

**All about Procedure of Arrest under
Criminal Procedure Code**

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INTRODUCTION

Code of Criminal Procedure, 1973 lays down the procedural aspects of procedure of arrest. Under this, the complete process been mentioned related to arrest a person who committed any offence. The essential object of criminal law to protect the society from criminal and from law-breakers. Therefore, criminal law consists both substantive and procedural law. **Chapter V** of Code of Criminal Procedure, 1973 deals with the arrest of persons under (**Sections 41 to Section 60**).

Three People can issue the process of arrest, they are as follows:

- A police officer with or without warrant, or
- A private person, or
- A magistrate

Q.1 – What do we mean by the term arrest? Is it been defined under CrPC?

Ans- This term “Arrest” is very common term that we pick up a lot in our day today life. Normally, we see a person, who do or have done something against the law, get arrested. The term ‘arrest’ means *apprehension of a person by legal authority so as to cause deprivation of liberty*.

As per 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.”*

In criminal law, arrest is a important tool for bringing an accused before the court and to prevent him from absconding. Thus, after arrest, a person’s liberty is under the control of arrester. Every deprivation of liberty or physical restraint is not arrest. Only the deprivation of liberty by legal authority or at least by apparent legal authority, in a professionally competent and adept manner amounts to arrest. However, a person against whom no accusation of crime has been made may be arrested /detained under a statute for certain purposes like removal in safe custody from one place to another, for example – removal of a

minor girl from a brothel. One thing to be noted that 'custody' and 'arrest' don't have same meaning. Taking of a person into judicial custody is followed after the arrest of the person by Magistrate on appearance or surrender. In every arrest there is custody but not vice versa. Thus, mere taking into custody of a person an authority empowered to arrest may not necessarily amount to arrest.

PURPOSE: The mere purpose of arrest is to bring a arrestee before a court and to secure the administration of the law. An arrest also serve the function of notifying society that an individual has been committed a crime and to deter him from committed any other crime in future.

Arrest can be made in both criminal and civil both but in civil matters the arrest is the drastic measure which is not looked upon in favour by the court.

Q.2 – Who are authorized to arrest a person?

Ans- Arrest can be made by a police officer, magistrate or any private person, like you and me can also arrest any person but the arrest should be made according to the process mentioned under Crpc. A police officer is authorized to arrest a person with warrant and without warrant. The code exempts the members of Armed forces from being arrested for anything done by them in discharge of their official duties except after obtaining the consent of the government (Sec. 45). Any private individual may arrest a person only when the person a proclaimed offender and the person commits a non-bailable offence and cognizable offences in his presence (sec. 43). Any magistrate (whether Executive or judicial) may arrest a person without a warrant (sec. 44)

Q.3- Is the police officer authorized to arrest any person without warrant?

Ans- Yes, the police officer is been authorized to arrest any person without the warrant ordered by the court. Under **Sections 41, 42, 151 CrPC**, a Police officer may arrest without warrant in the following conditions:

1. Who has been concerned in any cognizable offence such as murder, rape, kidnapping, theft, etc. or
2. Who has in possession, without, lawful excuse, of any house breaking weapon or
3. Who has been proclaimed as an offender either under CrPC or by order of the State Govt. or
4. Who is in possession of any stolen property or
5. Who obstructs a police officer while in the execution of his duty or who has escaped, or attempts to escape, from lawful custody or
6. Who is reasonably suspected of being a deserter from any of the Armed forces of the Union or

7. Who has been concerned in any law relating to extradition or
8. Who, being a released convict commits a breach of any rule made under sub-section (5) of Section 356 CrPC or
9. For whose arrest any requisition has been received from another police officer specifying the person to be arrested and the offence and other cause for which the arrest is to be made.

Q.4- What is the process of making an arrest? Is it mentioned under CrPC?

Ans- The mode of arrest is been mentioned under section 46 with or without warrant. In making an arrest the police officer /other person making the same actually touches or confines the body of the person to be arrested unless there be a submission to custody by words or action. When the police arrests a person in execution of a warrant of arrest obtained from a magistrate, the person so arrested shall not be handcuffed unless the police have obtained orders from the Magistrate in this regard.

1. In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

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.

2. If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.
3. Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.
4. Save in exceptional circumstances, no women 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.

Q.5- Can a police officer may arrest a person in any other place in India outside their jurisdiction?

Ans- As per section 48 i.e. pursuit of offenders into other jurisdiction lays down that a police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in india.

Q.6- Is there any special provision given to females?

Ans- Yes, as regarding to females they had been given following special protection as:-

- General rule is that Females are not be arrested without the presence of a lady constable and further no female be arrested after sun-set but there are exception in some cases, where crime is very serious and arrest is important then arrest can be made with special orders and it depends on facts and circumstances of each case. Separate lock ups to be provided for them.
- The salutary principle that the medical examination of a female should be made by female medical practitioner has been embodied in section 53(2).

Q.7- How a private person can arrest any other person?

Ans- Section 43 lays down the process of arrest by private person:

- Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.
- If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re-arrest him.
- If there is reason to believe that he has committed a non-cognizable offence and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

Q.8-How a magistrate can arrest any other person?

Ans- Section 44 lays down the procedure of arrest by magistrate:

- When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.
- Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Q.9- What are the rights given to the arrested person?

