

A STUDY ON ARREST: IN THE CONTEXT OF LEGISLATIVE PROVISIONS AND JUDICIAL ATTITUDE

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ABSTRACT

Arrest is the process of removing a person's many liberties, including personal liberty. The arrest is made solely to bring the accused before a court or other officer of the law. When making an arrest, it is important to use no unnecessary force and to inform the accused that he is being arrested. The accused person may be apprehended by a police officer, an executive or judicial magistrate, or a private individual. Under specific circumstances, military and paramilitary forces may arrest a person under special laws. Arrests in India are routine, and as such, they violate an individual's basic freedoms. Arrests, then, must be made in exceptional instances in accordance with the terms of the law. As a result, it is critical to understand when an accused individual can be arrested. Furthermore, it has to be examined if the Arresting Authority followed proper legal procedures when making the arrest. As a result, an investigation must be done into the use and misuse of arrest law, as well as the consequences and remedial actions available to an accused who has been wrongfully arrested. Therefore, an enquiry is required to be conducted to find out as to whether the provisions of arrest are being adhered to strictly or not by the courts of law. Hence the researcher has titled his study "A study on arrest: in the context of legislative provisions and judicial attitude".

Keywords: Arrest, remand, legislative provisions, law etc.

INTRODUCTION

The word "arrest" is derived from the French word 'Arrester', which means 'to stop or stay' and refers to the restraint of a person." In general, the word 'arrest' refers to the apprehension, restraint, or deprivation of one's personal liberty. A person is regarded to be arrested only when he is restricted from going wherever he wants. Legally, a 'arrest' refers to the use of legal authority to take a person into custody with the intention of bringing him before a court for trial. In the preceding context, the term 'arrest' refers to the seizing or detention of a person accompanied by legal authority.

It is a process in which a physical limitation is placed on an accused in order to deprive him of his personal liberty. Physical restraint aims to prevent a person from moving freely. When done by authority, it is called an arrest; otherwise, it is called unjust detention. When a person is subjected to complete physical confinement to the point that he is unable to move in accordance with his will, he is considered arrested. `

Articles 14, 19, 20, 21, and 22 of the Indian Constitution are specifically relevant to the issue of arrest and remand. The majority of these rights are available to the accused. As a result, an accused person has access to all of the same freedoms and privileges as any other Indian citizen. In other words, with the exception of a few freedoms, the Indian Constitution grants an accused in detention access to all of the same freedoms and privileges as an Indian citizen.

As a result, the Code empowers not only police officers and magistrates, but also ordinary citizens, to make arrests in specific instances. Arrest always comes before custody. As a result, every arrest is followed by a period of detention. In other words, if an accused individual is arrested or surrendered and brought before a court of law, that person is remanded to judicial/police custody. At this point, it appears that every arrest includes custody but not vice versa. As a result, the terms 'custody' and 'arrest' do not have the same meaning. Though 'custody' may imply an arrest in certain circumstances, it does not always.

The arrest is followed by custody, which is followed by bail, if approved by the court. The issue of re-arrest arises only when the bail previously granted to an accused is cancelled

by a competent Court of Law in accordance with the rules of law enunciated by the Higher Courts in this regard. As a result, the usual norm is that re-arrests occur only when bail is cancelled, however there are a few situations in which the accused can be re-arrested without bail revocation. The exceptions are listed as follows:

1. If an accused is released on bail for a minor offense and later discovered to have committed an aggravated offense, they can be re-arrested for the aggravated offense without canceling their previous bail for the minor offense.
2. If an accused is released on bail for a bailable offense but later determined to have committed a non-bailable offense, they can be re-arrested without having their bail revoked.

EQUALITY

The idea of equality enshrines the notions of classification on reasonable grounds and 'like should be treated alike'. These two ideas are quite valuable in helping courts in categorizing inmates and accused individuals. The new equality clause, which addresses arbitrariness, states that the arrest process must be fair and reasonable, not arbitrary; thus, the right against arbitrariness assists courts in declaring State actions as unconstitutional if they are prima facie arbitrary or unreasonable. Furthermore, when dealing with arrest cases, courts are expected to follow the basic guidelines outlined in the concept of equality.

