election law have been provided to safeguard the purity of election process and the Courts have a duty to enforce the same with all rigours and not to minimize their operation.

*Followed in 2015 (1) ALD page 603 Para 32*

It is thus suggested hand on – heart that the mandatory provisions delineated supra are to be complied with in order to set at rest the controversy and let me conclude by an appeal to the Bench and Bar it is time the enlightened sections of the Bar and the public ponder over the matter.

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## LAW PROHIBITING AUTOMATIC ARRESTS - RIGHT TO BAIL - MISCONCEPTIONS CLEARED

*By*

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1. During the last one week there has been considerable debate especially on the Telugu television channels on the subject of the power of the police to arrest and the right of the citizen to secure bail. In this article an attempt is made to remove the misconceptions in the minds of lawyers, judges, police officials and the general public touching such an important aspect of administration of justice.

2. Prior to the year 2010 the general impression was that the police had an automatic right to arrest a person whenever a case is registered against him. Though the Honourable Supreme Court laid down the law in the year 1994 (AIR 1994 SC 1349) that the police should not arrest a person just because it would be lawful to do so unless the police officer is satisfied that arrest is necessary for proper investigation to be carried out, there was no practical impact of the said decision. The legal profession also did not show any inclination to carry out the norms indicated in it. In fact, the said decision was given while dealing with the case of illegal arrest and detention of an advocate in the police station, even without informing his family or friends about the whereabouts of the arrested advocate. When the family members of the advocate filed a *habeas corpus* petition the police released the advocate and falsely contended that he was assisting the police in the investigation of some other case.

3. The Code of Criminal Procedure (Amendment) Act, 2008 and The Code of Criminal Procedure (Amendment) Act 2010 were passed to amend Section 41 of the Criminal Procedure Code and incorporate Sections 41-A, B, C and D.

4. *Section 41-A* is the most important provision which mandates that the police should not automatically arrest a person when a complaint is received against him. It provides that the police officer should only issue a notice to such a person calling upon him to be present before the police officer for questioning. This is very similar to the summons issued by a Court of law directing a person to be present before the Court either as an accused in a criminal case or as a defendant in a civil matter or as a witness in any case. After receiving the notice, if the said person complies with it by appearing before the police officer, the latter may question him and if he concludes that he has committed the offence, still he should

not arrest him but only send him away. *The question of granting bail in the police station itself or by the Court does not arise at all because granting bail presupposes an arrest. When there is no arrest, the question of granting bail does not arise at all.* The police can file a charge-sheet against the suspect before the Court which will issue summons to him. If he appears before the Court, no arrest should be made. Only when he fails to appear before the Court, the Court will issue a warrant for his arrest.

5. If the police officer concludes that the person to whom he issued a notice to appear before him has not committed any offence, he will anyway be let off.

6. Surprisingly, the above provision was misinterpreted even by senior lawyers to the effect that the section authorized the police to arrest the suspects and grant bail, referred to as "station bail", that the police are prone to misuse this supposed power, that this abuse could be prevented if the police are made to produce every arrestee before the Courts (so that the advocates could continue to file bail applications by taxing their clients). Not a single advocate practicing on the criminal *side bothered to object to the arrest itself at the first place*. This restriction for automatic arrest applies to all offences which are punishable with imprisonment for 7 years or less. The prohibition applies to offences under special enactments also like The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act commonly referred to as "SC cases" (2011-12-ALLAHABAD 103 SHAUKIN Appellant VERSUS State of Uttar Pradesh Respondents)

*Protest by lawyers*

7. When the aforesaid law was enacted a majority of the advocates practicing on the criminal side raised a hue and cry mainly because it would deprive them of chances to file bail applications which are a substantial source of income for such advocates, especially the juniors. Mercifully, the Government did not yield to such protests and the aforesaid enactments were brought into effect. Unfortunately, as the legal profession itself was averse to the said well-meaning law, its implementation was forgotten and the Honourable Supreme Court took a serious note of it and laid down the law in *Arnesh Kumar v. State of Bihar*, AIR 2014 SC 2756/(2014) 8 SCC 273, as follows:

> "Failure to comply with the directions aforesaid (dispensing with routine arrests) shall, apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for Contempt of Court to be instituted before High Court having territorial jurisdiction. Authorizing detention without recording reasons as aforesaid by the judicial Magistrate concerned shall make him liable for departmental action by the appropriate High Court."

8. Even such terse comments by the apex Court did not produce the necessary impact as the legal profession was allergic to it. *Some of them even used to request the Magistrates to ignore the directives of the Supreme Court and send the arrestees to judicial custody so that the advocates could continue to file bail applications, appeals et cetera.* (Some of them started giving moral justifications to ignore the said law on the ground that if there is no fear of arrest the crime rate would go up. If really such lawyers felt so, they ought not to have filed bail applications soon after arrest because by applying their own hollow logic if the offenders are released on bail they would have no fear of the law!)

9. In May 2015 the Parliament passed the Repealing and Amending (2nd) Act 2015 repealing 92 amending acts which were intended to carry out amendments to various major enactments. Two of the repealed amending Acts were The Code of Criminal Procedure (Amendment) Acts of 2008 and 2010. In the said repealing Act, Section 4

specifically mentions that this repeal shall not affect any act in which such enactment has been applied, incorporated or referred to. What it means is that the various amendments to various major enactments including the Criminal Procedure Code doing away with automatic arrests, will not be affected by this Repealing Act.

