

# Guidelines and Provision of Arrest

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**Abstract:** The word arrest is Anglo-Norman in origin, derived from French word arrest meaning to stop or stay and signifies a restraint of a person. If any person commit offence then he will be punished. To punish a person there is prescribed procedure which have to be follow. Under substantive law like Indian penal code, 1860 offences and their punishment is given. And how a person is convict for the offence is provided under procedure law code of criminal procedure, 1973. Under code of criminal procedure provision for arrest, trial and other procedure is given. Right to life and personal liberty is fundamental of every person under Article-21 of constitution of India. "No person shall be deprived of his life or personal liberty except according to procedure established by law."<sup>i</sup>

**Keywords:** Arrest, Guidelines, Provision

## I. INTRODUCTION

It is fundamental right of every person to move freely and he is not subject to any restriction. But laws are made if any person commit offence he will be punished and he will be deprived from his right of personal liberty. Even in grave offence like murder he will be sentence to death and he is deprived from his fundamental right that is right to life.

**Arrest:** The term arrest means apprehension of a person by legal authority so as to cause deprivation of his liberty. In criminal law arrest is an important tool for bringing an accused before the court and to prevent him from absconding. 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.

**Who can arrest:** Arrest can be made by police officer, magistrate, or any private person. Under section-43(1)<sup>ii</sup> of code of criminal procedure, 1973 (here an after called Crpc) 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 made over any person so arrested to police officer or in his absence to near police station. Under section-44(1) of Crpc 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. Under Crpc section-41(1) any police officer may without an order from a magistrate and without warrant arrest any person" who commit certain offences defined under section-41. Under Crpc section-42(2) when any person who in the presence of a police officer has committed or has been accused of committing a non-cognizable offence refuse to give name and residence he may be arrested by police officer in order that his name and residence may be ascertained.

**Procedure on arrest:** section-46 of Crpc describes the procedure in which an arrest is actually made. As per

section-46(1) unless the person being arrested consent to the submission to custody by words or action, the arrester shall actually touch or confine the body of the person to bw arrested. Save in exceptional cases no women shall be arrested after sunset.

The arrest should not only be legal and justified but it should be effected strictly according to procedure established by law. The first and foremost requirement of lawful arrest is the notification of the reasons of arrest along with the charges inform to the arrestee. Section-50 provides that the person arrested without any warrant should forthwith be intimated that the full particular of the offence and the ground for his arrest by the police officer or other person making arrest and where the offence is bailable one of his right to be released on bail. This is also a constitutional right guarnted under article-22(1) of constitution. "No person who is arrest shall be detained in custody without being informed as soon as may be of the ground for such arrest." Section-50 of the crpc is in confirmity with article-22(1) of constitution.

## II. PROCEDURE BEFORE MAGISTRATE

Under section-56 of Crpc lays down that in case of an arrest without warrant police officer is required without unnecessary delay and subject to the provision regarding bail to produce the arrested person before a magistrate. Under section-57 of code of criminal procedure, 1973 no person shall be detained in police custody more than 24 hour exclusive of the time necessary for journey. If police officer want that accused to be interrogate for more than 24 hour than custody is taken from magistrate under section-167 of Crpc.

**Guidelines on arrest:** In Joginder kumar v/s State of U.P.<sup>iii</sup> the 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 frequent instance of police atrocities and custodial death have prompted the Supreme court to issue the following directions in D.K.Basu v/s State of West

Bengal<sup>iv</sup> to be followed in all cases of arrest or detention till legal provision are made. The directions are: (1) The police personnel carrying out the arrest and handling the interrogation should bear an accurate and clear identification and name tags with their designations.

(2) A person who has been arrested/detained shall be entitled to have one friend /relative/other person known to him or having interest in his welfare being informed as early as possible.

(3) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend/relative of arrestee lives outside the district/town through the legal aid organization in the district and the police station of area concerned telegraphically within a period of 8-12 hours.

(4) The arrestee must be aware of his right to have someone informed of his arrest/detention as soon as he is put under arrest/detained.

(5) The arrestee must be permitted to meet advocate of his choice.

(6) Copies of all documents include memo of arrest should be sent to area magistrate.

(7) The arrested person should be medically examined by a trained doctor every 48 hours during his detention in custody.

(8) Police officer shall prepare a memo of arrest.

### III. CONCLUSION

Right to life and personal liberty is a fundamental right and right to life includes dignified life. Right to reputation also includes under article-21 of the constitution. So during the arrest of any person, police officers have to follow the prescribed procedure so that his fundamental rights will not be violated. Fair trial includes right to live with dignity so that innocent persons get justice. Under article-22 of the constitution, procedure to be followed on arrest and detention is given and the same provision is given in the criminal procedure code which is in conformity with the constitution.

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<sup>i</sup> Article-21 of constitution of India; Prof. Narender Kumar

<sup>ii</sup> Code of criminal procedure, 1973: S.N. Mishra

<sup>iii</sup> (1994) 4 SCC 260

<sup>iv</sup> (1997) 6 SCC 642