



RESTRICTIONS ON ARBITRARY ACTION OF POLICE REGARDING ARREST

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ABSTRACT

Any police officer may without an order from a Magistrate and without a warrant, arrest any person when someone commits, in the presence of a police officer, a cognizable offence. A police officer may arrest any person against whom a reasonable complaint has been made. If he or she is satisfied that such arrest is necessary for proper investigation of the offence. While during arresting of suspects police should wear "accurate, visible and clear" identification and name tags. A memo of arrest must be prepared at the time of arrest. The person arrested, detained or being interrogated has a right to have a relative, friend or well-wisher informed as soon as practicable. The person arrested must have a medical examination by a qualified doctor every 48 hours during detention. Medical examination should be done by a doctor who is on the panel. The panel must be constituted by the Director of health Services of every State. 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 is a submission to the custody by word or action. Save in exceptional circumstances, no women shall be arrested after sunset and before sunrise, whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

KEY WORDS: Arrest, Police Officer, Magistrate, Women, Medical Examination, offence, investigation

INTRODUCTION

Arrest: to deprive a person of his liberty by legal authority, taking under real or assumed authority, custody of another for the purpose of holding and detaining him to answer a criminal charge or civil demand¹.

WHO MAY ARREST

ARREST BY POLICE OFFICER

41(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person

(a) Who commits, in the presence of a police officer, a cognizable offence?

(b) 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 punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-

(i) The police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) The police officer is satisfied that such arrest is necessary-

(a) To prevent such person from committing any further offence; or

(b) For proper investigation of the offence; or

(c) To prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) To prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) As unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing².

Though arrest cannot be justified merely on the existence of power as a matter of law, to arrest without a warrant in a cognizable case.³

42. Arrest on refusal to give name and residence

(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 ascertained⁴.

ARREST BY PRIVATE PERSON

43 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 offender⁵

ARREST BY MEGISTRATE

When any offence is committed in the presence of magistrate within his local jurisdiction, he may himself arrest or order any person to arrest the offender. And any person for whose arrest he is competent at the time and in the circumstances to issue warrant⁶.

GUIDELINES OF SUPREME COURT ON ARREST ARE AS;

In D. K. Basu case the Supreme Court lay down following guidelines;

1. Police arresting and interrogating suspects should wear "accurate, visible and clear" identification and name tags, and details of interrogating police officers should be recorded in a register.
2. A memo of arrest must be prepared at the time of arrest. This should have the time and date of arrest be attested by at least one witness who may either be a family member of the person arrested or a respectable person of the locality where the arrest was made be counter-signed by the person arrested.
3. The person arrested, detained or being interrogated has a right to have a relative, friend or well-wisher informed as soon as practicable, of the arrest and the place of detention or custody. If the person to be informed he signed the arrest memo as a witness this is not required.
4. Where the friend or relative of the person arrested lives outside the district, the time and place of arrest and venue of custody must be notified by police within 8 to 12 hours after arrest. This should be done by a telegram through the District Legal Aid Authority and the concerned police station.
5. The person arrested should be told of the right to have someone informed of the arrest or detention is made.
6. An entry must be made in the diary at the place of detention about the arrest. The name of the person informed and the name and particulars of the police officers in whose custody the person arrested is.

7. The person being arrested can request a physical examination at the time of arrest. Minor and major injuries if any should be recorded. The "Inspection Memo" should be signed by the person arrested as well as the arresting police officer. A copy of this memo must be given to the person arrested.
 8. The person arrested must have a medical examination by a qualified doctor every 48 hours during detention. This should be done by a doctor who is on the panel. Which must be constituted by the Director of health Services of every State.
 9. Copies of all documents including the arrest memo have to be sent to the Area Magistrate for his record.
 10. The person arrested has a right to meet a lawyer during the interrogation. Although not for the whole time.
 11. There should be a police control room in every District and State headquarters where information regarding the arrest and the place of custody of the person arrested must be sent by the arresting officer. This must be done within 12 hours of the arrest⁷.
 12. On the above guidelines our legislature has amended the code of criminal procedure by the amendment act 2008 and make then statutory provision in chapter V.
- 50. Person arrested to be informed of grounds of arrest and of right to bail.- (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 arrest¹⁰.
 - 50A. Obligation of person making arrest to inform about the arrest etc., to a nominated person.- (1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information¹¹.
 - 54. Examination of arrested person by medical officer. - (1) When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made.
 - Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person.¹²
 - 55-A. Health and safety of arrested person. - It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.
 - 57. Person arrested not to be detained more than twenty-four hours. - No police officer shall detain in custody a person arrested without warrant for a longer period than under all the

Guidelines to Police Officers unde code of criminal procedure

- 46. (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 action⁹.
- 49. No unnecessary restraint. - The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

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 Court¹³

Safeguards While Arresting A Women

- 46(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 made¹⁴.
- 51(2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency¹⁵.

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