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# Arrest and Right of Arrested Persons

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## I. ARREST IN BRIEF

Before discussing about Arrest, related sections to it and rights of arrested persons, it is very much necessary to know about what actually “Arrest” means. In simple terms arrest means the act of seizing any person from their legal position and taking them into custody. Arrest is taking any person into a legal custody by the legal authority since that particular person is suspected of committing any form of a crime which is forbidden by law. Procedure of arresting a person is incorporated in code of criminal procedure. In India Police have the authority to arrest a person who has been suspected of committing any crime. Also in Code of Criminal Procedure (CrPC), the arrested person is given certain rights to defend himself and put his version related to the committed crime in court of law.

Also there is a certain procedure enumerated in CrPC which have to be duly followed by the police authority while arresting suspected person. Along with this, the Police authority have to even follow the enumerated procedure after the person is arrested, i.e. the arrested person can't be detained in custody for more than 24hours, and he must be taken to nearest Magistrate for further detention process.

Arrest of Persons is incorporated in Chapter V, Code of Criminal Procedure (CrPC). This chapter discusses about the procedure on how a person is to be arrested by Police authority, what are the rights to be granted for any arrested person, and the Magistrate's power to detain the arrested persons in custody.

In order to arrest a person, issuance of “warrant” is essential in some cases, where as there are certain cases (exceptions) enumerated in Section 41 of CrPC where issuance of Warrant isn't necessary in order to arrest a person.

- **Warrant:** It is form of a document issued by the legal or government authority to police or any other legal authority to arrest a person, or search a certain premises or to carry out certain other actions related to administration of justice.

**Sec 41:** As per section 41, a police officer can arrest any person without issuance of a “warrant” from Magistrate. Some of these cases include:

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- i) When any person has committed a cognizable offence in presence of Police officer.
- ii) A reasonable complaint has been received against a person or any kind of suspicion exists that a cognizable offence has been committed which is punishable with imprisonment which is less than 7 years or which may extend to 7 years.
- iii) A reasonable complaint has been received against a person or any kind of suspicion exists that a cognizable offence has been committed which is punishable with imprisonment which may extend to more than 7 years, or with any kind of fine, or with death sentence.
- iv) Who has been termed as a proclaimed offender under this code or by State government.
- v) Obstructs a police officer while he is in execution of his duty, or any person who has escaped or attempts to escape from lawful custody.
- vi) Any person who is suspected of being a deserter from any kind of armed forces.

These are some of the exceptions which were enumerated in Sec 41 of CrPC where, to arrest a person issuance of warrant isn't necessary.

Police have the authority to arrest any person without any warrant if that person has committed any offence which is mentioned in Section I. This schedule has incorporated 9 categories of offences, any person can be arrested without an order from magistrate and a warrant being issued. Some of those 9 categories were already explained above.

- It was held in “**Avinash v/s State of Maharashtra**”<sup>1</sup> that Section 41 is to be treated as a depository of general powers which is vested with the police authorities to arrest but these powers are subjected with certain other provisions as well which is mentioned in this code itself. It was held in this case that section 41 should be read in connection with section 155 and 156. Section 41 alone cannot be applied by the police authority.

**Sec 155:** This section deals with information related to Non-Cognizable offences, and investigation related to them.

- It was held in the case “**V.Kutumb Rao v/s State of Andhra Pradesh**”<sup>2</sup> that no police officer shall investigate any non-cognizable case without a proper order from magistrate, also the police officers of that particular jurisdiction should have the authority to

try such cases. Hence it can be laid down that without consultation with sec 155, polices have no absolute power to investigate any case just by the procedure laid down in sec 41.

**Sec 156:** this section have laid down the regulations on how a cognizable offence can be investigated by the police officers. Any officer in charge without an order from Magistrate have under this section have the authority to investigate any cognizable case and arrest a person for committing such a person as per the provisions laid down in Sec 41.

- In case “**Tula Ram v/s Kishore Singh**”<sup>3</sup> it was held that under sec 156, a police officer in charge is empowered to deal with cognizable cases by adhering to the provisions laid down in sec 41 as well.

**Sec 41A:** Sec 41A was inserted in CrPC, with the main objective of avoiding unnecessary arrests. A arrested person has many rights, one of the main right given to an arrested person includes: “**Right to remain silent**” and “**presumed to be innocent until proven guilty by court of law**”. 41A was enumerated to avoid unnecessary arrests which would damage the arrested person mental state and leads to further trauma to the arrested person. This section was added in the year 2010, to protect the interests of the accused.

(1) The police authority in all other cases irrespective of the situations mentioned in 41(1) shall issue a notice against whom any such complaint has been lodged or any kind of credible information has been derived, or reasonable suspicion has been raised that he has committed some kind of cognizable offences.

