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Paper : **Criminal Justice Administration**

Module : **Arrest Process in Criminal Justice Administration**





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Subject	Law
Paper	Criminal Justice Administration
Module Title	Arrest Process in Criminal Justice Administration
Module Id	Law/CJA/IX
Learning Objectives	<ul style="list-style-type: none">• After learning this module, the learners shall be able to understand the concept and meaning of arrest.• They are also expected to understand police officer's power to make arrest without warrant.• The learners shall be able to understand the instances of arbitrary arrest and the judicial response to it.• Rights of the arrestee
Pre-requisites	Basic understanding of the provisions of the Code of Criminal Procedure regarding Arrest and Constitutional protections to arrestee.
Key Words	Arrest, Rights of arrestee, constitutional safeguards, arbitrary arrest.



1. Introduction:

The process of arrest confers on the authorities a power to interfere with a person's freedom from physical restraint. However, from the point of view of the administration arrest is a process that ensures effective conduct of investigation, prevention of further criminal designs and availability of the accused for trial and consequent punishment. Thus the law of arrest entails fine balancing between the liberties of the arrestee, on the one hand, and the interest of the community to secure a crime free society, on the other. Often the law makers, the administrators and the judges face a dilemma to secure a crime free society but at the same time the right of personal liberty of a person should not be infringed without any reasonable cause and unnecessary arrest should be avoided. For this purpose various rights have been given to the arrestee by the Code of Criminal Procedure and by various judicial pronouncements. The Code also provides the procedure and the circumstances for effecting the arrest.

This module discusses the various provisions which deals with the arrest of a person without warrant by the police officer, private person and magistrate, the various steps taken by the judiciary and the legislature for the prevention of arbitrary arrest, various amendments made for this purpose, the manner of effecting the arrest and the rights of the arrestee.

2. What Constitutes 'Arrest'?

Black's Law Dictionary conveys the meaning of arrest as the restraint of a person's liberty through some lawful authority.¹ Arrest means a seizure or forcible restraint; an exercise of the power to deprive a person of his or her liberty; the taking or keeping of a person in custody by legal authority, especially, in response to a criminal charge.²

The term arrest is not defined in the Code. The code only provides the procedure for effecting the arrest and the circumstances in which arrest can be made. Arrest can be defined as taking a person into lawful custody for making him answerable to a criminal charge. Section 46 of the Code only provides how the arrest be made.³ This Section provides that the arrest is made by actual touching or confining the body of the person to be arrested. But if the person to be arrested submits him/herself to the custody then actual touch or confinement of the body is not required. The submission may be expressed by words or may be inferred from the conduct of the person.⁴

In the case of *State of U.P. v. Deoman Upadhaya*⁵ the accused approached a police officer investigating the offence. He offered to give information leading to the discovery of fact having a bearing on the charge which might be made against him. Supreme Court held that he had submitted to the custody by action within the meaning of sub-section (1) of this Section.

If the person to be arrested resists or tries to evade the arrest, then the person making the arrest is empowered to use all necessary means for the purpose of effecting the arrest.⁶ For such resistance or

¹ Black's Law Dictionary, 6th Edition.

² <http://legal-dictionary.thefreedictionary.com/arrest>.

³ Sec. 46, the Code of Criminal Procedure, 1973.

⁴ See Section 46(1) of the Code.

⁵ AIR 1960 SC 1125.

⁶ See Section 46(2) of the Code.



evading the arrest the person to be arrested may be convicted under Section 224 or Section 225 of the IPC. Means for the purpose of arresting the accused force can be used against him but this force should be reasonable force and be in proportion to resistance and necessary for the purpose of making the arrest. Unnecessary and unreasonable force should not be used.

Handcuffing is not necessary in all the cases for the purpose of making the arrest. In the case of *Birendra Kumar Rai v. UOI*⁷ it was held by the Court that arrest need not be by hand-cuffing a person, but could be complete even by the spoken words, if a person submits to the custody. In the case of *Prem Shankar Shukla v. Delhi Administration*⁸ the Supreme Court laid down the various conditions in which hand-cuffs can be used. Such as when the person is an accused of a severe offence, or when he is of desperate character, or the person is violent, obstructive or acting in a manner calculated to provoke popular demonstration, or the persons who are likely to escape or to commit suicide, etc.

