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# **CRIMINAL PROCEDURE CODE**

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**Sections: 41 - 45**

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## PROVISIONS RELATING TO ARREST OF PERSONS

### Explanatory Notes by DLA on "Arrest of Persons"

#### RIGHTS OF ARRESTED PERSONS

I. **FUNDAMENTAL RIGHTS** of arrested persons under Articles 21 and 22 of Constitution:

##### Rights of an arrested person under Article 22(1)

(1)

- An arrested person
  - shall not be detained in custody
  - without being informed of grounds of arrest

(2)

- An arrested person
  - shall not be denied the right
  - to consult and to be defended by
    - a legal practitioner of his choice

##### Rights of an arrested person under Article 22(2)

(3)

- An arrested and detained person
  - shall be produced before nearest magistrate
  - within 24 hours of arrest
  - **excluding** journey time from place of arrest to court

(4)

- No person shall be detained in custody
  - beyond the said period of 24 hours
  - without authority of a magistrate



The Fundamental Right of **Life and Personal Liberty** granted by Article 21 and Guaranteed by Article 32:

- **No person shall be deprived**
  - of his **life or personal liberty**
- **except**
  - according to **procedure** established by law

**II. STATUTORY RIGHTS** granted by the Code of Criminal Procedure:

- Sections 41B: Arrested person has to be informed that he has a right to have a relative or a friend informed of his arrest
- Section 41D: Arrested person is entitled to meet an advocate of his choice during interrogation
- Section 49: Arrested person shall not be subjected to more restraint than is necessary to prevent his escape
- Section 50: Arrested person has to be informed of grounds of arrest and of his right to bail
- Section 50A: Arrested person shall be informed of his right that a person nominated by him shall be informed of his arrest
- Section 56: Arrested person shall be produced before a Magistrate without delay
- Section 57: Arrested person shall not to be detained for more than 24 hours without authorization by a Magistrate

**III. LEGAL RIGHTS** of arrested persons enunciated by the Supreme Court:

Directions issued by the Supreme Court in [Dilip K. Basu v. State of West Bengal \[1997\]](#)



- (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations.
- (2) The police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police telegraphically within a period of 8 to 12 hours after the arrest.
- (5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- (6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- (7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The “Inspection Memo” must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.



(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors.

(9) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(10) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated and displayed on a conspicuous notice board.

## STATUTORY PROVISIONS OF CRPC RELATING TO ARRESTS:

### Cognizable offences: When police may arrest without warrant

#### Section 41(1)

- Any police officer may
  - without an order from a Magistrate and without a warrant
  - arrest any person
- (a)
  - who commits **in 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 less than or upto 7 years
  - if
  - Police officer has reason to believe that such person has committed the offence **and**



- **he is satisfied that arrest is necessary**

- (a) to prevent committing further offence or
- (b) for proper investigation or
- (c) to prevent disappearance of or tampering with evidence
- (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 Court or to police officer or
- (e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured

- Police officer shall record reasons in writing

- while making such arrest

- He shall record reasons in writing

- for not making arrest
- in all cases where arrest is not required

(ba)

- against whom credible information has been received

- that he has committed a cognizable offence
  - punishable with imprisonment for more than 7 years or death sentence **and**

- the Police officer has reason to believe that he has committed the offence

(c)

- who has been proclaimed as an offender

- either under this Code or by order of State Government

(d)

- in whose possession anything is found

- which is suspected to be stolen property and
- who may be suspected of having committed such offence

(e)

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



## [Non- cognizable offences: When police cannot arrest without warrant](#)

### Section 41(2)

- No person concerned in a non-cognizable offence or
- against whom
  - a complaint has been made or
  - credible information has been received or
  - a reasonable suspicion exists of his having so concerned
- shall be arrested except under a warrant or order of a Magistrate

### [Explanatory Notes by DLA on section 41](#)

#### **No routine arrests under section 41(1)(b):**

#### **Authority: [ARNESH v. STATE OF BIHAR \[2014 SC\]](#)**

- No arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. *No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person.* It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation.
- From a plain reading of Section 41(1)(b) CrPC it is evident that a person accused of offence punishable with imprisonment which may extend to seven years, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any



manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured.

- These are conclusions which one may reach based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest.
- In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of CrPC.

**Directions to Police by the Supreme Court in matters of Arrests** [as issued in **ARNESH v. STATE OF BIHAR** in 2014]

- All police officers shall be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii)
- The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention





- The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention
- The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing
- *Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court.*

## **Directions by Supreme Court in matters of [complaints u/s 498A IPC](#)**

**[Issued in [Rajesh Sharma v. State of Uttar Pradesh](#) in July 2017]**

- i) (a) In every district one or more **Family Welfare Committees** be constituted by the District Legal Services Authorities preferably comprising of three members.  
  
