maneka Gandhi and leaves the sole and absolute discretion with the police officer making arrest. Besides, taking into account study the National Police Commission Report (1981) on arrest and avoidable arrest, and having due regard to the rulings of the Supreme Court in Joginder Kumar and D.K. Basu, the Law Commission of India suggested sweeping amendments to the provisions of arrest without warrant. The law was amended in the year 2009 with the provision that police may arrest without warrant a suspect involved in offences that prescribe maximum punishment up to seven years only after certain conditions are justified in writing by the investigating officer, otherwise a notice can be served on the suspect with undertaking to produce himself for investigation as and when required. The law makers thus introduced a new category of offence by this amendment, i.e. “noticeable”. The legislative intent was to reduce number of avoidable arrests, overcrowding of the prisons, reduce police arbitrariness and regulate the discretion in arrest law.

A study of offences defined in substantive laws in India shows that 33.5 per cent i.e. approximately one-third of such laws prescribe punishment for more than seven years while two-third of such offences entails punishment for less than seven years. This effectively means that two-third of the cognisable offences in substantive laws in India are to be treated “noticeable” by the police. The figures of arrest should have been proportionately reduced but the figures show a disquieting trend, contrary to the intent of the law makers.

Joginder Kumar² and DK Basu³ are two leading judgements of the Supreme Court that paved the way for the recommendations of the 177th Law Commission to amend the law of arrest without warrant. In Joginder Kumar the court observed that “no arrest can be made because it is lawful for the police officer to do so. The existence of power of arrest is one thing; the justification for its existence is another. The police officer must be able to justify the arrest apart from his power to do so.” In quoting the report of Royal Commission on Criminal Procedure the court for the first time suggested that practice of “appearance notice” in petty offences may be adopted to reduce the use of arrest. The operative part of the judgement made it mandatory for the arresting officer to inform the relative of the arrestee about the arrest and place of detention following arrest. In DK Basu the court directed the state polices to follow “eleven point guidelines” in all cases of arrest and detention till legal provisions are made in that behalf. They include; bearing clear and visible identification by the arresting officer, preparation of memo of arrest in presence of a relative or witness, informing the relative about arrest, notifying place of detention, medical examination of the arrestee on his demand, allowing the arrestee to meet his lawyer etc. The eleven point guidelines became part of procedural law with the amendment of

¹ Maneka Gandhi v. Union of India, A.I.R. 1978 SC 597

² Joginder Kumar v. State of UP, 1994(2) Crime 106 SC

³ DK basu v. State of West Bengal, A.I.R. 1997 SC 610

CrPC in 2005. As has been mentioned in the preceding section, the amendments to provisions of arrest without warrant were brought by the amendments of 2009. Prior to the amendments of the law, “the orders so made shall be enforceable throughout the territory of India until the provision in that behalf is so made” are what the provisions of Article 142 of the Constitution of India state. Therefore, the rulings of the Supreme Court in Joginder Kumar and DK Basu were to be treated as laws prior to their inclusion in the CrPC by virtue of amendments in two phases in 2005 and 2009.

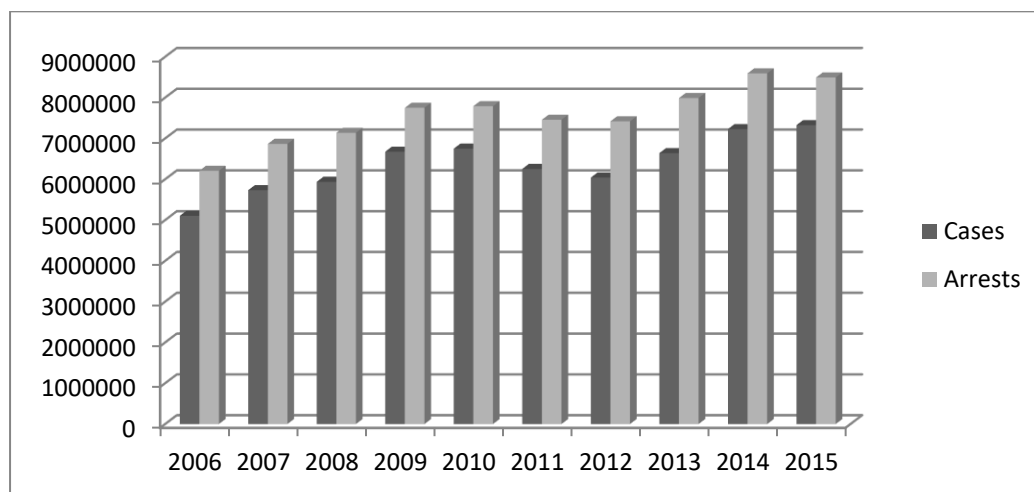
The post amendment period saw another land mark judgement of the Supreme Court in the year 2014. In Arnesh Kumar⁴, the court found lack of compliances to the provisions of arrest without warrant (Sec 41 CrPC) by police and introduced “check list” to be filled by the arresting officers furnishing the reasons and materials which necessitated arrest in “noticeable” offences. The check list shall be forwarded to the Magistrate who shall peruse the report before authorising detention. The decision not to arrest an accused person too is to be forwarded to the Magistrate within two weeks from registration of the case. The notice of appearance, if the formal arrest is dispensed with, is to be served within two weeks from the date of institution of the case.