Sub section (3) of section 46 provides that for the purpose of making the arrest even the death of the person to be arrested can be caused if the person is alleged to have committed an offence punishable with death penalty or life imprisonment. But in that case the burden shall be on the police officer or the other person making the arrest to prove that the accused was trying to escape and it was necessary to cause the death and there were reasonable grounds to believe that the accused has committed an offence punishable with death penalty or life imprisonment.

3. Legal Framework of Arrest Law:

There are two kinds of arrest:

1. Arrest without Warrant-

General Powers of arrest (Section 60A, Sections 41-45)

Special/Preventive Powers of arrest (Section 151)

2. Arrest under Warrant

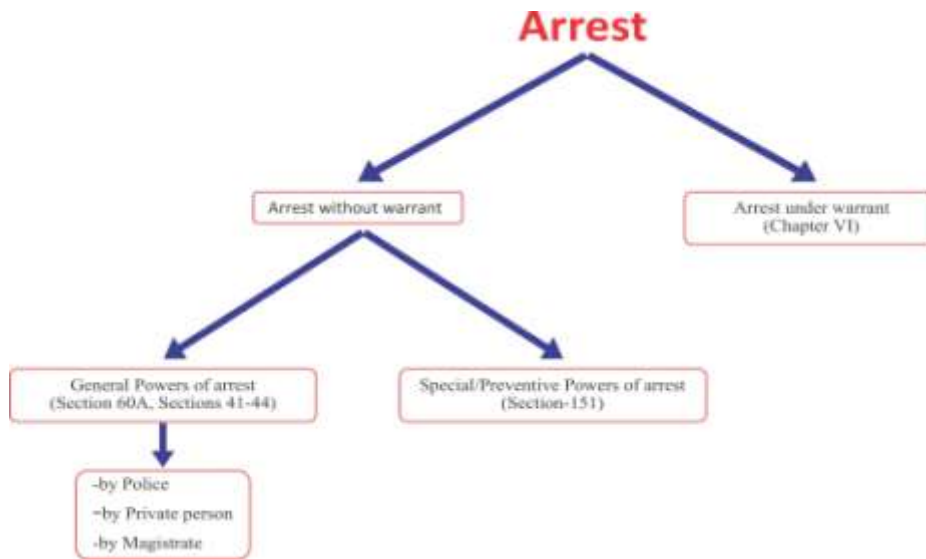
Chapter V of the Code of Criminal Procedure, 1973 deals with the arrest of persons without warrant. Section 41 provides for the situations when police may arrest without warrant. Section 42 deals with situation where a police officer can arrest without warrant in case of non-cognizable offences. Section 43 provides for the situation where an arrest can be made by a private person and the procedure to be followed thereafter. Section 44 deals with arrest by a magistrate. Section 46 provides the manner in which the arrest should be effected.⁹ Sections 50, 50A and 57 provides for the various rights of the arrestee.

Chapter VI of the Code deals with the arrest under the warrant. Sections 70 to 81 provide the procedure for effecting the arrest under the warrant, the various kinds of warrant and the rights of the arrestee.

⁷ 1992 Cr.L.J. 3866.

⁸ AIR 1980 SC 1535.

⁹ Sections 41-46, The Code of Criminal Procedure, 1973.



