



“Power of arrest is under arrest”: A critical analysis in light of code of criminal procedure, 1973

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Abstract

Arrest brings humiliation – Arrest curtails the freedom of individual - Arrest involves restriction of personal liberty of a person arrested and as such violates the basic human rights of liberty - Though the Constitution of India as well as international covenants recognise the power of the state to arrest any person as a part of its major role in maintaining the law and order problem, the Constitution of India mandates that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Article 22 (1) provides that “no person who is arrested shall be detained in custody without being informed, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice” - Further, Article 22 (2) also mandates that “every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate” - According to the national Human Rights Commission, these provisions are not strictly adhered to - Therefore, in this paper the authors are going to analyse under what circumstances the arrest can be made and what are the legal provisions and guidelines, available for making arrest and what the remedies are available for non-compliance of the procedure for arrest.

Keywords: personal (individual) liberty, code of criminal procedure, 1973, arrest, guidelines for arrest

Introduction

“Crimes in India 2015 statistics” published by National Crime Records Bureau, Ministry of Home Affairs shows that a total of 36,36,596 persons were arrested by the police under various IPC crimes during 2015 as against 37,90,812 persons in 2014, showing a decrease of 4.1%. Out of 36,36,596 persons arrested 2,69,663 were from the State of Tamilnadu. The arrest rate ^[1] at all-India level increased by 3.7% in 2012 over 2011 (from 259.9 in 2011 to 269.5 in 2012), 6.4% in 2013 over 2012 (from 269.5 in 2012 to 286.8 in 2013), 6.2% in 2014 over 2013 (from 286.8 in 2013 to 304.7 in 2014). However, it decreased by 5.2% in 2015 over 2014 (from 304.7 in 2014 to 288.8 in 2015). The arrest rate in the State of Tamil Nadu is 389.9. The female persons arrested under various sections of IPC crimes accounted for 4.9% (1,79,052 out of 36,36,596) of total arrestees during 2015. The maximum number of arrested persons under IPC were in the age-group of 18yrs & above-below 30 yrs. accounting for 45.9% (16,72,711 out of 36,36,596 persons) of total arrestees followed by persons in the age group of 30 yrs. & above – below 45 yrs. (37.4%) (13,60,448 out of 36,36,596 persons), persons in the age group of 45yrs & above – below 60 yrs. (14.1%) (5,14,486 out of 36,36,596 persons) and persons in the age group of 60yrs and above (1.4%) (49,877 out of 36,36,596 persons). A total of 39,074 juveniles (below 18 yrs.) were apprehended under the IPC crimes during 2015. Out of 1,87,20,169 persons whose cases were for trial, trials were completed in respect of 21,77,036 persons. Out of these disposed cases 8,69,013 persons were convicted, 12,70,936 persons were acquitted and 37,087 persons were discharged by different courts during the year 2015. The overall conviction percentage at all India level for the persons

arrested in IPC cases was 39.9% (8,69,013 out of 21,77,036 persons whose trials were completed).

Objectives of the paper

- To analyse the legal provisions of the arrest.
- To understand the procedure/circumstances for arrest.
- To know the directions and guidelines of the arrest.
- To know the remedies available for non-compliance of the procedure for arrest
- To give suggestions for effective implementation of the procedure for arrest.

Arrest

The term “arrest” has not been defined in the Code, though the process of making the arrest has been mentioned under section 46 of the Code. Arrest means “the apprehension of a person by legal authority resulting in deprivation of his liberty”. Under Section 46, the police officer or other person making the arrest 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* ^[2]. If the person to be arrested forcibly resists the endeavour to arrest him, or attempts to evade the arrest, the police officer or other person *may use all means necessary to effect the arrest* ^[3]. However, this right to use all necessary means for making an arrest shall not extend to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life ^[4]. The bare perusal of this section shows that no formality, for police officials, is necessary while arresting a person.

Object of arrest

Arrest may be necessary not only for the purpose of securing

the attendance of the accused at the time of trial, but it may also become necessary as a preventive or precautionary measure in respect of a person intending to commit a cognizable offence^[5] or a habitual offender or an ex-convict or a person found under suspicious circumstances^[6].

Whether mere registration of FIR in cognizable offences will lead to arrest?

