

**“A DETAILED STUDY OF ARREST UNDER CODE OF CRIMINAL
PROCEDURE, 1973 ”**

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TABLE OF CASES

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1.	BharosaRamdayal v Emperor	1940 SCC Online MP 120
2.	Gajender Singh vs State of Rajasthan	1988 SCC Online Raj 257
3.	Dakhi Singh v State	AIR 1955 All 379
4.	Maneka Gandhi V Union of India	AIR 1978 SC 597
5,	Joginder Kumar v. State of UP	(1994) 4 SCC 260
6.	D.K. Basu v. State of West Bengal	(1997) 1 SCC 416
7.	Arnesh Kumar v State of Bihar	(2014) 8 SCC 273
8.	Delhi Judicial Service Association Tis Hazari Court v State of Gujarat (1991)	1991 AIR 2176

ABSTRACT

An Arrest is considered to be the important tool to punish the offenders who conducted such heinous crimes and there are laws framed under Criminal Procedure Code,1973 so that justice is delivered to the victim. There should be no deprivation of liberty therefore certain rights are also framed for such persons who are arrested and detained. This projects deals with a broad concept regarding how arrest is made, rights granted to public officials and private person regarding this concept, rights of an arrestee and also special rights given to female offenders.

INTRODUCTION

An arrest is generally an act of apprehending a person and taking them into custody because they are suspected that they committed a crime or planning to commit a crime. It is considered to be a procedure in criminal justice system and can also question further or charge when they are taken into custody. It is laid down in Code of Criminal procedure, 1973 Chapter V under section 41 to section 60.

According to Legal Dictionary by Farlex, 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.*”

According to William J. Brennan Jr. Former Associate Justice of the Supreme Court of United States,

*“Nothing rankles more in the human heart than brooding sense of injustice. Illness we can put off with. But injustice makes us want to put things down. When only the rich can enjoy the law as a doubtful luxury and the poor, who need it most cannot have it because its expense puts it beyond their reach the threat to the continued existence of free democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness, In a democracy and under the Indian Constitution, the police as representative of a state whose sovereignty lies in the Indian people are public servants and the police station public property. The conduct within it needs to conform to law, needs to respect basic human freedoms to ensure a basic confidence between the people of a city, state or region and the wings of the state, the law and order machinery the police”.*³

To secure the administration of justice the individual should be arrested for the public equity and security. Arrest also notifies that there are police officers who are there for the protection of general public, if any crime happens in near future.

In both civil and criminal cases arrest can be made in civil matters only in extreme cases arrest is done.

The people who have right to issue process of arrest:

1. Police office with or without warrant
2. Private person- when a non bailable offence and cognizable offence is committed then only a private individual can arrest a person.

³Dr.B.Hyder Vali book titled “Rights of accused in criminal trail”

3. Magistrate – a magistrate may arrest a person without a warrant.⁴

Under the code courts are constituted by state government and offenders are persecuted by public prosecutors who are appointed by state and central government. All the elements of public justice system are interdependent even the strict law enforced by police agency will not be passed unless approved by judicial system⁵.

1. OBJECTIVE OF RESEARCH

1. Analysing procedure of an arrest
2. Analysing how rights of arrested person be protected.
3. Analysing the crimes for which arrestee is detained.
4. Understanding the capacity of police, magistrate, private person and other authorities

2. RESEARCH QUESTION

1. Does CrPC supports the process of arrest how made?
2. What are the rights of an arrested person?
3. Can a police officer misuse his power of arrest?
4. How a private person can arrest any other person?
5. Does police officer have authority to arrest a person without any warrant?
6. Are females granted with any special provision?
7. How a magistrate can arrest any other person?
8. Can a judicial officer be arrested?