FREEDOM

The various freedoms enshrined in Article 19 of the Indian Constitution are exclusive to citizens and cannot be claimed by non-citizens. Though the vast and vital freedom contained in the above-mentioned clauses of the Indian Constitution are regarded as God-given rights that automatically vest in a person. These liberties are neither absolute, unchecked, or unregulated.¹ As a result, the freedoms described in the preceding sections from Clauses 2 to 6 of the Article-19 are restricted liberties that can be abridged by passing restrictive legislation. The founding fathers put Article 19 into the constitution. It empowers the state to directly limit fundamental liberties. Article 19 of the Indian Constitution grants a variety of liberties, including "freedom of movement," "freedom to reside and settle," and "freedom of profession, occupation, trade or business." An accused in custody does not have access to these freedoms.²

However, an accused person can exercise other rights such as "freedom of speech and expression," "freedom to join an association," and so on. His custody does not justify depriving him of these liberties.

CONSTITUTIONAL RIGHTS

Article 21 of Constitution provides two rights :-

- Right to life.
- Right to personal liberty.

This states that "no person shall be deprived of his life or personal liberty except according to procedure established by law" Article 21 of the Constitution guarantees rights to all individuals, both citizens and foreigners. The aforementioned Article has been placed into the constitution to protect against arbitrary actions by the executive, legislature, and other government departments. This provision further states that a person's life or liberty may only be taken away through a reasonable and fair method.

¹ State of W.B. Vs.Subodh Gopal Bose, AIR 1954 SC 92

² Dr.Ambedkar's Observations , Constituent Assembly Debates CAD VII, 40-1.

The Supreme Court has interpreted the right to life and personal liberty, granting individuals independent rights based on previous verdicts. However, there is no explicit provision for preserving prisoners' rights. Taking all of the circumstances into account, the Supreme Court has construed Article 21 of the Constitution to include the protection of prisoners' rights. Article 21 was never understood to limit the authority of the government. However, it was given a broader definition in order to safeguard citizens against the despotic and inflexible activities of the government.

PROTECTION AGAINST ARREST AND DETENTION

Article 22 of the Indian Constitution provides following four safeguards to an arrested persons under:-

- a. "Rights to be Informed of Grounds of Arrest
- b. Right to Consult a Legal Practitioner
- c. Right to Produce Before a Magistrate.
- d. Right not to be detained in custody beyond 24 hours.
- e. Preventive Detention."

RIGHT TO BE INFORMED OF GROUNDS OF ARREST

According to the Constitution, an arrested individual has the right to know why he was apprehended and what crime he committed. This will give the apprehended person the opportunity to clear any doubts that may have arisen in the mind of the authority who is making the apprehension. The disclosure of the grounds of apprehension to a detainee assists him in preparing his defence and approaching the proper courts to seek bail as well as other constitutional remedies such as habeas corpus.³

The accused is entitled to know why they were apprehended, even after being freed on bond. It is also claimed that the terms "as soon as may be" occurring in Article 21 Clause 1 mean and imply as early as practicable for a reasonable man.

RIGHT TO CONSULT A LEGAL PRACTITIONER

As soon as an accused is apprehended, he has the right to speak with a counsel. If an accused cannot afford to hire a lawyer, the Magistrate must provide him with the option to do so. The accused shall be entitled to legal aid at all stages of the court procedures.

RIGHT TO PRODUCE BEFORE A MAGISTRATE

According to the Scheme of the Constitution and the Code of Criminal Procedure, a person who makes an apprehension must bring the apprehended person before the Judicial Officer without delay. Furthermore, the individual detained must be brought within 24 hours, disregarding travel time. The goal of bringing a person apprehended before a Judicial Officer without unnecessary delay is to reduce the practice of police extracting confessions, to treat police stations as prisons, and to allow a Judicial Officer to apply his independent judicial mind to the facts of the case.

