

Protection of Accused in Procedural Laws Perspective: An Overview

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Introduction

State and for that matter the police as its principal law enforcing agency have the undoubted duty to bring offenders to book. Even so, the law and procedure adopted by the State for achieving this laudable social objective have to conform to civilized standards. The procedure adopted by the State must, therefore, be just, fair and reasonable. In their battle against crime and delinquency, State and its officers cannot on any account forsake the decency of State behaviour and have recourse to extra-legal methods for the sake of detection of crimes and even criminals. For how can they insist on good behaviour from others when their own behaviour is blameworthy, unjust and illegal. Thus, in a democratic society even the rights of the accused are sacrosanct, for though accused of an offence he does not become a non-person. As a matter of fact, the laws of India - constitutional, evidentiary and procedural-have made elaborate provisions for safeguarding the rights of accused with a view to protect his dignity as a human being and giving him benefits of a just, fair and impartial trial. The Code of Criminal Procedure, 1973 deals with the procedural aspect of the Criminal Justice Administration.

RIGHTS OF THE ACCUSED UNDER THE CODE OF CRIMINAL PROCEDURE

Though the Code is mainly procedural, yet it deals with three distinct but closely related subjects, the Constitution and powers of Courts, the conduct of criminal proceedings and the prevention of crimes by interference beforehand. However, in this chapter we are concerned with those provisions of the Code which entitle an accused of certain rights during the course of any investigation, enquiry or trial of an offence with which he is charged. For convenience we have categorized those rights under certain heads, which are as under:

Protection against arbitrary or illegal arrest- The provisions in this regard are discussed as follows:



When police may arrest without warrant:

Under section 41 very wide powers are conferred on the police in order that they may act swiftly for the prevention or detection of cognizable offences without the formality and delay of having to go to a Magistrate for order of arrest. Courts should, therefore, be particularly vigilant to see that the powers are not in any way abused or lightly used for the satisfaction of private feelings or of designing complainants. Therefore, the arrest and detention of persons without warrant are not matters of caprice but are governed by rules and principles clearly laid down by law. To arrest persons without justification is one of the most serious encroachments upon the liberty of a subject. The duty of the police when they arrest without warrant is, no doubt, to be quick to see the possibility of crime, but equally they ought to be anxious to avoid mistaking the innocent for the guilty. Where there is no danger of the person who has ex-hypothesis aroused their suspicion, that he probably is an "offender" attempting to escape they should make all presently possible enquiries from persons present or immediately accessible who are likely to be able to answer their enquiries forthwith. The police should act on the assumption that their prima facie suspicion may be ill founded. When a constable has taken into custody a person reasonably suspected of committing a crime, it is his duty to act reasonably. Whether he acted reasonably is a question to be decided judiciously. There can be no legal arrest if there is no information or reasonable suspicion that the person had been involved in a cognizable offence. No definition is possible of what is reasonable complaint or reasonable suspicion as it depends so much on the special fact of each case, but it must at least be founded on some definite facts tending to throw suspicion on the person arrested and not on mere vague surmise or information. Still less have the police any power to arrest persons, as they sometimes appear to do merely on the chance of something being hereafter proved against them. This case has been approved in several decisions. Reasonable means a bona fide belief that an offence had been committed or is about to be committed. Mere suspicion is not enough. The burden is on the police officer to satisfy the court before which the arrest is challenged that he had reasonable grounds of suspicion.

Amendment Clause 5 amends section 41 relating to power of police to arrest without warrant. It amends clauses (a) and (b) of sub-section (1) so as to provide that the powers of arrest conferred upon the police officer must be exercised after reasonable care and justification and that such arrest is necessary and required under the section. Amendment is also made in sub-section (2) of section 41 so



as to provide that subject to the provisions of section 42 relating to arrest on refusal to give name and residence, no person shall be arrested in a non-cognizable offence except under a warrant or order of a Magistrate.

Notice of appearance before police officer

This provision under section 41A has been recently added to the Cr.P.C., which provides the police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person 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, to appear before him or at such other place as may be specified in the notice. It further provides where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice. Where such person complies and continues with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested. Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice.

Procedure of arrest and duties of officer making arrest

Under section 41B, a procedure for arrest has been laid down and certain duties have been conferred on the police officer at the time of making an arrest. He is under obligation to bear an accurate, visible and clear identification of his name which will facilitate easy identification. He is under further obligation to prepare a memorandum of arrest which shall be attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made and the same shall be counter-signed by the person arrested. The arrested person shall be informed, unless the memorandum is attested by the member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest. It is pertinent to mention here that this provision has been added in the CrPC. in pursuance of the pronouncement of the Supreme Court in *D.K. Basu v. State of Bengal*.



Control room at districts

Under section 41C every State Government is under obligation to establish a police control room in (a) in every district; and (b) at State level. The State Government shall also cause to be displayed on the notice board kept outside the control rooms at every district, the names and addresses of the persons arrested and the name and designation of the police officers who made the arrests. The control room at the Police Headquarters at the State level shall collect from time-to-time, details about the persons arrested, nature of the offence with which they are charged and maintain a database for the information of the general public.

Right of arrested person to meet an advocate of his choice during interrogation

Under section 41D when any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.

Amendment: Clause 6 of the Amendment Act, 2008 inserts aforementioned new sections 41A, 41B, 41C and 41D. Section 41A, as stated above, provides that the police officer may, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person 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 to appear before him. Section 41B lays down the procedure of arrest and duties of officer making arrest. Section 41C requires the State Government to establish a police control room in every district and at the State level, where the names and addresses of the persons arrested, nature of offences with which they are charged, and the name and designation of the police officers who made the arrest are to be displayed. Section 41D makes provisions for right of the arrested persons to meet an advocate of his choice during the interrogation, though not throughout interrogation.

Arrest on refusal to give name and residence

Under section 42, arrest of a person - (1) who commits a non-cognizable offence in the presence of a police officer, or (2) is accused before him of having committed such an offence is permissible only, if he refuses to give name and address and as soon as they are ascertained he is to be released on execution of a bond for appearance. If name and residence cannot be ascertained he



must not be kept under arrest beyond 24 hours, but should be taken to a Magistrate. If his name and address were previously known to the police officer, he cannot be arrested or detained.

Arrest by private person and procedure on such arrest

Section 43 is based on the principle that every citizen has the duty to help, keep the peace and so has the right to make over or cause to be made over to the authorities any offender who breaks the law. It empowers a private person to arrest or cause to be arrested - (1) a proclaimed offender, or (2) any person who in his presence commits a non-bailable and cognizable offence, but not after the completion of such offence. After the offence has already been committed, it is a matter for the police and a private person should then inform them. After arrest, he must without unnecessary delay either take the person or cause him to be taken to the nearest police station. Akin to the right in section 43 is the right of private defence (sections 96 & 97, IPC) which every citizen has of protecting the body or property of himself or any other person extending to causing death, for saving life or property in proper cases.

The rule of English Common law that a private person may arrest any mearso n reasonably apprehended to commit a breach of the peace does not apply ir this country. Sections 96, 97,102 and 105 of IPC define the limits within which restraint can be placed on another citizen.

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