Arrests and Detention

What is the issue?

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The recent incidents of arrests and the contentious procedure followed therein have led to various concerns.

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What are the recent incidents?

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- The heavy-handed treatment of those opposing the Chennai-Salem eight-lane highway project in Tamil Nadu
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- The arrests of Swaraj India Party's chief, Yogendra Yadav for being in a fact-finding mission to meet farmers affected by or opposed to the project.
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- The arrest and remand of a student in Tamil Nadu to 15 days judicial custody (before eventually let off on bail) for political sloganeering on an aircraft.
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- Very recently, the arrests of activists across the country over their alleged links to Maoists.
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- All these have come as a blow on the liberty of citizens.
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What is the legal mandate?

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- The power of arrest is conferred on the police to be employed with discretion and deliberation.
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- However, it is certainly not a tool of oppression and harassment for prosecuting authorities or the government of the day.
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- Section 41 of the CrPC, the law that empowers the police to arrest people without warrants, is reasonably stringent.
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- It demands that some conditions be met, including that such arrests be carried out to prevent -
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i. commission of further offences
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ii. tampering of evidence
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iii. influencing of witnesses
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- Also, Art 22 of the Constitution guarantees certain protection against arrest and detention in certain cases.
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- The Supreme Court has also emphasised that arrests should never be a hasty response to an allegation or a commission of an offence.
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What are the concerns?

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- The use of the power of arrest and the following course of events in the recent days seems to be overriding the due process.
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- The accused are being sent to custody after the police oppose bail.
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- The restrictions on bail are more severe when booked under the Unlawful Activities (Prevention) Act.
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- The prosecution has 180 days to file a charge sheet, a period during which bail is routinely denied.
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- And after the charge sheet is filed, bail is extremely difficult to secure as it is

dependent on the accused establishing his or her innocence.
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- In this prosecutorial ecosystem, jail succeeds in defeating bail request almost every time.
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- In contrast, magistrates, who are empowered to refuse remand and grant bail, continue to issue orders mechanically.
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- It is time to ensure that the chain of events of arrest, custody, and remand follow each other only by due process.
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Source: The Hindu

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