Clearly, the “judicial rule making” by the court in all three occasions was either in response to fill the gap in the laws of arrest or to regulate the police arbitrariness or discretion in making arrests without warrant. The operative parts of the rulings were made part of departmental guidelines by the state polices on the basis of directives from the court.

An analysis of arrest figures without warrant by police in the pre- and post- amendment period shows that there has hardly been any reduction in the arrest figure. (Source: Crime in India, National Crimes Record Bureau, Ministry of Home Affairs, government of India)

The following graph (Graph A) represents a decennial registration of offences and arrests made by police in India and the Table (Table A) shows the average arrest per offence in the period 2006-2009 and 2010-2015.

Graph A



⁴ (2014) 8 SCC 283

Table A

Year	Ratio of arrest per offence	Average arrest per offence
2006	1.21	1.19
2007	1.19	
2008	1.20	
2009	1.16	
2010	1.15	1.18
2011	1.19	
2012	1.22	
2013	1.20	
2014	1.18	
2015	1.15	

The figures may not show a definite trend but one thing is clear that the average arrest per offence in post 2009 period, if that year is taken as benchmark since the law was amended then, does not show any appreciable decline as was expected following the amendment. The decline should have ideally followed the percentage of offences which are declared “noticeable” by the amended provision of Sec 41 CrPC in 2009, i.e. by a margin of two-third as the previous study shows but interestingly what it reflects is a very negligible decline in a statistical comparison. The average arrest per offence during the four year period from 2006 to 2009 was 1.19 and that during the six year period from 2010 to 2015 is 1.18 – a marginal drop of 0.01 per offence– whereas had the legislative intent been translated ideally, the decline would have been in the range of 0.5 to 0.7 (two-third of the offences being noticeable). In the field it would have been translated as one arrest per two offences as against more than one arrest per offence in the post amendment period, mirroring the trend of pre-amendment period.

The research problem, therefore, flows from these findings. The legislative intents, rulings of the courts and departmental guidelines have not resulted in desirable reduction in the number of avoidable arrests when offences punishable up to seven years of imprisonment are to be treated noticeable in the post amendment period. The logical questions that follow the observations should inquire further into the factors that act as impediments to the legislative intents and the rulings of courts and departmental guidelines. Is the exercise of arrest discretion enjoined in the amended arrest law too wide and also legally tenable to deny the legislative intent to be reflected on the ground? What are the factors that influence arrest discretion behaviour of the police?

The study is intended to be a deductive process, testing the validity of a number of premises and hypotheses that are derived from literature review by empirical study in the Indian context. Besides, certain degree of qualitative methodology will be employed by analysis of the interviews and case studies. The studies by western scholars on arrest discretion behaviour of police are mostly based on the characteristics of field patrol officers. Similar research in the Indian context is lacking and the study intends to fill in that research gap. The arrest discretion behaviour of police in course of arrest without warrant will be the focus of the study, which means the arrests made after registration of an offence by the police. The investigating officers will remain as the main focus of the study.

Definition of Terms and Literature Review:

The study uses several concepts including arrest without warrant, cognisable cases, discretion, exercise and abuse of discretion, factors influencing arrest discretion behaviour, police sub-culture and accountability. They need to be explained from the statute or from literature review.

Arrest: Arrest consists of the actual seizure or touching of a person's body with a view to his detention. The mere pronouncing of the words of the arrest is not an arrest unless the person sought to be arrested submits to the process and goes with the arresting officer. Words may, however, amount to an arrest if, in the circumstances of the case, they are calculated to bring to a person's notice that he is under compulsion and therefore submits to the compulsion.⁵

Black's Law Dictionary explains arrest as to deprive a person of his liberty by legal authority or taking, under real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand.⁶

The term 'arrest' is not defined either in the procedural Laws or in the various substantive Laws of India, though Section 46, Criminal Procedure Code, 1973 (CrPC) lays down the procedures on how arrest is made.

