

ARREST, BAIL & SEARCH

Arrest, Bail & Search

- Arrest means **taking a person into custody by a lawful authority**. It results in the deprivation of liberty of the arrested person. The main purpose of arrest is to ensure the presence of the accused at the trial. The code contemplates two types of arrest :
 - a. Arrest with a warrant.
 - b. Arrest without a warrant.

Purpose for which a person is arrested

1. For ensuring presence of accused at trial.
2. For preventing the commission of cognizable offence.
3. **For obtaining correct name and address in a non-cognizable offence.**
4. For removing obstruction to police.
5. For retaking a person escaped from custody.

Arrest without a warrant by a Police Officer : (Ss 41,42 and 151).

1. Proclaimed offender.
2. Deserter of armed forces.
3. **Person obstructing a police officer in discharge at his duties,**
4. Person escaped from lawful custody.
5. **Person concerned in an offence committed outside India which makes him liable to be arrested under the Indian law.**

Arrest without a warrant by a Police Officer

6. Released convict committing breach of rules.
7. Person for whose arrest, requisition is sent by another competent police officer.
8. **Person designing to commit a cognizable offence (if such offence cannot otherwise be prevented).**
9. **For obtaining correct name and address in a non-cognizable offence**
10. Person possessing without any lawful excuse.
 - An Implement for house breaking; or
 - Property suspected to be stolen.

Arrest without a warrant by a Police Officer

Cr.PC amendment Act 2008/2009

11. Where a person committed a cognizable offence in the presence of a police officer
- 12. Punishable with imprisonment upto 7 years**
=Where a **reasonable complaint** has been made , or **credible information** has been received or a **reasonable suspicion exists** that a person has committed a cognizable offence.
- 13. Above 7 years**=Where **credible information** has been received that a person has committed a cognizable offence and **the police officer has reason to believe** on the basis of that information that such person has committed the offence

Punishable with imprisonment upto 7 yrs

- (i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
- (ii) the police officer is satisfied that such arrest is necessary-
 - (a) to prevent such person from committing any further offence; or
 - (b) for proper investigation of the offence; or
 - (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

Punishable with imprisonment upto 7 yrs

(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 the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured

- and the police officer shall record while making such arrest, his reasons in writing

NOTICE OF APPEARANCE BEFORE POLICE OFFICER

- "41A. (I) The police officer may, in all' cases where the arrest of a person is not required under the provisions of sub-section (I) of section 4 1, 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.**

Above 7 years

- (ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without-fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;"

Duties of Officer making Arrest

(b) prepare a memorandum of arrest which shall be-arrest.

- (i) 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;
- (ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a 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

Arrest Without Warrant-Police Act 1861

- *First.*—**Slaughtering cattle, furious riding, etc.**—Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle:
- *Second.*—**Cruelty to animals.**—Any person who wantonly or cruelly beats, abuses or tortures any animal:
- *Third.*—**Obstructing passengers.**—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public:
- *Fourth.*—**Exposing goods for sale.**—Any person who exposes any goods for sale:

Arrest Without Warrant-Police Act 1861

- *Fifth.*—**Throwing dirt into street.**—Any person who throws or lays down any dirt, filth, rubbish or any stones or building materials, or who constructs any cowshed, stable or the like, or who causes any offensive matter to run from any house, factory, dungheap, or the like
- *Sixth.*—**Being found drunk or riotous.**—
- *Seventh.*—**Indecent exposure of person.**—
- *Eighth.*—**Neglect to protect dangerous places.**—
Any person who neglects to fence in orduly to protect any well, tank or other dangerous place or structure.

Arrest by a private person without a warrant: (S. 43)

1. any proclaimed offender or
2. any person committing a cognizable and non-bailable offence in his presence.

Arrest without a warrant by a Magistrate, whether Executive or Judicial (S:44)

- any person committing any offence in his presence and within his local jurisdiction; or
- any person against whom he is competent to issue an arrest warrant.

POWERS FOR MAKING AN ARREST

- 1. Power to use force(S.46):** If the person to be arrested resists or attempts to escape arrest the person making an arrest may use necessary force. However, this power does not allow causing death, unless the alleged offence is punishable with death or with life imprisonment.
- 2. Power to search a place (S.47):**This power empowers the police officer to search a place and to use force for getting entry into the place of search. The police officer can also use force for liberating himself in case he is detained.