(2) Once, such notice has been issued by the person, it is the duty of that person to comply with all the necessary terms mentioned.

(3) The person wouldn't be arrested by the police authority unless he has been complying with the terms and conditions as per the notice issued.

(4) Once, the person fails to fulfill the terms mentioned in the notice issued, then the police authority would have the power to arrest the person for the offence mentioned.

- Recently “**Madras High Court**” has stated in a bail application that, police must be made aware that all the criminal cases need not necessarily involve the element to arrest the persons who are accused. The court have also observed that, the main aim of this section is to **unnecessary, hasty and illegal arrests of persons**<sup>4</sup>.

**Sec 41B:** Sec 41B describes the procedure on how arrest is made, and what are the responsibilities which are to be abided by police authority. It is the duty of the police authority to abide by following provisions:

(a) Every police officer who have the authority to arrest shall bear a clear and visible identification of his name which will be easy for identification.

(b) It is the duty of police officers to prepare a memorandum which will be used for:

- The prepared memorandum shall be attested by atleast one witness who is a family member or any other respectable member residing in the same locality.

- Later, it must be counter signed by the arrested person.

(c) Intimate the arrested person that he has a right to inform any of his relative or to his friend about his arrest.

- It was in this historical case “**D.K Basu v/s State of West Bengal**”<sup>5</sup>, that every arrested person is guaranteed protection against unnecessary detention. Here article 22 was invoked that, no arrested person shall be detained in custody for more than 24 hours without being informing them related to grounds of their arrest.

- Also in “**Neelabati Bahera v/s State of Orissa**”<sup>6</sup> it was held that, no arrested person shall be deprived of any kind of fundamental rights as per article 21 of indian constitution. Only a certain amount of restriction can be imposed related to the enjoyment of fundamental rights.

**Sec 42:** Sec 42 talks about the authority given to police officers to arrest any person who refused to give their name and place of residence.

(1) When any person is accused of committing a non-cognizable offence, and refuses to give his name and place of residence when the same was demanded by police officer or gives such a name and place of residence on which police officer has a reason to believe to be untrue, may get arrested by police officer for the same.

(2) Once, the original name and place of address has been ascertained by the police officer, then such person would be released after execution of a bond.

(3) If the original name and place of residence isnt ascertained in 24hours from the time of arrest, then the arrested person without any execution of bail shall be sent to nearest magistrate for further period of detention.

**Sec 43:** Sec 43 enumerates the provision which gives the authority for a private person as well to arrest a person who “**in his presence**” has committed non-bailable and a cognizable offence, or if that person is a proclaimed offender, and without any cause of delay should be handed over to police officer. This section also gives the authority to police officers to “**re-arrest**” a person who falls under the provisions of Sec 41.

Also, if a person is arrested on the suspect that he has committed an offence mentioned under sec 42, but if there is no proper evidence to believe that he has committed any offence, then he shall be released.

- A private individual has the authority to arrest a person who falls under Sec 41(1) or if he is a proclaimed offender. The words mentioned in this section “in his presence” plays a significant role in application of this section. The word “in his presence” means that the offence should be committed **“infront of him”** and not **“in his opinion” or under any kind of “suspicion”**<sup>7</sup>

- For example, A sees a person running towards him with knife and blood stain on it, and many persons back of him are shouting for his apprehension. A on seeing all this tries to arrest the fleeing person. A have no authority to arrest the person fleeing under this section, since A have **no right to arrest the person as per his opinion or under any kind of suspicion unless he have seen or noticed the fleeing person have committed any cognizable crime**<sup>8</sup>.

**Sec 44:** This section empowers the Magistrate to arrest a person, who committed an offence in front of him or who has committed any offence in police custody.

(1) When any offence is committed in his presence within his local jurisdiction he may arrest or order any of the police officer to arrest the offender.

(2) Any magistrate he himself or order any of the police officer to arrest a person, whose arrest is mandatory at that certain point of time and it is under the circumstances to issue a warrant.

**Sec 46:** This section have clearly laid down the provisions inorder to arrest a person.

(1) While arresting a person, police officer or any other person having such authority shall have the right to touch or confine the body of arrested person.

(2) If the arrested person escapes or attempts to escape then the police officer can use any reasonable means to stop the arrest.

(3) Police authority havent been given the authority to cause death of a person who isnt accused of an offence punishable with death penalty or with life imprisonment.

- In **“B.Kumar Rai v/s Union of India”**<sup>9</sup> the court held that it is not necessary to confine a person by handcuffing him if the person accused have completely accepted his mistake and voluntarily submits himself to police custody.

