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## Arrest: Conceptual study and ITS types

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### Abstract

The Natural Life or rather the Dignified Life of any Person must be the paramount consideration of the State to protect, nurture and maintain them in an efficient and decent manner which shall further be in accordance with the Principle of Natural Justice, Right to Personal Liberty conferred by Article 21 of Indian Constitution and General Principle of Human Rights. Moreover, though accused might commit crime in a fanciful or a playful manner under different motives, but they also deserve a dignified or a humane life condition within the closed boundaries of our Indian Prison System or Administration.

For each Cognizable or Non-Cognizable Offence, an accused tends to be punished within the prescribed penalties under Indian Penal Code, 1860 and the entire procedure of Arrests under the Code of Criminal Procedure, 1973. There is the common presumption of Criminal Law that 'A Person is Innocent until proven Guilty', where everything the Hon'ble Courts analyses, interprets and checks through different sorts of Evidences, Trial Processes and Circumstantial Evidences for proving or disproving the 'Guilt of an Accused'.

Under this Research Paper, the Author endeavours to highlight about the Concepts, Meaning and Types of Arrests with a broader spectrum.

**Keywords:** Arrest, cognizable offence, non-cognizable offence, article 21

### Introduction

#### Meaning and Concept of Arrest

Every person having their sole Right to get a Dignified Life <sup>[1]</sup> whether it is regarding Normal People or even an Accused. The Substantial Process or Procedure of Criminal Code to detain or to made accused feel deterrent by the Police Authorities because of the Commission of the Crimes whether Cognizable or Non-Cognizable Offence committed by them is duly known by the name of 'Arrest'. The process of Arrest has to be duly exercised by the Police Authorities, like an instance if person has committed a 'Cognizable Offence', then no permission from the Magistrate has to be taken by the Police Authorities and they can directly arrest them without 'Warrant' under Section 151 & 41 of the Code of Criminal Procedure <sup>[2]</sup>, 1973 but in contrary, if a person committed 'Non-Cognizable Offence', then in that case Police Authorities needs to take permission from the Magistrate in terms of 'Seeking Proper Warrant', and shall not make a arrest without showing 'Warrant' under Section 42 of the Code of Criminal Procedure, 1973 <sup>[3]</sup>.

Arrest is the substantial weapon or the legal weapon being used by the Indian Criminal Agencies to punish the Wrongdoer or an Accused for committing Cognizable or Non-Cognizable Offence against the Victim or the entire Society. The prevention of hardcore offences is truly indispensable in order to thoroughly restrict the danger movement of an accused and to create in their mind a 'Deterrent Feeling/Effect' which undoubtedly stops them or rather prevents them to 'Commit Continuing Hardcore/Brutal Offences'.

An Arrest <sup>[4]</sup> is a preventive method or the Criminal Methodology to detain an Accused from committing further crimes against different persons which ultimately secures the society at large or in other words Arrest construes to be the Real Deprivation of Accused Rights and Liberty to do a common piece of activity like a normal civilians or citizens in the Society, which further provided that the 'Practice of Arrest by the Police Authorities who are conferred with this Power under the Criminal Statutes of Indian Legislation' has to be made diligently, with utmost proper care and always has to be considered about the 'Principle of Natural Justice' which must not be in 'Conflict with Law' <sup>[5]</sup>.

#### Types of Arrest with Broader Spectrum & Interpretations of Indian Courts

Arrests are not only to detain accused for their wrong doings or commission of illegal crimes which is thoroughly forbidden by law to either commit or to have an attempt to commit the

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same. But it also a preventive technique or the substantial procedure of Criminal Law by which an Accused tends to be put behind the Judicial Custody under the direct supervision of Jailor/Police Authorities when it comes to 'Restraining or Confining the Accused on Remand'. The classification of Arrests is of certain types which is mandated by the Code of Criminal Procedure, 1973, and are as follows:

1. Arrest by Warrant under Section 42 of the Code of Criminal Procedure, 1973 <sup>[6]</sup>.
2. Arrest without Warrant in Cases of Commission of Cognizable Offences by Accused under Section 151 & 41 of the Code of Criminal Procedure, 1973 <sup>[7]</sup>.
3. Arrest by Private Person under Section 43 of the Code of Criminal Procedure, 1973 <sup>[8]</sup>.
4. Arrest by Magistrate under Section 44 of the Code of Criminal Procedure, 1973 <sup>[9]</sup>.

