

LAW OF ARREST

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Law of Arrest

- What is arrest
- Why arrest
- Arrest with Warrant and without Warrant, Chapter-V of CrPC –
Sec.41 – 60
- Impact of arrest on individual, family, society
- Custodial trauma

Law of Arrest

- Balancing the power to arrest with the individual liberties.
- The NPC (1979-81) said; large number of arrests were superfluous.
- Reiterated by Supreme Court in a Sheela Barse, 1983, Joginder Kumar 1994 and D. K. Basu 1997 and Arunesh Kumar 2014 rulings.
- Resulted in comprehensive arrest law reform was effected through the Criminal Procedure (Amendments), 2009-2010.

Rationalization of the power to arrest

Sections 41(1)(b),41A,41B,41C,41D and 60A which lay down the following conditions for the exercise of the power:

- (i) Follow separate procedures for the arrest of persons involved in cognizable offences punishable with less than 7 years' imprisonment.
- (ii) Follow the "Notice of Appearance" procedure.
- (iii) Follow the procedure for arrest and compliance with arresting officer duties.
- (iv) Control room at districts.
- (v) Right of the arrested to have a lawyer at the time of interrogation.
- (vi) All the arrests to be strictly within the laid down procedure under the Code.

Sheela Barse Case, 1983

Legal assistance to prisoners in jails: IGP Prisons in Maharashtra to issue circular to all SPs:

- (1) to send list of all under-trial prisoners to Legal Aid Committee of the district with particulars of date of entry in jail and offence charged and gender.
- (2) to send District Legal Aid Committee a list of the persons arrested on suspicion under section 41 Cr.PC. who have been in jail beyond 15 days.
- (3) to provide facilities to the lawyers nominated by District Legal Aid Committee to enter the jail and to interview the prisoners.

Sheela Barse

- (4) to furnish to the lawyers nominated by the concerned District Legal Aid Committee whatever information is required in regard to the prisoners in jail.
- (5) to put up notices at prominent places in the jail that lawyers nominated by the concerned District Legal Aid Committee would be visiting the jail on particular days and that any prisoner who desires to have their assistance can meet them and avail their services; and
- (6) to allow any prisoner who desires to meet the lawyers nominated by the concerned District Legal Aid Committee.

Joginder Kumar, 1994

For effective enforcement of Articles 21 and 22(1) of the Indian Constitution, we issue the following requirements:

1. Information of arrest to friend, relative or other person as far as is 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 this right.
3. An entry shall be required to be made in the diary as to who was informed of the arrest.

DK Basu, 1997

- Identification Marks of Arresting officer-name tag, badge – particulars to be recorded in register.
- **Memo of arrest** to be signed by family member or respectable member of locality as a witness, and countersigned by arrestee.
- **Information of Arrest:** Relative or friend of arrested person is entitled to know whereabouts of arrestee – this is to be informed through District Legal Aid Committee in case relative/friend resides outside district.
- Right to inform relative/friend as soon as possible.

DK Basu Guidelines

- Entry to be made in case diary regarding arrest of a person, particulars of relative/friend and particulars of arresting officer.
- Examination by medical officer-inspection memo signed by arrestee and police—medical examination every 48 hrs by panel.
- Copies of all documents to be sent to Magistrate for record.
- legal counsel during interrogation.
- Information about arrest within 12 hours to be given to Police control room .

Aurnesh Kumar Case, 2014

Guidelines:

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

NOTICE FOR APPEARANCE:

41A of the Code, the Delhi High Court in Amandeep Singh Johar v. State of NCT of Delhi (2018) guidelines for notice of appearance.

- (i) Police officers being required to mandatorily issue notice for appearance under section 41A in the prescribed format;
- (ii) Necessary compliance by the noticee with the time and place of appearance with rescheduling permitted with prior permission and only for justifiable causes;
- (iii) Provision of an acknowledgement receipt to the accused/suspect on appearance;
- (iv) Issuance of duly indexed booklet containing serially numbered notices in duplicate / carbon copy format should be issued by the SHO of the Police Station to the Investigating Officer; and,
- (v) Initiation of disciplinary proceedings against police officers in case of non-compliance.

‘Arrest memo’ Section 41B:

The memorandum of arrest mandates the police officer effecting the arrest to state the date, time and place of arrest and getting it signed by the family member or independent witnesses and countersigned by the person so arrested to authenticate such arrest. The ‘arrest memo’ is a vital piece of material at the stage of ‘first production’ of the arrestee before the Magistrate.

Proforma of ‘arrest memo’ can be of three parts. The first part with general information of particulars of arrest, arrestee and the police officer making the arrest. The second part procedural compliance mentioned in section 41B of the Code and last part with judicial scrutiny of the procedural compliance by the Magistrate.

INTER-STATE ARREST & TRANSIT REMAND:

The Delhi High Court in *Tasleema v. State* (NCT of Delhi) has taken cognizance of such practice and awarded compensation to the victim who was 'illegally' arrested by the Gujarat police from Delhi and has been taken to Ahmedabad without being produced before the nearest Judicial Magistrate from the place of arrest.

Recently, in *Sandeep Kumar v. State* (NCT of Delhi) facing the issue of non-compliance with the procedure of arrest in the matters of inter-state arrest, the Delhi High Court constituted a Committee to give suggestions on the protocol to be followed by the police in such cases of inter-state arrest. The Court has accepted the suggestions made by the Committee and directed for its implementation by the concerned states.

Thank you