

Chapter – V
Arrest of
Persons
Section 41 to
60 - A

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Introduction

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When Police may Arrest without Warrant : Sec. 41

- (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—
- a. who commits, in the presence of a police officer, a cognizable offence;
 - b. 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 punishable with imprisonment for a term which may be less than seven years, or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—
 - 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
 - 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:

[Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.]

- 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;
- c. who has been proclaimed as an offender either under this Code or by order of the State Government; or
- d. in whose possession anything is found which may reasonably be suspected to be stolen property 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 escaped, or attempts to escape, from lawful custody; or
- f. who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; 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 his 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 he is, 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 made under sub-section (5) of section 356; or

i. for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition

(2) Subject to the provisions of section 42, 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.]

Notice of appearance before police officer Sec. - 41A.

- **1. 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.**
- **2. 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.**
- **3. Where such person complies and continues to comply 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.**
- **4. 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 : Sec. 41 - B

- **Every police officer while making an arrest shall—**
- **a. bear an accurate, visible and clear identification of his name which will facilitate easy identification;**
- **b. prepare a memorandum of arrest which shall be—**
 - **1. 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;**
 - **2. 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.**

Control room at districts: Sec. 41 - C.

- **(1) The State Government shall establish a police control room—**
 - **(a) in every district; and**
 - **(b) at State level.**
- **(2) The State Government shall 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.**
- **(3) 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: Sec. 41 - D

- 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.

Arrest on refusal to give name and residence: Sec. 42.

- **(1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.**
- **(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required:**
- **Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India.**
- **(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest, or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.**

Arrest by private person and procedure on such arrest: Sec. 43.

- **(1) Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested 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.**
- **(2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re-arrest him.**
- **(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.**

Arrest by Magistrate: Sec. 44.

- **(1) 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.**
- **(2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.**

Protection of members of the Armed Forces from arrest: Sec. 45.

- **(1) Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.**
- **(2) The State Government may, by notification, direct that the provisions of subsection (1) shall apply to such class or category of the members of the Force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that subsection shall apply as if for the expression “Central Government” occurring therein, the expression “State Government” were substituted.**

Arrest how made: Sec. 46

- **(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:**
 - **[Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.]**