3. METHODOLOGY

The research methodology used in this project is Doctrinal research methodology. As Doctrinal method is normally a two-part process, because it involves first locating the sources of the law and then interpreting and analysing the text therefore, the First part of doctrinal methodology: Locate

⁴ Section 44; Criminal procedure Code,1973

⁵“Jaishree Jaiswal, Human rights of accused and juveniles: delinquent / in conflict with law, Kalpaz Publications, 2005”

the sources of law and once the document is read and located the application of such techniques, along with a description of, for example, the use of deductive logic, inductive reasoning and analogy where. We have referred to some secondary sources like books, articles, and websites. This research focuses on concept of arresting a person and what are the crimes for which person is convicted or detained. The paper talks about various rights of an arrestee person with different case laws and also mentions the powers of authorities.

4. LITRETAURE REVIEW

TITLE	AUTHOR NAME	OUTCOME	LACUNA/GAP	CITATION
Know Your Rights Part -1: Rights of an arrested person	Vivek Narayan Sharma	This article talks about certain rights which an arrested person has with reference to	It just touches the constitutional provision of article 21 but not explanatory.	Vivek Narayan Sharma, "Know Your Rights Part -1: Rights of an arrested person", <i>The Times of India</i> July 5, 2018
All about Procedure of Arrest under Code of Criminal Procedure	Komal Srivastava	This article explains the concept with various questions and not referring to detailed scenario but explaining the crux of every matter.	This article lacks explanation with various case laws.	Komal Srivastava, "All about Procedure of Arrest under Code of Criminal Procedure" <i>Latest laws.com</i> , (last modified June 6 2018)
Human	Jaishreejaisw	In this book author	This book only	

rights of accused and juveniles: delinquent / in conflict with law, Kalpaz Publications, 2005	al	explains”, the non-realization of the human right to the accused at a large scale showing completely the non-democratic running of the administration and the whole scenario of the people, with detailed recommendations and suggestions regarding accused during detection.”	focuses on the areas where accused is not realizing their rights as an arrestee and not dealing with the concept of power of authorities.	
Can A Judge Be Arrested? What Is The Procedure?	Ashok Kini	It explains the various procedure and instances when a judge can be arrested.		<i>Available at https://www.livelaw.in/know-the-law/arresting-a-judge-and-its-procedure-142852 (last modified 13 Feb 2019 11:20 AM)</i>

5. EXPLANATION TO RESEARCH QUESTIONS

1. WHETHER CrPC SUPPORTS THE PROCESS OF ARREST HOW MADE?

The process is mentioned in section 46 of the procedural code which explains arresting a person with or without a warrant. When a person is arrested, he loses his right to freedom as per article

21 of Indian Constitution. Therefore, there are some procedure which the police officer has to follow at the time of arrest. When a woman has to be arrested then a women constable is mandatory for the arrest of the women and the arrest should be before sunset and not after sunset, and if no lady constable is there and the arrest is necessary then the police has to carry a letter signed by the magistrate to arrest a woman.

When police officer can arrest a person

There are only a limited number of situations when a police officer can make an arrest they are as follows:

1. When police officer personally witnesses a crime.
2. The police believe's that the person has committed a crime.
3. When a police officer has a warrant issued with him

As explained in the case of *BharosaRamdayal v Emperor*⁶

“Court held in this case that if a person makes statement to police officer that he committed the crime it will be considered that he submitted his custody to police officer. If accused proceeds towards police officer when directed by police officer he submitted his custody, in such cases there is no requirement of physical contact.”

In the case of *Gajender Singh vs State of Rajasthan*⁷ the Court held that

“the appellant was within his right to inflict these injuries either under the powers vested in him under Section 46 CrPC or in the right of his private defence of person. He cannot be said to have exceeded that right and in these circumstances he cannot be held guilty of any other offence. The appellant was acquitted of the charge.”

Here in this case of *Dakhi Singh vs State*⁸ the court referred to section 46 of the code which says that

⁶1940 SCC Online MP 120

⁷ 1988 SCC online Raj 257

⁸AIR 1955 All 379

“when a police officer arrests a person and such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, such police officer may use all means necessary to effect the arrest; but this does not give a right to cause the death of the person unless he is accused of an offence punishable with death or imprisonment for life. So, the accused has exceeded his power and is covered under exception 3 of sec 300 liable for culpable homicide not amounting to murder.”