RIGHT NOT TO BE DETAINED IN CUSTODY BEYOND 24 HOURS

Article 22(2) plainly states that no accused shall be imprisoned for more than 24 hours without the order of a magistrate. As such, the inclusion of the word 'shall' clearly indicates that failing to comply will render the entire arrest and custody process unconstitutional.⁴ The rights given by Clauses (1) and (2) of Article 22 do not apply to the following detainees:

³ M.Re Madhu Linaye, AIR 1969, SC 101

⁴ Ganpati K.Reddy Vs.Nafisul Hasan AIR 1954 SC 928

- A. An enemy alien;
- B. Preventive detainee;

As a result, police have the authority to detain a detainee for a maximum of 24 hours. The inmate will then be brought before the Judicial Officer, and any subsequent custody will be controlled by Section 167 of the Code of Criminal Procedure. The above-mentioned protections will not be available to hostile aliens under clause (3) of Article 22. Furthermore, an arrest of a person who has failed to pay income tax falls beyond the scope of Article 22's protection because the goal is not to penalize such a person, but to force him to pay the tax.⁵

PREVENTIVE DETENTION

Preventive detention differs in terms of object and amplitude. The law of preventive detention must be enacted in accordance with the provisions of the Seventh Schedule, namely Entry 9 of List I in the case of such law by the Centre and Entry 3 of List III in the case of law by the State or Centre. It should also not contravene Articles 14 and 19.⁶ The following is a summary of the discussion:

1) GENERAL

Detention can be punitive or preventive. Punitive detention occurs when a person is detained for an alleged and proven offense, whereas preventive detention occurs when someone is detained to prevent him from engaging in any wrongdoing.

2) LEGAL JUSTIFICATION

Preventive detention is always used to keep someone from committing a harmful conduct. It is never a good idea to wait until irreparable loss has occurred. This principle serves to justify preventative detention provisions.

3) POWER

In *A.K.Gopalan v. State of Madras*⁷, it was said that "the provisions of Article 22 do not confer any legislative power to enact law in relation to preventive detention." Entry 9 of List I of the VIII Schedule to the Constitution and Entry 3 of List III, read in conjunction with Article 246, give rise to power. Entry 9 of List I permits Parliament to establish legislation governing preventive detention for grounds related to India's defense, foreign affairs, or security.

Entry 3 of List III enables both Parliament and State Legislatures to make such legislation for reasons related to state security, public order, or the maintenance of important community supplies and services. Preventive detention was also included in the Government of India Act of 1935, but it was not on the Concurrent List. Preventive detention is not uncommon in other countries, but the unique feature of our Constitution is that power is not limited to times of war or emergency."

4) SAFEGUARDS PROVIDED IN CLAUSES 4 TO 7

In view of the terrible repercussions of such imprisonment, the Constitution has provided for some safeguards in clauses (4) to (7) of Article 22, which are as follows:

Clause (4) of Article 22 contains a clause about limitation. Preventive detention allows a person to be held for a set period of time. For the first time, a person might be imprisoned for a maximum of three months. The Advisory Board must approve any extension of detention for more than three months. The Advisory Board shall be made up of individuals who are, have been, or are qualified to serve as High Court judges. In 1972, the Supreme Court ruled in *D.S. Roy vs. State of West Bengal*⁸ that "after considering the opinion of the

⁵ *Purshottam Govindji Halai Vs.B.M.Desai*, AIR 1956 SC 20

⁶ *Khudiram Das Vs.State of W.B.*AIR 1975 SC 550

⁷ AIR 1950 SC 27 (per Kania and Dass, JJ

⁸ AIR 1972 SC 1924

Board, the Government should also confirm the detention within the period prescribed under clause (4)".

In *Satya Deo Parsad v. State of Bihar*⁹, it was said that "the petitioner was detained by an order of detention dated 11.7.1974. The Advisory Board issued its opinion on August 20, 1974, but the government confirmed the arrest on November 15, 1974. "The detention was declared invalid." The provision in question is included in Clause (5) of Article 22. When a detainee is detained, the State is required to reveal the grounds of imprisonment. However, in the public interest, the state has the authority to refuse to divulge the reasons for incarceration. This law allows the State broad discretion in refusing to divulge the basis of detention.

In *Khudiram Das v. State of W.B*¹⁰, it was determined that "communication of grounds in this context means imparting to the detainee sufficient knowledge of all the basic facts and material on which the order of detention is based." When there are many grounds and they are based on numerous remarks reported to have been made on different dates, communication entails bringing the detainee up to speed on the facts and circumstances that led to the order. In such a circumstance, the police officer's mere oral translation or explanation would not constitute communication.