In *Roshan Beevi v. Joint Secretary to Govt. of Tamilnadu*,⁷ a Full bench of Madras High Court while explaining the meaning of the term "arrest" observed that the word "arrest" when used in its ordinary and natural sense, means the apprehension or restraint or deprivation of one's personal liberty. The question whether a person is under arrest or not, depends not on the legality of arrest, but whether he has been deprived of his personal liberty to go where he pleases. When used in legal sense in the procedure connected with criminal offences, an arrest consists in taking into custody of another person under authority empowered by law for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. Tyagi (2014) argues that the essential elements to constitute an arrest are that there must be an intent to arrest

⁵ Halsbury's Law of England, 3rd Edition Vol 10 Page 342

⁶ Black's Law Dictionary, 5th Edition, 1979

⁷ A.I.R. 1984 N.O.C. 103 (Mad)

under the authority accompanied by a seizure or detention of the person in the manner known to law, which is understood by the person arrested.

Cognizable Case: Section 41 CrPC of Chapter V deals with the circumstances when police can arrest without warrant or order of the Magistrate. Under the provisions of the Section police may arrest any person who commits a cognizable offence in presence of the police officer or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence.

It is pertinent to explain here what is meant by cognizable and non-cognizable offence. Sec 2(c) of CrPC defines a cognizable offence: “cognizable offence means an offence in which police officer may, in accordance with First Schedule of the or under any other law for the time being in force, arrest without warrant.” First schedule of the CrPC gives details of classification of offences defined in the Indian Penal Code (IPC) under six columns, such as, 1. Section of law 2. Offence description 3. Punishment 4. Cognizable or non-cognizable 5. Bailable or non-bailable 6. Triable by what court. To illustrate an example, offences related to marriage under Chapter XX of IPC like marrying again within the life time of a husband or wife, adultery etc. are non-cognizable offences though imprisonment for seven and five years have been prescribed, respectively upon conviction in those offences. Offences like murder, rape, grievous hurt, robbery, theft etc. are classified as cognizable offences even if the only imprisonment for three years is prescribed for conviction in a theft case. Therefore, it is not the quantum of punishment that differentiates whether an offence is cognizable or non-cognizable but probably the classification is based on the offences which require immediate police intervention without order from the court. However, this remains debatable and the scope of this research is not to go into details of the debate. Suffice is to say that the number of cognizable offences in the IPC far outnumber that of non-cognizable offences.

Besides the cognizable offences under the IPC, treated as a Criminal Major Act, a large number of offences under Criminal Minor Acts, sometimes referred as Special and Local Laws (SLL,) have been classified as cognizable offence, e.g. offences under Arms Act, Explosive Act, Narcotics Drug and Psychotropic Substance Act, State Excise Acts etc. Police have the power under Sec 41 CrPC to arrest persons involved in cognizable offences under minor criminal Acts too.

The scope of this research is limited to the arrests made by police without warrant under Sec 41 CrPC for involvement in cognizable offences both under IPC and SLL, not the preventive arrests as authorised under CrPC (Sec151) or under any other law for the time being in force.

Discretion: Although discretion is an unavoidable and ubiquitous feature of police work, it is also subject to significant controversy and debate. The “discovery” of discretion as a topic worthy of scholarly attention came relatively late. It was not until 1956, when American Bar Foundation (ABF) conducted a survey discovering that discretion operated at all levels of criminal justice system, that discretion was discovered and came to light. Discretion became an object of serious study of police researchers around the world by scholars like Kenneth Culp Davis (Discretionary Justice: A Preliminary Enquiry 1969,

Police Discretion, 1975), Wayne LaFave (The Need for Discretion, 1969), Joseph Goldstein (Police Discretion not to Invoke the Criminal Process, 1960), Ronald M. Dworkin (The Model of Rules, 1967), Herman Goldstein (Policing in a Free Society, 1977), Harold E. Pepinsky (Better Living Through Police Discretion, 1984), Samuel Walker (Taming the System: The Control of Discretion in Criminal Justice, 1993), John Kleinig (Handled with Discretion: Ethical Issues in Police Decision Making, 1996), Lloyd E. Ohlin and Frank J. Remington (Surveying Discretion by Criminal Justice Decision Makers, 1993), George L. Kelling ("Broken Windows" and Police Discretion, 1999) and host of other scholars. Besides, courts particularly in UK, Canada, the USA interpreted police discretion in common law through their rulings and pronounced guidelines on proper exercise of discretion by the police, while recognising that discretion is a ubiquitous and legitimate aspect of modern policing.

The lexical meaning of discretion, according to Oxford English Dictionary, is "the freedom to decide what should be done in a particular situation." Longman Dictionary of Contemporary English defines discretion "as the ability and right to decide exactly what should be done in a particular situation".

Black's Law Dictionary explains that "when applied to public functionaries, discretion means a power or right conferred upon them by law of acting officially in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgement or conscience of others."