- In “**Bharosa Ramdayal v/s Emperor**”<sup>10</sup> it was held that if a person has accepted in front of police regarding the offence committed by him, this would be considered as surrendering himself to police custody. Also it was held that if the accused person submits himself if he goes to police station as stated by police officer then also it would be considered as submitting himself to custody. In these two cases physical contact as stated in Sec 46(1) is not necessary.

- Also in “**Joginder Singh v/s State of Up**”<sup>11</sup> it was held by the apex court that arrest of a person cant be made on **mere allegation or in just a routine manner**. Arresting a person on mere suspicion is illegal when it is related to complex offences. Arrest of a person in complex cases cant be made without any proper investigation after examining the genuiness of complaint.

**Sec 46(4)** lays down the specific provisions on how arrest of a women is to be made. It is to be noted that no women shall be arrested before sunrise and after sunset. Also, a women can be arrested only by a lady police officer. Except in certain exceptional circumstances, a women can be arrested before sunrise or after sunset by drafting a written report related to the same and a lady police officer, by obtainig a prior approval of the judicial magistatre can arrest the accused women.

- Bomaby high court have held in the case “**Christian Community Welfare Council v/s state of Maharashtra**”<sup>12</sup> that it is utmost important to uphold the dignity of a women and hence it was held that no female shall be detained in custody or shall be arrested before sunrise or after sunset unless and until in rarest of rare and exceptional cases. Also it was held in this case itself that presence of lady officer to arrest a women is mandatory.

**Sec 151:** Sec 151 of CrPC expressly confers the right to police authority to arrest a person without an order from magistrate or any kind of warrant if that person is accused of committing cognizable offence as mentioned in Schedule I of this code.

- Recently it was held by **Bombay high court** in case “**Kishore v/s State of Maharashtra**”<sup>13</sup> that police officer can take action under section 151 iff he has knowledge that any cognizable offence has been committed and if it appears on the face of the offence to police officers that commission of such offences cant be prevented unless the accused is arrested for the same, then the person would be taken into the custody without any warrant. In this case, the trustee of Shri Mirannath Maharj alleged that ther detention in custody was totally illegal and unlawful as per Article 22 of Indian constitution. It was held by court that

petitioners suffered damage due to illegal arrest and compensation was paid to them accordingly.

**Sec 56:** It is the duty of the police officers, to submit the arrested person in front of Magistrate whose having the jurisdiction to try the case without any further delay.

- It was laid down in the case “**G.Rath v/s Aparti Samal**”<sup>14</sup> that the police officers must adhere to the powers stated in Sec 56 of CrPC. Sec 56 clearly lays down the provisions that when any person is arrested without a warrant, he must be presented in front of magistrate as soon as possible without any delay. Also in this case itself, the court decided the ambit of **Sec 55 of CrPC**. It was laid down by court that if any police officer delegates his authority to subordinate officer to arrest a person without warrant then the same must be specified in writing regarding the details of the person to be arrested and the reason to be arrested.

## **II. RIGHTS OF ARRESTED PERSONS**

**Sec 41D:** As per sec 41D, the first right granted to any arrested person is that they would be given an fair opportunity to consult an advocate of his choice during interrogation

- Article 22(1) of Indian Constitution clearly lays down the provision that no person can be detained of the right to consult a legal practitioner. In order to make this provision consistent with CrPC sec 41D was inserted in the year 2010. This provision was given importance in the case “**D.K.Basu v/s State of West Bengal**”<sup>15</sup> the court had made it a mandatory provision for an arrested person to meet an advocate of his own choice.

**Sec 50:** When a person is arrested, first and foremost he should be informed on what grounds he was arrested. The information regarding the particulars of the offence had to be communicated to arrested person.

As per article 22(2) of Indian Constitution, it establishes the rule that, no person shall be arrested and be detained in custody for more than 24 hours. He must be informed as soon as possible grounds on which he was arrested.

Right established under Sec 41D and Sec 50 of CrPC are two most important rights granted to the arrested person, since it is the fundamental right of every person to prove himself to be innocent.

**Right to Remain Silent:** The arrested person can choose to remain silent during the process of interrogation. Being silent during the process, doesn't mean the person arrested is guilty of the offence. This right can be exercised even during modern times as per the report given by

Malimath Committee.

- **“Nandini Sathpathy v/s P.L.Dani”**<sup>16</sup> it was laid down by court that as per Article 20(3) the accused have the authority to remain silent and the same can be claimed as his fundamental right. No accused person can be compelled to speak during the process of interrogation. Also in this judgement the court had clearly explained about the ambit of Article 20(3) and Sec 161 of CrPc, and the right to remain silent is protected.

