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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ARREST: AN OVERVIEW AND ANALYSIS.....

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ABSTRACT:

The arrest is an important part of the Criminal Justice System as it serves as a crucial tool for law enforcement agencies to restrict individuals suspected of committing criminal offences. It is an act of taking an individual into custody or control or legal protection because he/she is suspected of an offence.

Arrest means the deprivation of a person of his liberty by a legal authority of a person who is accused of any offence or under an apprehension that he may commit a crime. Arrest is one of the steps in ensuring a fair trial and it is not to be done arbitrarily. It must be done by due process of law and the arresting authority shall exercise the power of arrest keeping the spirit of Article 20 (protection in respect for conviction for offences) in mind. The person exercising such power should also comply with the rights provided under Article 21, and the due procedure should be just, fair and reasonable.

Introduction & Meaning:

The word 'arrest' is derived from the French word 'Arrester' meaning "to stop or stay" and signifies a restraint of the person, the word 'arrest' when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases. When used in the legal sense in the procedure connected with criminal offenses, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence.

What is Arrest?

Generally, a person who break the law is arrested. In general term, 'arrest' would mean that when a person is arrested they lose some of their freedom & liberty. They are put in restrain.

Arrest means apprehension of a person by a legal authority, resulting in deprivation of his liberty. For instance whether police officer apprehended a pick pocket he is arresting the pick pocket, but when a dacoit apprehended a person with a view to extract ransomed, the dacoit is not arresting that person what wrongfully confining him.

As per Legal Dictionary by Farlex, 'Arrest' means "a seizure or forcible restraint; an exercise of power to deprive a person of his or her liberty; the taking or keeping of a person in custody by legal authority, especially, in response to a criminal charge."

In Indian Law previous Criminal Procedure Code 1973 (CRpc) chapter V (section 41 to 60) talks about Arrest of Person now in Bharatiya Nagrik Suraksha Sanhita 2023 Chapter V (section 35 to 62) define the Arrest of the Person.

When a person is arrested, then the arrested person is taken into the custody of an authority empowered by the law for detaining the person. The person is then asked to answer the charges against him and he is detained so that no further crime is committed.

WHO CAN ARREST?

ARREST OF PERSON

<u>ARREST</u>	<u>SEARCH</u>	<u>SEIZE</u>
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Who can arrest :

- 1) Arrest made by Police Officer
- 2) Arrest by Private Person
- 3) Arrest By Magistrate

The arrest can be made by Police, Magistrate and even a private person.

Arrest by Designated Police Officer:

As per BNSS (Bhartiya Nagrik Suraksha Sanhita 2023) section 37 defined arrest by designated Police Officer. Previously section 41C of CrPC (Criminal Procedure Code) defined the arrest made by Police officer. The state government shall designate a police officer in every district and in every police station, not below the rank of Assistant Sub- Inspector of Police who shall be responsible for maintaining the information about the names and addresses of the persons

arrested, nature of the offence with which charged. Such information shall be prominently displayed in any manner including in digital mode in every police station and at the district headquarters.

Arrest By Private Person:

As per BNSS (Bhartiya Nagrik Suraksha Sanhita 2023) section 40 defined arrest by designated Police Officer. Previously section 43 of CrPC (Criminal Procedure Code 1973) defined arrest by private person. Any Private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence or is a proclaimed offender. He is required without unnecessary delay, but any case within Six hours from such arrest, to make over or cause to be made over such person to a police officer, or in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

Arrest By Magistrate:

As per BNSS (Bhartiya Nagrik Suraksha Sanhita 2023) section 41 defined arrest by designated Police Officer. Previously section 44 of CrPC (Criminal Procedure Code 1973) defined arrest by Magistrate. When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, Within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

TYPES OF ARREST:

- 1) An arrest made in view of a warrant issued by magistrate
- 2) An arrest made Without such Warrant but in accordance with some legal provision permitting such an arrest

An arrest made in view of a warrant issued by magistrate:

We have earliest since between cognizable and non-cognizable offence.

Issued by a magistrate or judge, a warrant is necessary for non-cognizable offenses. Section 35(2) BNSS says that: Subject to the provisions of section 39 of BNSS, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

As per section 227(1) of BNSS (Bhartiya Nagrik Suraksha Sanhita) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be— (a) a summons-case, he shall issue summons to the accused for his attendance; or (b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction: Provided that summons or warrants may also be issued through electronic means.

