

# CHAPTER-1

## INTRODUCTION

Arrest in criminal jurisprudence signifies the detention of a person under the authority of law in connection with an alleged or expected violation of the law. Police officers are entrusted with wide powers of arrest under different circumstances, so are several other classes of officers who are entrusted with the enforcement of penal enactments. Magistrates have powers of arrest in certain circumstances and even private persons have the power to arrest in extraordinary circumstances. But the power to arrest has to be exercised with intelligent discretion and caution.

More over, arrest is undoubtedly a serious interference with fundamental right of the personal liberty of the citizen, which includes an arrestee or an accused, guaranteed under Articles 21 and 22 of the Constitution of India and it has to be strictly in accordance with the law, so as to be escaped the arresting authority from the punishment.

### **(A) MEANING OF ARREST:-**

The term arrest is not defined in any Statute. However, the Dictionary of Law of Lexicon has given a meaning of the term arrest as ‘an apprehension of a person by legal authority resulting in deprivation of his liberty’. In English law, arrest consists of the actual seizure or touching of a person’s body with a view to his detention. Further, in **State of Punjab Vs Ajaib Singh, AIR 1953 SC 10**, the Supreme Court has defined the term arrest occurring in Article 22 of the Constitution of India as ‘indicating physical restraint of a person under the authority of the law in respect of an alleged accusation or default or violation of the law.’

In ordinary parlance the terms arrest and custody are using as synonyms. But literally they suggest a different meaning. Arrest means restraint of liberty of the person. It is a mode of taking a person into custody. Custody means immediate charge and control exercised by person under authority of law. Taking a person into custody is followed after arrest of the concerned

person. In, **Directorate of Enforcement Vs Deepak Mahajan AIR 1994 SC 1775**, the Supreme Court laid down that taking of a person into judicial custody is followed after the arrest of the person by the Magistrate on appearance or surrender. In every arrest there is custody but not vice-versa and custody and arrest are not synonymous terms.

**(B) PURPOSE OF ARREST:-**

The purposes of arrest are twofold: the first and main purpose is to ensure the presence of the accused at trial; the second is to prevent him from committing a serious crime (cognizable offence).

Arrest of the offender especially of the dangerous and violent type does have a highly beneficial effect on the morale of the society. Timely arrest of the accused persons in serious cases is essential step in investigation; failure in this regard considerably weakens the position of the prosecution.

**(C) HUMAN RIGHTS VIS-À-VIS INDIAN CONSTITUTION ON ARREST**

**(i) CONCEPT AND PHILOSOPHY OF HUMAN RIGHTS:-**

Universal Declaration of Human Rights by the U.N. on 10<sup>th</sup> December, 1948 attach importance to the protection of life and liberty of the individual and put emphasis on respect for human dignity. It is now an International Law and Constitutional provision of protecting civil, political, social and cultural rights of the individual and community without discrimination of race, colour, religion and caste under the umbrella of the U.N. and the Indian constitution.

As per the provisions of human rights, life and dignity of the individual can not be encroached to taken away by the Government or by its machineries or by any dominant group excepting by the due procedure established by law. All are equal before law. No one will be subjected to arbitrary arrest or detention. No accused or person should be subjected to inhuman

and cruel treatment in the hands of police, Magistrate and Jail administration. Thus, provisions of human rights are concerned with the rightful attitudes in the administration of criminal justice as well as humanitarian approach in the administration of the Criminal law.

There are as many as 30 articles in the Universal Declaration of Human Rights by the U.N. Articles 3-21 deal with the civil and political rights of the individual, Articles 22-27 deal with economic, social and cultural rights of the individual and groups of the individuals.

**(ii) INDIAN CONSTITUTION AND HUMAN RIGHTS ON ARREST:**

Our Constitution – makers through part – 111 and 1V of the Constitution gave expression to the concept of human rights by providing fundamental rights to the citizen and even to the accused in certain cases [e.g.; Article 20 (3)]. As a matter of fact, out of 30 articles of the Universal Declaration of Human Rights, 1948, at least 23 Articles have been covered and incorporated in the Constitution of India.

**(iii) PROTECTIONS OF AN ARRESTEE UNDER THE INDIAN CONSTITUTION AS WELL AS UNDER THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)**

Safeguards and protections of an arrested person have been incorporated in the Indian constitution under Articles 21 and 22 as well as in the Universal Declaration of Human Rights (1948) under Articles 3, 5 & 9.

