

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 1

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Arrest of Persons

ARTI¹, AMISHA² AND SAKSHI³

ABSTRACT

This article throws light on the procedure of arrest of person (with or without warrant). This article is based on the criminal maxim that, "Let the hundred guilty be acquitted but one innocent should not be convicted" Arrest is mainly done when there is reason to believe that a person is going to commit any offence or has done any offence or crime. The process which is being followed after the arrest is the interrogation or questioning and investigation. It is considered as a part of criminal justice system. In arrest, a person is detained by the concerned authority. The word arrest has not been defined under the Code of Criminal Procedure, 1973.

I. INTRODUCTION

The word arrest came from a French word 'arrest' which means to stop or stay. Arrest mainly means apprehension of a person by legal authority resulting in deprivation of his Liberty. It can be mainly done by actual seizure or touching of person's body with the intention for his detention. It was held that arrest can be done for the purpose of detaining any person to answer any criminal charge.⁴ The major essential ingredient for constituting arrest are:

1. There must be an intent to arrest under the authority
2. Arrest should have accompanied by seizure or detention of a person in lawful manner.

In state of Punjab vs. Ajaib Singh, it was defined that arrest can put a physical restraint on the accused person and if the person who is being arrested submit his custody to the person who is making the arrest then is arrest is complete and he need not to be confined by touching his body.

II. REASON FOR MAKING ARREST OR WHY ARREST IS NECESSARY?

1. **For securing attendance of an accused at trial-** when any person is to be tried on the charge of any criminal offence then is attendance before the court is necessary. If he is not present himself before the court or escape himself even after the summons issued

¹ Author is a student at Geeta Institute of Law, Panipat, Delhi NCR, India.

² Author is a student at Geeta Institute of Law, Panipat, Delhi NCR, India.

³ Author is a student at Geeta Institute of Law, Panipat, Delhi NCR, India.

⁴ Roshan Beevi vs. Joint Secretary, Govt. Of Tamilnadu (1984)

against him then the arrest and detention of the accused person is only the method to ensure his presence at the trial before the court.

2. **As a preventive or precautionary measure**-if there is any danger of the commission of any serious crime which is a cognizable offence then it became necessary to arrest that person who is going to commit such crime as a preventive measure.
3. **For getting correct name in address**-when a person refuses to give his name and address after being asked by the police officer then in such circumstance the police can arrest that person without warrant for getting the correct name and address.
4. **For removal of hindrance to police**-when any person obstructs any police officer in the execution of his duty then such person is liable to be arrested by the police.
5. When any person escaped from the lawful custody then he can be arrested by the police.

III. PROVISIONS UNDER THE CODE OF CRIMINAL PROCEDURE, 1973 DEALING WITH THE ARREST OF PERSONS

They are made in two types of arrest-

1. Arrest which is made in presence of warrant
2. Arrest which is made without any warrant but within the legal provisions.

(A) Arrest by warrant

If a person commits any offence which is non cognizable in nature, then a warrant is necessary to be issued. The warrant is mainly issued by a magistrate.

(B) Arrest without warrant

Sec 41(1) states that when a police officer may arrest without warrant. It is mainly done in cases of cognizable offence when the credible information has been received.

The high court state that the police cannot arrest a lady without the presence of a lady constable and also restrict the arrest of lady after sunset and before sunrise under any circumstances or conditions but the supreme court found that the above decision of the High court would create difficulties in the investigation. It may not always possible and practical to have the presence of a lady constable so the supreme court modify the direction of the High court that while arresting of female, all efforts should be made to keep a lady constable present but in circumstances when the arresting officer is reasonable satisfied that such presence of a lady constable is not available then the arrest would be permitted of a female person for a lawful reasons at any time of day or night depending on the circumstances of a case even without the

presence of a lady constable.⁵

If the person refuses to give his name and address which the police officer believes to be false on asking from the police officer, then the person can be arrested. The arrested person should be released on executing a bond to appear before a magistrate. And the arrested person cannot be detained by the police officer beyond 24 hours.

(C) Arrest by a private person

Any private person, who has the reason to believe that the person is a proclaimed offender or the person is going to commit any cognizable offence, may arrest a person.

For example-if a person is drunk and committing assault to the public, then he could be arrested by any private person but should be present to the nearby police station without reasonable delay.

(D) Arrest by magistrate

According to section 44 of the code of criminal procedure 1973, the magistrate has a wide power to arrest a person who has committed any cognizable offence or even known cognizable offence in his presence.

(E) Protection of the armed forces members from arrest

Section 45 of the code of criminal procedure 1973 provides for the exception or protection from the arrest of the members of armed forces. The member of the armed forces cannot be arrested while on the official duties except from the order of the central the state government as also impaired to give consent for the arrest of the members of armed forces.

(F) Mode of arrest

Section 46 of the code of criminal procedure 1973 provides about the mode of arrest. The word custody and arrest is not similar. Every arrest consists of custody but not vice versa. Basically, arrest is meant by touching or confining the body of the accused person but if the accused person gives his submission by words or action then there is no need to confine the body of the person. If any person escapes himself from being arrested or attempt to evade the arrest, then the police officer can use force but cannot cause the death of the person if the accused has not committed the offence which is punishable with death or life imprisonment. Arrest need not to be by handcuffing of person but could be complete by spoken words if the person accused submits his custody.⁶

⁵ State of Maharashtra v. C.C.W. Council of India, (2004) Cri.L.J. 14 (S.C.).

