Subject Name: Code of Criminal Procedure
Topic Name: Powers of Arrest

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Introduction

Arrest serves multiple purposes, including securing the attendance of the accused at trial and preventing potential crimes. It may be necessary for various reasons, such as dealing with individuals intending to commit crimes, habitual offenders, or those found under suspicious circumstances. Arrest can also be warranted to obtain accurate information about a person committing a non-cognizable offence or to prevent obstruction of police duties.

Arrest involves apprehending a person by legal authority, leading to the deprivation of their liberty. The Code of Criminal Procedure recognizes two types of arrests: those made pursuant to a warrant issued by a Magistrate and those made without a warrant but in accordance with legal provisions permitting such arrests.

A warrant of arrest is a written order issued and signed by a Magistrate, directing a police officer or another designated individual to apprehend the named accused person.

Warrant of Arrest

A warrant of arrest is an official document issued by a competent Magistrate authorising the arrest of a specific individual. It must be in writing, signed, and sealed by the Magistrate or court. The warrant must clearly identify the person to be arrested and specify the offence they are charged with. Additionally, it must indicate the person authorised to carry out the arrest.

In some cases, the warrant may include a provision allowing the arrested person to be released if they execute a bond and provide security for their appearance in court. Such warrants are known as "bailable warrants of arrest."

The provisions regarding warrants of arrest are outlined in Sections 70 to 73 of the Code of Criminal Procedure:

1. Form of warrant of arrest and duration: Every warrant of arrest must be in writing, signed by the presiding officer of the court, and bear the court's seal. The warrant remains valid until it is cancelled by the issuing court or executed.

2. Power to direct security to be taken: The court issuing a warrant of arrest may, at its discretion, direct that if the arrested person executes a bond with sufficient sureties for their appearance before the court at a specified time, they may be released from custody. The endorsement on the warrant must specify the number of sureties, the amount of the bond, and the time for appearance before the court. When security is taken, the officer executing the warrant must forward the bond to the court.

A warrant of arrest directed to any police officer can be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed (Section 74). However, this rule does not apply to the special procedure provided by Sections 78 to 81 for the execution of warrants outside the local jurisdiction of the court issuing them.

Importantly, a warrant of arrest can be executed at any place in India (Section 77). When a warrant of arrest is to be executed outside the local jurisdiction of the court issuing it, the procedure laid down in Sections 78 to 81 must be followed.

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Arrest Without Warrant

Arrest without a warrant may be necessary in various circumstances, including when a person is reasonably suspected of committing a serious (cognizable) offence or when immediate arrest is needed to ascertain the name and address of an offender involved in a less serious (non-cognizable) offence. The power to arrest without a warrant is provided under Sections 41 and 42 of the Code of Criminal Procedure (CrPC).

Section 41(1) outlines the conditions under which a police officer may arrest a person without a warrant. These conditions include:

1. If a person commits a cognizable offence in the presence of a police officer.

2. If there is a reasonable complaint, credible information, or suspicion that the person has committed a cognizable offence punishable with imprisonment for up to seven years.

3. If the arrest is necessary to prevent further offences, facilitate proper investigation, prevent the disappearance of evidence, prevent tampering with evidence, prevent inducement or threats to witnesses, or ensure the person's presence in court.

4. If the person has been proclaimed as an offender, is found with stolen property, obstructs a police officer, attempts to escape lawful custody, or is reasonably suspected of being a deserter from the Armed Forces.

5. If the person is involved in an offence committed outside India that would be punishable in India.

6. If the person commits a breach of rules after release from custody.

7. If there is a requisition from another police officer specifying the person to be arrested and the offence.

Section 41(2) states that no person involved in a non-cognizable offence or against whom a complaint has been made shall be arrested except under a warrant or order of a Magistrate.

Section 42 deals with the arrest of a person involved in a non-cognizable offence. If such a person refuses to provide their name and residence, or provides false information, they may be arrested to ascertain their identity. Once their identity is confirmed, they are released on executing a bond to appear before a Magistrate if required. If their identity cannot be ascertained within 24 hours, or if they fail to execute the bond, they must be forwarded to the nearest Magistrate.

Arrest How Made?

Section 46(1) of the CrPC stipulates that during an arrest, a police officer must physically touch or confine the individual's body, unless there's a clear submission to custody through words or actions.

Sub-section (2) further elaborates that if the individual resists arrest forcefully or tries to evade it, the police officer is authorised to employ all necessary means to carry out the arrest.

Sub-section (3), often referred to as the justification for police encounters, states: "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."

Now, if we were to omit the words "Nothing" and "not" from the aforementioned section, it would seemingly grant the police the authority to cause the death of an individual accused of an offence punishable with death or life imprisonment.

Therefore, when examining both sub-sections (2) and (3) together, it implies that the police can employ "all means necessary to effect the arrest" and, if necessary, cause the death of an individual accused of such serious offences.

Arrest by Private Person

Arrest by a private individual without a warrant is deemed necessary in the interest of societal order, particularly when dealing with grave offences that demand swift action according to the law. While police powers to arrest without a warrant serve a purpose, they may not always suffice, especially in situations where no law enforcement officer is present at the scene of a serious crime witnessed by multiple private citizens.

In such scenarios, expecting these witnesses to refrain from taking action until a warrant is obtained or waiting for the police to intervene would be unreasonable. Thus, the law empowers private individuals to make arrests without warrants under certain circumstances.