Communication should take place in the language understood by the detainee. In *Hari Kishan v. State of Maharashtra*¹¹ the grounds were communicated in English, and it was determined that "communication in English, so long as English was the official language, was sufficient compliance with constitutional provisions." However, the Supreme Court rejected this position, ruling that "to a person who was not conversant with the English language, the grounds must have been given in a language that he could understand and a script that he could read if he was literate." Normally, the Court does not dispute the sufficiency of the ground."

Initially, the detaining authorities were supposed to provide the detainee with an option to protest his imprisonment through representation. This safeguard has been implemented to reduce the overuse of preventive detention. If the representation is not evaluated within a reasonable time frame and no explanation is provided for the delay, detention may be declared illegal. Whether the delay in consideration of representation is unreasonable will be determined by the facts of each case. "No fixed period can be established." In each case, the court must decide judicially based on the available evidence whether the delay between the receipt of representation supplied by the government is insufficient to declare the imprisonment unconstitutional.

In *S.K. Rashid v. State of W.B*¹², this issue was addressed, and it was determined that "the representation was made on February 3, 1972, and the Government evaluated it on March 1, 1972. This period was determined to be unreasonable." In *Kanti Lal Bose v. State of W.B*¹³ a delay of 28 days was judged sufficient to invalidate the detention order. Similarly, in *Sambu Kar. v. State of W.B*¹⁴, when the representation was received on December 29, 1971 and examined on February 2, 1972, the delay was deemed unreasonable. Diplomatic contact between countries, as well as memorials, submissions, or petitions addressed to the Prime Minister and other Ministers in large numbers around the world, cannot be considered

⁹ AIR 1975 SC 367

¹⁰ AIR 1975 SC 550. *Harikishan Vs. State of Maharashtra* AIR 1962 SC 911

¹¹ AIR 1978 SC 624 1972 Cr.L.J.

¹² AIR 1978 SC 624 1972 Cr.L.J.

¹³ *Devji Vallabhbhai Vs. Administrator, Goa, Daman and Diu* AIR 1982 SC 1029

¹⁴ *A.K. Roy Vs. Union of India* AIR SC 710

representation under clause (5)¹⁵ Clause (5) of Article 22 does not grant detainees the right to be heard in person, cross-examine evidence, or be represented by an advocate. The person imprisoned has no right to be represented by an advocate; nevertheless, if the detaining authorities seek the assistance of a legal practitioner before the Advisory Board, Article 14 mandates that the detainee be allowed to appear through a legal practitioner.¹⁶

After gaining independence, India was a young republic. There were different subversive elements determined to endanger the country. With these circumstances in mind, the principle of preventive retention was introduced into the Constitution. Preventive detention law allows for the custody of anyone who poses a threat to national defense, international affairs, state security, or law and order.

ARREST: STATUTORY PROVISIONS

The sections 41 to 60A deals with the process of arrest. These provisions are divided into two parts for the purpose of study;

- Arrest of Persons;
- Subsequent Proceedings after Arrest of Persons;

A brief commentary on the above-said provisions is narrated below for the purposes of having a clarity over the subject matter especially in view of the technical provisions and procedure thereof.

Arrest can be without warrant and with warrant. Section 41 of the Criminal Procedure Code of 1973 lists nine sorts of instances in which a police officer may arrest someone without a Magistrate's order or a warrant. As such, this section contains the general powers of police officers to arrest, although these rights are subject to certain other provisions in the Code and the specific statute to which the Code is applied. As a result, police officers can exercise their powers under Section 41 CrPC without the participation of the Court. The police officer can arrest everyone who is suspected or concerned with the offenses, including all suspects, without a warrant from the court.

According to Section 42 of the CrPC, a police officer has the authority to arrest a person who has been accused of committing a non-cognizable offence in the presence of another police officer in order to obtain his name and address. After determining the person's name and address, the police officer is required to release him by executing a bail.

As previously stated, sections 41 to 60A deal with the arrest of a person. This Chapter describes the powers of a police officer. This Chapter also explains how and in what ways a police officer can exert his authority. It is widely seen that police officers abuse their authority to arrest by breaking established legal standards.

