

## Arrest under (CrPC) Code of Criminal Procedure

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### Abstract

*This paper deals with "arrest" under the code of criminal procedure (CrPC), and in which I have dealt with various important topics regarding the arrest. As nowhere in CrPC arrest is precisely defined, we know that we apply for bail to prevent arrest as my paper deals with the meaning of arrest, arrest without warrant, Arrest in non-cognizable cases, arrest how made. Power for effecting arrest police officer is required to ensure that arrest is made and for the sake of arresting police officer to search a place provided in section 47 of CrPC. Also, the police officer can pursue the offender under section 48 of CrPC. The police officer can depute to subordinate, which is dealt with under section 55 of CrPC, and the power to escape under section 60 of CrPC. I have discussed the difference between arrest and custody, cases where the arrest is necessary, arrest punishable with more than seven years, cases where the detention is not compulsory, Encounter, post-arrest procedure. Also, discussed the post-arrest procedure and what to do after an arrest is made, so several things must be done. The first one is to search the arrested person under section 55 of the code. Caesar of that weapon under section 52 of CrPC medical examination under section 53 of CrPC and sends a report to the DM. Also, I have discussed the arrested person's rights and the consequence of non-compliance with guidelines and safeguards of the arrest.*

**Keywords:** Arrest, custody, investigation, medical practitioner, limitation

### INTRODUCTION

#### Code Entirely Provides two Types of arrest

1. Arrest with the warrant of a magistrate where an only police officer can arrest
2. Arrest without warrant
  - The police officer can arrest under section 41 of CRPC
  - A private person can also arrest only when a private person is apprehensive that an offense has been committed.
  - And Magistrate himself

Under this code, one can be arrested, but section 45 exempts Armed Forces from discharging his official duty. They can't be detained.

#### Meaning of Arrest

In the case of the State of Haryana versus Dinesh Kumar AIR 2008 S.C

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The arrest is not defined in IPC or CRPC. An indication of arrest is there as to what amounts to arrest under section 46 of CRPC.

The court held that arrest is apprehension restraint or deprivation of one's liberty, known as an arrest [1].

#### Purpose of Arrest

So, there are three folds of arrest

1. To ensure person presence in trial

2. To prevent the commission of the crime
3. To avoid the tampering of shreds of evidence

**What is the difference between arrest and custody?**

If a person is arrested, then he is taken to the Magistrate to seek custody in every arrest, there is custody, but in every custody, there is no arrest this discretion was dealt with in the case of Directorate of Enforcement vs. Deepak Mahajan (1994) SC, in this case, it was held that custody after the arrest is not synonymous custody is followed after the person's arrest. Then it is warranted by Magistrate [2].

**Section 41**

Under section 41, a police officer has a general power to arrest in cognizable cases, but section 41 does not provide exhaustive power that can be curbed or extended by special laws.

In a cognizable offense, if an arrest is made before a police officer, that police officer can arrest him for presenting him before the court.

For example, if a committed murder of B and the police officer is present, he can directly arrest A to present him before the court.

In the case where a police officer receives a complaint which is for the offenses less than seven years or more than seven years, then in such case, the RCR formula will be applicable, which is dealt in section 41 clause b of the code, which talks about the reasonable complaint when a police officer receives credible information and a police officer has a reasonable suspicion based on the office. And following conditions are to be satisfied that a police officer has a reason to believe that the offense has been committed here. The police officer is unsure about the crime, but some facts make him feel the offender has committed the crime.

**There are some cases where the arrest is necessary, and if not arrested following consequences might be followed, and they are**

- To prevent further offense
- For proper investigation
- To prevent tampering or disappearance of shreds of evidence
- If not arrested, then my temper or disappear evidence
- To prevent from influencing the witness
- To ensure the presence of such a person, police officers can arrest in five cases if anyone is justified.

One thing which is essential for arresting and non-arresting is the reason must be recorded that if an arrest is made, then why and if not made then why.