### **Arrest by Warrant**

Section 42 of the Code clearly mentions that in case of commission of Non-Cognizable Offence committed by Accused, the Police Authorities shall need to take the reasonable permission from the Magistrate in order to arrest the concerned person, and they shall not arrest such person without showing them a 'Due Warrant Authorized by Magistrate', and in other words this is an 'Absolute Right of Accused' to ask or get known about the Nature of Offence he has committed or this Right is also known by the name of 'Right to be Informed about the Commission of Crime/Offence' <sup>[10]</sup>.

### **Arrest without Warrant**

Section 151 and 41 of the Code of Criminal Procedure Code, 1973 <sup>[11]</sup> mandates about the Arrest of an Accused without Warrant or in other words in such nature of Offences, the Police Authorities are not supposed to take any permission and are conferred by the Law to Arrest such Offender without showing them a Warrant as due to the Gravity of an Offences <sup>[12]</sup>.

The Nature of Cognizable Offences is like: Crimes against State, Offences of Rape, Offences of Murder, Offences of Waging War against Government of India, Offences of Gang Rape, Acid Attack, etc.

The rationale behind this concept is to 'Prima Facie Punish the Accused for their Brutal/Hardcore Offence committed against the Victim at large', and further not even giving any single time to Accused to 'Escape from their Liability'.

### **Arrest by Private Person**

Section 43 of the Code of Criminal Procedure, 1973 <sup>[13]</sup> attracts this kind of Arrest which is known as 'Arrest by Private Person' <sup>[14]</sup> is basically done by any person, third person who have witnessed the Incidents of Crime or in other words, whosoever person has seen an accused committing any Cognizable or Non-Cognizable Offence in their respective presence, can make Accused arrest by the Police Authorities.

### **Arrest by Magistrate**

Comparing this kind of Arrest with Arrest by Private Person is nearly similarly as in the former kind of Arrest, the person stands as 'Any Person who has witnessed the Incidents of Offence whether Cognizable or Non-Cognizable in Nature' and in the latter i.e., Arrest by Magistrate under Section 44

of the Code of Criminal Procedure, 1973 <sup>[15]</sup>, under this kind of Arrest, a Magistrate on its Suo-Moto Initiative can arrest a person who has committed any Offence in presence of Magistrate whether Cognizable or Non-Cognizable in nature.

The scenarios of Indian Judiciary have been changing from one case to another pertaining to Arrests and their Nature of Offences, and undoubtedly Hon'ble Courts have fruitfully decided or broadly interpreted the Case Scenarios.

In the leading case decided by the Apex Court of India in *Birendra Kumar Rai V. Union of India* <sup>[16]</sup>, the Hon'ble Court held that the Police Authorities or the Police Officers shall not handcuff the person and instead of that only the spoken words or the gestures shall be duly sufficient in order to fulfil the procedure of Arrest or if in case such person submits himself only to be Arrested, then handcuffs shall not be made to such accused person. This was one of the good and fruitful interpretation made by the Hon'ble Court by considering the true and reasonable rationale of arrest to be followed by the Legal Agencies.

In the case of *Bharosa Ramdayal V. Emperor* <sup>[17]</sup>, the Hon'ble Court has duly established the 'Principle of Self-Submission of Accused Person for Committing Offence'. The Hon'ble Court has further held that in case if any person voluntarily submitting themselves to Police Authorities after Committing of Offence, then in such case there shall be no need to have a 'Physical Contact by the Police Officers to such Accused Person'.

In the case of *Kultej Singh A. Inspector of Police* <sup>[18]</sup>, the Hon'ble Court held that depriving the absolute movement of an accused within the closed precincts of Judicial Custody construes to be 'Arrest of such Person', and such person thereby, shall not able to exercise their luxurious and fanciful life.

In the leading case the Hon'ble Court decided that Arrest shall not means that an Accused shall be treated inhumane within the closed precincts of Judicial Custody, and rather the Natural Rights, Human Rights Principle's as declared by the Universal Declaration of Human Rights, 1948 and Protection of Natural Justice shall be duly served upon the part of an Accused.

In the leading case decided by the Hon'ble Court, the Court held that the Evidentiary Value of Person being Arrested by Private Person under Section 43 of the Code of Criminal Procedure, 1973 is of an Utmost Importance, as the Private Person informs the Police Authorities about making of an Arrest of Person/Accused only if an Offence has been committed by an Accused in due presence of such Person, so therefore, such kind of Arrest is truly relevant and non-erroneous before eyes of law.