Arrest made Without a Warrant:

Section 35 under BNSS (Bhartiya Nagrik Suraksha Sanhita) defined when Police may arrest a person without warrant.

- 1) Any person commits a cognizable offence in presence of a police officer ; or
- 2) Reasonable complaint has been made; or
- 3) Credible information has been received; or
- 4) A reasonable suspicion exists
- 5) He has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or extend to seven years

Condition satisfied the police officer that such arrest is necessary:

- 1) To prevent such person from committing any further offence.
- 2) For proper investigation of the offence
- 3) To prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner
- 4) To prevent such person for 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 the court Under section 176(1) of BNSS (Bhartiya Nagrik Suraksha Sanhita) it is mentioned that a police officer shall investigate a case relating to cognizable offence and if necessary it measures or arrest of the offence.

ARREST HOW MADE

- 1) As per section 43 of BNSS (Bhartiya Nagrik Suraksha Sanhita) defined arrest how made. Section 43(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Case Analysis of Arrest: famous landmark judgment

JOGINDER SINGH V STATE OF UTTAR PRADESH [1994 SCC (4) 260]

SUBJECT: *No arrest can be made because:*

- *It is lawful, or*
- *Made on mere allegation or in a routine manner, an offence against a person.*

FACTS:

The petitioner, Joginder Kumar, 28 a young lawyer, he was called to the office of the Senior Superintendent of Police (SSP), Ghaziabad, in connection with some inquiries.

He was accompanied by friends and his brother, who were told by the police that he would be released in the evening, but he was taken to a police station with the assurance that he would be released the next day. Next day, too he was not released as the police wanted his help in making further inquiries.

On the third day, when his father went to the police station, they found that he had been taken to an undisclosed location. In effect, Joginder Kumar was illegally detained over a period of five days. His family had to file habeas corpus writ petition with the Supreme Court to find out his whereabouts.

The Court issued notice to the State of Uttar Pradesh and to the SSP,

- to immediately produce Joginder Kumar, and
- answer:
- why he was detained for 5 days without a valid reason,
- why his detention was not recorded by the police in its diary, and
- why he was not produced before Magistrate.

SUPREME COURT HELD:

(1) No arrest can be made, because:

- it is lawful, or
- made on mere allegation or in a routine manner, an offence against a person.

(2) It's a person's mandatory constitutional rights, that- he must not be arrested on simple suspicion of complicity in an offence.

- (3) Moreover, an arrest cannot be made-
- i) after a reasonable satisfaction reached after some investigation is made, as to the genuineness of the complaint.

COURT GUIDELINES:

- 1) An arrested person being held in custody, is entitled (if he requests),
 - to have 1 friend, relative or other persons, who is:
 - known to him, or
 - likely to take an interest in his welfare,
 - whom, it is being told (as far as practicable), that-
 - he has been, arrested and
 - where, he is being detained.
- 2) An arrested person shall be informed:
 - regarding, this rights,
 - when, he is brought to police station,
 - by, the police officer.
- 3) Under the power flowing from Article 21 and 22(1),
 - there are some protections-
 - an entry shall be required to be made in the diary (which, must be held and enforced strictly),
 - regarding, who was informed of the arrest.
- 4) Duty of magistrate:
 - before whom, arrested person is produced,
 - to satisfy himself, that these requirements have been complied with
- 5) where a woman is to be arrested, a woman without the present of a lady constable and arrest of a woman should not be made after sunset and before sunrise. The Supreme Court ruled high while arresting a female person, police officer shall not touch the person of the woman for making her arrest.
- 6) As per Section 43(3) of BNSS (Bhartiya Nagrik Suraksha Sanhita) defined no provision of Handcuff. The police officer may, keeping in view the nature and gravity of the offence, use handcuff while making the arrest of a person or while producing such person before the court who is a habitual or repeat offender, or who escaped from custody, or who has committed offence of organised crime, terrorist act, drug related

crime, or illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency-notes, human trafficking, sexual offence against children, or offence against the State.