**(a) PROTECTION OF AN ARRESTEE UNDER THE INDIAN CONSTITUTION**

Articles 21 and 22 of the constitution of India are the essence of the fundamental rights with respect of the personal liberty of a citizen which includes an arrestee or an accused. These two articles are discussed as follows:-

As per article 21, protection of life and personal liberty has been granted to every one without any discrimination on ground of caste, race, religion, language and sex. Accordingly, no one shall be deprived of his life or personal liberty except by adopting due procedure established by law. No one will be compelled to live a subhuman condition. Every one has right to live as human being, necessary for his physical and human existence.

Article 22 provides safeguards and protects individual from arbitrary arrest and detention. It's various clauses declare clearly that-

- 1) No person who is arrested shall be detained in custody without being informed the grounds of such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice.
- 2) Every person who is arrested and detained in custody shall be produced before the nearest court of Magistrate within 24 hours excluding the journey time and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

In, **State of Maharashtra Vs. Shoba Ram, Air 1966 SC 1910**, the Supreme Court held that as soon as an arrest is made in respect of citizen, operation of Article 22 of the Constitution of India starts operation and he may take immediate step to regain his freedom.

## **(b) PROTECTION OF AN ARRESTEE UNDER THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)**

Article 3 says 'everyone has the right to life, liberty and security of person'.

Article 5 says 'no one shall be subjected to torture or to a cruel in human or degrading treatment or punishment'.

Article 9 lays down, that 'no one shall be subjected to arbitrary arrest, detention or exile'.

## **CHAPTER- II**

### **PROCEDURE FOR EFFECTING ARREST**

Section 46, Cr.P.C. lays down the procedure for effecting of an arrest. According to section 46, whether the arrest to be made is with a warrant or without a warrant, it is necessary that in Making such an arrest the police officer or another person making the same actually touches or confines the body of the person to be arrested unless there be a submission to the custody by word of arrest is not an arrest, unless the person sought to be arrested submits to the process and goes with the arresting officer. Any attempt by it self punishable under section 223 I.P.C.

The importance of the precise arrest – procedure becomes obvious while determining the question as to whether at a particular time a person was under arrest or not.

Under section 46 (2), the police officer or any other person arresting may use all means necessary to effect arrest if the person to be arrested evades or forcibly resists the arrest. “use all means” is a very wide term and recognising this aspect section 46[3], sets the limit at this, i.e. the arresting authority will not have the right to cause the death of the person to be arrested unless the latter is acused of an offence punishable with death or imprisonment for life.

The words “may use all means” appearing in section 46 (2), are to be read with section 49, which say that an arrested person shall not be subjected to more restraint than is necessary to prevent his escape.

As mentioning the words “may use all means” in section 46(2) the escorting police party is caused some times for use of hand cuffing, particularly, when the party is brining the under

trail prisoners from jail to the court and vice-versa. In this context, the escorting police party shall be know the guidelines of the Supreme Court on use of hand cuffsings.

**(A) GUIDELINES OF THE SUPREME COURT ON HAND CUFFINGS:**

The Hon'ble Supreme Court has given its Judgments in the following cases on the subject of hand cuffsings as to when they are to be used and not be used.

**(i) WHEN TO USE THE HAND CUFFINGS-**

In **Prem Shankar Shukla Vs Delhi Administration, AIR 1980 SC.1535**, the Supreme Court held that the handcuffs can be used by the escorting police party if the prisoner is dangerous and desperate, or if the prisoner is likely to break out of custody or play the vanishing tricks. The escorting party must form the opinion on the basis of antecedents of the prisoner.

Further, in **Sunil Gupta Vs State of M.P. 1990 SCC (Cr.) 440**, the Supreme Court held that the escorting authority should record contemporaneously the reasons for hand cuffing under trial prisoner even in extreme cases and intimate the court, so that the court may consider the circumstances and issue necessary direction to the escort party.

**(ii) NO HAND CUFF IN GENERAL –**

In **Sunil Batra Vs Delhi Administration, AIR 1978 SC 1675**, the Supreme Court maintained that the hand cuffs should not be used in routine manner. The minimum freedom of movement which even on under trail prisoner is entitled to under Article 19 of the constitution, can not be cut down cruelly by application of handcuff or other hoops.