One of the most cited definitions of discretion is that offered by Kenneth Culp Davis (Davis 1969). He states that a "public officer has discretion whenever the effective limit on his power leave him free to make a choice among possible courses of action or inaction". This, of course, is a very broad definition of discretion which does not distinguish between acceptable and unacceptable bases for discretion. Accordingly, Davis went on to point out that the discretion allowed to officials is typically structured or "fettered" by policies or guidelines designed to ensure the acceptable exercises of discretion. This is accurately captured in the Concise Oxford English Dictionary's definition of discretion as the "liberty of deciding as one think fit, absolutely or within limits". Such limits are typically designed to ensure that decisions are principled rather than arbitrary and they respect human and civil rights (Bronnitt and Stenning 2011).

Some elements of Davis' definition need special emphasis (Palmitto & Unittan, 2011). According to Davis discretion is not limited what is authorised or what is legal but includes all that is within the effective limits of officer's power. This phraseology is necessary because a good deal of discretion is illegal or has questionable legality. Another facet of the definition is that a choice to do nothing; perhaps inaction decisions are ten or twenty times as frequent as action decisions (Palmitto, Unittan, *ibid*). Discretion is not limited to substantive choices but extend to procedures, methods, forms, timing, and many other subsidiary factors.

Galligan (1986) notes how discretion is generally defined as the freedom that a decision maker enjoys to choose between alternatives. Terming such an understanding as simplistic, he argues that the standards used by the decision maker and the reasoning behind the choice are crucial. According to Galligan, discretion denotes "good judgement" and implies

choice exercised by a decision maker based on proper reasoning and supported by intelligible standards (Mrinal Satish 2016).

Halliday (2009) describes discretion in law enforcement as an official action that is taken by a criminal justice official i.e. police officer, lawyer or judge etc. in which they use their own individual judgement, to decide the best course of action. In theory, the criminal justice official considers the totality of circumstances before determining whether or not legal action should be taken an individual. Discretion is further a permission, privilege or prerogative to use judgement about how to make a practical determination. There are embedded constraints in exercise of discretion, which are bound by laws, rules, norms, and guidelines (Kleinig 1996).

Yale Law Professor, Ronald Dworkin (1967) likens discretion to “hole in the doughnut.” Police officers exercise discretion within this space. The surrounding boundaries represent laws, regulations, standards, rules and policy which supposedly constrict and restrict discretion. Ambiguity and vagueness create cracks in the boundary of the structure that results in policy failure. Thus, the cracks allow the discretion to seep outside the boundary and causes police officers to err (Dworkin 1967). A police officer operating in this manner on the edge of law inevitably leads to a chain of related events with significant impact. A minor incident of abuse of discretion leads to a chain reaction down the “slippery slope” which can establish arbitrary behaviour (Young 2011)

Kenneth Culp Davis (1969), Professor of Law at several Universities including Chicago and Harvard and also a former practitioner, reflecting on these findings, estimated that about half of the discretionary decisions made by criminal justice agencies were made by police. He added: “the police are among the most important policy makers of our entire society. And they are far more discretionary determinations in individual cases than any other class of administrators; I know of no close second” (Davis, 1969).

Consequently, some scholars and policy makers began to study how to control and shape discretion. At this point their thoughts started diverging out into two different directions. While one school of scholars like Davis (Davis 1975) believed in rule-making, regulations and accountability to tame unfettered discretion, others like Goldstein (1960) advocated eliminating discretion altogether. Pepinsky (1984) argues that discretion is a desirable part of policing and although it can be exercised unjustly, “there can be no justice without discretion.”

As scholars have pointed out, there are four main reasons why discretion is both a necessary and legitimate aspect of police work, some pragmatic and other more normative (Bronnit and Stenning, 2011).

1. No legislature has succeeded in formulating laws which encompass all conduct intended to be criminal and which clearly excludes all other conduct; (Walker and Katz, 2005)
2. Failure to eliminate and repeal the poorly drafted and obsolete laws renders the continued existence of discretion for fairness;

3. Discretion is necessary because limited resources make it impossible to enforce all laws and against all offenders; (Gaines And Kappeler, 2003)
4. The strict enforcement of the law would have harsh and intolerable results; (La Fave W 1969)

On the flip side, the arguments go that when police officers use individual discretion, they are in essence engaging in selective enforcement, which allows them “to redefine justice in terms of their own priorities, which might not correspond to the priorities of wider community” (Wortley, 2003). Secondly, by allowing police all the discretionary power without appropriate training and education to fairly exercise it, potential misuse and its direct consequence on individual’s liberty will be more prominent (Halliday, 2011). Thirdly, discretion offers opportunity to treat offenders on the basis of gender, race, and religion, age etc. inappropriately. Racial profiling is a good example of police discretion concerning race disparities. A final opposing argument, to discretion in law enforcement is that it breeds corruption within the department by abuse of discretion and misuse of authority. An instance of abuse of discretion could be clothed under its proper exercise as the dividing line between the two is often is very thin and blurred.