**Arrest in cases of an offense punishable with more than seven years**

Then there has to be credible information, and based on that information, and a person has reason to believe that offense has been committed.

41(2) non-cognizable offenses in Cases of non-cognizable no arrest without an order of Magistrate should be made.

If a person is completely drunk and is creating nuisance on the road, then a police officer can arrest him for asking his name and residence, and once he discloses, he is not to be charged.

**Section 42** is not precisely an arrest because the purpose is not made. It's only for name and address and is only for the sake of ascertainment. After it is done, he is released on bond. Suppose the person

who has committed a non-cognizable offense is kept for 24 hours still not giving his name, then after that. In that case, he should be presented before the Magistrate prescribed under section 42, clause three, which says that within 24 hours, police officers need to send him before the Magistrate.

### **Section 43 Arrest by a Private Person**

Cases where a private person can make an arrest so whenever in the presence of a private person a non-bailable and cognizable offense is committed, and that offense is achieved by a person who is a proclaimed offender then in such cases a private person can arrest and with unnecessary delay forward him to the nearest police station.

Section 43 clause one talks about if the case falls under section 41, then the police officer will re-arrest the accused 43 class two talks about if there is a reason to believe that offense is non-cognizable. In that case, the accused will be dealt with as per section 42.

Section 43 class 3 talks about if there is no offense in reality, and even though a private person thinks it's an offense, then no offense will be considered, and the accused will be released.

Section 44 talks about arrest by a magistrate, whether executive or judicial magistrate, within his local jurisdiction. If an offense is committed, then the same Magistrate can make an arrest.

A magistrate arresting a person should not try the case himself as a rule against biasness is applicable here, and the Magistrate will be prejudiced and is aware of the facts. Hence, within 24 hours, he needs to send him to any other magistrate for the order of remand for police custody or judicial custody.

**Section 46** talks about arrest how made section 46 clause one talks about means of arrest, so there are few means of arrest by touch or by confining a person, or there is a submission to the custody by saying this I mean that the accused himself came to the police station, also just because if one is saying that you got arrested, so mere oral declaration without any contract or submission is not arrested it should be made by words or by conduct by word means "I do surrender" and by conduct means he "raise his hands".

### **Proviso talks about cases of women**

So, the proviso prohibits touching of women by a male officer, so whenever an arrest is made of a woman, then the first presumption is that she is submitted to the custody through oral intimation and only of a female police officer can touch the woman—no other person.

**Section 46**, clause four talks about provisions of arresting a woman. Women should not get arrested after the sunset and before the sunrise. If you have to charge in exceptional cases, then prior information from Magistrate is required.

And a police officer can only arrest a woman in the middle of the night when any woman randomly kills the people out there is great apprehension of danger. In such cases, the measure of necessity will not wait.

Section 46, clause 2 provides for the resistance from arrest. Hence, resistance itself is an offense, and in such cases, a police officer will exercise all necessary means to effect an arrest and even exercise force. Still, there should be a reasonable force, which cannot cause death. Only necessary restraints are permitted.

Section 46, clause 3, talks about cases where a police officer can cause death, so under no circumstances police officer can cause death; it is done in cases where the accused has committed an offense punishable with death or life imprisonment than in such cases can cause death also, causing

death as a measure of private defence if a police officer is arresting a person. If a person is threatening the police officer, then the police officer can cause death only by exercising personal defence.

### **Cases in which arrest is not compulsory**

**Section 41**, clause one talks about offenses punishable less than seven years. A police officer has reason to believe that the person who has committed an offense will not engage or fabricate offense, temper the evidence, abscond, or appear before the court. He will not commit future crimes. In such cases, police officers can send the notice under section 41 A to secure an appearance before the police station. A notification is sent to the accused to comply with all information requirements. If he fails to compel, then in such cases, he will be arrested and shall not be arrested if he continues to compel.

### **Encounter**

The Law Commission said that a police officer encounters a threat to his life, so he had no other reason to cause death.