- 7) Section 43 (5) of BNSS (Bhartiya Nagrik Suraksha Sanhita) Exceptional Circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

Case Analysis: Rajkumari and Others V. SHO 2003

RAJKUMARI V. SHO NOIDA: Reinforcement of Established Arrest Protocol for Woman

The Supreme Court of India, in the case of **Rajkumari And Another v. SHO Noida And Others**, adjudicated on September 19, 2003, addressed critical issues pertaining to the lawful arrest procedures involving female individuals. The petitioners, Smt Rajkumari and Smt Brinda Karat, sought judicial intervention under Article 32 of the Constitution, alleging violations of their fundamental rights during the arrest process. The case primarily revolved around the alleged improper arrest of Smt Rajkumari by police personnel during night time hours, stipulating that such arrests should be restricted to grave offences like murder. Additionally, concerns were raised regarding the lack of proper legal safeguards as outlined in previous landmark judgments.

Summary of Judgment:

The Supreme Court meticulously examined the premises of the writ petitions, which included allegations of unlawful arrest practices contrary to established legal precedents. The petitioners contended that their arrests were conducted without adherence to protocols such as:

- Restricting night time arrests of women to severe offences.
- Ensuring the presence of a relative or legal counsel during police interrogation.
- Proper documentation and communication of arrest grounds.

Upon reviewing the evidence and affidavits presented by both parties, the Court found discrepancies in the claims made by the petitioners regarding the time and manner of arrest. The respondents provided counter-affidavits clarifying that the arrest occurred in the early

morning hours, not during the night as alleged. Additionally, the Court observed that the direction to comply with protocols was followed during the subsequent legal processes, including the issuance of arrest memos and the prompt appearance before the Magistrate.

Ultimately, the Supreme Court dismissed both the writ and contempt petitions, concluding that no substantial evidence was presented to establish a violation of Articles 14, 21, and 22 of the Constitution. The Court emphasized the need for consistency in following established legal procedures and highlighted that any general directives to restrict arrests would require more pertinent circumstances to warrant judicial intervention.

RIGHTS OF ARRESTED PERSON:

The accused in India are afforded certain rights, the most basic of which are found in the Indian Constitution. Article 21 of the Indian Constitution provide few rays of hope to the lives of arrested, under trial and convicts. The treatment of such people has to be human and manner prescribed by law. Hence the accused or arrested person has been provided with certain rights under the law.

Grounds of Rights of Arrest Person:

1. **Right to be informed** : This rights has been given the status of a Fundamental right in the Indian Constitution, Article 22(2) of the Indian constitution. Article 22(2) of the Indian Constitution says that “no person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds of such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice”.
2. **Right to Silence**: Just because the accused / arrested person chose to be silent under interrogation doesn't mean that he is guilty. There is much speculation if this right is to be exercised in modern times as mentioned in justice Malimant Committee's report.
3. **Right To be released on Bail**: Article 21 of the Indian Constitution says that every individual shall have a right to liberties till he is proven innocent.
4. **Right to be released on Bail**: Article 21 of the Indian Constitution says that every individual shall have a rights to liberty as per procedures established by law. However, an accused cannot be given all these liberties till he is proven innocent. But he needs to be informed that he has right to apply for bail in bailable offence and even non-bailable offences, bail is granted by the court after taking into factors such as nature or

seriousness of the offence, the character of the evidence etc.

5. **Right to be taken before Magistrate without delay** : Whether the arrest was made with or without warrant, the person making such an arrest is duty bound to present the accused before the magistrate within 24 hours excluding the time taken for travelling from the place of arrest to the Magistrates Court.
6. **Right Regarding Detention**: If arrested person not produced before a magistrate within 24 hours of the arrest, by the police officer then he shall be held guilty of wrongful detention.
7. **Right At Trial**: keeping with the international system of law, our constitution uploads the fair trial system and the same is also seen in our procedural law. Fair trial is necessary to protect the accused individual's basic rights from unlawful and arbitrary deprivation and it is also based on the principle of natural justice.
8. **Right to examined by a medical Practitioner**: This is absolute necessary to put on record any mark or injuries or ascertain the health of the accused when taken into custody and put it on record. Subsequently this also works as check to ensure if these was any torture by the power that be during interrogation or during custody.