Since police are the first point of call acting as gate-keeper of any criminal justice system, much of its functions are subject judicial scrutiny. Besides, citizens have the right under the common law remedies to knock at the door of the courts to protect their rights and against abuse of authority. The pronouncements of the courts in different countries like the USA, UK, Canada, India etc. have shaped the police discretions over the years by bringing the abusers to justice, compensating the victim, defining the limits of discretion, engaging in the process of judicial rule making or even amending the legislation. In the Indian context, Joginder Kumar and DK Basu substantially contributed to the amendment of arrest law in last decade.

Accountability: Discretion and accountability are linked intrinsically. Pepinsky (1984) argues that accountability means having to answer for one’s actions or inaction. Accountability is synonymous with responsibility. Having to answer for one’s action makes sense only if one could have chosen to do otherwise. According to Davis (1969) discretion means choice of action. Pepinsky (1984) concludes that accountability implies discretion. Besides, as the authority of police is derived from the people through the social contract and the power is held in public trust (Moll 2006), the police must remain accountable to the public for its action. National Police Commission (1981) recommends that police should remain accountable to the people, to law and to the organisation - in that order. It also emphasises that accountability can be ensured by active supervision and depends upon the awareness of people of their rights and their willingness to exercise the same.

Factors of Discretion: The literature review of the determinants or factors influencing the arrest discretion behaviour of police has broadly categorised the variables under four major headings, such as, situational, organisational, environmental and individual (Gaines & Kappeler, 2003, Groeneveld, 2005, Hidayet, 2011). The organisational determinant has further been sub-divided into formal departmental policy and informal organisational

culture. The latter has been explained in term of police sub-culture. Police subculture is defined as a specific set of beliefs, attitudes, and behaviors exhibited by those in law enforcement. For the purpose of this research police sub-culture has been taken as a separate determinant as the variables under this head are critical and distinctive enough to deserve a separate identity. Literature review also suggests that studies on individual determinants produce mixed results with both strong and weak relationship and that relationship between attitude and behaviour is not strong enough to judge whether a set of values can guarantee a certain kind of behaviour. Therefore, no presupposition is drawn to study these aspects though the field study aims at collecting officer's gender, age, experience, and educational level etc. for any possible co-relation with arrest discretion behaviour. However, corruption as an important variable has been dealt under this head and it is highly unlikely that any meaningful study outcome can be obtained if the members of the police organisation are required to respond on the subject. Alternatively, it is decided that this aspect could be elicited by devising a suitable written interview schedule to be administered to individuals who have been arrested in "noticeable offences". The awareness about the legal rights or lack of it depends upon the socio-economic condition of the individual. Members of poor and marginal section of the society are more likely to be at the receiving end of discretionary abuse than their affluent counterparts. Having regard to these critical variables that influence arrest discretion, a new determinant has been introduced for the purpose this research, i.e. Rights Determinants, by selecting relevant variables from Situational and Individual Determinants. To sum up, the study intends to capture the police arrest discretion behaviour under Organisational, Sub-culture, Environmental and Rights determinants. Organisational determinant has further been sub-divided into Process, Policy and Value Dimensions by adopting the classifications followed by Groeneveld (2005) in his study of organisational influence on field patrol officers' arrest discretion behaviour. Some of the variables taken for this research are departmental guidelines, court rulings, supervision, accountability, training, statutory discretionary space, police sub-culture, political and media pressure, legal awareness of the suspect etc. under appropriate determinant.

Out of the five determinants – organisational, situational, subcultural, environmental and individual – the first one comprises legal variables like statute, court directives, departmental guidelines, manual rules while the situational determinants are partly guided by legal factors like seriousness of the offence, offender's criminal record etc. and partly by some extralegal factors like demeanour of the offender and individual officers characteristics. Rest of the determinants are extralegal⁸, complex and intangible in nature while considerably influencing the arrest decision. While the empirical research leaves little doubt that legal factors significantly influence arrest outcomes, arrest decision is not solely influenced by law, and that "policing is for the most part extralegal, for while officers work within the constraints of law, they seldom invoke law in performing police work" (Worden, 1989).

⁸ Extralegal is not synonymous with illegal. Extra-legal factors are those factors in decision making which are not regulated or sanctioned by law, yet have influence on shaping the final outcome of the decision.

Context of the Study:

The study has been undertaken in the context of Indian police. Article 246 of the Constitution of India read with List II of Seventh Schedule essentially designate the police as a state subject which means that the state governments of the union of India shall remain responsible for maintenance of law and order and frame the rules and regulations that govern each police force. These rules and regulations are contained in the police manuals of each state force. As on date, there are 29 state police and 7 union territory police organisations in India.