Section 43 outlines these provisions:

1. Any private person may arrest, or cause to be arrested, an individual who commits a non-bailable and cognizable offence in their presence, or apprehend any proclaimed offender. Subsequently, the arrested person must be promptly handed over to a police officer or taken to the nearest police station if no officer is available.

2. If there is reason to believe that the arrested person falls under Section 41 provisions, a police officer must re-arrest them.

3. If there's reason to believe the individual has committed a non-cognizable offence and they refuse to disclose their identity or provide false information, they shall be dealt with according to Section 42. However, if there's insufficient evidence of any offence, they must be released immediately.

This power of arrest without a warrant applies solely to offences categorised as both non-bailable and cognizable. Non-bailable offences, broadly speaking, encompass serious crimes.

While Section 42 grants police officers the authority to arrest without a warrant for non-cognizable offences, Section 43 extends this right to private citizens exclusively for non-bailable and cognizable offences witnessed by them firsthand.

The privilege to arrest under Section 43 hinges on the private citizen's personal observation of the offence. Any attempt to apprehend a fleeing individual, even in response to cries for help, without direct witnessing of the offence does not align with the provisions of Section 43. Therefore, the right of arrest under this section must coincide with the commission of the offence.

Legal and Psychological Implications of Arrest

Discretion in arrest entails the authority's ability to select from various available options without adhering to predetermined criteria, regardless of how whimsical the choice may appear, while the term "arrest" denotes the act of taking another person into custody under the authority of the law, with the aim of detaining them to answer criminal charges and preventing the commission of further offences. This action results in a temporary curtailment of some of the fundamental rights of the accused.

Apart from the legal framework surrounding arrest, there exists a psychological dimension to it. The act of arrest profoundly impacts the social life and future prospects of the individual, leading to irreparable damage to their public image.

In this context, the Delhi High Court, in the case of ***Rakesh Kumar v. Vijayanta Arya (DCP) & Ors,*** has remarked that the repercussions of arrest extend beyond the accused alone, affecting the reputation of their entire family. No amount of explanation to neighbours or witnesses can undo the humiliation and indignity suffered by the accused and their relatives.

Arrest and imprisonment inflict lasting harm on an individual and collateral damage on innocent family members. The subsequent release or acquittal of the innocent offers little solace and provides no restitution for the loss of reputation or temporary deprivation of personal liberty. A stigma lingers with the person who has been taken into custody, detained, or incarcerated by the police.

Given the aforementioned factors emphasised in the judgement, it becomes imperative for authorities to exercise caution and exercise utmost prudence when utilising discretionary arrest powers as outlined in Section 41 and 41A of the Code of Criminal Procedure. These provisions hinge on terms like "reasonable complaint," "credible information," and "reasonable suspicion,"

which afford a wide spectrum of subjective satisfaction for police authorities before taking further action.

Additionally, it is mandatory for a police officer to document the reasons as per the stipulations of Section 41A(3), which states that: Where the individual complies and continues to comply with the notice, they shall not be arrested concerning the offence mentioned in the notice unless, with recorded justification, the police officer deems it necessary to do so.

Given the critical nature of the issue, the Honourable Supreme Court introduced a set of guidelines in the case of ***Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273*** to prevent the misuse of discretion and harassment by the police in cases involving the application of Section 41 of the CrPC. These guidelines are as follows:

1. State Governments are instructed to direct police officers not to resort to automatic arrest in cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, 1961, or in cases where the offence is punishable with imprisonment for a term less than seven years or where arrest may not be necessary as per the parameters outlined in Section 41 CrPC.

2. All police officers should be provided with a checklist containing specified sub-clauses under Section 41(1)(b)(ii) CrPC.

3. Police officers must forward a duly filled checklist along with the reasons and materials necessitating the arrest when presenting the accused before the Magistrate for further detention.

4. The Magistrate, before authorising detention, shall examine the report provided by the police officer and record their satisfaction.

5. The decision to refrain from arresting an accused must be conveyed to the Magistrate within two weeks from the date of instituting the case, with an extension of this period possible upon written justification by the Superintendent of Police.

6. Notice of appearance under Section 41-A CrPC should be served on the accused within two weeks from the date of instituting the case, with the possibility of extension upon written justification by the Superintendent of Police.

Furthermore, failure to adhere to these directives would not only subject the concerned police officers to departmental action but also render them liable for contempt of court, to be adjudicated by the respective High Courts. Judicial Magistrates who authorise detention without recording reasons as specified may face departmental action by the appropriate High Court.

In addition to the guidelines issued by the Supreme Court, High Courts have also formulated procedures to address procedural ambiguities:

In April 2018, the Bench, under the leadership of the Acting Chief Justice of Delhi High Court, Justice Gita Mittal, issued comprehensive guidelines in the case of ***Amandeep Singh Johar v.***

State of NCT of Delhi & Anr. These guidelines aim to ensure transparency in the system and include provisions such as:

- Providing acknowledgment to suspects/accused upon receiving a notice under Section 41-A CrPC.
- Issuing duly indexed booklets containing serially numbered notices in duplicate/carbon copy format by the Station House Officer to the Investigating Officer.
- Preserving and destroying used booklets as per appropriate rules framed by the Police department.
- Widely publicising these guidelines to ensure awareness among the general public.

Similarly, the Jharkhand High Court, through its order in the case of ***Mahesh Kumar Chaudhry v. The State of Jharkhand,*** directed the State of Jharkhand to consider framing appropriate guidelines regarding the issuance of notice of appearance before police officers under Section 41-A of the Code of Criminal Procedure, aiming to prevent arbitrary arrests and ensure adherence to due process of law.