2. WHAT ARE THE RIGHTS OF AN ARRESTED PERSON?

Article 21 of Indian constitution provides rights to the lives of arrested person under trials and convicts as the treatment done to such people has to be humane and prescribed by law. As in *Maneka Gandhi V Union of India*⁹ supreme court held that the

“state and police who are principal law enforcing agency have undoubted duty to bring offenders to book. Law and procedure adopted by state for achieving social objective have to come to civilized standards and the procedure to be adopted by state must be just fair and reasonable.”

This is questionable that Why do criminals need rights when they already violated rights of others? But it is a fact that criminal jurisprudence is based on study of criminal behaviour, impact of crimes on victims, criminals and society.

Right to Bail

There are two categories of offenses, Bailable and Non- bailable offense. A person is arrested without a warrant and has been accused of a bailable offense then he has the right to ask all the appropriate questions of the bail including the information regarding the surety amount.

Section 50(2) CrPC, states that “where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released in bail that he may arrange for sureties on his behalf”.

⁹ AIR 1978 SC 597

Right to Be Taken Before the Magistrate Without Any Delay

Whether the arrest is made with warrant and without warrant by a police officer, the person making the arrest must present the arrested person before the magistrate without any unnecessary delay. Also, the arrested person be kept only in police station and no other place, as explained under section 56 and 76.

❖ Relevant Legal Provisions Important Rights of An Arrested Person:**Arrest How Made –**

Section 46¹⁰ explains the modes of arrest i.e. giving custody touching the body physically or confining the body. Arrest is basically restraint on personal liberty. Unless there is any submission to custody either by words or conduct it can also be made by actual contact. In case where force is required

Section 46 of CrPC envisages modes of arrest i.e. submission to custody, touching the body physically or confining the body. Arrest is restraint on personal liberty. Unless there is submission to custody, by words or by conduct, arrest can be made by actual contact. In case force is required, it should be no more than which is justly required and this section does not give a right to cause death of a person, who is not accused of an offence punishable with the death or with imprisonment for life.

Where a woman is to be arrested, unless the police officer is a female, the police officer shall not touch the person of the woman for making an arrest and arrest would be presumed on her submission to custody on oral intimation. After sunset and before sunrise, no woman can be arrested, except in exceptional circumstances and upon prior written permission from the local Magistrate.

No Unnecessary Restraint –

¹⁰ Section 46; Criminal Procedure Code,1973

Section 49¹¹ provide that there should not be excess restraint than necessary to prevent escape i.e. reasonable force should be used for the purpose, if necessary; before restraining a person, the person should be arrested any restraint without arrest is illegal.

Rights to Know the Ground of Arrest:

Section 50(1)¹² provides, “every police officer or other person arresting any person without a warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.” Apart from the provisions of CrPC, **Article 22(1)**¹³ of Constitution of India provides, “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.”

On basis of decisions by supreme court in *Joginder Kumar v. State of UP*,¹⁴ and *D.K. Basu v. State of West Bengal*,¹⁵ there were substantial amendments been enacted in **Section 50A** in 2006 making mandatory on the part of the police officer who is making an arrest to notify the friend, relative or any listed person of the arrested person regarding his arrest, notify arrested person of his rights and formulate an entry in the register maintained by the police. The magistrate is also in an obligation to assure himself about the conformity of the police in this regard.

Person Arrested to Be Informed of The Right to Bail

There are two categories of offenses, Bailable and Non- bailable offense. A person is arrested without a warrant and has been accused of a bailable offense then he has the right to ask all the appropriate questions of the bail including the information regarding the surety amount.

Section 50(2) CrPC, states that “*where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released in bail that he may arrange for sureties on his behalf*”.

¹¹ Section 49; Criminal Procedure Code, 1973

¹² Section 50; Criminal Procedure Code, 1973

¹³ Article 22(1); The Constitution of India

¹⁴ (1994) 4 SCC 260

¹⁵ (1997) 1 SCC 416

Search of Arrested Person- Section 51 of CrPC allows a police officer to conduct personal search of the person so arrested and with regard to provision of this section reference is made with Article 20(3) of our constitution of India which guarantees to the accused against self-incriminatory testimonials compulsion. An accused cannot be subjected to compulsion to produce any evidence against him but can be seized under process of law from custody of person or accused by issue of search warrant.