### **Additional power to effect investigation a police officer has**

1. Search (section 47)
2. Pursuit offender in other jurisdiction (section 48)
3. Deputing to subordinate (section 55)
4. Pursue and arrest in case of escape (section 60)

**Section 47** provides the power to search if any person acting on the warrant of arrest or police officer has authority to arrest where the case falls under 41 and 42 of the code. The police officer has a reason to believe that to whom they want to arrest has entered to a place so police will demand the occupier to inter-house and occupier is duty-bound to allow the entrance of police officer in his house.

Under section 47, the occupier of the house is under a legal duty to afford the police officer all legal facilities of the searching house. If the occupier denies it, a police officer will get a warrant from the magistrate. Still, if the police officer thinks that the person holding can abscond, the police officer will get into the house of such cases.

Section 47 clause two talks about whenever the facilities are denied, then subsection allows the officer to use force to enter the house. For example, they can break the outdoor and indoor windows if they are stopped.

Section 47 clause three talks about the situation when a police officer is kidnapped or kept captive or any other person who is held captive so in such circumstances, if there is a lawful entry for arresting any person who is detained so for liberating himself in house police officer can exercise reasonable force to extricate himself or any other person who has legally entered the premises to arrest the person.

**Proviso** talks about cases where the occupier is a pardanashin woman. In that case police officer has to give the option by providing notice through the mic to withdraw from premises. After that, she has the liability for withdrawing, and a police officer has to provide the proper facilities for the withdrawals [3].

**Section 48** provides pursuit of offenders into other jurisdictions so a police officer can pursue any place in India to exercise the power of section 48. For an exercise in power, the senior officer's permission in writing is required from his police station. Then that written statement is to be submitted to the police station where he will exercise his extraterritorial jurisdiction.

**Section 55** provides for the procedure when a police officer deposes his subordinate to arrest, so in this case, the superior police officer has the power to investigate under chapter 12. Still, he can

delegate his authority to subordinates. It is only to be done in written form. When a subordinate is arresting, he must give a written order that specifies the person to be arrested for the offense for which he is arrested. The subordinate must tell the cause of arrest, preventive detention, or any other reason for which he has been arrested. If the accused asks for the notice of arrest, the subordinate must show the order received from a senior. Subsection 2 provides that the person authorized to arrest will not be affected by subsection 1.

Section 60 talks about if a person is in the custody of police and he escapes from there, then police officers can pursue and arrest him any place in India.

Section 60 clause two talks about if a person is in the custody of police and he skipped, then the police officer can pursue and arrest him any place in India.

60 clause two talks about making the arrest 47 provisions will be applicable.

### **What is the post-arrest procedure?**

So basically, there are three post arrest procedures. The first is we can search the fellow, which is given under section 51, then second is if we got anything in search, then it would be seized under section 52 of the code and the medical examination section 53.

### **Section 51 search of the arrested person**

What is the need for a search? So basically, search is helpful for proper investigation also it is helpful as if any stolen article or any incriminating articles found can be seized under section 102 of CRPC.

Section 51 clause two talks about search in cases of women. If any woman is searched then strict decency must be followed.

### **Limitation of applicability of section 51**

Section 51 is only available when the arrested person is not released on bail.

### **Receipt**

Giving receipt for all articles seized is mandatory. Irregularity in search ipso facto will not make evidence inadmissible. The anomaly might have occurred as the search memo was not recorded properly.

### **Section 52 talks about the seizure of the offensive weapon**

Any offensive weapon found that weapon is to be grasped under section 52 of the code and weapon needs to be submitted to the court.

### **Section 53 examination of accused by the medical practitioner**

The medical examination is done to find evidence, and the purpose is to ascertain facts that may afford evidence. For medical examination, reasonable force can also be used.

Does medical examination violate Article 20, clause three of the Indian constitution? Hence, the ambit relates to the mental element to extract anything from the mind, then that medical examination will hit by 20 clauses 3. Still, compulsion is of physical essence, manifest on the body then it Article 20 class 3 protection will not be applied.