While answering to the question, the Hon'ble Apex Court of India, in *Lalitha Kumari Vs Govt of U.P and Ors*^[7], the Court observed that *"while registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under the law, and there are several safeguards available against arrest. It is not correct to say that just because FIR is registered, the accused person can be arrested immediately. It is the imaginary fear that "merely because FIR has been registered, it would require arrest of the accused and thereby leading to loss of his reputation", Thus, the arrest of a person and registration of FIR are not directly and/or irreversibly linked and they are entirely different concepts operating under entirely different parameters. On the other hand, if a police officer misuses his power of arrest, he can be tried and punished under Section 166^[8]" - the Court asserted.*

Procedural Safeguards of the arrested person:

Section 41, Cr. P.C. confers powers on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate. Section 46 provides the method and manner of arrest. Under this Section, no formality is necessary while arresting a person. Under Section 49, the police are not permitted to use more restraint than is necessary to prevent the escape of the person. Section 50 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence. Section 56 contains a mandatory provision requiring the police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and Section 57 provides that the arrested person shall not be detained in police custody exceeding twenty four hours excluding the time for necessary journey from the place of Arrest to the Magistrate's Court. There are some other provisions also like Section 53, 53A, 54 and 167 which are aimed at affording procedural safeguards to a person arrested by the police.

Check on the Misuse of Power of Arrest:

Though there are several constitutional and statutory provisions for safeguarding the personal liberty and life of individuals, the Apex Court of India time and again observed that growing incidence of torture and deaths in police custody has been a worrying issue. Therefore, in order to curb the menace of misuse of power of arrest, in some cases, the Supreme Court of India issued several directions. In *Joginder Kumar vs State Of U.P*^[9], to curb the menace of the power of arrest, the Supreme Court of India held as follows:

"No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a *reasonable satisfaction* reached after some investigation *as to the genuineness and bona fides of a complaint* and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do". Accordingly certain guidelines were issued by the Apex Court for the effective enforcement the fundamental rights.

Again in *D.K Basu Vs State of West Bengal*^[10], the Apex Court observed that "abuse of police power is not only peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global". Further the Court by referring constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen observed that *"growing incidence 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...."* Therefore after analyzing the various provisions of the Code and Constitutional provisions, eleven directions^[11] was issued to be followed in all cases of arrest or detention *till legal provisions are made* in that behalf as preventive measures. Further, the Apex court directed that failure to comply with the eleven directions shall apart from rendering the concerned official liable for departmental action; also render his liable to be punished for contempt of court. The points to be mentioned here is most of the (excluding direction 8 & 9) directions were incorporated in the Code by way of Cr.P.C (Amndt) Act, 2008^[12]. Further, Section 60A provides that "no arrest shall be made except in accordance with the provisions of this Code or any other law^[13] for the time being in force providing for arrest".

Authority of Handcuffing:

In *Citizens For Democracy Vs State Of Assam And Ors*^[14], the Apex court directed that "handcuffs or other fetters shall not be forced on a prisoner - convicted or under-trial-while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back. *The police and the jail authorities, on their own, shall have no authority to direct the hand- cuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.*

Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner

is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Further, the court directed that *any violation of any of the directions issued the Supreme Court by any rank of police in the country or member of the jail establishment shall be summarily punishable under the Contempt of Courts Act apart from other penal consequences under law* ^[15]”.

National Human Rights Commission’s Guidelines regarding arrest ^[16]

The National Human Rights Commission (NHRC) also issued several guidelines for making arrest of a person. The guidelines are as follows:

The guidelines issued by the NHRC are divided into three categories: (i) Pre Arrest guidelines (ii) Arrest guidelines and (iii) Post arrest guidelines. Apart from these guidelines, it has also contains the mechanism for effective implementation of these guidelines.

Pre-arrest Guidelines

According to the pre arrest guidelines of the NHRC, the power to arrest without a warrant should be exercised only after a reasonable satisfaction is reached, after some investigation, as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person's complicity as well as the need to effect arrest.