The Hon'ble Supreme Court ruled in the Joginder Singh case¹⁷ that "no arrest should be made because it is lawful for the police officer to do so". Furthermore, in the Rini Jhorar case, the court stated that "if a police officer arrests a person without following proper procedure, it constitutes a violation of the rights guaranteed by Article 21 of the Indian Constitution." It is also a violation of the legislation mandated by Sections 41 and 41(a) of the Code, and such official shall be held accountable to compensate the victim."

In the Delhi Judicial Service Association's¹⁸ case, the Supreme Court of India commented on the possible abuse of arrest power, holding that "arrest, assault, and handcuffing of Chief Judicial Magistrate by police with an object to work vengeance and humiliate CJM who has been policing the police by judicial orders was not justified." The

¹⁵ AIR 1994 Section 41(1)(i)

¹⁶ AIR 2016 SC 2679

¹⁷ AIR 2014 SC 2756

¹⁸ ID at 46

police's behavior and approach are obviously extraordinary, undesired, and uncommon."

In Arnesh Kumar case¹⁹, the court stated that "no arrest can be made routinely based on a mere allegation of commission of an offence made against a person." It would be prudent and wise for a police officer to make no arrest until a reasonable satisfaction is reached following an examination into the veracity of the claim".

The Police Officer's statutory responsibility is to utilize the power of arrest with caution and in accordance with established legal principles. However, a police officer is entitled to protection even if he makes an incorrect arrest due to an honest mistake. It is also alleged that the police officer used the power of arrest even in civil cases.²⁰

The power under Section 151 CrPC is very similar to a state's preventative detention laws. Section 151 of the Criminal Procedure Code provides for police preemptive action. If the police officer discovers that the individual in question intends to commit a cognizable offence, he may arrest them. The police officer invoking Section 151 of the CrPC should constantly keep in mind that any arbitrary invocation violates Articles 19 and 21 of the Constitution.

Section 46 (4) of the CrPC, enacted by virtue of Section 6 of the Criminal Amendment Act of 2005, establishes fundamental procedures for the arrest of a woman. This provision clearly states that a woman police officer must make the arrest. It also states that under normal circumstances, no woman shall be arrested after dusk and before sunrise. However, in the case of a major offense, the accused lady may be detained promptly between sunset and daybreak by any female police officer with approval from the Judicial Magistrate.

Section 43 allows private individuals to arrest a person if he is proven to be committing a non-bailable cognizable offence. After an arrest, the individual making the arrest has the right to turn the person over to a police officer.

This clause also authorizes a private citizen to apprehend a declared offender. The private individual's power to arrest the perpetrator is not infinite, but rather constrained. The power of a private individual to arrest another person who, in his opinion, has committed a non-bailable and non-cognizable offence, provided that such power of arrest is accessible immediately after the offence is committed. However, if such private person does not utilize his ability to arrest such person, this power to arrest the person will expire in his favor at a later date. The Abdul Habib²¹ states that a private citizen cannot arrest another person based solely on suspicion. Private individuals must have legitimate reasons for arresting another person.

RIGHTS OF AN ARRESTED PERSON

The following rights are granted to an arrested individual under the Code. These are as follows:-

1. Accused persons have the right to know their arrest grounds under CrPC sections 50, 50A, 55, 75, and Article 20 (1) of the Indian Constitution. This allows them to prepare their defense and approach the court for bail.
2. Information on the right to be freed on bail

According to Section 50 of the CrPC, every accused person has the right to be freed on bail if the offence is bailable, and if the offence is not bailable, he has the right to seek bail concession from the Court.

- Sections 57 and 76 of the CrPC, as well as Article 22 (2) of the Indian Constitution, provide the accused with the right to appear before a Magistrate within 24 hours of

¹⁹ Abdul Habib Vs.State 1974 CR.L.J.278.

²⁰ Balasahab Sadanand Bhagat Vs.State of Maharashtra 2015 CrL.J (NOC)470 (Bom)

²¹ 1990 CrL.J.1923 (Delhi)

being arrested. During the 24-hour detention period, the accused must be detained at the Police Station and nowhere else.

