

ARREST AND RIGHTS OF ARRESTED PERSON

- *Drishti Narbar and Komal Vaid**

Introduction

The essential object of criminal law is to protect society against criminals and lawbreakers. For this purpose, the law holds out threats of punishments to prospective lawbreakers as well as attempts to make the actual offenders suffer the prescribed punishments for their crimes.

Nature of Criminal Procedure Code, 1973

The Criminal Procedure Code, 1973 (CrPC) came into force on 1st April, 1974. It provides the machinery for the detection of crime, apprehension of suspected criminals, collection of evidence, determination of guilt or innocence of the suspected person and the imposition of suitable punishment on the guilty person.

Special Importance of Criminal Procedure

The basic importance of criminal procedure has to be borne in mind, as it is the procedure that spells much of the difference between rule of law and rule by whim and caprice.¹ The importance of a Criminal Procedure Code is based on three other special considerations:²

- (i) It is more constantly used and affects a greater number of persons than any other law.
- (ii) The nature of its subject-matter is such that human values are involved in it to a greater degree than in other laws.

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¹ *Iqbal Ismail Sodawala v. State of Maharashtra*, (1975) 3 SCC 140

² 37th Report, pp. 1-2

(iii) As the law of Criminal Procedure is complementary of the substantive criminal law, its failure would seriously affect the substantive criminal law which in turn would considerably affect the protection that it gives to the society.

Basic Considerations in the Formulation of Code

While formulating CrPC, the following considerations were kept in view:³

- (i) an accused person should get a fair trial in accordance with the principles of natural justice
- (ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to individuals involved but also to society
- (iii) the procedure should ensure fair deal to poorer sections of the society.

Territorial Extent

Section 1 of the Criminal Procedure Code, 1973 provides the short title, extent and commencement.

It provides :

“(1) This Act may be called the Code of Criminal Procedure, 1973.

(2) It extends to the whole of India except the State of Jammu and Kashmir: Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply-

(a) to the State of Nagaland,

(b) to the tribal areas, but the concerned State Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification. Explanation.- In this section, "tribal areas" means the territories which immediately before the 21st day of January, 1972, were included in the

³ Raghava Nadar Rghu v. State, 1988 Cri LJ 1364 (Ker), 1373

tribal areas of Assam, as referred to in paragraph 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong.

(3) It shall come into force on the 1st day of April, 1974 .”

Meaning of Arrest

The word "arrest" is Anglo-Norman in origin, derived from the French word *arrêt* meaning 'to stop or stay' and signifies a restraint of a person.

The meaning of the word arrest is given in various dictionaries depending upon the circumstances in which the word is used. There are numerous slang terms for being arrested throughout the world.

In British terminology, the term "nicked" is often synonymous with being arrested, and "nick" can also refer to a police station, and the term "pinched" is also common. In the United States and France the term "collared" is sometimes used. The terms "lifted" or "picked up" are also heard on occasion.

Object of Arrest

An arrest is the act of apprehending a person and taking them into custody, usually because they have been suspected of committing a crime. After the person is taken into custody, they can be questioned further and/or charged. An arrest is a procedure in a criminal justice system.

Police and various other officers have powers of arrest. In some places, a citizen's arrest is permitted; for example in England and Wales, any person can arrest "anyone whom he has reasonable grounds for suspecting to be committing, have committed or be guilty of committing an indictable offence," although certain conditions must be met before taking such action. Similar powers exist in France, Italy, Germany, Austria and Switzerland if a person is caught in an act of crime and not willing or able to produce valid ID.

Importance of Arrest

As a safeguard against the abuse of power, many countries require that an arrest must be made for a thoroughly justified reason, such as the requirement of probable cause in the United States. Furthermore, the time that a person can be detained in custody is relatively short (in most cases 24 hours in the United Kingdom and France and 24 or 48 hours in the United States) before the detained person must be either charged or released.

Arrest is the deprivation of a person of his liberty by legal authority or at least by apparent legal authority. Every compulsion or physical restraint is not arrest but when the restraint is total and deprivation of liberty is complete, that would amount to arrest. If a person suppresses or overpowers the voluntary action of another and detains him in a particular place or compels him to go in a specific direction, he is said to imprison that other person.