Further, in **Prem Shankar Shukla Vs Delhi Administration, AIR 1980 SC 1535**, Supreme Court held that the person can not be handcuffed only because he is charged with grave offence not only for the convenience of the escort party. The rules, regulation and manuals of

various statutes authorizing the Police to use handcuff have been struck down as violative of Article 14 of the Indian Constitution.

In the same above mentioned case (**Prem Shanker Shukla**) the Supreme Court has laid down certain alternatives of handcuffs so as to abolish the practice of use of handcuffs: The alternatives are;

- i) Increase in the number of escorts;
- ii) Arm the escort party, if necessary;
- iii) Give special Training to escort party;
- iv) Transport of prisoners in protected vehicle.

By adopting the above methods, the handcuffing is virtually abolished in the State of Tamil Nadu.

## CHAPTER -III

### POWER TO ARREST

Arrest may be effected with warrant or without warrant. Arrest with warrant is dealt with in chapter –VI under sections 70 to 81 of Cr.P.C. so, the scope of the present chapter is broadly confined to arrest without warrant. The following officers/personnel are empowered to arrest without warrant Viz.(A) Any Police officer , (B) The officer-in-Charge of a Police Station (C) Private person (D) Magistrate (E) Armed force Personnel.

**1.(A) Any Police Officer**, of whatever rank , may without an Order from a Magistrate and without a warrant, a person on fulfillment of the conditions laid down in section, 41,42, 123 (6), 151 and 432 (3) of Cr. P. C.

(1) Under Section 41 ( i );

- (a) any person concerned in cognizable offence or against whom reasonable complaint made or credible information received or reasonable suspicion exists.
- (b) any person having implement of house of house breaking without excuse.
- (c) any proclaimed offender.
- (d) any person suspected to be in possession of stolen property.
- (e) any person who obstructs a police officer on duty , or who has escaped or attempts to escape from custody.
- (f) any deserter from Army , Navy or Air Force .
- (g) for commission of offence out side India , if it is an offence in India .
- (h) any released convict committing a breach of rule made under section 356 (5) Cr.P.C.
- (i) for whose arrest requisition has been received from another police officer.



- (2) Under section 42, when a non – cognizable offence is being committed by the accused in his view and the accused refuses to give his name and address or gives a false name or address.
- (3) Under section 123 (6), when the person released violates the condition of releases .
- (4) Under section 151, to prevent the commission of a cognizable offence, if designed by the person.
- (5) Under section 432 (3), any person whose suspension of remission of sentence has been cancelled by State Govt.; owing to his failure to fulfil any condition.
- (6) Under the Local and Special Laws which authorize the arrest without warrant, e.g. U/s 34 of the police Act 1861, U/S 64 of the Forest Act 1927, U/S 20 of the Arms Act 1959, U/S 30 of the Explosive Act 1884, U/S 59 ( 2 ) and 3 of the Delhi Police Act 1978, U/S 14 of the Foreigners Act, 1946 and U/S 128 of the Motor Vehicles Act 1939.

**(B) THE OFFICER – IN – CHARGER OF POLICE STATION** Can arrest or cause to be arrested without warrant under the following circumstance :-

- (1) Any habitual offender or any person who is taking precaution to conceal himself with a view to commit cognizable offence (Sec. 41 (2) )
- (2) To disperse any member of unlawful assembly (Sec. 129 (2)),
- (3) In the interest of Investigation of a cognizable offence (Sec. 157)
- (4) When witnesses refuse to attend court or execute a bond (Sec. 171)
- (5) In exercise of the powers as mentioned at “A”.

**(C) PRIVATE PERSON:-**Under section 43 any private person can make an arrest or caused to be arrested without warrant any person who in his presence commits a non-bailable and cognizable offence or any proclaimed offender.

**(D) MAGISTRATE:-**Under Section 44 any Executive Magistrate or Judicial Magistrate can arrest or cause to be arrested a person without warrant on fulfillment of the following conditions-

- (1) Offence (any) must be committed in his presence;
- (2) It must be within his local Jurisdiction;
- (3) The Magistrate is competent to issue warrant of arrest for the arrest of such person.

### **(E) ARMED FORCE OFFICERS-**

In the absence of Executive Magistrate any Commissioned officer or Gazetted officer of the Armed Forces can arrest any person in order to disperse any unlawful assembly for public security (Secs. 130(2) & 131)

## **II PROTECTION FROM ARREST-**

The following personnel have been protected from being arrested under the Indian Constitution as well as under the provisions of the Cr.P.C.