**Sec 57:** This section acts as a right to the arrested person. No police officer shall have the authority to detain any arrested person in custody for not more than 24hours. Under any circumstances the arrested person have to be submitted in front of nearest Judicial Magistrate. However, the travel time would be excluded from these 24hours.

- **“State of Punjab v/s Ajaib Singh”**, in this case the court held that if a person is arrested without any warrant, then he must be produced in front of nearest Judicial Magistrate within 24hours in order to ensure **“immediate application of judicial mind to the legality of the arrest”**<sup>17</sup>. In the same case, Article 22(2) of Indian constitution was also invoked.

Hence it is a right given to the arrested persons, and at the same time it is the responsibility of the police officers to submit that person in front of judicial magistrate.

**Sec 243:** Arrested person is innocent, until proven guilty by the court of law. It is the court's responsibility to proceed with a fair trial, and hence the arrested person would be given a fair opportunity to consult an advocate, and to present the evidence related to the offence which gives him a fair chance to prove himself as innocent. The same thing was established in the case law **“Joginder Kumar v/s State of UP”**.

**Sec 436:** The most important right given to any accused is to be released on **“Bail”**. Under this section, the provisions stated that any person other than a person arrested for non-bailable offence or detained in custody without a warrant can apply for bail. If court thinks that the person can be released by granting bail, then such person can be released on bail.

A person to be released on bail shall be compelled to follow certain conditions which are to be mentioned in a bail bond. If the released person doesn't comply with the mentioned conditions, then the Court has the discretion to cancel such bail and he can be re-arrested again.

- It was held by the apex court regarding the provisions related to granting of bail that: **“on the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the**

investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate”<sup>18</sup>.

- **“Sanjay Chandra v/s CBI”**<sup>19</sup> the judgement stated that, the grant or rejection of a bail bond is completely court’s discretion. Grant or rejection of a bail is totally pertaining with the facts and circumstances of each individual case.

**Sec 437:** There are certain exceptional cases which are drafted in CrPC that even a bail may be granted in certain non-bailable offences. The court in order to grant bail related to non-bailable offence, the court has to follow the express provisions stated in sec 437 of CrPC.

- In the year 2004, the court have passed a judgement stating that **“the grant of Bail in Non-Bailable offences is the discretion of a court and that the court dealing with grant of bail is to only satisfy if there is a prima facie case against the accused”**<sup>20</sup>

- Further in the same year, it was held in the case **“Ram Govind v/s S.Singh”**<sup>21</sup>, granting of bail is completely court’s discretion, and the same must be utilized judiciously. In the same case it was held that, a person being accused on bail bond without any **“cogent reason”** cant withstand accordingly.

**Sec 438:** As per this section, a person can be granted with anticipatory bail, that is when a person has the knowledge he would be arrested for the commission of a non-bailable offence, he might apply to the high court or court of sessions to grant him bail prior to his arrest itself.

- **“Salauddin Shaikh v/s State of Maharashtra”**<sup>22</sup> the apex court has passed an order in this case, that any anticipatory bail which is being granted by High courts or Court of sessions should be time bound. Also granting of such bail should be done prior to the case which is incomplete in the process of investigation.

### III. CONCLUSION

After examining all the above provisions stated in CrPC, the police authority were delegated with rights as well as responsibilities which both go hand in hand. It is the duty of the police authority to balance both the rights and responsibilities while following the process of arrest.

At the same time, provisions drafted in CrPC also give equal opportunity for the arrested persons to exercise certain rights and give them a fair chance to prove them as innocent from the offence they are arrested for.

Hence it can be concluded that, all the above stated sections and provisions shall be followed

with due diligence.

#### **IV. ENDNOTES**

1. 1983 Cr. L.J 1833 (Bom)
2. AIR 1961 AP 448
3. AIR 1977 SCR (1) 615
4. Sec 41 of CrPC, 1973
5. AIR 1997 SC 610
6. AIR 1960 SCR (2) 581
7. Abdul Habib v. State, 1974 Cr. L.J 248
8. Ram Chandra v. State of UP, 1977 Cr. L.J 1783
9. 1992 Cr. L.J 3866
10. 13 Ind Cas 999
11. AIR 1994 SCC (4) 260
12. AIR 2004 SC (7)
13. 1995 Cr. L.J 3706
14. 1960 Cr. L.J 381
15. AIR 1997 SC 610
16. AIR 1978 SCR (3) 608
17. AIR 1953 SCR (10) 254
18. Aslam Babalal Desai v/s State Of Maharashtra (1992) SCC 272
19. AIR 2012 SCR (40)
20. *Chamna Lal v. State of UP (2004) SCC 525*
21. AIR 2002 SCC 598
22. AIR 1996 SCC (1) 667

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