The head of the police force in each state is the Director General of Police (DGP), who is responsible to the state government for the administration of the police force in each state, and for advising the government on police matters. The DGP represents the highest rung in the police hierarchy. The hierarchical structure of the police in India follows a vertical alignment consisting of senior officers drawn, by and large, from the Indian Police Service (IPS) and provincial police services who do the supervisory work and the upper subordinates (inspectors, sub-inspectors, and asst. sub-inspectors) who work generally at the police station level, and the police constabulary who are delegated the patrolling, surveillance, guard duties, and law and order work. The constabulary accounts for almost ninety per cent of total police strength.

States are divided territorially into administrative units known as districts. An officer of the rank of Superintendent of Police heads the district police force. A group of districts form a range, which is looked after by an officer of the rank of Inspector General or Deputy Inspector General of Police. Some states have zones comprising two or more ranges, under the charge of an officer of the rank of an Inspector General of Police or Additional Director General of Police. In order to address the law and order problems of highly populated urban areas Commissioner of Police posts have been created by statute which additionally confers power of executive magistrates to the officers to address the urban disorders.

Every district is divided into sub-divisions. A sub-division is under the charge of an officer of the rank of Assistant Superintendent of Police or Deputy Superintendent of Police. Every sub-division is further divided into a number of police stations, depending on its area, population and volume of crime. Between the police station and the subdivision, there are police circles in some states - each circle headed generally by an Inspector of Police.

The police station is the basic unit of police administration in a district. Under the Criminal Procedure Code, all crimes have to be recorded at the police station and all preventive, investigative and law and order work are executed from the police station. A police station is divided into a number of beats, which are assigned to constables for patrolling, surveillance, collection of intelligence etc. The officer in charge of a police station is generally an Inspector of Police, particularly in cities and metropolitan areas. But, important police stations, in terms of area, population, crime or law and order problems, are placed under the charge of an Inspector of Police. In rural areas or smaller police stations, the officer in charge is usually in the rank of Sub-Inspector of Police.

The entry to Indian police takes place in three or four levels. The highest level entry is at the level of Assistant Superintendent of Police who has to qualify all India test to be a member of India Police service. Article 312 of the constitution of India provides for this All India service and regulates the service conditions of the officers. They rise in the rank to become senior supervisory officers and hold the leadership mettle of the police organisation. They are trained on leadership, police science, criminal law, field crafts and tactics etc. for two years before take up the field assignment. Next in hierarchy of direct entry is the Deputy Superintendent of Police who is recruited by the state governments and undergoes trainings at state police academies for two years before getting substantive post. The third direct entry is in the rank of Sub-Inspector of police which is the cutting edge level of the organisation. The officers manage the police stations, register offences, conduct investigation, have the power to arrest suspects, search and seize material evidences, regulate traffic and remain responsible for overall law and order situation in their jurisdiction. The minimum educational qualification for all these three direct entries is graduation. The last and lowest level of direct entry is that of a constable. Their minimum educational qualification is high school certificate or in some states junior college (plus two) and training varies from nine months to one year. A constable rises in the rank as head constable, Assistant Sub-Inspector and even Sub-Inspector on promotion, if he maintains a good service record.

Data on Police Organisation, published annually by Bureau of Police Research and Development, Ministry of Home Affairs, Government of India show that in the year 2015 the sanctioned strength of civil police is more than 1.8 million out of which one-sixth, i.e. approximately 3,00,000 are officers. Effectively, that is the massive number of officers empowered to arrest without warrant. There are 15,555 police stations, 727 police districts, 184 police ranges, 101 police zones and 53 commissioners of police in India (BPR&D 2016).

Despite 29 state police and 7 union territory police organisations and diversity in police forces, there is good deal of commonality among the organisations. “This is due to four main reasons:

1. The structure and working of the State Police Forces are governed by the Police Act of 1861, which is applicable in most parts of the country, or by the State Police Acts modelled mostly on the 1861 legislation.
2. Major criminal laws, like the Indian Penal Code, the Code of Criminal Procedure, the Indian Evidence Act etc. are uniformly applicable to almost all parts of the country.
3. The Indian Police Service (IPS) is an All India Service, which is recruited, trained and managed by the Union Government and which provides the bulk of senior officers to the State Police Forces.
4. The quasi-federal character of the Indian polity, with specific provisions in the Constitution, allows a coordinating and counselling role for the Centre in police matters and even authorizes it to set up certain central police organisations.” (CHRI, 2002)

5. The rulings of the Supreme Court of India on police matters are applicable and binding to all state and union territory police organisations

The study will undertake empirical research on Odisha police as the universe, one of the major state police organisations of India. Besides, random sample of IPS officers from across the country have been taken for the study purpose. Inductively, the research findings are expected to throw insight into the arrest discretion behaviour of the police in India.

Research Questions:

The study stems from the general inquiry whether the amended provision of CrPC of arrest without warrant during investigation (Sec 41CrPC) resulted in desirable reduction in the arrest figures in the India. The preceding discussions and data analysis do not substantiate the legislative intent. The subsequent inquiries flow from the research problem. The following research questions have been developed to explore the factors influencing arrest discretion behaviour of the police in India.