1. The president and Governors are immuned from arrest in any process issued by any court during their tenure of office (Art.361 (3) of the Indian Constitution).
2. Members of the Armed Forces can not be arrested without sanction of the Central Govt. for any thing done by them in discharge of official duty (Sec. 45 of Cr.P.C.).
3. The Judicial officers can not be arrested without approval of either the District and Session Judge or Chief Justice of the High Court as the case may be. (Judicial officers' Service Association Vs State of Gujarat, AIR 1991 SC (2176))
4. Members of the Parliament or Assemblies can not be arrested without prior permission of the speaker when they are in the precincts of the houses business (Proceedings). If arrest is outside precincts, then send intimation to the speaker.

### **(III) PROCEDURAL SAFEGUARDS OF A FEMALE ACCUSED ON ARREST AND SEARCH.**

The Criminal Procedure Code, 1973 has provided certain safeguards under the following circumstance to protect the honour of the female accused in respect of arrest and search.

- 1) If ingress to the place (search of place entered by person sought to be arrested) can not be obtained under sub section (1) and such place is an apartment in the actual occupancy of a female (not being the person to be arrested) the Police officer before search of that place shall give a notice to the said female to withdraw [Sec.47 (2)].
- 2) The search (personal) of a female shall be made by a female with strict regard to decency [Sec.51 (2) &100(3)].
- 3) A female accused shall be examined only under the supervision of a female registered medical practitioner [Sec.53 (2)].
- 4) A District Magistrate, Sub-Divisional Magistrate or Magistrate of the First Class may give immediate relief of restoration to a female, above or below 18 years, who is in un-lawful detention for unlawful purpose (Sec.98).

In, **Christian Community welfare council of India vs. Govt. of Maharashtra, 1995 Cr. L.J.4223 (Bom.)**, The Bombay High Court has directed to the State Govt. to constitute a committee to see that females be not arrested without presence a lady Constable and no female be arrested after sun-set and further separate lock ups be provided for them

## **CHAPTER-IV**

### **PROCEDURE AFTER ARREST**

The procedure to be followed after arrest is laid down in different circumstances by different sections of the Cr.P.C. The procedure is as follows:-

- 1) The Police officer making arrest has to inform the arrested person of the grounds of arrest (Art. 22 of the constitution & Sec. 50 of the Cr.P.C. )
- 2) He has to inform the arrested person of his right to be realized on bail if the offence is a bailable one (Sec.50).
- 3) The Police officer making arrest, if no bail is given, shall conduct a personal search on arrestee and prepare a memo about it. He shall take all articles other than necessary wearing apparel into possession. A receipt showing the articles so seized shall be given to such an arrestee. Where an arrestee is a woman the search shall be made by an other woman with strict regard to decency (Sec.51). If the articles so seized are offensive weapons, he has to send them to the court before which an arrestee is to be produced (Sec.52).
- 4) He can get an arrestee medically examined to afford evidence of commission of offence and can use necessary force for such examination (Sec.53).
- 5) He has to produce the arrested person before a Magistrate without unnecessary delay and not to detain an arrestee beyond 24 hours (excluding journey time) without obtaining order of the Magistrate (Secs. 56&57).
- 6) An arrestee shall not be subjected to more restraint than is necessary to prevent his escape (e.g. handcuffs is one method of restraint)-(Sec.49).
- 7) Officers-in-charge of Police Station shall report to the District Magistrate or Sub- Divisional Magistrate of all arrests made without warrant(Sec. 58).
- 8) The person arrested by Police shall not be discharge except on his own bond or on bail or under the orders of a Magistrate (Sec.59).

The Police officer making arrest has an obligation to adopt the above mentioned procedure after arrest

## **CHAPTER-V**

### **RIGHTS OF ARRESTED PERSON**

The following are the rights of an arrested person guaranteed under the Indian Constitution as well as under the Criminal Procedure Code, 1973,

#### **(1) RIGHT TO BE INFORMED OF THE GROUNDS FOR ARREST:-**

In every case of arrest with or without a warrant the person arresting shall communicate to the arrested person, without delay, the grounds for his arrest (Art, 22 (1) of the Constitution of India, Secs. 50 (1), 55, 75 of Cr.P.C.).