Ans- Arrest of a person is made in order to ensure his presence at the trial in connection with any offences to which he is directly or indirectly connected or to prevent the commission of a criminal offence. In law, there is principle of “presumption of innocence till he has proven guilty” it requires a person arrested to be treated with humanity, Dignity and respectfully till his guilt is proof. In a free society like ours, law is quite careful toward one’s “personal liberty” and doesn’t permit the detention of any person without legal sanction. Even article 21 of our constitution provides: “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The procedure contemplated by this article must be ‘right, just and fair’ and not arbitrary, fanciful or oppressive. The arrest should not only be legal but justified also, Even the Constitution of India also recognize the rights of arrested person under the ‘Fundamental Rights ‘and here I will inform you about those rights :-

IMPORTANT CASE:

D.K. Basu v. State of W.B

Despite several attempts being made by issuing guidelines in various cases, to eradicate the possibility of the committing torture by the police officials, there were frequent instances of police atrocities and custodial deaths. Therefore, the Supreme Court, in this case, issued some guidelines which were required to be mandatorily followed in all cases of arrest or detention. Following are some of the important ones-

- Right to be informed of the grounds of arrest under sec. 50 of crpc and article 22 of Indian Constitution, it’s a fundamental right to be informed. It is the duty of the police officer to inform you and also tell whether the

offence is bailable or non bailable. Normally, Bailable offences are those where bailable can be granted and it is right of the person to be granted bail and Non- bailable offences are where bailable can't be granted generally and it's the discretion of the court.

- In non- cognizable cases ,arrest are made with warrant and the person going to be arrested have a right to see the warrant under Sec. 75 of crpc. Warrant of arrest should fulfill certain requirements such as it should be in writing , signed by the presiding officer , should have seal of court , Name and address of the accuse and offence under which arrest is made. If any of these is missing, warrant is illegal.
- Under sec. 41 , police have a power to arrest a person without warrant as prompt and immediate arrest is needed , no time to approach magistrate and obtain a warrant for example in case where serious crime is has been perpetrated by a dangerous person or where chances of that person absconding unless immediately arrested. Section 41 got amended in 2008/2010 because of misuse of power conferred by this section to police and amendments targeted the power conferred to police officer must be exercised after reasonable care. Some clauses were put to this section such as police officer must act reasonably that such arrest is necessary.

Not in all cases arrest is necessary, Notice of appearance before police officer can be made if reasonable complaint has been made ,credible information has been received and suspicion exists of cognizable offence and if concern person continues to comply with such notice and appears then arrest is not necessary but he don't, arrest can be made.(sec 41A)

- The police officer must be wearing a clear, visible and clear identification of his name which facilitate easy identification. A memo of arrest must be prepared at the time of arrest – (i) attested by least one witness, it can be family member or member of locality where arrest is made (ii)counter signed by arrested person.
- Right of arrested person to meet an advocate of his choice during interrogation under sec. 41D and sec. 303 crpc.
- Arrested person have a right to inform a family member, relative or friend his arrest U/ sec 50 of crpc.
- Arrested person have right not to be detained for more than 24hrs, without being presented before magistrate, it is to prevent unlawful and illegal arrests. This right is fundamental right under article 22 of Indian constitution and supported under section 57 and 76 of crpc.
- Arrested person have right to be medically examined (Sec 54,55A) the person who is arrested should be given the right to have his body examined by the medical officer when is produced before a magistrate or at any time under custody, with a view to enabling him to establish that the offence with which he is charged was not committed by him or that he

was subjected to the physical torture. With the insertion of 55A, “it shall be duty of a person having custody of an accused to take reasonable care of the health and safety of the accused” and it attempt to take care of “custodial violence”(torture, rape, death in police custody/lock-up) to some extent.

- Arrested person have right to remain silent under Sec. 20(3) of Indian constitution so that police can't extract self – incriminating statement from a person without will or without his consent.

Q.10- Can the power of arrest be misused?

Ans- Although, there have been may safeguard provided by the code and Constitution of India as mentioned above but the fact remain that the power of arrest is being wrongly and illegally used in large no. of cases in all over the country. The power is very often is utilized to extort monies and other valuable property or the instance of the enemy of the person arrested. Even in civil disputes, this power is being restored to a basis of a false allegation against the party to a civil dispute at the instances of the opponent. The vast discretion given by Crpc to arrest a person even in case of aailable offence (not only where theailable offence is cognizable but also where it is non – cognizable) and further power to make preventive arrest (e.g. under section 151 of the crpc and several city police enactments), clothe the police with extraordinary power which can be easily abused. Neither there is any in- house mechanism in the police department to check such misuse or abuse nor does the complaint of such abuse and misuse to higher police officers bear fruit except in some exceptional cases.

RELEVANT CASES:

As, in cases of “ arrest” we have landmark judgments that have been given by the Supreme court of India which sets some rule in favor of arrested persons and also to prevent the misuse of powers.

Case 1:

JOGINDER KUMAR VS STATE OF U.P. [(1994) 4 SCC 260]

OBSERVATION- In this case Apex Court ruled that an arrested person being held in custody is entitled , if he so requests, to have one friend , relative or other person interested in his welfare , told that he has been arrested and where he is being detained. The police officer shall inform the arrested person when is brought to the police station of this right. An

entry shall be requested to be made in the diary as to who was informed of the arrest. The Magistrate is obliged to satisfy himself that there requirements have been complied with.

Case 2:

ARNESH KUMAR VS STATE OF BIHAR [(2014) 8 SCC 273]

OBSERVATION- ,In this case Apex Court ruled that an arrested person being held in custody is entitled , if he so requests, to have one friend , relative or other person interested in his welfare , told that he has been arrested and where he is being detained. The police officer shall inform the arrested person when is brought to the police station of this right. An entry shall be requested to be made in the diary as to who was informed of the arrest. The Magistrate is obliged to satisfy himself that there requirements have been complied with.

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, by we can read with data’s 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 inailable 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.