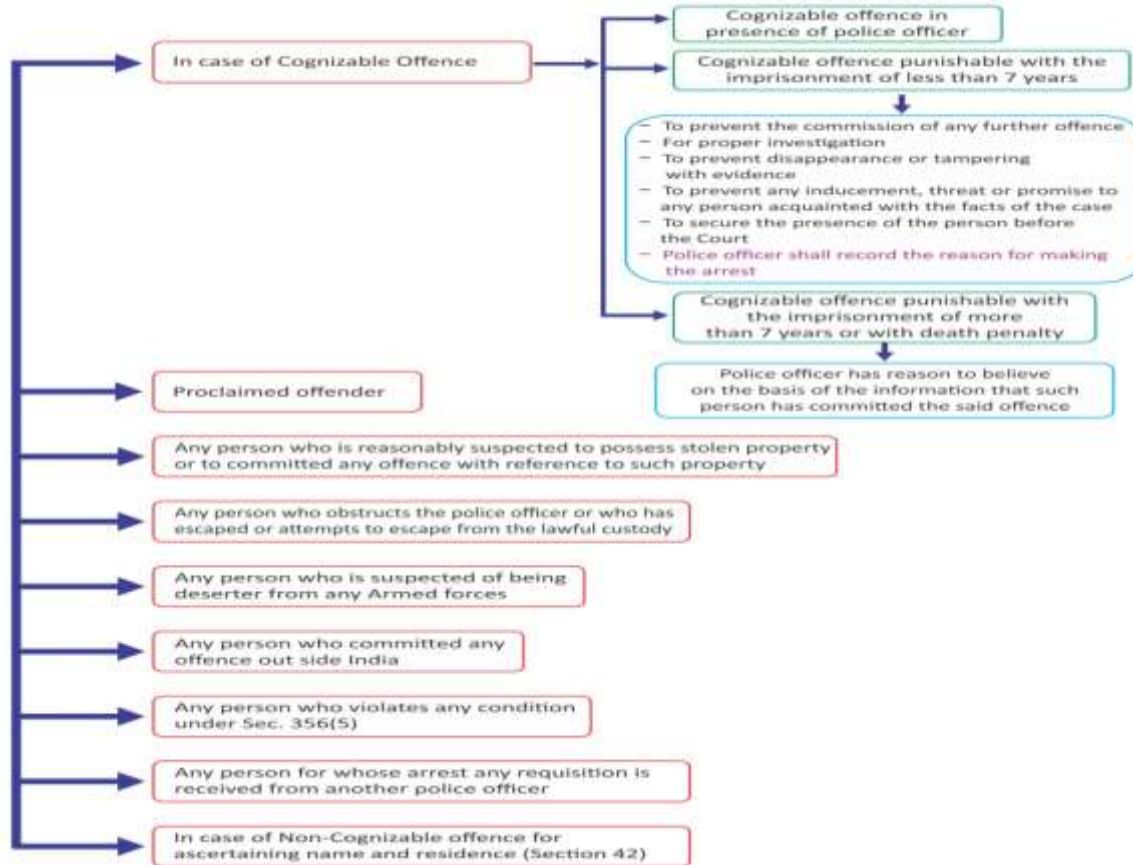
3.1 Arrest without Warrant: General Powers of Arrest (Section 60A and Sections 41-45)

Section 60A of the Code provides that no arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.¹⁰ The various provisions which authorize arrest without warrant are discussed hereafter.

¹⁰ See Section 60A of the Code.



Arrest without warrant by Police Officer (Section 41 & 42)



3.2 Police Officer's Power to arrest without warrant:

Section 41 deals with the powers of police officer to make arrest without warrant. It means that in all the cases arrest cannot be made by the police officer without warrant, except only in circumstances enumerated in these sections.

3.2.1 When Police Officer may arrest without warrant: Section 41(1)

Section 41(1)(a) enumerates the circumstances in which a police officer is empowered to make the arrest without warrant. This Section only gives the discretionary power to police to make arrest. It is not mandatory to make the arrest on the part of police officers in the circumstances mentioned in this section. As the opening line of section 41(1) says “Any police officer **may** without an order from a Magistrate and without a warrant, arrest any person”.¹¹

¹¹ Section 41(1) of the Code.



Section 41(1) confers a discretionary power on the police officer to decide whether in a given case arrest is required or not. Such exercise of power of arrest should be reasonable and to be exercised only in cases where the immediate arrest and the prompt action is needed. When the legality of an arrest is challenged, the burden is on the police officer to satisfy the Court that he had reasonable ground of suspicion.¹² The malicious and excessive exercise of the power of arrest under these Sections would be punishable under Section 220 of the IPC.¹³

The various circumstances in which a police officer may arrest without warrant are as follows:

A. Arrest in Case of Cognizable Offences:

Prior to Criminal Procedure Code (Amendment) Act of 2008, a police officer had wide discretionary powers to make arrest. The provision was clothed with expressions like *reasonable complaint*, *credible information* and *reasonable suspicion* which required the police officer to first confirm himself about the reasonability or the credibility of the information before effecting arrest. But in reality it did not prove of much help to guide such exercise of discretion.¹⁴ It was also evident from the decisions of some High Courts.¹⁵

Finally, the Supreme Court in two landmark cases decided to limit the potential misuse of power of arrest by the police. Through these cases the Supreme Court has laid down various guidelines for prevention of the arbitrary exercise of such power of arrest.

In the case of *Joginder Kumar v. State of U.P.*¹⁶ the Supreme Court has held that *no arrest can be made because it is lawful for the police officer to do so. The existence of the power is one thing. The justification for the exercise of it is quite another. No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person his liberty is a serious matter.*¹⁷

After making such observation the Court has laid down following steps to be followed in cases of arrest in a cognizable case:

1. An arrested person being held in custody is entitled, if he so requests, to have any friend, relative or other person who is known to him or likely to take an interest in his welfare, told, as far as practicable, that he has been arrested and where he is being detained.