- According to Section 303 of the Criminal Procedure Code and Article 22 (1) of the Indian Constitution, every accused has the right to appear before the Magistrate through his legal counsel. It is his fundamental right, as stated in Article 22(1) of the Indian Constitution.
- According to Section 304 of the CrPC and Article 39 (A) of the Indian Constitution, the accused has the right to free legal aid given by the District Legal Services Authority if he meets the other conditions.
- According to Article 20(3) of the Indian Constitution, the accused has the right to stay silent. This is the right granted to the accused under common law principles.

POST ARREST PROCEDURE

The police officer who has apprehended a person under his powers bestowed upon him under Section 41 of the Code or any other law currently in force (unless and until otherwise stipulated) shall follow the following procedure:

Obligation of police officer making arrest to inform a nominated person- According to Article 21 of the Constitution, a police officer must inform the arrested person's acquaintances, relatives, or family members about his arrest and the location where he is being held. When the accused is brought before the Magistrate, he is also required to satisfy himself as to the fulfillment of the aforementioned rule. It is now accepted that compliance with the aforesaid rule is necessary, and in case of disobedience, the accused shall be at liberty to question the correctness of his arrest against the procedure prescribed According to the standards established in D.K.Basu's case,²² "if information of arrest is not provided to a relative of the arrestee, it constitutes a violation and the court must award compensation to the victim."

Medical examination of the arrested person- Upon the request of a police officer or the accused person. Section 53 of the Criminal Procedure Code specifies the scope of conducting a medical examination on an accused person. This component requires a medical examination by a qualified medical practitioner. The female accused must be examined by a female medical practitioner. Under this clause, the investigating agency may use reasonable force to conduct a medical examination of the accused. A police official with the level of Sub-Inspector or higher can request a medical examination of an accused while the investigation is ongoing. Section 54 of the Cr.P.C. also grants the accused the valuable right to have himself medically checked if he believes that police authorities have done something illegal against his wishes. He can make such a request to the Magistrate.

As a result, Section 53 of the Code enables police officers to compel the accused to undergo a medical examination in order to conduct an effective investigation. Section 54 of the Code allows the accused to have himself medically tested in order to prove that something wrong was done to him against his will while in police custody. In *Mukesh Kumar v. State (Delhi)*²³, the Delhi High Court issued a directive requiring the Magistrate to ask the arrested person if he has any complaints of torture or maltreatment in police custody and to inform the accused of his right under section 54 to be medically examined."

Police to report apprehensions (section 58)- Section 58 of the Criminal Procedure Code requires police officers to notify all arrests committed without a warrant to the District Magistrate or Sub Divisional Magistrate. **Health and safety of arrested person-** Every police

²² Urooj Abbas v. State of Uttar Pradesh 1975 CrL.J.1458 Allahabad High Court.

²³ Niranjan Singh Prabhakar 1960 CrL.J.426 SC.

officer who has custody of an accused person is required to take reasonable precautions to ensure the accused's safety and well-being.

CONCLUSIONS

Section 41 of the Criminal Procedure Code of 1973 states that "a police officer can arrest a person without the instructions or warrant of the magistrate in the following situations:

1. when any person has been concerned in any cognizable offence, against whom a reasonable complaint has been made, credible information has been obtained, or a reasonable suspicion exists that he has been thus concerned,
2. when any person has in his possession without legitimate justification an instrument of housebreaking, or
3. When any individual has been proclaimed as an offender under this code or by order of the state government,
4. when any person in whose possession anything is found that may reasonably be considered to be stolen goods and who may fairly be suspected of having committed an offence in relation to such things, or
5. When any person obstructs a police officer while performing his duties, or has escaped or seeks to escape from lawful custody, or
6. When any person is reasonably suspected of being a deserter from any of the Union's armed forces,
7. When any person has been involved 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 involved in, any act committed at any place outside 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
8. When a released criminal violates any provision set under sub-section (5) of section 356; or
9. when another police officer issues a requisition, whether written or oral, for the arrest of any person, provided that the requisition specifies the person to be arrested as well as the offence or other cause for the arrest, and it appears from the requisition that the person may lawfully be arrested without a warrant by the officer who issued the requisition.