POWERS FOR MAKING AN ARREST

3. **Power to pursue (S.48):** Pursue means follow the person required to be arrested. The police officer may pursue into any place in India if necessary.
 4. **Power to obtain assistance: (S. 37) –** A police officer can ask any person to assist him in arresting any other person. Intentional failure to assist is punishable under S. 187 I.P.C.
- **Note:** According to s.49 the person arrested shall not be subject to more restraint than is necessary to prevent his escape.

Arrest of a woman

- Only a woman police officer can touch the person of the woman.
- Save in 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 Judicial Magistrate of the First Class*** within whose local jurisdiction the offence is committed or the arrest is to be made

POST (AFTER) ARREST PROCEDURES:

- 1. Search of arrested person : (S. 51) :** The police officer making arrest shall search about the person (body). *Where the arrested person is a woman the search shall be made by another woman with strict regard to decency.*
- 2. Seizure of offensive weapons : (S.52)** If offensive weapons are found about the person the same shall be seized and sent to the concerned court or officer before whom the person is to be produced.

POST (AFTER) ARREST PROCEDURES:

- 3. Medical examination of the accused (S.53) -**
Having regard to the nature of offence if it is felt that the medical examination of the arrested person would provide evidence as to the commission of the offence, such examination could be made by a Registered Medical Practitioner.

- 4. No discharge except on bail or bond (S. 59):** A person arrested shall not be discharged except on his own bond or bail or under the special order of a Magistrate.

Rights of an Arrested Person

1. Right to be informed of the grounds for arrest.
2. Right to informed of the right to bail (in bailable offences)
3. Right to be produced before a Magistrate without delay.
4. Right of not being detained for more than 24 hours without judicial scrutiny.
5. Right to consult a legal practitioner of his choice.

Consequences of non-compliance with the provisions relating to arrest

- 1. Right of private defence :** If the arrest is illegal the person who is being so arrested can exercise the right of private defence.
- 2. Illegal arrest by a public servant :** If an illegal arrest is made by a public servant, he can be made liable under Sections 342 and 220 I.P.C. for wrongful confinement and confinement by public authority in contravention of law. He can also be sued under the law of Torts for the tort of false imprisonment.

Consequences of non-compliance with the provisions relating to arrest

3. **Illegal arrest by a private person** : If an illegal arrest is made by a private person, he can be made liable for wrongful confinement under I.P.C. and for false imprisonment under the law of Torts.
4. **Writ of Habeas Corpus**: The High Court or Supreme Court can be moved for the writ of Habeas Corpus.
5. **Validity of Trial** : Trial will not be void simply because the provisions relating to arrest have not been fully complied with.

BAIL

- Bail means to set free or liberate an arrested person on security being given for his appearance. According to Law Lexicon, bail means ***“security for the appearance of the accused person on giving which he is released pending trial or investigation”***.
- 77% Prisoners are undertrials (NCRB 2022)

Grant of bail in Bailable and Non-bailable offences

- The person arrested for a bailable offence can claim release on bail as a matter of right. The person arrested for a non-bailable offence cannot claim release on bail as a matter of right and his release is left to the discretion of the concerned authorities.

Bail is a rule and jail is an exception

Cases in which bail shall be granted

1. Where the arrested is accused of only a bailable offence: (S.436)

- If the arrested person is accused of a bailable offence only and not accused of a non-bailable offence, he can claim release on bail as a matter of right. However, if the arrested is accused of more than one offence, of which at least one is non-bailable, he cannot claim release on bail as a matter of right.

2. Where it appears that the accused is not guilty of a non-bailable offence [(S. 437 (2)]. Subsequently at any stage of investigation, inquiry or trial it may appear clearly that the accused has not committed a non-bailable offence

Where the investigation is not completed within time: (S. 167)

If the accused person is in detention and if the investigation is not completed within the prescribed time, it becomes obligatory to grant him bail. The prescribed time is:

- a. **90 Days** - Where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than ten years.
- b. **60 Days** - Where the investigation relates to any other offence (punishable with imprisonment for less than 10 years).

Circumstances in which bail is cancelled

1. If the person released on bail obstructs investigation.
2. If he commits the same offence during the period of bail.
3. If he tries to abscond or run away to a foreign country.
4. If he tries to turn prosecution witnesses to his side by inducement or threat.
5. If the conditions of bail are violated.
6. If he threatens or commits acts of violence against the police and the prosecution witnesses.

ANTICIPATORY BAIL (S.438)

- Section 438 makes a provision enabling **High Court and Court of Session** to grant Anticipatory bail. The expression Anticipatory Bail in the context of s.438 denotes *“an order directing the release of a person on bail in the event of his arrest”*. It is only on arrest the order granting anticipatory bail becomes operative. An ordinary order of bail is granted after arrest and therefore means release from the custody, whereas, an order of anticipatory bail is granted in anticipation of arrest and is therefore effective at the moment of arrest.