¹² *Emperor v. Vimlabai Deshpande*, AIR 1946 PC 123.

¹³ R.V. Kelkar, *Criminal Procedure*, Eastern Book Company, Fifth Edition (2008), pg. 55.

¹⁴ Section 41(1)(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned.

¹⁵ In the case of *Bir Bhardra Pratap Singh v. D.M. Azamgarh* AIR 1959 All 384, it was observed by the Allahabad High Court that even if a police officer has been empowered by Section 41 to arrest without warrant, this power is to be exercised in circumstances where the obtaining of a warrant from a Magistrate would involve unnecessary delay defeating the arrest itself.

¹⁶ (1994) 4 SCC 260.

¹⁷ *Id.* at 267.



2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.
3. An entry shall be required to be made in the Diary as to who was informed of the arrest.¹⁸

In *D.K. Basu v. State of West Bengal*¹⁹ the Supreme Court has further extended the protection from arbitrary arrest. In this case the Supreme Court laid down the various requirements which should be followed while arresting a person. Some of the important requirements are listed below:

- (i) The police making the arrest should bear an accurate, visible and clear identification and name tags.
- (ii) That the police officer making the arrest shall prepare a memorandum of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a family member of the arrestee or a respectable person of the society, it shall also be signed by the arrestee and shall contain the time and date of arrest.
- (iii) The arrestee shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place.
- (iv) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- (v) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed; of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- (vi) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor-injuries, if any, present on his/her body, must be recorded at that time.
- (vii) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor.
- (viii) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
- (ix) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

¹⁸*Id.* at 268. The authors like Prof. B.B. Pande urged that “these protections from power of arrest must be held to flow from Articles 21 and 22(1) and enforced strictly. It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with. *See*, B.B. Pande, ‘Human Rights and Criminal Justice Administration in India’ in K.I. Vibhute (ed.) *Criminal Justice: A Human Rights Perspective of the Criminal Justice System in India* 105 at 108 (Eastern Book Co., Lucknow 2007).

¹⁹AIR 1997 SC 610.



(x) A police control room should be established at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be displayed on a conspicuous notice board.

In light of the guidelines issued by the Supreme Court in the above mentioned cases and the observations made by the National Police Commission in its 3rd Report, the provisions relating to arrest in cognizable cases has gone a sea change by the Criminal Law Amendment Act of 2008. The original clause (a) and (b) in section 41 were substituted with the following clauses by the Amendment Act of 2008:

Section 41(1)-

“(a) who commits, in the presence of a police officer, a cognizable offence;

(b) 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 punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) The police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) The police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall **record** while making such arrest, his **reasons in writing**.

(ba) Against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine 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;²⁰

After the Amendment Act of 2008 now in case of all the cognizable offences police officer cannot arrest without warrant. Amended clause (a) provides that the police officer can arrest without warrant if the

²⁰ Section-5 of the Criminal Procedure (Amendment) Act, 2008.



cognizable offence is committed in his presence. The other cases relating to the cognizable offence in which police officer acts only on the ground of information or complaint or suspicion but those are not committed in his presence are covered under clause (b) and (ba).

Clause (b) provides for the less serious offences which are punishable upto the imprisonment of seven years, in case of those offences the arrest can be made without warrant but only for the purposes mention in that clause and the police officer is also required to record the reason for making the arrest. However the police officer is empowered to make the arrest without warrant only on the ground of credible information in case of the serious offences which are punishable with the imprisonment of more than seven years under clause (ba). This clause (ba) gives a wide discretionary power and does not, like clause (b), provide the purposes only for which the arrest can be made and like clause (b) no reason is required to be recorded.

By the Amendment Act of 2008 the original clause (b) relating to person in possession of house breaking instrument has been repealed because of grossly misuse by the police officers.

In fulfillment of the guidelines issued by the Supreme Court for the prevention of arbitrary arrest Section 41A to Section 41D were inserted by the Amendment Act of 2008.

Section 41-A provides that even in case of cognizable offences before making the arrest the police officer shall issue a notice to the accused for his appearance before him and if he does not comply with the notice, only then the arrest should be made without warrant.

Section 41-B provides that the police officer at the time making the arrest shall bear an accurate, visible and clear identification and shall prepare a memorandum of arrest.

Section 41-C provides for the establishment of control rooms at the District and State level at the notice board of which the list of names of all the arrestees shall be displayed.

