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Arrest and detention laws in India: An overview

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Abstract

Crime is a grim reality of society existing since the days of ancient period. It is necessary to keep it under control with appropriate measures so as to keep the society in harmony and peace. The system of criminal justice administrating has met a change with the changes in the socio-political situation of the world. Measures are now no longer focused on punishment of accused only but also to improve system by paying compensation to victim of crime and giving a human treatment to the offender also. The person involved in committing a crime becomes a part of criminal justice process and becomes a subject of police action. He is often arrested and put into a police lock-up or jail or remand home primarily to prevent him from further involvement in another offence or attempting tampering with the evidences or from preventing him from ascendance etc.

Keywords: Arrest, Detention, law

1. Introduction

The general law of arrest and custody is found in the Chapter five of Code of Criminal Procedure (Cr. P.C.), 1973. Section 41(1) of the Code of criminal procedure, 1973 empowers a police officer to arrest, without an order from a Magistrate and without any warrant, any person:

- a) Who has been accused in any cognizable offence, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been an accused, or
- b) Who has in his possession without any lawful excuse the burden of proving which lies on such person any implement of house breaking; or
- c) Who has been proclaimed as an officer either under the Cr. P.C. or by an order of the state government, or
- d) In whose possession anything is found which may reasonable be suspected to be stolen propriety and who may reasonably be suspected of having committed an offence with reference to such thing; or
- e) Who obstructs a police officer while in the execution of his duty. Or who has scabbed, or attempts to escape, from lawful custody; or
- f) Who reasonably suspected of being a deserter from any of the armed forces or
- g) Who has been concerned in or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of having been concerned in any act committed at any place out of India which if committed in India, would have been punishable as an offence and for which heis under any law relating to extradition or otherwise, liable to be apprehended or detained in custody in India, or
- h) Who being a released convict, commits a breach of any rule about change or absence from residence; or
- i. On whose arrest any requisition whether written or oral, has been received from another police officer. For the purpose of arrest or requisition, the requisition should specify the person to the arrested and the offence or other cause for which the arrest is to be made. ^[1]

The provision of sec. 41 Cr. P.C. as amended in 2010, now requires a police officer to give reason of arrest. According to sec. 42 Cr. P.C. in case the name and residence of such person cannot be ascertained within 24 hours from the date of arrest or if such person fails to execute a bond as required, he would have be presented before the nearest magistrate having jurisdiction.

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Arrest can be made or caused to be made by a private person also if someone is a proclaimed offender or anyone who commits a non-boilable and cognizable offence in the presence of such private person. After arrest, the arrested person has to be hand over to the police officer or a police station. A magistrate is also authorized to arrest and commit to custody an offender, if the crime is committed in his presence. The members of armed forces, however, have been granted exemption from such arrest.⁷

Section 56, Cr.P.C. which corresponds to Article 22 (2) of Constitution of India, provides that the person arrested shall be kept in police custody for a longer period that 24 hours and then has to be produced before the nearest magistrate. Section 58 Cr.P.C. casts a duty on officer in-charge to report to the specified authorities of arrests made without warrant within their jurisdiction.

There is vast discretion to the police to arrest a person in the case of non-bailable offences, whether cognizable or non-cognizable, and its further authority to make preventive arrests often result into abuse of power. Supreme Court has ruled that arrests should not be making in a routine manner. The detention of a person in police custody beyond 24 hours as mentioned in Article 22 (2) and section 57, Cr. P.C. becomes as it violates the fundamental right of citizen. And the detention on a remand order under sec. 167 Cr. P.C. or arrest of a citizen beyond permissible limit of 24 hours is also illegal^[2].

The custody of an accused has to be reckoned only from the date when he was formally arrested and remanded to jail and not from the date of production of warrant^[3]. The custody of an arrested is illegal if he is not produce within 24 hours before a magistrate because provision under section 57, Cr. P.C. and Art. 22 (2) of Constitution are mandatory^[4]. An order of remand made on production beyond 24 hours is also illegal accordingly^[5].

The Hon'ble Supreme Court has laid down certain safeguards in "*D.K. Basu-V-State of west Bengal*"^[6] and has given the following guidelines.