- Arrest cannot be justified merely on the existence of power, as a matter of law, to arrest without a warrant in a cognizable case.
- After Joginder Singh's pronouncement of the Supreme Court the question whether the power of arrest has been exercised reasonably or not is clearly a justifiable one.
- Arrest in cognisable cases may be considered justified in one or other of the following circumstances:
 - The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the suspect to prevent him from escaping for evading the process of law.
 - The suspect is given to violent behaviour and is likely to commit further offences.
 - The suspect requires to be prevented from destroying evidence or interfering with witness or warning other suspects who have not yet been arrested.
- The suspect is a habitual offender who, unless arrested, is likely to commit or further offences. (3rd Report of National Police Commission).
- Except in heinous offences, as mentioned above, an arrest must be avoided if a police officer issues notice to the person to attend the police station and not leave the station without permission ^[17].
- Police officers carrying out an arrest or interrogation should bear clear identification and name tag with designations ^[18]. The particulars of police personnel carrying out the arrest of interrogation should be recorded contemporaneously in the register kept at the police station.

Arrest Guidelines

The NHRC listed out the following guidelines for making arrest:

- As a rule, use of force should be avoided while affecting arrest. However, in case of forcible resistance to arrest, minimum force to overcome such resistance may be used ^[19]. However, care must be taken to ensure that injuries to the person being arrested, visible or otherwise is avoided.
- The dignity of the person being arrested should be protected. Public display or parading of the person arrested should not be permitted at any cost.
- Searches of the person arrested must be done with due respect to the dignity of the person, without force or a aggression and with care for the person's right to privacy. Searches of women should only be made by other women with strict regard to decency ^[20].
- The use of handcuffs or leg chains should be avoided and if at all, it should be resorted to strictly in accordance with the law repeatedly explained and mandated in judgment of the Supreme Court in *Prem Shankar Shukla v. Delhi Administration* and *Citizen for Democracy v. State of Assam*.
- As far as is practicable, women police officers should be associated where the person or persons being arrested are women. The arrest of women between sunset and sunrise should be avoided ^[21].
- Where children or juveniles are sought to be arrested, no force of beating should be administered under any circumstances. Police officers, May for this purpose, associate respectable citizens so that the children or juvenile are not terrorised and minimal coercion is used.
- Where the arrest is without a warrant, the person arrested has to be immediately informed of the grounds of arrest in a language which he or she understands ^[22]. Again, for this purpose, the police, if necessary may take the help of respectable citizens. These grounds must have already been recorded in writing in police records. The person arrested should be shown the written reasons as well as also given a copy on demand.
- The arrested person can, on a request made by him or her, demand that a friend, relative or other person known to him be informed of the fact of his arrest and the place of his detention ^[23]. The Police should record in a register the name of the person so informed.
- If a person is arrested for a bailable offence, the police officer should inform him of his entitlement to be released on bail so that he may arrange for sureties.
- Apart from informing the person arrested of the above rights, the police should also inform him of his rights to consult and be defended by a lawyer of his choice ^[24]. He should be informed that he is entitled to free aid at States expense.
- When the person arrested is brought to the police station, he should, if he makes a request in this regard, be given prompt medical assistance. He must be informed of his right. Where the police officer finds that the arrested person is in a condition where he is unable to make such request but is in need of medical help, he should promptly arrange for the same ^[25]. This must also be recorded contemporaneously in a register. Only a female registered practitioner should examine the female requesting for medical help ^[26].
- Information regarding the arrest and the place of detention should be communicated by the police officer effecting the arrest without any delay to the police control room and

District/State headquarters ^[27]. There must be a monitoring mechanism working round the clock.

- As soon as the person is arrested, police officer effecting the arrest shall make a mention of the existence or non-existence of any injury on the person of the arrestee in the register of arrest. If any injuries are found on the person of the arrestee, full description and other particulars as to the manner in which the injuries were caused should be mentioned on the register. The entry shall also be signed by the officer and the arrestee. At the time of release of the arrestee, a certificate to the above effect under the signature of the police officer shall be issued to the arrestee.
- If the arrestee has been remanded to police custody under the orders of the court, the arrestee should be subjected to medical examination by a trained Medical Officer every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory ^[28]. At the time of his release from the police custody, the arrestee shall be medically examined and a certificate shall be issued to him stating therein the factual position of the existence or non-existence of any injuries on his person.

Post Arrest Guidelines:

The NHRC also issued guidelines to be followed after arresting a person. The guidelines are as follows:

- The person under arrest must be produced before the appropriate court within twenty four hours of the arrest ^[29].
- The person arrested should be permitted to meet his lawyer at any time during interrogation ^[30].
- The interrogation should be conducted in a clearly identifiable place, which has been notified for his purpose by the government. The place must be accessible and the relatives or friend of the person arrested must be informed of the place of interrogation taking place.
- The methods of interrogation must be consistent with the recognised rights to life, dignity and liberty and right against torture and degrading treatment ^[31].