Section 41-D provides for the right of the arrestee to meet his advocate even at the stage of interrogation.

B. Arrest of the Proclaimed Offender:

Section 41(c) provides that any person, who has been proclaimed as an offender either under this Code or by the order of the State Government, can be arrested by the police officer without warrant.²¹

C. Arrest of a person in possession of stolen property:

Clause (d) provides that a person, who is suspected to be in possession of stolen property or a person who is suspected to have committed an offence in relation to that property, can be arrested without warrant.²² In order to exercise the power under this clause, the suspicion of the police must be 'reasonable', i.e. founded on unsatisfactory replies of the person on interrogation as to his belongings or

²¹ See Section 41(c) of the Code.

²² See Section 41(d) of the Code.



on inquiries as might be proper in the circumstances, so that he may be said to have acted in good faith.²³ The term ‘Stolen Property’ is defined under Section 410 of the IPC.

D. Arrest of obstructor or absconder:

Section 41(e) provides that a person, who obstructs a police officer in the discharge of his duties, can be arrested without warrant.²⁴ It is important to note here that obstructing a public servant in the discharge of his official duties is a non-cognizable offence under Section 186 of the IPC. But this clause provides that in case of obstruction to the police officer, arrest can be made without warrant.

This clause also provides that a person who has escaped or attempts to escape, from lawful custody, can be arrested without warrant. It is important to note that it is not necessary that the escaped person must have committed a cognizable offence.²⁵ The person, who escapes from lawful custody, can be convicted for such an action under Section- 224 of the IPC.

E. Arrest of a deserter:

Section 41(f) provides that a person who is reasonably suspected of being a deserter from any of the Armed Forces of the Union, can be arrested without warrant.²⁶

F. Arrest of the person having committed the offence outside India:

Section-41(g) provides that a person, who has been concerned in or against a reasonable complaint has been made or a credible information has been received or a reasonable suspicion exists of his having been so concerned in the commission of an offence outside India, can be arrested without warrant.²⁷ It is important to note that it is not necessary that the act done by the accused must be punishable as an offence in that foreign country and it is also not necessary that the offence must be cognizable one. This clause applies in case commission of any offence, whether cognizable or non-cognizable, committed outside India.

G. Arrest of a person who violates the conditions imposed under Section 356:

Section-41(h) provides that in case of violation of the conditions imposed under Section 356(5) relating to the notification of residence or change in, or absence from residence by the released convicts, arrest can be made without warrant.²⁸

H. Arrest in case of requisition by another police officer:

Section-41(i) provides that when a requisition, written or oral, is received from another police officer for the arrest of a person, then he can be arrest without warrant.²⁹ This provision is designed to

²³ D.D. Basu, Criminal Procedure Code, 1973 pg.193 (Butterworths Wadhwa, Nagpur 2010).

²⁴ See Section 41(e) of the Code.

²⁵ *Id.*

²⁶ See Section 41(f) of the Code.

²⁷ See Section 41(g) of the Code.

²⁸ See Section 41(h) of the Code.

²⁹ See Section 41(i) of the Code.



facilitate the arrest of a person at a distance. However, the circumstances which justify the issue of such requisition are not mentioned in this Section.³⁰

3.2.2 Arrest without warrant in Case of Non-Cognizable Offence:

Section 41(2) provides that no person accused of committing a non-cognizable offence can be arrested without warrant.³¹ However Section 42 provides a situation in which the police officer can arrest without warrant even in case of non-cognizable offence. This Section provides that when any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer for the purpose of ascertaining his true name and residence.

As soon as the name and residence is ascertained, that person shall be released on his executing a bond. If the name and residence cannot be ascertained within 24 hours, then he is required to be produced before the Magistrate.³²

However, the police officer must have reason to believe that the name or residence is false only then the power can be exercised under this Section. Where the person refuses to produce some document in his possession (e.g. a driving license), from which his identity could be verified, the police officer may be said to have reason to suspect that the name and address given by the person were false.³³

3.3 Arrest by Private Person:

Section 43 provides that a private person may arrest or cause to be arrested the following two categories of persons:

- i. a person who in his presence commits a non-bailable and cognizable offence, or
- ii. a proclaimed offender.

Under the old Code of 1898 only a private person in whose view the offence is committed, was entitled to arrest without warrant but he was not authorized to take assistance of third person for the purpose of effecting the arrest. As Section 59(1) of the old Code reads as under:

*“Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender.”*³⁴

This question was raised in the case of *Abdul Habib v. The Satate*³⁵ before the Allahabad High Court. It was observed by the Court that Section 59 provides that any private person may arrest any person who in his view, commits a non-bailable and cognizable offence and a third person who has not seen the commission of the offence is not entitled to arrest.