Arrest Without Warrant

In case of ***arrests without warrant*** the decision to make arrest is no doubt made by persons other than magistrates and courts i.e. by police officers, private citizens, etc. These persons may not have the judicious mind and detached outlook, and yet because of the exigencies of certain situations the Code allows them to make the arrest-decisions themselves without obtaining warrants of arrest from the magistrates.

Section 41 to Section 44 of the CrPC, 1973 relates to the arrests which are made by police officers without prior warrants from the magistrate.

Section 41 of the Code provides for when the police officer can arrest a person without warrant.

It provides-

“(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

(b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house- breaking; or

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub- section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in section 109 or section 110.”

The requirement in Section 41 of responsibility and credibility would hopefully prevent the misuse of powers by the police officers. What is a reasonable complaint or suspicious or credible information must depend upon the facts and circumstances in each case.⁴ A Magistrate can issue a warrant of arrest only after taking cognizance of an offence.⁵

⁴ Kajal Dey v. State of Assam, 1989 Cri. LJ 1209 (Gau)

⁵ Section 204 of the Code

Section 41-A of the Code provides for the notice of appearance before the police officer.

It provides-

“(1) The police officer shall in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”

Section 41-B of the Code provides for the procedure of arrest and duties of the police officer.

It provides-

“Every police officer while making an arrest shall-

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be-

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.”

The guidelines provided in these sections are not exhaustive.⁶

Section 42 of the Code provides for the situations in which a police officer can arrest a person without warrant on refusal to give name and residence.

It provides-

“(1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non- cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required: Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India.

(3) Should the true name and residence of such person not be ascertained within twenty- four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.”

Section 42 is clear in itself. It provides that if a person commits a non-cognizable offence in the presence of a police officer and refuses to give his name and address when demanded by such officer, he can be arrested in order to ascertain his name and residence.⁷

Section 43 of the Code deals with the cases in which the arrest can be made by a private person and also what would be the procedure on such arrest.

It provides-

“(1) 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

⁶ Delhi Judicial Service Assn. v. State of Gujarat, (1991) 4 SCC 406

⁷ Gopal Naidu v. King Emperor, ILR (1923) 46 Mad. 605

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.

(2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re-arrest him.

(3) 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.”

Section 44 of the Code deals with the situation in which the arrest may be made by the Magistrate.

It provides-

“(1)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.

(2) 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.”

If a person arrested by a Magistrate is detained beyond 24 hours and is not produced before another Magistrate for obtaining an order of remand to custody under Section 167(1), his detention would be illegal.⁸

Arrest with Warrant

Section 204 of the Code provides for the issue of process of warrants for the arrest of the accused person.

⁸ Swami Hariharanand Saraswativ. Jailor I/C Distt. Jail, Banaras, AIR 1954 All 601

It provides-

“(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons- case, he shall issue his summons for the attendance of the accused, or

(b) a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear

at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub- section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing every summons or warrant issued under sub- section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.”

Section 87 of the Code deals with the issue of warrant in lieu of, or in addition to summons issued for the arrest of an accused person by the police officer.

It provides-

“A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest-

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.”

Rights of Arrested Persons

The right of personal liberty is a basic human right recognized by the General Assembly of the United Nations in its Universal Declaration of Human Rights.

Article 21 of the Indian Constitution provides that *“No person shall be deprived of his life or personal liberty except according to a procedure established by law.”*

Section 50 of the Code provides that person arrested by the police officer must be informed of the grounds of arrest and of his right to bail.

It provides-

“(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) 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 on bail and that he may arrange for sureties on his behalf.”

Section 54 of the Code provides that the accused person has the right to be examined by a medical practitioner.

It provides-

“When a person who is arrested, whether on a charge or otherwise alleges, at the time when he is produced before a Magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.”

Section 56 of the Code provides that the person arrested by the police officer must be taken before magistrate or officer in charge of police station.

It provides-

“A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.”

Section 57 of the Code provides that the person arrested not to be detained for more than twenty-four hours.

It provides-

“No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate' s Court.”

Section 76 of the Code provides that the person arrested by the police officer to be brought before the Court without delay.

It provides-

“The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person: Provided that such delay shall not, in any case, exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate' s Court.”

Article 22(2) of the Indian Constitution provides that-

“An arrested or the detained person has to be produced before the nearest magistrate within the time frame of twenty-four hours of such arrest. This time is exclusive of the time necessary for the journey from the arrested place to the court.”