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Examining the Place of Detention and Arrest in the Criminal Justice System of the People's Republic of China

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Abstract

The right to personal liberty, a right that legal theory has long acknowledged as inherent, inalienable, and rooted in the natural rights tradition, occupies not merely a central place but a position of exceptional significance within the broader framework of contemporary and historical criminal justice systems. It functions as a fundamental cornerstone—indeed, a structural pillar—in safeguarding individuals against every conceivable form of arbitrary or unlawful deprivation of liberty, while at the same time guaranteeing that arrest and detention take place strictly and exclusively in accordance with established legal provisions, procedural safeguards, and the universally recognized requirements of due process. Consequently, it constitutes a foundational precondition for the full realization and effective enjoyment of all other rights and freedoms, for without physical liberty, the exercise of such entitlements becomes unstable and insecure. The exercise of human rights depends on foundational rights such as the right to life and the right to personal liberty. Among the hierarchy of fundamental human entitlements, personal liberty—standing immediately after the right to life—represents one of humanity's most vital and enduring concerns, and is counted among the oldest and most universally recognized human rights.

The notion of “liberty” is expansive in scope, embracing and encompassing a wide array of civil, political, economic, and social freedoms—freedoms that are deeply interwoven with the legal, moral, philosophical, and cultural values that underpin and sustain societies across different legal traditions. The principle of liberty, as one of the fundamental rights of individuals, underlies most of the safeguards provided at the preliminary stage of criminal proceedings in numerous international human rights instruments. The principle of the presumption of innocence—which lies at the very heart of criminal law—demands that personal liberty be maintained and respected up to the point at which a competent judicial authority proves an individual's guilt. Naturally, in situations where a person is suspected or accused of committing a crime, the protection and

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observance of their liberty become even more crucial than under normal circumstances. This is due to the clear reality that, in the course of criminal investigations, a suspect held in custody or temporary detention is far more vulnerable to infringements upon their rights and legal protections than one who remains at liberty, as the very condition of detention inherently increases such vulnerability.

It is precisely for this reason that paragraph 3 of Article 9 of the International Covenant on Civil and Political Rights explicitly stipulates that: "It shall not be the general rule that persons awaiting trial shall be detained in custody." On the other hand, however, pre-trial detention and the deprivation of liberty—particularly during the investigative stage and to prevent a suspect from destroying evidence—may be deemed important and necessary. Therefore, a pre-trial detention order to conduct preliminary investigations is one of the most important security measures that may be issued by a judicial authority.

Under the Constitution of the People's Republic of China, a broad spectrum of liberties is formally recognized for citizens, encompassing, among others, the right to personal liberty, freedom of expression, freedom of assembly and demonstration, freedom of religious belief, and freedom of marriage, with corresponding legislative measures designed to protect each of these rights in practice. Based on these rights and freedoms, the law provides legal protection for their specific manifestations. However, there is no consensus among Chinese jurists regarding the specific manifestations of the right to personal liberty. Some maintain that the right to personal liberty may be classified among relatively broad rights, which include human dignity, physical liberty, freedom of marriage, and the inviolability of one's home and residence. Others contend that personal liberty should also encompass the freedom and privacy of correspondence, while yet another group believes that the right to reputation and the right to privacy should likewise be included.

Chinese judicial practice holds that citizens' fundamental rights are determined by the state, and the government's responsibility to guarantee these rights has long been recognized in theory and in academic discourse in China. In 2004, the Constitution was amended to include this provision in the third paragraph of Article 33. China has undertaken practical measures aimed at reforming the criminal justice system, both legislatively and judicially, in light of international human rights law and particularly following the signing of the International Covenant in 1998, which placed greater emphasis on human rights protection. To this end, China has enacted or amended numerous domestic laws, including the Criminal Procedure Law, to fulfill its legal obligations.

Nonetheless, a persistent gap remains between the provisions of the law as articulated in legal texts and their actual implementation in practice, with certain legal protections either not enforced at all or applied only in a restricted and inconsistent manner. One of the most

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	<p>significant criticisms of the country's legal system concerns the existence of arbitrary arrests and detentions.</p> <p>It is anticipated that adherence to the provisions set forth in this international instrument, accompanied by a measurable reduction in arrest rates, will constitute a key benchmark in evaluating the effectiveness of arrest system reforms. Yet, prevailing academic discourse within the country underscores a more entrenched structural concern: the disproportionately high incidence of arrests, which has rendered arrest an almost routine legal response. In practical terms, the mere commission of an offense frequently, and often automatically, culminates in arrest. Leading Chinese legal scholars attribute this entrenched practice primarily to the insufficiency and lack of comprehensiveness in the existing statutory framework. Within the context of Chinese judicial practice, the legal definitions and practical applications of "arrest" and "detention" are notably distinct. The term "arrest" refers specifically to the procedural act of taking an individual into custody at the initial moment of deprivation of liberty. Conversely, "detention" denotes the sustained deprivation of liberty commencing from the moment of arrest and continuing uninterrupted until the individual's release. This conceptual and procedural differentiation remains a pivotal point of analysis in understanding the country's criminal justice process and in framing reforms aimed at aligning domestic practices with international standards. Due to the nature of the subject, the present study is applied in terms of purpose and, in terms of data collection, uses a documentary method. By studying valid laws and sources, the obtained information is analyzed descriptively and analytically. The findings indicate that the right to personal liberty has been recognized in Article 37 of China's Constitution. The exercise of this right has been referred to in China's CPL and CL. Nevertheless, according to China's judicial precedent and legal system, there have been cases of illegal and arbitrary detentions causing the violation of the right to personal liberty. Cases such as judicial detention, administrative detention, and customs detention are considered arbitrary detentions.</p>
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