Article 20 clause 3 is applicable in cases of mental elements but not for physical characteristics. Any medical practitioner or police officer cannot force for mental element, but the physical element is not protected under Article 20 clause three and can be used as evidence.

**In the case of State of Bombay versus Kathi Kalu AIR 1961 SC**

In this case, it was held that protection under Article 20, clause three does not concern material things like DNA samples, thumb impressions, hair samples, etc. (these are physical elements manifest). Somewhat protection is only relating to information based upon personal knowledge. Force can be reasonable.

Three kinds of tests are not mentioned in section 53, which is: -

1. Narco analysis
2. Polygraph test and
3. Brain mapping test

Test under section 53 includes blood, bloodstain, Semen, swabs, sputum, sweat, hair, fingernail sleeping, DNA profiling [4].

**Selvi vs. State of Karnataka 2010 SC**

In this case, the Narco analysis, polygraph test, also known as lie detecting test and brain mapping test, is conducted under compulsion; therefore, the test itself is unconstitutional as it is violative of Article 20 clause three and section 161 clause 2 of CrPC.

Section 53 A of CRPC and 54 provides for the various medical tests, but nowhere is it supplied for narco analysis. The legislature intends to exclude such tests, and hence all these kinds of tests are not to be done [5].

**So, a question arises what if the accused themselves want to conduct all these three kinds of tests voluntarily?** In such a case, prohibition of article 20, clause three does not kick in because of Article 20, clause three if compulsion over police can conduct in such a case. Still, we'll have no evidentiary value in such instances test is not unconstitutional. Still, it will have no evidence we value and can only be used as a discovery statement.

Under section 53, in the process of medical examination while taking test samples, if some discomfort is caused, that discomfort is permissible.

**Who can request a medical officer?**

It has to be requested by a police officer who is not below the rank of sub-inspector and also superior of such a person can request even if the court can order if it feels that examination is necessary. If a person is released on bail can also undergo a medical examination as nationally is considered in the court's custody.

**Safeguard of arrest**

- Right to know prescribed under section 50/55/75 of the code.
- Right to be taken before a magistrate without delay section 56
- Directly not to be detained for more than 24 hours section 57
- Right to consult the advocate

So, the first safeguard is right to know, and three sections of the code deal with the same

- Section 50 clause 1
- Section 55
- And section 75, when an arrest is made under warrant, the police officer must inform the warrant's contents.

**Section 50**, clause one, states that the police officer must inform full particulars of the arresting offense. Still, a police officer need not get into intense details of the crime. Only what he needs to provide is full particulars.

There may be an arrest to prevent offense; in that case, it will not inform full particulars of crime but only the ground of offense.

One more important thing in this section is that all the details of the particulars explained should be in the language the accused understands.

Also, the purpose of arrest is most crucial to be disclosed because it gives a chance to defend himself. Also, timely information enables him to move to proper court can seek bail for or habeas corpus.

**Section 50A** of the code imposes an obligation to a police officer who is arresting to inform about the detained person and the place of arrest to a nominated person who can be his friend or relative.

The concept of a nominated person was introduced in 2005. It was affected in 2006 earlier we used to inform, but that information was given based on judgment. They were Joginder Kumar versus the state of UP AIR1994 and DK Basu vs. State of West Bengal [6]. In both cases, it was held that information is to the person and his friend and relative [7].

**Section 52 A** also talks about the person arrested for informing the nominee and making an entry in the register, both of these things are mandatory. The magistrate must ensure that 50 a has been duly performed.

**Section 50 clause two** talks about information regarding release on bail. When a police officer is a person who is arrested without a warrant, and the person is accused of a non-bailable offense, then the police officer shall inform the person arrested that he is entitled to be released on bail and that he can arrange for sureties.

**Section 56** is concerned with traveling time from a place of arrest to the police station and from the police station to the magistrate. The traveling time should be reasonable, and there should not be an unnecessary delay. Delay should be necessary.