Ant Bail for proclaimed absconder/offender

- In State of Madhya Pradesh v. Pradeep Sharma(2020), *the Supreme Court reiterated that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail*
- Section 82 (4)=*If a proclaimed absconder fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect*

Search without a warrant

1. Search without search warrant by Magistrate:
According to Sec. 103 Cr.P.C. any Magistrate may direct a search to be made in his presence of any place for the search of which he is made competent to issue a search warrant.
2. Search without search warrant by Police : ***A police officer can conduct a search without a warrant, if he opines that immediate search is necessary and taking time to obtain search warrant, will defeat the purpose for which he intends to conduct search. However, this power of the police officer to conduct search without warrant is subjected to certain limitations mentioned in section 165.***

LIMITATIONS ON POLICE POWER:(in search without a warrant S.165)

- 1. Cognizable offence:** The search must not relate to a non-cognizable offence unless investigation is ordered into such offence. In other words, search must relate only to a cognizable offence
- 2. Local Limits :**The place of search must be within the local limits of the police officer conducting search.
- 3. Officer in charge of police station:** The search without a warrant can be conducted only by an officer in charge of police station or an officer above that rank.

LIMITATIONS ON POLICE POWER

4. **Grounds for belief** :The Police Officer must have reasonable grounds for believing that immediate search is necessary and some specific thing necessary for investigation may be found in the place of search.
5. **Record**: The Police Officer before proceeding to search a place must record the grounds for the necessity of search and the things for which a search is to be conducted. A copy of such record must be sent to the nearest Magistrate immediately.
6. **Particular Search**: *The search must not be a general search* but must be a particular search for particular things.

GENERAL PROVISIONS RELATING TO

SEARCH: (applicable to a search with or without a warrant -- S. 100).

- 1. Occupant's duty :** The occupier of the place to be searched must allow free entry and provide reasonable facilities to the maker of the search.
- 2. Use force :** To effect an entrance the police officer can use force if necessary. The police officer can break open any door or window and can arrest anyone obstructing him.

GENERAL PROVISIONS RELATING TO SEARCH

3. **Presence of witnesses:** The search must be conducted in the presence of two independent and respectable inhabitants of the locality. The police officer has powers to call witnesses for this purpose. The search witnesses must be present at the place of search and must be the actual witnesses to the fact of the finding of the property.
4. **List of things seized :** The Police Officer has to prepare a list of things seized and get it attested by the witnesses.
5. **Occupant's rights:** The occupant or his nominee must be permitted to witness the search and a copy of the list of things seized shall be given to the occupant.

CONSEQUENCES OF AN IRREGULAR OR ILLEGAL SEARCH

- 1. Private Defence :** The occupant of the place searched can obstruct the officer attempting an illegal search.
- 2. Suit for Trespass:** The occupant can sue the person making an illegal search, in a civil court for trespass.
- 3. Search evidence admissible :** Though the search is illegal, the search evidence is admissible. Generally speaking, the evidentiary value of such search evidence is low.

Seizure

The word seizure denotes the act of suddenly taking control or possession of something.

Section 93 empowers the Court to issue a search warrant under certain circumstances. In the course of a search in execution of warrant u/s 93, the person to whom such warrant is directed has the power to seize any document or thing.

If a police officer during the course of investigation searches a place for any particular things, he has the power to seize such things if recovered in the search.

BAIL BOND

- To get oneself released on bail in bailable or non-bailable offences one has to file the bail bond
- The bail bond is filed by the surety who takes the responsibility for producing the accused person in the court or before the investigating agency.
- Any person who has the capacity, control and competence to produce the accused in case of non-appearance or to pay the amount of the surety can be accepted by the court for the purpose
- Personal Bond and Cash ***Security=In some cases while granting bail the court directs for personal bond as well as security in cash.***
- Amount of Bond=The amount of every bond executed shall be fixed with due regard to the circumstances of the case.

Setting the bail amount=

- The judge ***announces an amount to be paid by the accused when he appears in court. The provision of the setting of the amount is in order to ensure that*** the suspect appears in court at the time scheduled. In many jurisdictions, there is a provision of the bail schedule which provides for a predetermined amount for different criminal acts. To give you an example, assume, the bail amount set for robbery is Rs. 10000 whereas the bail amount set for an act of manslaughter is Rs. 100000. The initial amount set can be reset or altered, that is it can be increased or decreased in conformance with the circumstances.