- 1) The police personnel carrying out the arrest and handing the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation. The particulars of all such police personnel's who handle the interrogation of the arrests must be recorded in a register.
- 2) That 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 be either a member of the family of the arrestee or respectable person of the locality from. Where the arrest is made. It shall also be countersigned by the arrested 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 memo of arrest in himself such a friend or a relative of arrestee. The National Police Commission in its third report stated that nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of

Jails. For effective enforcement of the fundamental rights granted under article 21 and 22 (1) of the Constitution, the Supreme Court in "*Joginder Kumar-V-State of U.P.*"^[7] Issued the following guidelines.

- 1) An arrested person being held in custody is entitled if he desires to have any friend, relative or other person, who is known to him or likely to take an interest in his welfare, been informed as far as practicable that he has been arrested and where he is being detained.
- 2) The police officer shall inform the arrested person when he is brought to the police station of his right.
- 3) The entry shall he required to be made in the diary as to who was informed of the arrest.

In view of the paramount necessity of preserving the independence of Judiciary, the Supreme Court in "*Judicial Officer Service Association-V-State of Gujrat*"^[8]. issue the following guidelines so that a magistrate, judge or any other Judicial officer, who is liable to criminal prosecution for an offence, may not be humiliated by police or flimsy and manufactured charges afflicting administration of Justice:

- a) If a judicial officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.
- b) If facts and circumstances necessitate the immediate arrest of a judicial officer of the subordinate judiciary, a technical or formal arrest may be effected.
- c) The facts of such arrest should be immediately communicated to the District and session Judge of the concerned District and the Chief Justice of the High Court.
- d) The Judicial officer so arrested shall not be taken to a police station, without the prior order or directions of the District and the Chief Justice of the High Court.
- e) Immediate facilities should be provided to the Judicial Officer for communication with the family members, legal advisers and judicial officers, including the District & Session Judge.
- f) No statement of Judicial officer who is under arrest be recorded, nor any Panchanamma be drawn up, nor any medical tests be conducted except in the presence of the legal Adviser of the Judicial Officer concerned or another Judicial officer of equal or higher ranks if available.
- g) There should be no handcuffing of judicial officer, if however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such a case, immediate report shall be made to District & Session Judge concerned and also of the Chief Justice of the High Court. But the burden would be on the police to establish the necessity for effecting arrest and handcuffing the Judicial officer and if it is established that the physical arrest and handcuffing of the judicial officer was unjustified, the police officer causing or responsible for such arrest and handcuffing would be guilty of misconduct and would be personally liable for compensation and/or damages as may be summarily determined by the High Court.

It is well settled its law that a victim of illegal arrest and detention is entitle to exemplary compensation^[9]. An accused arrested is a Criminal offence has right u/s 167 (2) Cr. P.C. to bail on prosecutions failure to file charge-sheet against the accused within 90 days^[10] The arrest should not

be made as a Matter of course ^[11]. When an FIR is lodged, there must be some preliminary enquiry before arrest and the police officer must be able to justify the arrest. Arrest is not a must in every case of a cognizable offence ^[12].

It is statutory duty of police to produce the arrested person before the nearest magistrate within 24 hours as the detention of a person in police custody beyond the time mentioned in section 57, Cr. P.C. and Article 22(2) of Constitution of India is illegal ^[13]. Despite a number of statutory safeguard to prevent unjustified arrests and detentions, the unnecessary arrests by police is a matter of common experience.

Notes

1. Ss. 46-49, Cr. P.C.
2. Mahesh Kumar —V- State of Bihar =2008(2) BBCJ 642.
3. Janki Das-V-State of Bihar = 2009(1) BBCJ 579.
4. Birendra Sahni-V-State of Bihar=2006(2) PLJR 256.
5. Ibid.
6. D. K. Basu-V-Stat of West Bengal=AIR 1997 SC 610.
7. Joginder Kumar —V- State of U.P. =AIR 1994 SC 1349.
8. Judicial Officer Service Association — V- State of Gujrat = AIR 1991 SC 2176.
9. (9) Bhim Singh —V-State of J&K- AIR 1986 SC 494; Meja Singh-V- SHO police station, Ziro 1991 ACJ 439.
10. Union of India —V-Thamisharasi=1995 SCC (Cr.) 665, C. Satyanarayana-V- State=1986 SCC 141.
11. Dinkar Rao-V-State of Mharastra=2004(1) Crimes 1;
12. Some mittal-V-Govt. of Karnataka=AIR 2008 SC 1126.
13. Mahesh Kumar —V-State of Bihar=2008(2) BBCJ 624.

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