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

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Arrest Methodology

As per Section 46(1) of the Code of Criminal Procedure (CrPC), the method of arrest requires the police officer or individual executing the arrest to physically touch or confine the body of the person to be arrested, except in cases where there is clear submission to custody by word or action.

Notably, in instances involving the arrest of a woman, her submission to custody upon oral notification of arrest is presumed, unless circumstances suggest otherwise, and physical contact with the woman during arrest should be avoided unless the arresting officer is female or exigent circumstances necessitate otherwise.

Resisting Arrest and Use of Force

Section 46(2) of the CrPC allows the arresting officer or individual to use all necessary means to effectuate the arrest if the individual being arrested resists arrest forcibly or attempts to evade it.

Limitations and Protections

Furthermore, Section 46(3) of the CrPC specifies that this section does not confer the right to cause the death of a person who is not accused of an offence punishable with death or life imprisonment.

Exceptional Circumstances Regarding Arrest of Women

Section 46(4) of the CrPC outlines limitations on the arrest of women, stating that, unless under exceptional circumstances, no woman should be arrested after sunset and before sunrise. In cases where such exceptional circumstances arise, a female police officer must seek prior permission from the Judicial Magistrate of the first class within whose jurisdiction the offence was committed or the arrest is intended, by filing a written report.

Responsibilities During Arrest

Section 41B of the CrPC mandates certain obligations for every police officer while making an arrest, including bearing visible and clear identification of their name and preparing a memo of arrest, which must be attested by at least one witness and countersigned by the arrested person.

Additionally, police officers are required to inform the arrested person of their right to inform a relative.

Rights of the Arrested Person

Section 41D of the CrPC grants arrested persons the right to meet with an advocate during interrogation, albeit not throughout the interrogation process.

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Additional Powers of Police Officer

Section 41 of the CrPC confers various additional powers upon a police officer apart from arrest, including the authority to search a place entered by the person sought to be arrested, pursue any person into any place in India, and ensure that the person is not subjected to more restraint than necessary. Moreover, police officers must inform the arrested person of the grounds of arrest and their right to bail, and they are obligated to inform a nominated person about the arrest.

Additionally, police have the power to search the arrested person, seize any offensive weapon, arrange for medical examination of the accused or person accused of rape, and ensure reasonable care of the health and safety of the arrested person.

Mandatory Procedures After Arrest

Section 57 of the CrPC mandates that a person arrested must be presented before a magistrate within 24 hours of arrest. Additionally, the officer in charge is required to report all arrests without warrant to the District Magistrate. The arrested person may be discharged on their own bond, bail, or a special order of the magistrate, and police also have the power to pursue and retake in case of escape.



Arrest of Judicial Officers

Can a judicial officer be arrested? This question delves into an intriguing legal territory, but its answer has been firmly established by the Supreme Court in the case of ***Delhi Judicial Service Association Tis Hazari Court vs. State of Gujarat (1991)***. The court unequivocally asserted that no individual, regardless of their rank or designation, is exempt from the law's purview. Every person, including a magistrate, judge, or any other judicial officer, is subject to criminal prosecution for any offences they may commit, just like any other citizen.

In the same landmark judgement, the Supreme Court outlined certain guidelines, serving as minimum safeguards to be adhered to in the event of the arrest of a judicial officer:

1. The arrest of a judicial officer for an offence should be carried out with prior intimation to the District Judge or the High Court, depending on the circumstances.

2. If immediate arrest of a judicial officer is deemed necessary, a technical or formal arrest may be conducted.

3. Prompt communication of the arrest details should be made to the District and Sessions Judge of the concerned district and the Chief Justice of the High Court.

4. The arrested judicial officer should not be taken to a police station without the prior order or directions of the District & Sessions Judge of the concerned district, if available.

5. Immediate facilities should be provided to the judicial officer to communicate with their family members, legal advisers, and other judicial officers, including the District & Sessions Judge.
6. No statement of the arrested judicial officer should be recorded, no panchnama drawn up, and no medical tests conducted without the presence of the judicial officer's legal adviser or another judicial officer of equal or higher rank, if available.

7. Handcuffing of a judicial officer should be avoided. However, if violent resistance to arrest is encountered or if there is an imminent danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such cases, immediate reports must be made to the concerned District & Sessions Judge and the Chief Justice of the High Court.

It's imperative to note that the burden lies on the police to justify the necessity for effecting physical arrest and handcuffing of the judicial officer. If it is established that such actions were unjustified, the police officers responsible may be deemed guilty of misconduct and held personally liable for compensation or damages, as determined by the High Court.

De Facto IAS