Latest Law and Judgment on Arrest:

In *Arnesh Kumar vs. State of Bihar and another* ^[32], the Supreme Court of India while dealing with the concept of arrest forced to observe as follows:

“Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr. PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive”.

The Court, Further, held that “Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short ‘Cr.PC), in the present form came to be enacted”.

Under this section a person accused of offence punishable with imprisonment for a term which *may be less than seven years or which may extend to seven years* with or without fine, *cannot be arrested by the police officer* only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary (i) to prevent such person from committing any further offence; or (ii) for proper investigation of the case; or (iii) to prevent the accused from causing the evidence of the offence to disappear; or (iv) tampering with such evidence in any manner; or (v) to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or (vi) unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

Law further requires the police officers to record the reasons in writing for not making the arrest. Eventually, the Court compelled to state:-

“In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses(a) to (e) of clause (1) of Section 41 of Cr. PC”.

If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest under Section

41 Cr. PC has been satisfied and it is only thereafter that he will authorise the detention of an accused. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order.

Apart from section 41, Section 41A also aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalised. Under this section in all cases where the arrest of a person is not required under Section 41(1), Cr. PC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr. PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid, the Court observed.

Finally, the Apex Court issued certain directions for not to make any arrest automatically and mechanically. Further the court held that “failure to comply with the directions aforesaid 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”.

For not following the directions mentioned above, the Supreme Court of India awarded compensation for a doctor and an advocate holding that their liberty was curtailed in violation of law. Further, the Court held that when the individual liberty is curtailed in an unlawful manner, the victim is likely to feel more anguished, agonized, shaken, perturbed, disillusioned and emotionally torn. It is an assault on his/her identity. The said identity is sacrosanct under the Constitution. Therefore, for curtailment of liberty, requisite norms are to be followed^[33].

Whether a Judicial Officer can be arrested by the police?

In *Delhi Judicial Service Association vs. State of Gujarat*^[34], the Apex Court of India observed as follows:

“No person whatever his rank, or designation may be, is, above law and he must face the penal consequences of infraction of criminal law. A Magistrate, Judge or any other Judicial Officer is liable to criminal prosecution for an offence like any other citizen”. But, in view of the paramount necessity of preserving the independence of judiciary and at the same time ensuring that infractions of law are properly investigated, the following seven guidelines were issued by the Apex Court:

- i) If a judicial officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.
- ii) If facts and circumstances necessitate the immediate arrest of a judicial officer of the subordinate judiciary, a technical or formal arrest may be effected.
- iii) The facts of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.
- iv) The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the

District & Sessions Judge of the concerned District, if available.

- v) Immediate facilities shall be provided to the Judicial Officer to communication with his family members, legal advisers and Judicial Officers, including the District & Sessions Judge.
- vi) No statement of a Judicial Officer who is under arrest be recorded nor any *panchnama* be drawn up nor any medical tests be conducted except in the presence of the Legal Adviser of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.
- vii) There should be no handcuffing of a Judicial Officer. If, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be over-powered and handcuffed. In such case, immediate report shall be made to the District & Sessions Judge concerned and also to the Chief Justice of the High Court.

But, the burden would be on the Police to establish necessity for effecting physical arrest and handcuffing the Judicial Officer and if it be established that the physical arrest and handcuffing of the Judicial Officer was unjustified, the Police Officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court.

The Court further added that, the above guidelines are not exhaustive but these are minimum safeguards which must be observed in case of arrest of a judicial officer.

Suggestions and Conclusion

- i) No doubt, the Indian police have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, terrorist activities, etc^[35]. But, in order to check the misuse of the police power of arrest, we would like to suggest the following:
- ii) As pointed out by our Hon'ble Apex Court of India, Transparency of action and accountability perhaps are two possible safeguards. Attention is also required to be paid to properly develop work culture, training and orientation of police force consistent with basic human values. Therefore, Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos.
- iii) Efforts must be made to change the attitude and approach of the police personal handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable form of interrogation.
- iv) With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third degree methods during interrogation.
- v) Moreover, the as mentioned in the “Enforcement of Guidelines^[36] (*Supra note:18*)” of the National Human Rights Commission, wide spread publicity should be given to make aware of the procedure for the arrest so as to reduce the misuse of police powers on arrest.
- vi) Police Standing Order 622^[37] that gives wider discretionary power to the police officials to arrest in

cognizable cases has to be deleted or suitably amended in consonance with the discussion we had earlier.

vii) So as to arrest the misuse of power in the hands of police personal, Apart from rendering departmental action and contempt of court, erring police personnel has to be booked under the relevant penal provisions of law.