In the leading case decided by the Apex Court, the Hon'ble Supreme Court mandated or broaden their Interpretation towards the Concept of Arrest which according to them does not only construes about the 'Deprivation of Accused Personal Liberty in order to Prevent the Society and Victim on a Paramount Spectrum' but simultaneously also to 'Protect and Nurture Accused General Human and Natural Rights' within the closed area of Judicial Custody.

In the leading case decided by the Hon'ble Court, the Court held that for Cognizable Offences which is non-bailable in nature when committed by Accused, then the chances of getting Bail is indeed tougher, as the gravity of such offence is very high and are highly detrimental to the Society and Victim, and thus, the Hon'ble Court left no room for think,

that the Accused has to be reformed once or either gets an Acquittal.

In the leading case decided by Hon'ble Court, the Court held that the Police Authorities or the Police Officers who are conferred with the Power to Arrest the Accused whether with or without Warrant has to duly exercise such power, and has to kept in the mind that the powers must not exceed their authority or jurisdiction range or in other words they shall not suppose to commit any Illegal or Illicit Treatment towards Accused during the time of making Arrest Procedures.

Moreover, there is dual obligations upon the Police Authorities, i.e., Firstly to Maintain Law and Order by Arresting Person and to create deterrence effect on the mindsets of Accused in order to prevent the Crime and to protect the Victim, and also to protect the Legal Rights of Accused on the other head.

### **Arrest: Need To Be Judicious and Not Brutal/Inhumane**

The broad principle of Indian Legislations which includes the protagonist provisions of Indian Constitution under Article 21 i.e. Right to Personal Liberty and also under the Wider Emancipation of Natural Justice Doctrine do not allow us to treat any person in a malafide ways or inhumane manner. Just like normal Citizens of India having ample Rights being prescribed by the Indian Legislations and Global Statutes or Declarations by the name of Human Rights Law and the Principles of Universal Declaration of Human Rights, 1948, so similarly, Accused is also a human and thus, deserves basic Human Rights within the closed precincts of Judicial Custody.

The Indian Criminal Legislations do have a wider provision or the procedures for Arrest under the Code of Criminal Procedure, 1973, but even the Hon'ble Courts mandates to exercise such Powers by the Police Officers under Due and Reasonable Manner and not arbitrarily which defeats the 'Real Facets of Doctrine of Natural Justice within Indian Territory.

The Custodial Torture or the Custodial Death of an Accused needs to be stopped in its very strict form as it is against the Principle of Human Rights and Natural Justice. The biggest lacuna of our Indian Criminal Administration is that their rate of implementation is very tedious and as a result of which every year lakhs of accused persons whose offence has yet not proved that whether such person is accused or innocent, gets brutally killed by the Police Officers within the Remands or either in Judicial Custody.

### **Conclusion**

There shall be an indispensable need for the effective and efficient Reformation of Indian Criminal Administration System, where they have to proceed with each of their proceedings in a very due and diligent manner and that too without hindering or violating the rights of accused persons as they also come under the domain or classification of normal person.

Arrest though is the true ends on the other head in order to create deterrent effect over the mindsets of an accused, so that they can easily render that for each heinous crime they commit against the society at large, then they have to face the Real Whip of Indian Judiciary in forms of Hardcore Punitive Actions or the Penalties at large. For heinous crimes such as Rape, Murder, Crimes Against Women at Large, the provisions of the Indian Criminal Codes inclusive

of Indian Penal Code, 1860 & The Code of Criminal Procedure, 1973 are very stringent and strict and are not at all lenient for sure.

There are Criminal Punishments for the Accused which involves Capital Punishment/Death Penalty, Rigorous Imprisonment, Simple Imprisonment, along with Fines that are indeed already established under the wider facets of Indian Penal Code, 1860, and in case some local laws also having certain punishments prescribed against these hardcore offenders, which is very strict and are not at all subject to remission or lessen of the gross sentence which the accused about to be faced behind the bars.

The one side of the coin gives a brief about how the accused gets punished by getting Arrested through the powers conferred to the Police Authorities under different Indian Criminal Statutes and on the other side the Police Authorities needs to exercise those powers within 'Intra Vires Capacity' and shall not at all violate the 'Rights of Accused' which shall in further be against the 'Natural Justice as Conferred by the Indian Constitution' as even the 'Authorities shall not go Ultra Vires'.

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