⁶ Birender Kumar Rai v. Union of India, 1992

IV. SUPREME COURT GUIDELINES ON ARREST

D.K. Basu Vs. State of West Bengal AIR 1997 SC 61

There are some guidelines which has been given by the supreme court in the DK Basu case which are as follows:

1. The police officer who is arresting any person should handle the interrogation should have accurate, visible and clear identification and name tags with their designations and the interrogation questions must be recorded in a register.

2. The police officer who is arresting that used person should prepare a memo of arrest and such memo shall be attested by at least one witness. The witness can be either the member of the family of the arrestee or any person from the locality from where the arrest has been made.

3. The person who has been arrested should have the right to be inform his friend or relatives about his arrest.

4. If any relative or friend of the arrestee resides outside the district then the legal aid organization in the district and the police station informed or notify him within a period of 8 to 12 hours of after the arrest.

5. The arrested person should be examined by the medical practitioner within every 48 hours during custody.

6. The copy of memo of arrest shall be sent to magistrate for record.

7. The police control room at all the district and state headquarters should consist of the details of the arresting and should be displayed on a conspicuous police board.

Other provisions regarding arrest

1. According to section 47 of the code of criminal procedure 1973, any person having the warrant of the person being arrested can enter into the premises of the accused. And if the accused person avoids the officer to enter into the premises then the officer has authority to break the door. But if there is any female in the premises then reasonable notice should be given to that female and then they may enter the premises.

2. If a police officer found that the accused has committed the cognizable offence than he can arrest him without warrant within the territory of India and even outside is own circle. This type of arrest is considered as legal arrest.

3. If any person who is in lawful custody of the police and tried to escape, can be

immediately arrested in any place of India by the police officer.⁷

V. RIGHTS OF THE ARRESTED PERSON

To ensure that the power of the police officer should not be used in an unfair manner or arbitrarily, there are various rights which has been given to the rested person which will ensures the concept of fair-trial. These rights have been mentioned below:

1. Right to know the ground of the arrest (section 50(1)) –

it is a duty of the person, who is arresting the accused person without warrant, to inform him about the full matter for which she has been arrested or the grounds of the arrest. If any subordinate officer is working under the direction of his senior officer then, the subordinate officer must have notified the arrested person regarding the return order given by his senior officer to him (section 55). In *Satish Chandra Raivs Jodu Nandan Singh*, it was held that if the substance of the arrest is not notified to the arrested person then the arrest would not be considered as lawful hence it is unlawful.

Also Article 22(1) of the Constitution of India states that no one can detained any person in custody without being informed of the ground for arrest and cannot be denied the right to consult a legal practitioner. It was held that right to be informed about the grounds of arrest is the precious right of the accused person.⁸

2. Right to be taken to the magistrate without delay-

Detaining any person without proving that he is guilty of offence is clearly considered as the violation of the human right and is completely and lawful. Also Article 22 (2) of the constitution of India provides that the arrested person should be produced before the magistrate within 24 hours of arrest and the 24 hours does not include the travelling time from the place of arrest to the court full stop this provision work as an effective measure to limit the power of the police officer so that the police officer cannot misuse his power.⁹

3. Right to be informed of the provision for bail (section 50 (2))-

For offences which are not of serious nature or which are non-cognizable in nature, accused person can see for bail as a matter of right and it is the duty of the police officer to inform the accused person that he can release on bail and should provide all the necessary requirements.

4. Right to consult legal practitioner-

⁷ Section 60 of the Code of Criminal Procedure, 1973.

⁸ *Udaybhan Shuki v. State of UP* 1999

⁹ *Khatri v state of Bihar* 1981 SCC

the accused person can seek to a legal practitioner office on choice and no one can stop him to meet the legal practitioner or the right to consult. If the accused person is not eligible to appoint the legal practitioner of his own choice then, it is a duty of the state to ensure him free legal aid. The similar provision has been also mentioned under section 303 of the code of criminal procedure, 1973 regarding to consult the legal practitioner of the choice of accused person.

5. Right to free legal aid-

When the accused person does not have enough sources or means to hire a legal petitioner then the court appoints a legal petitioner for his defence. In *Khatri vs. state of Bihar 1981 SCC*, it was held by the supreme court that the right to get a legal practivational comes under article 21 of the constitution of India. And it is the fundamental right to life and liberty. So it is compulsion on the state to provide free legal aid to they accused person.

6. Right to be informed about the rest of the accused person to his relative or friend-

it is a duty of the police officer to inform one friend or relative or any other person of the accused choice about his arrest.

7. Right to be examined by medical practitioner-

Section 54 (1) of the code of criminal procedure 1973 states that used as the right to examined himself by a registered medical practitioner.¹⁰ This right is given mainly to the accused so that he can prove any physical injury.

VI. CONSEQUENCES OF NONCOMPLIANCE WITH THE PROVISIONS RELATED TO ARREST

If any person having the knowledge that the arrest is illegal and he continues that then he will be liable under section 220 of the Indian penal code.

And similarly any private person who has arrested the accused has an obligation to present him before the nearest police station without a reasonable delay and if he failed to do so then he will be liable under section 342 of the Indian penal code for wrongful confinement.

VII. CONCLUSION

Chapter 5 of the code of criminal precision, 1973 deals with the concept of arrest of persons. The major provisions of arrest of any person has been discussed above in this article. There are various rights which has been given to the accused person in order to limit the power of the

¹⁰ *Sheela Barse v. State of Maharashtra 1983 SCC*

police officer and to ensure that the power has not been misuse arbitrarily.