(b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.  
  
(d) **Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee.**  
  
(e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.  
  
(g) **Till report of the committee is received, no arrest should normally be effected.**



(h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.

ii) Complaints under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area.

iii) **In cases where a settlement is reached**, it will be open to the District and Sessions Judge to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord.

iv) If a **bail application** is filed with at least one clear day's notice to, the same may be decided as far as possible on the same day.

vii) **Personal appearance of all family members and particularly outstation members may not be required.**

viii) These directions will not apply to the offences involving tangible physical injuries or death.

### **Modification by Supreme Court**

These directions have since been revised by the Supreme Court in **Social Action Forum for Manav Adhikar v. Union of India** on **14 September 2018**.

Directions in *Rajesh Sharma v. State of UP* are modified as under:

- Direction (i) as a whole is not in accord with statutory framework
- Direction (ii): Director General of Police of each State shall ensure that investigating officers handling 498-A cases should be imparted rigorous training with regard to principles stated by this Court relating to arrests
- Direction (iii) is modified to the extent that if a settlement is arrived at, parties can approach the High Court under Section 482



## **Directions by the Supreme Court in matters of arrests **under the SC/ST [Prevention of Atrocities] Act****

[Issued in **Dr. Subhash Kashinath Mahajan v. State of Maharashtra** in March 2018]

- In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.
- To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.
- Any violation of these directions will be actionable by way of disciplinary action as well as contempt.

### **REVERSAL BY PARLIAMENT:**

Parliament amended the SC & ST [Prevention of Atrocities] Act **in August 2018** and inserted a new section therein in the following words:

- preliminary enquiry shall not be required for registration of a First Information Report against any person
- the investigating officer shall not require approval for the arrest, if necessary, of any person against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply



## Current legal position

**The current legal position therefore is that in cases of accusations under the SC & ST [Prevention of Atrocities] Act preliminary inquiry will not be necessary before registering FIRs and arrests can be made by the police officer without any approval.**

As a result, the Supreme Court directions issued in *Dr. Subhash Kashinath Mahajan v. State of Maharashtra* are no longer applicable and are effectively obliterated.

## Issue of Notice in place of Arrest

### Section 41A Notice of appearance

- Police officer shall, in cases where arrest is not required
  - issue a notice directing him to appear before him
- Where such person fails to comply, police officer may arrest him

## Procedure of arrests and Control Rooms

### Section 41B

- While making an arrest, a police officer shall
  - bear accurate and visible identification of his name
  - prepare a memo of arrest
    - attested by a family member of arrested person or a respectable member of the locality where arrest is made and
    - is counter-signed by the person arrested
  - inform the arrested person that
    - he has a right to have a relative or a friend informed of his arrest



## Section 41C

- State Govt shall establish a police control room
  - in every district and at state level
- Names and addresses of persons arrested shall be displayed on a notice board
  - kept outside control room in every district
- Control room at state level shall maintain a database
  - for information of general public
  - on persons arrested and nature of offences

## Right of arrested persons [Inserted w.e.f. 1.11.2010]

## Section 41D

- When a person is arrested and interrogated by police
  - he shall be entitled to meet an advocate of his choice during interrogation
  - though not throughout interrogation

## Arrest even in a non-cognizable offence on refusal to give name and residence

## Section 42

- Any person
  - who has committed or has been accused of committing
  - a non-cognizable offence
- refuses on 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 may be arrested by such officer
  - to ascertain his name or residence



- When 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
- Should true name and residence of such person not be ascertained within 24 hours
- should he fail to execute the bond or to furnish sufficient sureties
  - he shall be forwarded to nearest Magistrate having jurisdiction

## Arrest by **Private persons** in non-bailable and cognizable offences

### Section 43

- Any private person may arrest any person
  - who in his presence commits a non-bailable and cognizable offence or
  - who is a proclaimed offender
- He shall
  - make over such person to a police officer or
  - take him in custody to nearest police station
- If there is reason to believe
  - that such person comes under section 41
  - a police officer shall re-arrest him
- If there is reason to believe that he has committed a non-cognizable offence
  - if he refuses on 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 section 42



- If there is no sufficient reason to believe that he has committed any offence
  - he shall be at once released

## Arrest by Magistrate

### Section 44

- When any offence is committed in presence of a Magistrate
  - whether Executive or Judicial, within his jurisdiction
- he may himself arrest or order any person to arrest the offender

## Protection of Armed Forces from arrest

### Section 45

- No member of Armed Forces of Union
  - shall be arrested for anything done by him in discharge of his official duties
  - except after obtaining consent of Central Govt

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