- RQ 1.** Are the discretionary latitudes wide enough in the amended arrest law of Sec 41 CrPC to deny realisation of legislative intent?
- RQ 2.** Are the determinants of arrest discretion behaviour in the Western literature significant for police in India?
- RQ 3.** Do the extra-legal determinants like subculture, environment and individual characteristics impact the arrest discretion behaviour of police in India?
- RQ 4.** Which among the three determinants, such as, organisational-, subcultural- and environmental determinants, is the dominant one in influencing arrest discretion behaviour?
- RQ 5.** Do the police in India have the arrest bias against “socially and economically marginal” people as an equivalent of “racial profiling” in Western literature?

Research Design:

The field study is intended to be a deductive process, testing the validity of a number of premises and hypotheses that are derived from literature review by empirical study. In the deductive process of measurement, each concept must be converted to concrete elements like variables or indicators that are meaningful to the world of experience (Kaplan, 1964). For example, in order to validate the influence of one of the components of police sub-culture, “Dirty Harry dilemma”, meaning use of illegal means to achieve an acceptable end, or as put by some scholars, meting out punishment (by police) to those who are guilty, but who, because of inefficiencies of criminal justice system are likely to escape retribution, response to the following interview schedule by a police respondent may elicit the degree of dilemma faced by him/her.

“Arrest and pre-trial custody during investigation is the only punishment meted out to anti-social and rowdy elements as they are most likely to get acquitted”

Response to this statement will be more meaningful to the “world of experience” of the police respondent than asking him/her to respond if he/she is affected by “Dirty Harry dilemma”.

Conceptually, each indicator/variable needs to be different from other indicator in order to measure a specified dimension. “This is consistent with the statistical notion that indicators should be additive, such that the accumulation of the indicators individually captures different dimensions and collectively they represent the conceptual space defined by the dimension (Blalock, 1982, Groeneveld, 2005).” Each variable under a major determinant or concept needs to be qualified with a statement which should be meaningful to the “world of experience” and collectively they must represent the concept. To take the previous example of influence of sub-culture on arrest discretion behaviour, the conceptual space of “sub-culture” is intended to be represented collectively by (i)“Dirty Harry dilemma” (criminal justice system is ineffectual), (ii)“us versus them” (public potentially hostile and untrustworthy), (iii)“thin blue line” (thin line between order and chaos), (iv)“code of silence” (to maintain solidarity and protect each other). Each necessarily needs to be qualified with a statement which the respondent must be able to relate to the “world of experience” and when responded must indicate the degree of his/her agreement or disagreement.

Operationalisation of Variables:

From the preceding discussion twenty four items representing indicators of the dimensions under each or combined determinants are enumerated as follows. They are operationalized as follows:

A. Organisational Determinants:

1. Policy Dimensions

- a. Specific Statutory Guidelines*
- b. Court Pronouncement e.g., Arnesh Kumar guidelines*
- c. Extensiveness of arrest policy e.g., Crime Branch Circular*
- d. Internal Review*

2. Process dimensions

- a. Supervisory monitoring*
- b. Weightage to supervisory instructions over personal judgement*
- c. Discovery of procedural violations*
- d. Departmental /legal actions*

3. Value Dimensions

- a. Independence*

- b. Discretionary Choices*
- c. Training*
- d. Community Policing*

B. Informal organisational /Sub-culture Determinants:

The Sub-culture Dimensions

- a. Dirty Harry Dilemma (criminal justice system is ineffectual)*
- b. “Us versus them” (public potentially hostile and untrustworthy)*
- c. “Thin Blue Line” (thin line between order and chaos)*
- d. “Code of Silence” (to maintain solidarity & protect each other)*

C. Environmental Determinants:

Societal Pressure Dimensions

- a. Fall-out of action*
- b. Public perception*
- c. Media & Civil society*
- d. Politics*

D. Situational/Individual determinants:

Rights Dimensions

- a. Socio-economic status*
- b. Awareness of rights*
- c. Legal assistance*
- d. Oblique motive- arrestee perception of police treatment*

The respondents for the first four dimensions will be chosen from among the police officers posted to the police stations, those who in course of investigation of offences resort to arrest of the accused persons as the scope of the research are limited to arrest by police in cognisable offences. The fifth dimension is meant to be responded by the persons who were either arrested or served notice by the police for their involvement in cognisable offences.