³⁰ *Supra* note 23 at 195.

³¹ See Section-41(2) of the Code.

³² See Section-42 of the Code.

³³ *Supra* note 23 at 205.

³⁴ See Section-59 of the Code of Criminal Procedure, 1898.

³⁵ 1974 Cr.L.J. 248.



However, in the new Code under Section 43 the words are used “any private person may arrest or cause to be arrested any person.....”. It suggests that under the new Code the assistance can be taken from a third person for the purpose of effecting the arrest even though that third person has not seen the commission of the offence.

In the case of *Nazir v. Rex*³⁶ it was held by the Allahabad High Court that Section 46(2) authorizes a private person to “use all means necessary to effect the arrest.” Words “all means” are very wide and include the taking of assistance from others in effecting the arrest.

Another important thing to note is that the private person can make the arrest under Section-43 long after the commission of the offence. As it was held in the case of *In re: Kolavennu Venkayya*³⁷ that Section 59(1) (old Code) does not say that if a non-bailable and cognizable offence was committed long ago, a person who actually was present at that time could not arrest him whenever he liked i.e. long after the commission of the offence. The expression actually used by the Legislature is “commits” and not “had committed”.

Section 43 provides that after making the arrest, the private person shall immediately hand over the accused to the police officer and if no police officer is present there, to the nearest police station.

Sub Section(2) provides that if the police officer has reason to believe that such person comes under Section 41, then he shall re-arrest him.

Sub Section(3) provides that if the police officer has reason to believe that such person has committed a non-cognizable offence, means such person cannot be arrest without warrant, then the procedure given in Section 42 with respect to the non-cognizable offences shall be adopted.³⁸

However, if wrongful arrest is made by the private person, i.e. arrest in case of a non-cognizable offence or arrest long after the commission of the offence or arrest with the intention to detain, the accused has the right of private defence against the private person and the accused cannot be convicted for the resistance to arrest under Section 224 or Section 225 of the IPC. On the other hand, the private person can be made liable for the offence of wrongful confinement under Section 340 of the IPC. However, the private person cannot be made liable for the *bonafide* arrest, as for example it was not known to him that whether the offence is cognizable or non-cognizable.

3.4 Arrest by Magistrate:

According to Section 44 a Magistrate can arrest the following to categories of persons:

- (i) any person who commits an offence in the presence of the Magistrate. [Sub Section (1)]
- (ii) any person for whose arrest, such Magistrate is competent to issue a warrant. [Sub Section (2)]

Certain things are important to note under this Section that this power can be exercised by any Magistrate whether executive or judicial and with respect to any offence, whether cognizable or non-cognizable, if committed in presence of the Magistrate, the arrest can be made.

³⁶ AIR 1951 Allahabad 3.

³⁷ AIR 1956 Andhra 156.

³⁸ See Section- 43 (2)&(3) of the Code.



In the case of *Cf. Chari v. State*³⁹ the Supreme Court has held that though there is no express provision, a Magistrate may also issue a warrant before taking cognizance, in cases where a police officer would be competent to arrest without warrant, under Section 41, for it would be unreasonable to hold that a Magistrate cannot do what a police officer can, namely, to arrest a person suspected of having committed an offence specified in Section 41.⁴⁰

After making the arrest that Magistrate is required to produce the accused within 24 hours before another Judicial Magistrate for the purposes of Section 57 and Section 167. That Magistrate is not empowered to authorize the remand of the arrested person under Section 167. According to 479 that such arrested person cannot be tried by the Magistrate who made the arrest.

4. Arrest of Female Person:

Several times the incidents are recorded of the custodial violence and custodial rape by the police officers with the woman arrestee. To prevent the incidents and to maintain the dignity of the woman steps have been taken by the judiciary and the legislature.