Person Arrested Not to Be Detained More Than 24 Hours – The constitutional and legal requirements to produce an arrested person before a Judicial Magistrate within 24 hours of the arrest must be scrupulously observed *Khatri v. State of Bihar*¹⁶. Section 57 is concerned solely with the question of the period of detention. The intention is that the accused should be brought before a magistrate competent to try or commit, with the least delay. The right to be taken out of police custody by being brought before a Magistrate is vital in order to prevent arrest and detention, with a view to extract confession or as a means of compelling people to give information.

Right to Free Legal Aid– after arrest person have the right to consult his advocate and be defended by him, he should also be entitled to free legal aid. Apart from fair protection a society under Rule of Law has duty to arrange for defence of accused if in case he is poor. Free legal aid to persons of limited means is a service which the modern State, in particular a welfare state, owes to its citizens.¹⁷

3. CAN A POLICE OFFICER MISUSE HIS POWER OF ARREST?

Police officer can misuse their position as well as the power given to them by taking advantage of their position, if they misuse their power then there will no advantage of police as they are there for the protection of public some of the police officer take their pledge seriously while some of them come under the influence of money and starts misusing their power. Abuse of power by a law administration officer could include:

¹⁶ AIR 1983 SC 378

¹⁷ (Law Commission of India, 14th Report, Vol. I, pp 587-600).”

- If they use more force
- Falsely arrest a person
- Arrest without warrant
- Assaults an individual
- When a police officer forces a citizen to have a sex with him/her for not arresting them
- When police officer violates any fundamental or civil rights

We have landmark judgement given by Supreme court of India in favour of arrested person and to prevent misuse.

In the landmark case of *Joginder Kumar V State of Uttar Pradesh*¹⁸ in this case the Apex court stated that

*“An arrested person who is held in custody is entitled to have one friend, relative or other person whoever is interested in his welfare and should be informed that where is arrested and detained. Police officer should inform accused of his rights and entry shall also be made in Station house diary and entry should also be made about who was informed of the arrest. Magistrate duty to satisfy himself about the requirement provided. The same was ruled in Arnesh Kumar Vs State of Bihar*¹⁹.”

4. HOW A PRIVATE PERSON CAN ARREST ANY OTHER PERSON?

Section 43 of the procedural code explains the process followed by a private person to arrest any other person.:

- Any private person may arrest a person who in his presence commits a non-bailable and cognizable offence or any proclaimed offender without causing any unnecessary delay should make a person to be arrested to a police officer or in absence of police officer take such person in his custody.
- A person can be re-arrest if he is under the belief that he comes under the provisions of **section 41** of CrPC.

¹⁸(1994) 4 SCC 260

¹⁹2014) 8 SCC 273

- When a knowingly commits a non-cognizable offence and refuse to provide the name, reason and to police officer or give such information then such person can be charged under section 42²⁰, if police officer is unable to find any reason then the person shall be released with all due respect.

5. DOES POLICE OFFICER HAVE AUTHORITY TO ARREST A PERSON WITHOUT ANY WARRANT?

Police officer has a right to arrest a person without warrant which is explained under section 41, 42, 151 of CrPC. In the following conditions police officer may arrest a person without any warrant:

1. When a person charged with any cognizable offence as rape, murder, theft, etc
2. When a person possesses a house wrongfully by breaking and entering it unlawfully.
3. When an individual is charged under CrPC or any other state laws.
4. When he possesses a stolen property.
5. When some escapes or tries to escapes from the custody of the police officer
6. If police officer has a suspect on any one for armed forces or union
7. Anyone who is subjected to commit a crime which related to extradition
8. Who, being a released convict commits a breach of any rule made under **sub-section (5) of Section 356.**²¹

Person who is arrested is supposed to be brought before court without any delay. Police officer or any other person who is executing a warrant of arrest should without causing any unnecessary delay bring the person so arrested before court as required by law to produce such person and it is provided that such delay shall not in any case exceed twenty-four hours excluding the time necessary for travelling from arrest place to the magistrate's court. No police officer has authority to detain person who is arrested without any judicial scrutiny for any longer period unless the case is reasonable and by a special order of a magistrate under **Section-167**²² and

²⁰ Section 42; Criminal Procedure Code,1973

²¹ Section 356(5); Criminal Procedure Code,1973

²² Section 176; Criminal Procedure Code,1973

should not exceed twenty four hours exclusive of time necessary for journey from place of arrest to magistrate's court.