Each item under first four dimensions will be qualified either by one or in few cases by more than one statement to enable the respondent to respond by relating it to the “world of experience”. Since the dimensions and indicators developed for this research are constructed to be additive, the classical five-answer-choice Likert summated ratings scale is considered appropriate. The respondents will be asked to express their degree of agreement or disagreement with each item. The process of scoring will be achieved by assigning numerical values to the answer choices. The response format with five-answer-choice Likert rating scale is enclosed in **Annexure-A**. Statements 1 to 6 relate to policy dimensions, 7 to 10 process dimensions, 11 to 16 value dimensions, 17 to 20 sub-culture

dimensions and 21 to 24 environmental dimensions. Some items are worded such that agreement with the item represents a higher level of factors influencing discretion. Accordingly, a value of 5 has been assigned to strongly agree and each item choice after is numerically smaller until a strongly disagree receives a value of 1. Where disagreement with the item represents a higher level of influence on discretion, the items have been reverse coded, such that strongly disagree is assigned a value of 5 with subsequent items receiving smaller values through strongly agree which is assigned a value of 1. An example is illustrated below.

“Arrest and pre-trial custody during investigation is the only punishment meted out to anti-social and rowdy elements as they are most likely to get acquitted”

Strongly Agree	Agree	Cannot say	Disagree	Strongly Disagree
5	4	3	2	1

The last of the dimension- “Rights Dimensions”- will be captured by simple response format with information on socio-economic background of the arrestee and his interface with police. The response format is enclosed in **Annexure-B**.

Universe and Sampling Technique:

The state of Odisha is taken as a universe. The procedural and substantive laws are by and large uniform across the states in India, the Police Act of 1861 was applicable to all state polices until recently and the rulings of the Supreme Court are binding on the state polices. Therefore, inductively, the research findings are expected to mirror pan Indian characteristics of police discretion behaviour in making arrests in cognisable offences.

From the various types of available sampling methods, multi-stage sampling procedure for the present study work will be adopted. Considering feasibility of the study, the sample of the present study will be drawn in various steps as follows:

- Step-1: Select 15 districts out of 30 districts by adopting Simple Random Sampling Without Replacement (SRSWOR), considering 5 districts from each RDC Division, i.e., Central /Northern/Southern Divisions.
- Step-2: Select 2 other Police districts out of 4 extra Police districts by adopting SRSWOR.
- Step-3: Select 17 districts (15 + 2) including extra Police districts for the study.
- Step-4: Select 3 Police Stations from each selected 17 districts as follows:
 - i) One PS of Headquarter
 - ii) Two by adopting SRSWOR

Select 51 total Sample PS (3 PS x 17 districts = 51)

- Step-5: i) Select 2 Sub-Inspectors (SI) – preferably one male and one female (by own choice) from each selected PS. Total SIs is 102 (2x51)
 (If there is no woman Sub Inspector, a male counterpart will be chosen)
- ii) Select one Inspector (Officer –In- Charge) from each selected PS. Total Inspector is 51 (1x51)
- iii) Select 25 Deputy Superintendent of Police (DSP) as supervisors having jurisdiction over the selected police stations by own choice.
- Step-6 Select 2 persons (arrested/ served notice) from each Police Station by adopting Purposive Sampling. Total 102 (2x51)

In all, total 280 (SI-102, Officer-in-charge OIC-51, DSP-25, Victims-102) sampling (interview schedule) is to be covered and their opinions will be analysed using various statistical methods. Besides, purposive sample of senior police officers from rest of Indian states will be collected preferably from the National Police Academy, Hyderabad which conducts training programme for IPS officers of State and UT polices.

For the purpose of sample for Situational/Individual determinants 12 Districts have been selected by adopting SRSWOR. From each of these Districts, 3 police stations have been selected on simple random basis. From each police station 6 persons (purposive) have been selected out of which 4 have been arrested by police in “noticeable offences” and 2 have been served with notice in similar offences. The total number of samples comes to 216.

On the basis of research findings a set of recommendations on how to regulate the arrest discretion behaviour of the police will be proposed with the hope that the legislative intent of the 2009 amendment of the arrest law in the CrPC becomes a reality.

Data Analysis:

On the basis of responses from the Districts of Odisha and of the Senior Police Officers from across the country frequency tables have been prepared for correlation and regression analysis. The total response is as follows: Odisha Police personnel – 222, Senior Police Officers (All India) – 138 out of which 22 are from peer group. The rank varies from Addl DGP to Sub Inspector of Police. For the purpose of data analysis officers in the rank of Sub Inspector to Deputy Superintendent of Police are taken as non-supervisory rank officers and those from Addl SP to Addl DGP are taken as Supervisory officers. Further, as gender break up, there are 300 male officers and 60 female officers. The frequency tables for the purpose of data analysis have been prepared on four categories – All Samples (360), Odisha Police personnel (222), Senior Officers All India (138), Supervisory officers (158), Non-supervisory category (202).

193 samples collected for studying Situational/ Individual determinant are under analysis. After completion of coding and preparation of frequency tables the data will further be collated analysed under the four main independent variables, viz, Organisational, Sub-cultural, Environmental and Situational Determinants and their relationships with the arrest discretion behaviour of police.