**Section 57** provides a safeguard when a person will not have to be in custody for more than 24 hours. Arrestee cannot be kept beyond 24 hours without magistrate permission. Section 57 is worded in a prohibitive language or negative language. It puts restrictions upon police officers to not control the arrestee in police custody beyond 24 hours without the magistrate's permission. Even if it is reasonable, police officers need to get the magistrate's authorization.

A reasonable period is used, but the restriction is 24 hours is mandatory, so we can say that the threshold is 24 hours. The reasonable period maybe four days, but the accused can still not be kept in custody without the permission of a magistrate for a maximum period of 24 hours. The purpose of section 57 is to safeguard the accused, and it is in line with articles 21 and 22, clause one clause 2 of the Indian constitution.

### **Exclusion of traveling time**

In computing 24-hour period, the total traveling time has to be excluded. The time taken in taking the accused from the place of arrest to the police station and time taken from the police station to the magistrate shall be excluded. It won't be counted as part of 24 hours.

### **Reasonable time may be less than 24 hours also.**

A reasonable time is not always 24 hours or more than 24 hours. In a good case, it may be even less than 24 hours. For example, after an arrest, if the accused has made the confession within 3 to 4 hours, and there is no need for further examination, then reasonable time is over. The accused shall be

produced before the magistrate as soon as possible. He should not be detained unnecessarily for 24 hours. Any such detention will amount to illegal arrest.

The right to consult the advocate is provided under **section 303 of CRPC**, and Article 22(1) states that every person has the right to consult a legal practitioner of their own choice. Under Article 39(1), there is an obligation of the state to provide legal aid when he cannot afford the consultancy. A person is entitled to meet an advocate during interrogation but not throughout the interrogation.

### **Right to medical examination**

Examination at the request of the accused. The accused can apply to the magistrate for the examination, which is prescribed under section 54, and this medical examination is not used to abstract evidence. Still, it is done to check whether torture was used or not. The arrestee has the right to defend himself, and medical examination enables him to defend himself properly, and the arrestee gets examined when he is produced before the magistrate.

If the arrestee asks for a second examination and the magistrate feels it is necessary, they can allow for the second examination.

Sheela Barse vs. state of Maharashtra (1983)

The magistrate must inform the arrested person about his right to examine his medical [8].

DK Basu vs. State of West Bengal [9]

In this case, the first is that the arresting person has to have an accurate and unambiguous identification mark. The person to whom the police officer will arrest must have the apprehension that he is a police officer. The second is a memorandum of arrest, which is prescribed in section 41 b, The third is the arrest memo of the person you are arresting countersigned by the person arrested.

### **Concept of the Control Room**

Every district and state-level control room will maintain a database for a person arrested for an offense for which he is arrested. That should be stuck outside aboard the name of the person who is arrested and which police officer has arrested him.

### **CONCLUSION**

At last, I would like to conclude with a question does CrPC not allow or permit torture. Yes, CrPC does not allow or permit torture for this; there are various case law which deals with the same as in the case of Prem Shanker vs. Delhi Administration (AIR1980) [10]; third degree is not permissible also court condemned that if accused is willing to come then what is the need of handcuffs, in extreme cases where accused retaliate it is necessary but for that one need to record the reasons.

Sheela Barse vs. the State of Maharashtra (AIR1983) Court held that "No Custodial Violence" certain lockups were in remote areas to inflict harm court held that dungeon should be in good location cases where women are arrested prisons must be in outstanding locations. In CrPC, it is incorporated in section 55(A) to take reasonable care of health and safety.

### **Consequences of Non-Compliance with Provisions related to arrest**

If a public servant having authority to make an arrest knowingly exercises that authority in contravention of law or makes an illegal arrest, he would be held liable under section 220 of the Indian Penal Code (IPC).

Any other person making an illegal arrest will be punished under section 342 of IPC for wrongful confinement. In the case of illegal arrest, the trial will not be vitiated, and the court's jurisdiction will also not be ousted.

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