6. ARE FEMALES GRANTED WITH ANY SPECIAL PROVISION?

The general clause for females is that they can't be arrest without a lady constable and no female can be arrest after sunset and before sunrise yet they can be arrested some of the time where the crime extraordinary and the arrest is mandatory then the arrest can be made at any time regardless the clause given in the procedure, hence it can be done with the permission of Magistrate as held in the case of *Area of Maharashtra v. Christian Community Council of India*.²³

7. HOW A MAGISTRATE CAN ARREST ANY OTHER PERSON?

Yes. The magistrate has the power to arrest a person under any circumstances which are mentioned under section 44²⁴ of CrPC

1. When an offence is committed in the presence of magistrate then he may himself arrest that person or any person to arrest him.
2. Magistrate can himself arrest a person or directs a person to arrest an individual with his local jurisdiction.

8. CAN A JUDICIAL OFFICER BE ARRESTED?

The answer to this question is well settled by supreme court ion the case of *Delhi Judicial Service Association Tis Hazari Court vs State of Gujarat (1991)*²⁵, held that npo person irrespective of his rank or designation can be above law and must face penal consequences of infraction of criminal law. Apex court also stated that a magistrate, a judge or any such judicial officer will be liable to criminal prosecution for any offence like other citizens are liable.

Judgement laid down various guidelines for arresting a judicial officer:

²³(2003) 8 SCC 546

²⁴ Section 44; Criminal Procedure Code,1973

²⁵1991 AIR 2176

1. If judicial officer is to be arrested for any offence to should be proceeded with indication to district judge or High court depending on the case
2. If factors and circumstance indicate immediate arrest of a judicial officer of subordinate judiciary it should be affected by technical or formal arrest.
3. Facts of such arrest should be immediately communicated to District and Sessions judge and chief justice of high court.
4. Judicial officer who is arrested shall not be taken to police station without any prior orders of district and sessions judge of concerned district.
5. Facilities should be provided immediately to judicial officer for communication to his family members, legal advisors and judicial officers.
6. No statement of judicial officer who is under arrest must be recorded nor any panchnama be drawn for any medical tests to be conducted except in presence of legal adviser of concerned judicial officer or any other judicial office of higher or equal rank if available.
7. There should be no handcuffing of any judicial officer, however violent resistance to arrest offered or when there is a need to effect physical arrest in order to avert danger to life and limb, the person who is making the arrest should be over powered. Immediate report shall be made to district, session's judge and high court concerned.
8. Burden should be on police to establish need for making physical arrest and handcuffing and if arrest and handcuffing was unjustified police officer causing for responsible for such handcuffing will be guilty of misconduct and will be liable for compensation and damages determined by high court

6. CONCLUSION

Up to now we tried to understand the term "Arrest", procedure of arrest, rights of the arrested person and related case laws to the topics. Above mentioned each case has its own significance. By going through Law Commission paper on Law of arrest, we can read with that how power of arrest is being misused and more because of unawareness of people about their right. We somehow console ourselves that these protectors of law and order must be doing right but we have hundreds of cases where we witnessed of this power being misused. These report shows high percentages of arrests are made even in bailable offences; bails are not granted to those

where getting bail is one's right. Increasing percentage of no. of under trial prisoners in jails, we can deal with the plight of this topic separately. Arrest has a diminishing and demoralizing effect on the personality. He is outraged, alienated and becomes hostile. But there need to be balance between security of state on one hand and individual freedom on other hand. There need to be some checks on this power and more awareness need to be created among the peoples about their rights, so that balance system can be form.