10. Section 6-A of the General Clauses Act also specifically provides that when an amending act is repealed, the amendment already effected to the main enactment will not be affected, unless a different intention is manifest in the repealing enactment. The Honourable Supreme Court also explained this aspect in a judgement reported in AIR 1960 SC 89. An amending act is like a surgical instrument which can be discarded after carrying out the surgery. By discarding the instrument the surgery already done is not undone. *Therefore, the law banning automatic arrests is not repealed and is very much in force, with all the attendant consequences to the police officers and judicial magistrates who ignore the law.*

11. Without taking the trouble of verifying the law, misinformation is being spread that the police can and should arrest the suspects in every case and produce them before the Court. It is needless to repeat that advocates hope to merrily file bail applications and of course charge moderate to heavy fees. It is difficult to believe that it is the same legal profession which sacrificed its income, plunged into the freedom struggle, received lathi blows, went to jail and ultimately freed this nation from foreign rule. What a decline!

12. Whether Section 41 a will encourage criminals to commit more crimes

It must be remembered that the law has dispensed with automatic arrests, as in most cases the allegation would be that the offences were already committed. Mere arrest by the police will not undo the crime already committed. No doubt, the offender has to be punished but only after the offence is proved beyond reasonable doubt before an independent judge. There cannot be any interim punishment in the form of arrests because a person who is wrongfully arrested cannot be truly compensated for the suffering undergone by him even if he is ultimately found not guilty by the Court. However, under Section 41(1)(b)(a) a police officer continues to enjoy powers to arrest to prevent such person from committing any further offence. Again, if a police officer actually witnesses a crime committed in his presence, he can arrest the offender under Section 41(1)(a). Therefore the law prohibiting automatic arrests is a wonderful instrument to strike a balance between the need to prosecute the offenders on the one hand and the need to preserve the dignity and the freedom of the individual who is innocent on the other.

*Lawyer's responsibilities have increased*

13. The abolition of "interim punishment" by way of arrest in most cases also necessitates punishing the really guilty swiftly. In advanced countries like the US defense lawyers do not encourage their clients to set up false defenses and drag on cases for years or decades as was done recently in the case of a leading film actor. They advise their clients to go in for plea bargaining. When the accused honestly admits the offences, shows genuine repentance and co-operates with the administration of justice, he enjoys great concessions in punishments. Section 265-A Criminal Procedure Code provides for such a course in India now. Defense lawyers should also discharge their responsibilities towards the society by encouraging the above procedure atleast when their clients admit the offences confidentially before their lawyers. This will cut down the delay in administration of justice, punish the criminals and also secure compensation to the victims. Honest police officers and prosecutors derive professional satisfaction for successfully investigating into a crime and correctly laying the prosecution for getting the offender punished.

*Section 41-D Criminal Procedure Code can cheer up criminal lawyers*

14. The aforesaid provision actually gives scope to criminal lawyers to be present at the police station at the time of interrogation of their clients so as to prevent the police from applying third degree methods. The advocates can charge their fee from their clients on an hourly basis for their visit to police stations, so that what they lose by way of declining bail applications due to a decline in the number of arrests can be compensated by the visiting fee to the police stations. The Advocates Act mandates that advocates are to represent only before those authorities who are empowered to record evidence of oath. Police officers do not come under this category. By applying the principle of harmonious construction it can be concluded that advocates can be present in the police station to prevent third degree methods by the police, but should not represent before them that their clients are innocent and should not be prosecuted, as it amounts to interference in investigation. They should not strike deals with the police under any circumstances.

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## JUDICIAL SYSTEM AND PUBLIC INTEREST LITIGATION IN INDIA

*By*

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At present, the concept of *locus standi* is receiving an increasing attention because a number of public interest litigations are being filed in Courts. *Locus standi* means "the ground to stand" or "right to file a case". Previously only the person whose rights are affected could file a suit in the Court. A person could not come to the Court to ventilate the problem of others. This is the basic concept of *locus standi*. This concept has undergone radical changes in recent times. Public interest litigation is the order of the day to ventilate the provisions of down trodden people. Public interest litigation linked with the relaxation of *locus standi* and providing access to justice. It is also concerned with protection of the countless and unrepresented masses of India.

Justice *Krishna Iyer*, considered PIL as the product of creative judicial engineering. According to the eminent judge, "the jurisdiction of the Indian Supreme Court is the widest in the world. The challenges of India's social changes are the sharpest; the dynamics of a functional jurisprudence is the creative expression of judicial response to the crises of hunger for justice. PIL is the offspring of these social forces.

In a democracy, the most important task is welfare of the people as a whole. This is important cause and result in every nation. As far as India is concerned, the Kings in good olden centuries ago, gave importance to the safety and welfare of people. This was first priority to them rather than their other aspirations. They used to arrange more facilities to the people such as digging water tanks, planting trees, food and shelter to them. There used to be friendly nature among people. Everybody wished safety to others. Law was also stringent. Whether the party belongs to rich or poor, everybody was equal before law. For example, one king gave judgment against his son in a case and gave death penalty. Such was the enforcement of law.

There was change in the system in India after the entry of foreigners into India during the early period after B.C. Indians suffered