Case Analysis for guideline on arrest and right:

DK BASU V STATE OF WEST BENGAL [(1997) 1 SCC 416]

SUBJECT: Custodial deaths

FACTS:

- (1) DK Basu, Executive Chairman of the Legal Aid Services cell, West Bengal. He addressed a letter to the Chief Justice of India:
 - requesting him to draw his attention to certain news articles published concerning the deaths in police lock-ups and custody, and
 - requested the authorities to treat it as a Writ Petition within the "Public Interest Litigation" category.
- (2) Considering the relevancy of the issues raised in the letter:
 - it was treated as a Writ Petition and
 - notice was served to the Respondent which was the State of West Bengal.
- (3) While the letter was under consideration, one Mr. Ashok Kumar Johri addressed

another letter to CJI, drawing his concern to the death of one Mahesh Bihari of Pilkhana, Aligarh in Police Custody. It also got treated as a writ petition and was listed along with the petition of DKBasu.

- (4) The Court made an order by issuing notices to:
- all the State Governments and
 - the law Commission of India,
 - requesting suitable suggestions within a period of 2 months.

SUPREME COURT GUIDELINES, (to be followed while making arrest)-

- (1) Police personnel, carrying out arrest and handling interrogation of arrestee,
- should bear, accurate, visible and clear identification:
 - name tags, and
 - designations.
- (2) Police officer carrying out arrest shall prepare, Memo of Arrest, which shall be attested by at least 1 witness,
- Such witness may be:
 - a member, of family of the arrestee, or
 - a respectable person of the locality, from where arrest is made.
- (3) *SITUATION:* Person:
- has been arrested or detained,
 - is being held in custody in:
 - Police station,
 - Interrogation center, or
 - other lock up.

CONSEQUENCE:

- He shall be entitled to have one friend, 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, to himself such a friend or relative of arrestee.
- (4) *SITUATION* :
- Where the next friend or relative of the arrestee lives outside district or town.
- (5) *CONSEQUENCE*:
- The time, place and venue of custody of an arrestee,
 - must be notified by police, through:
 - legal aid in the District, and
 - police station of the concerned area, telegraphically,
 - within period of 8- 12 hours, after the arrest.
- (6) Person arrested must be aware of his rights,:
- to have someone informed of his arrest and detention, as soon as he is put under arrest or detention.
- (7) An entry must be made in diary, at the place of detention, regarding:
- arrest of the person,
 - name of the next friend of person, who has been informed of arrest,
 - name and particulars of police officer in whose custody arrestee is. (7)Arrestee should be:
 - examined (where he requests), at the time of arrest, and
 - any major and minor injuries (if any) present on his or her body, must be recorded.
- (8) Inspector's memo, must be:
- signed, by arrestee and police officer, affecting arrest, and
 - copy, is to be provided to the arrestee.
- (9) Arrestee should be subjected to medical examination:
- by, trained doctor,
 - every, 48 hours,
 - during, his detention in custody.

(10) Examined by a doctor, on the panel of approved doctors:

- appointed by Director, Health Services of concerned State or Union Territory,
- prepared for all tehsils and districts.

(11) Copies of all documents should be sent to Magistrate for his record. (11)Arrestee:

- may be permitted to meet his lawyer during interrogation,
- though not throughout interrogation.

(12) Police control room, should be provided:

- at, district and state headquarters,
- for communicating information:
- regarding arrest and place of custody of arrestee,
- by, officer, causing the arrest, within 12 hours of effecting arrest,
- should be, displayed on conspicuous notice board in police control room.

Conclusion:

There shall be an indispensable need for the effective and efficient Reformation of Indian Criminal Administration System, where they have to proceed with each of their proceedings in a very due and diligent manner and that too without hindering or violating the rights of accused persons as they also come under the domain or classification of normal person. Arrest though is the true ends on the other head in order to create deterrent effect over the mindsets of an accused, so that they can easily render that for each heinous crime they commit against the society at large, then they have to face the Real Whip of Indian Judiciary in forms of Hardcore Punitive Actions or the Penalties at large. For heinous crimes such as Rape, Murder, Crimes Against Women at Large, the provisions of the Bhartiya Nyaya Suraksha 2023 & Bhartiya Nagrik Suraksha Sanhita 2023 are very stringent and strict and are not at all lenient for sure.