The Nagpur Bench of the Bombay High Court in *Christian Community Welfare Council of India v. State of Maharashtra*⁴¹, with a view to prevent custodial violence by the police against female arrestees and detainees, directed the Maharashtra Government to issue the additional requirements. It was ordered by the Court that The State Government should issue instructions immediately in unequivocal and unambiguous terms to all concerned that no female person shall be detained or arrested without the presence of lady constable and in no case, after sunset and before sunrise.⁴²

The Maharashtra Government filed an appeal against the decision of Bombay High Court in the Supreme Court. The Supreme Court in the appellate case⁴³ revised the instructions and held:

We think the object will be served if a direction is issued to the Arresting Authority that while arresting a female person, all efforts should be made to keep a lady constable present but in circumstances where the Arresting Officer is reasonably satisfied that such presence of lady constable is not available or possible and/or the delay in arresting is caused by securing the presence of a lady constable would impede the course of investigation such Arresting Officer for reasons to be recorded either before the arrest or immediately after the arrest be permitted to arrest a female person for lawful reasons at any time of the day or night depending on the circumstance of the case even without the presence of a lady constable.⁴⁴

The Law Commission of India in its 135th Report⁴⁵ on Women in Custody recommended to add the following proviso in Sec. 46(1) and a new sub section after Section 46(3) providing for the arrest of a female person.

³⁹ AIR 1957 SC 207.

⁴⁰ *Supra* note 23 at 231.

⁴¹ 1995 Cr. L.J. 4223(Bom).

⁴² Dr. K.I. Vibhute, 'Criminal Procedure', Vol. XL *Annual Survey of Indian Laws* at 179 (2004).

⁴³ *State of Maharashtra v. Christian Community Welfare Council of India*, AIR 2004 SC 7.

⁴⁴ *Supra* note 42 at 180.

⁴⁵ Law Commission of India, 135th Report on 'Women in Custody' at 5 available at: http://lawcommissionofindia.nic.in/old_reports/rpt135.pdf.



In fulfillment of the above mentioned direction issued by the Supreme Court and the recommendations given by the Law Commission of India some provisions have been inserted by the amendments in the year 2005 and 2008 in the Cr.P.C.. These are as follows:

1. Sub Sec. (4) has been inserted in Sec. 46, Cr.P.C. by the Criminal Procedure (Amendment) Act, 2005:

“(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.”⁴⁶

2. A Proviso has been inserted after Sub Sec (1) of Sec. 46, Cr.P.C. which is as follows:

“Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.”⁴⁷

5. Rights of the Arrestee:

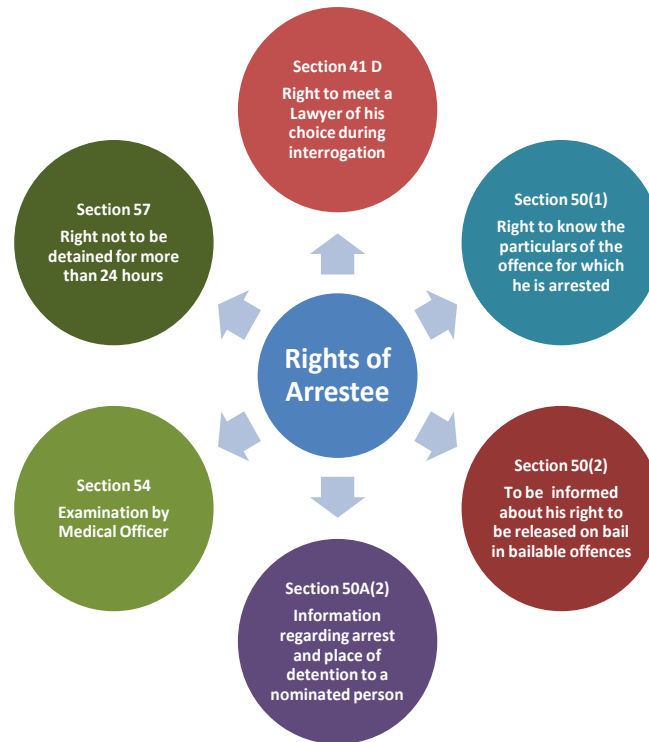
Chapter V which relates to the arrest without warrant provides certain rights to the arrestee in case of arrest without warrant.

⁴⁶Sec. 6, The Criminal Procedure (Amendment) Act 2005.

⁴⁷Sec. 7, The Criminal Procedure (Amendment) Act 2008.



Rights of Arrestee



5.1 Right to know the grounds of arrest:

Section-50(1) provides that when a police officer or the person makes an arrest without warrant then he is required to inform to the arrested person the grounds of his arrest.⁴⁸ This is a mandatory provision. This provision fulfills the constitutional objective given under Art. 22(1).

In the case of *Vikram v. State*⁴⁹ it was held that an accused must be informed of the bare necessary facts leading to his arrest. It is difficult to prescribe any form in which the information must be given. An arrested person must know the grounds and the reasons and the facts that in respect of whom and by whom the offence is said to have been committed as well as the date, time and place of the offence etc.

