

beginning from the leaders *Mahatma Gandhi* to *Sonia Gandhi*. But, their efforts are not being materialized due to criminalization of politics, rampant corruption, failure of rule

of law and lack of sincerity and truthfulness among the leaders who are ruling the Country through their Political Parties.

“ARREST” AND ITS SCOPE IN CONTEMPORARY INDIAN CRIMINAL JUSTICE SYSTEM

By

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The emerging trends in the criminal justice system emphasize the need to speedy trial. Since our Constitution envisaged the spirit of fundamental rights to its citizens the right of life and personal liberty

Article 21 of the Indian Constitution read as “No person shall be deprived of his life or personal liberty except according to procedure established by law”. However in spite of the constitutional and statutory provisions are aimed at safeguarding the personal liberty and life of a citizen, growing incidents of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation.... custodial death is perhaps one of the worst crime in a civilized society governed by the rule of law”¹.

Speedy trial thus an integral and essential part of the fundamental right to life and

personal liberty enshrined in Article 21 of the Constitution².

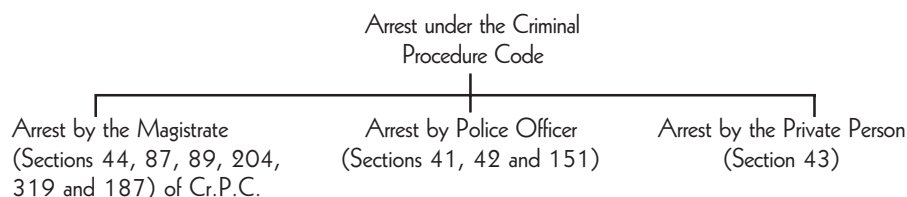
In *Kadra Pabadiya v. State of Bihar*,³ it was held that several trials were languishing in jail for several years without their trial having made any progress. The Supreme Court commented “it is a crying shame upon our adjudicatory system which keeps men in jail for years an end without a trial”

In this context it is obvious to know about arrest and its scope in the Code of Criminal Procedure.

“Arrest means the apprehension of a person suspected of criminal activities”⁴.

When a person is found to be committed an offence under I.P.C or another law for the time being in force, be arrested by the police officer and a Magistrate as according to the following provisos

Arrest under the Criminal Procedure Code:



1. AIR 1997 SC 610 (*D.K. Basu's case*)

2. AIR SC 1675 (*State of M.H. v. Champalal*)

3. AIR 1981 SC 939

4. Oxford Dictionary of Law (3rd Edtn)

According to the provisions of the Criminal Procedure Code a person who is found to be committed an offence may be arrested as mentioned infra:

BY A MAGISTRATE: A Magistrate may arrest under the following circumstances:

Section 44: when an 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....”

Section 87: A Magistrate is empowered by this code to issue a warrant of arrest for appearance of any person after recording the reasons in writing.

Section 89: A Magistrate is empowered to issue a warrant of arrest against whom is bound by any bond taken under this code for his appearance.

It is to be noted that under Sections 87 and 89 the warrant issued by the Magistrate not only against the accused but also any person who disobey the order of the Court.

Section 204: The Magistrate taking cognizance of an offence thinks fit that there is sufficient ground for proceedings and the case appears to be a warrant case, he may issue a warrant against the accused. However it is to be noted that the discretion of Magistrate is essential in issuing warrant.

Section 319: As per Section 319(2) the Magistrate is empowered to issue arrest warrant against a person appearing to be guilty of offence as the circumstances of the case may require him to do so.

By Police Officer: The power of police officer to arrest is of twofold, former entitles him to arrest without acting under discretion and the latter puts him into the discretion in arresting the offender as per the amended proviso in the Cr.PC.

Without warrant : (without using discretionary power)

Section 41(1)(a) : The police officer may arrest any person who commits in his presence a cognizable offence

Section 41(1)(ba) : The police officer may arrest any person who commits any cognizable offence punishable with an imprisonment for a period more than 7 years⁵.

Section 41(1)(c to i) : The police officer may arrest without warrant under the circumstances mentioned in sub-clauses c to i.

Section 42 : The police officer may arrest a person who commit in his presence a non-cognizable offence and refuses to give his name and address.

Section 151 : A police officer knowing of a design to commit any cognizable offence may arrest without the orders/warrant from a Magistrate as a preventive action to maintain law and order.

Without warrant (with discretionary power)

Section 41(1)(b): The police officer may arrest any person under this section likewise as in the old code Section 41(a) but after fulfilling the grounds mentioned in Clauses (i) and (ii) for arrest and recording in writing about the necessity of arrest in his case diary. As per Section 41(1)(b)(i) for arresting a person it is very essential for police officer to satisfy about well establishment of guilt and as per Section 41(b)(ii) before arresting a person under this section the police officer has to well firm about necessity of arrest as mentioned in the circumstances stated under sub-clause (a) to (e) to clause (ii).

The new sections brought drastic changes in arrest by the police officer by vesting the discretionary power.

5. The Code of Criminal Procedure (Amendment) Act 2008.

With warrant by police officer :

Section 41(2) : The police officer is not entitled to arrest a person who commits a non-cognizable offence or against whom a complaint has been made except with the warrant of the Magistrate.

On perusing the above amendments it appears that the recognition of need of arrest in certain cases. The Code of Criminal Procedure (Amendment) Act, 2008 which came into force on 1st November 2010 *vide* Notification: S.O.2687 (E) of Ministry of Home Affairs dated 30th Oct. 2010. This amendment brought as a result of recommendations made in the 177th Law Commission Report headed by J. B.R. Jeevan Reddy.

The theme of the report is to maintain a balance between the liberty of citizens (the most precious of all fundamental rights) and the societal interest a difficult balance but it has to be attempted and achieved to the extent possible. The report taken into the consideration of the judgments in the cases

mainly *D.K. Basu* (1997) and *Joginder Kumar* (1994) and concentrates on the specific theme “the police officer must be able to justify the arrest apart from his power to do so”

In *Amarabati v. State of U.P.*, 2005 Cr. LJ 755, it was held that arrest and detention in the police custody can cause ill-calculable harm to the reputation and self –esteemed of a person and, that, is why no arrest can be made in routine manner on minor allegation of commission of a crime”

In *M.C. Abraham v. State of M.H.*, 2003 SCC 628 Cri., The Lordships held that Section 41 gives a discretion to the police officer from a Magistrate that even without a warrant may arrest any person in the situation enumerated in that section’

CONCLUSION: It is therefore the concept of arrest has an important role in the criminal justice system and it is inevitable the new changes in the concept of arrest in view of contemporaneous societal changes which recognizes the fundamental rights of citizens.

IRRETRIEVABLE BREAK DOWN OF MARRIAGE – OLD WINE IN NEW BOTTLE

By

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Our Indian society is rich with its traditions and culture. The laws in India recognize the operation of personal law of Hindus which provide the rights and obligations of a Hindu. The Hindu Law has its roots in the Dharmasastras, Vedas, itihahas, puranas, commentaries and customs. The Hindu Law is an ancient law made applicable to the Hindus at large.

The origin of marriage amongst Aryans is very sacred. As early as since the times of

commencement of Rigveda age, the values of marriage were rewarded its esteem. The sacrament of marriage is highly respected and regarded with moral values among Hindus. The sacredness of the marriage and the values of a woman were respected and honoured as shown by the long and striking hymn in Rigveda thus” Be thou, mother of heroic children, devoted to the Gods. Be thou, queen in thy father-in-law’s household. May all the Gods unite the hearts of us into one.”