Therefore, we conclude that from the above analysis, it is categorically clear that the power of arrest has been arrested by the judicial pronouncements and by the Code of Criminal Procedure, 1973, as amended in 2008. If any police official ignoring the above provisions and guidelines discussed above, arrests any person then the affected person should be awarded compensation, apart from rendering the erring officials departmental action, contempt proceedings and penal action.

References

1. Arrest Rate means number of persons arrested under IPC crimes per 1,00,000 population.
2. Section 46 (1).
3. Section 46 (2).
4. Section 46 (3).
5. Cognizable offence” mean an offence for which, a police officer may arrest without warrant. See Section 2 (c).
6. See: Sections 151, 41 (2) r/w Ss.110, 41 (1) (h), 41 (1)(b), 41 (1)(ba) and (d) – Taken from R.V. Kelkar’s Criminal Procedure, By, Dr. K.N. Chandrasekharan Pillai, EBC, 6th Edi, 2014, P.48.
7. (2014) 2 SCC 1. This is the latest verdict by the Hon’ble Apex Court of India in which the Court directed and declared that when a complaint is lodged disclosing the commission of cognizable offence, the registration of F.I.R is mandatory. Exception is also available. For details, see the Judgment.
8. Section 166 of IPC says “Public servant disobeying law, with intent to cause injury to any person. – Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.
9. Equivalent citations: 1994 AIR 1349, 1994 SCC (4) 260.
10. (1997) 1 SCC 216.
11. For details of the directions see D.K. Basu’s Case.
12. See Sections 41 (B) (a),(b),(c) 50A (1),(2),(3), 54, 41(D) and 41 (C).
13. Under Article 141 of the Indian Constitution, the Law declared by the Supreme Court of India is binding. Also see Article 144.
14. AIR 1996 SC 2193.
15. See also: Prem Shankar Shukla v. Delhi Administration, [1980] 3 SCR 855, Sunil Batra Etc. v. Delhi Administration and Ors. Etc., [1979] 1 SCR 392.
16. Available at: <http://nhrc.nic.in/Documents/sec-3.pdf>. Last visited on 21.12.2016. Also see: Badru Ram and Ors. vs State Of Rajasthan: RLW 2006 (4) Raj 3110, 2006 (4) WLC 734.
17. Section 41-A.
18. See Section 41-B (a) of Cr.P.C.
19. See also Section 46 (2), *ibid*.
20. See also Section 51 (2), *ibid*.
21. See also section 46 (4), *ibid*.
22. See also Section 50, *ibid*.
23. See also Section 41–B(c) and 50-A.
24. See also Section 41-D.
25. See also Section 53 & 54.
26. See also Section 53 (2) & Proviso to Section 54.
27. See also Section 41 - C
28. See also Section 55-A.
29. See also Section 57 & Article 22 (2) of the Indian Constitution.
30. See also section 41 – D & Article 22 (1), *ibid*.
31. See Article 21 of Indian Constitution & see also ICCPR, 1996 & UDHR, 1948 & Human Rights Act, 1993.
32. (2014) 8 SCC 273.
33. Dr. Rini Johar & Anr. Vs State of M.P. & Ors. Writ Petition (Criminal) NO. 30 of 2015, Date of Judgment: June 03, 2016
34. Equivalent citations: 1991 AIR 2176, 1991 SCR (3) 936.
35. For more information see: D.K.Basu Vs State of West Bengal (*Supra Note - 12*).
36. For enforcement guidelines see the *Supra Note: 18* website.
37. PSO 622 Read as follows: Discretion to arrest in cognizable case: A Police Officer has discretion whether, or not, to arrest a person of his own motion, in a cognizable case and in instances where the position of the accused person and the nature of the charge against him render his arrest without warrant an unjustifiable hardship, application should be made to the magistrate to issue a process for his appearance.