The burden lies on the police officer to prove that the provisions of this Section have been complied.

⁴⁸ See Section-50(1) of the Code.

⁴⁹ 1996 Cr.L.J. 1536.



In case of arrest under warrant also reasons of arrest need to be disclosed. As it is given under Section 75 of the Code that the police officer executing the warrant is required to notify the substance of the warrant to the person to be arrested.⁵⁰

Sub Section (2) of Section-50 provides that when a police officer makes an arrest without warrant in case of a bailable offence then he is required to inform the arrestee that he has a right to be released on bail.⁵¹

5.2. Right of the arrestee to be produced before a Magistrate within 24 hours:

Section-57 of the Code provides that when a police officer makes an arrest without warrant then the arrestee is required to be produced before the Magistrate without unnecessary delay and this period should exceed 24 hours from the arrest.⁵²

This provision is in consonance with the constitutional mandate given under Art. 22(2). The object of the provision is that the arrest must come into the judicial consideration and some or the other Judicial Magistrate must check the legality of the arrest.⁵³ It is not necessary under this Section that the arrestee must be produced before the Magistrate having jurisdiction, but before any nearest Magistrate.

This is a mandatory provision and the detention beyond 24 hours becomes illegal and the police officer can be convicted for the offence of wrongful confinement under Section-340 of the IPC.⁵⁴

However this period of 24 hours is excluding the time necessary for the journey from the place of arrest to the Magistrate's Court.

This Section does not authorize the police officer to detain the arrestee for the period of 24 hours in all the cases without any reasonable cause. In the case of *P. Swarupa and etc. v. State of A.P.*⁵⁵ it was held that Section 57 of the Code does not empower a police officer to keep an arrested person in custody a minute longer than is necessary for the purpose of investigation and it does not give him an absolute right to keep a person in custody till 24 hours. The police officer shall, without unnecessary delay, take or send the arrested person before a Magistrate. The 24 hours prescribed under Section 57 is the outermost limit beyond which a person cannot be detained in the police custody. It is certainly not an authorization for the police to detain him for 24 hours in their custody. It is only in a case where a police officer considers that the investigation can be completed within 24 hours that such detention for 24 hours is permitted.

6. Law of arrest and Judicial Process:

Recently in the case of *Arnesh Kumar v. State of Bihar and another*⁵⁶, which is a case with regard to the misuse of power of arrest in matrimonial case, the Hon'ble Supreme Court once again made the observations for the prevention of unnecessary arrest in the following words:

“... No arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the

⁵⁰ See Section-75 of the Code.

⁵¹ See Section-50(2) of the Code.

⁵² See Section 57 of the Code.

⁵³ Supra note 23 at 255.

⁵⁴ *Sharifbai Mehmoob v. Abdul Razak*, AIR 1961 Bombay 42.

⁵⁵ 1996 Cr.L.J. 2607.

⁵⁶ CRIMINAL APPEAL NO. 1277 OF 2014



justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation.”

In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed, the power of arrest needs to be exercised.

The Supreme Court issued the following guidelines to avoid the unnecessary delay:

- (1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C.;
- (2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);
- (3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;
- (4) The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;
- (5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;
- (6) Notice of appearance in terms of Section 41A of Cr.P.C. be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;
- (7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.
- (8) Authorizing detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

The Court added further that the directions shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, but to all cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years.



7. Summary:

At the last a summary of this module can be presented. For the purpose of securing the presence of the accused for conducting the investigation and for the fair trial, the arrest is required to be made. The Code makes a wide range of provisions in this regard. The police officer has the power to make the arrest without warrant in the circumstances given under Section-41 but this power should not be exercised arbitrarily and for the prevention of arbitrary arrest the Supreme Court has provided several guidelines time to time. The recent amendment made in the year 2008 also provides various provisions for the prevention of arbitrary arrest. In certain circumstances given under Section-42 police officer can make the arrest without warrant even in case of non-cognizable offences. Section-43 provides the circumstances in which the arrest without warrant can be made by the private individual and Section-44 provides for the arrest by the Magistrate, whether judicial or executive. Section-46 provides the mode of effecting the arrest and it provides that only the reasonable force should be used for making the arrest. Then this module discusses certain rights of the accused such as right to know the grounds of arrest as provided under Section-50 and the right to be produced before the Magistrate within 24 hours of arrest as provided under Section-57, etc.