#### **(2) RIGHT TO BE INFORMED OF RIGHT TO BAIL:-**

The arrested person must be informed of his right to be released on bail when he is arrested without warrant in a bailable offence (Sec. 50 (2) & (436)).

#### **(3) RIGHT OF NOT BEING DETAINED FOR MORE THEN 24 HOURS WITHOUT JUDICIAL SCRUTINY:-**

In case of every arrest the person making the arrest is required to produce the arrested person before the Magistrate within 24 hours from the time of arrest. The time required for journey from the place of arrest to the court of magistrate will be excluded in computation of the duration of 24 hours (Art. 22 (2) of the Constitution and section 57),

#### **(4) RIGHT TO CONSULT A LEGAL PRACTITIONER:-**

Both the Constitution and the provisions of Cr.P.C. recognize the right of every arrested person to consult a legal practitioner of his choice (Art. 22 (1) and Sec. 303)

**(5) RIGHT OF AN ARRESTED INDIGENT PERSON TO FREE LEGAL AID AND TO BE INFORMED ABOUT IT-**

In, **Khatri (II) Vs, State of Bihar, (1981) 1 S.C.C. 627**, the Supreme Court has held that the State is under a constitutional mandate (implicit in Art,21) to provide free legal aid to an indigent accused person, and that this constitutional obligation to provide legal aid does not arise only when the trial commences but also when the accused is for the first time produced before the Magistrate as also when he is remanded from time to time.

The Supreme Court has gone a step further in, **Suk Das VS Union Territory of Arunchal Pradesh, (1986)2 S.C.C 401**, where in it has been categorically laid down that unless refused, failure to provide free legal aid to an indigent accused would vitiate the trial, entailing setting aside of the conviction and sentence. The accused shall be assigned a pleader for his defence, by the court, at the expense of the state when he has not sufficient means to engage a pleader (Sec. 304).

**(6) RIGHT TO BE EXAMINED BY A MEDICAL PRACTITIONER-**

The Magistrate can direct for medical examination of the arrested person on fulfillment of the following conditions; (a) the medical examination will disprove the commission of any offence by him or (b) establish the commission of any other offence against his body (Sec. 54)

## **CHAPTER-VI**

### **CONSEQUENCES OF ILLEGAL ARREST AND USE OF THIRD DEGREE METHOD BY THE POLICE**

**(A) CONSEQUENCES OF ILLEGAL ARREST:-** An arrest which is not authorized by the Law is an illegal arrest . The following are the consequences of illegal arrest.

- 1) If the arrest is illegal, the person who is being so arrested can exercise the right of private defence in accordance with , and subject to, the provisions contained in sections 96 to 106 of the I.P.C.
- 2) If the public servant having authority to make arrests, knowingly exercises that authority the contravention of Law and effect and section 220 of IPC. Apart from this special provision , any person who illegally arrests another is punishable under section 342 of the I.P.C. for wrongful confinement.
- 3) A civil suit for damages may be instituted against the arresting officer for illegal arrest, false imprisonment, illegal confinement etc. after giving notice to the Government and the concerned officer under section 80 of the Code of Civil Procedure.
- 4) A trial will not be void simply because the provision relating to arrest have not been fully complied with.
- 5) A writ of Habeas Corpus can be filed either in the Supreme Court under Article 32 or in the High Court under Article 226 of the Indian Constitution for release of the person illegally arrested or detained in custody by any authority .

### **(B) USE OF THIRD DEGREE METHOD BY THE POLICE AND ITS EFFECTS:**

Use of third degree method in course of interrogation and investigation means ‘obtaining confession from the accused under coercion and physical torture’. Police is no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but law does not permit use of third degree method or torture of

accused in custody during investigation and investigation with a view to solve the crime. Frequent threats and insistence on answering is a form of pressure, especially in the atmosphere of police station (under physical torture) is an example of third degree method.

## **EFFECTS:**

- 1) As per sections 330 and 331 of IPC Physical torture of an accused during interrogation is an offence and hence punishable from 7 to 10 years imprisonment.
- 2) Article 5 of the Universal Declaration of Human Rights and Article 20(3) of the Indian Constitution, Section 29 of the Police Act, 1861 and Rule 3 of the Police code of Conduct forbid such physical torture on the accused.



## CHAPTER: VII

### OBSERVANCE OF DOs AND DON'Ts BY THE POLICE OFFICER REGARDING ARREST

#### (A) Dos:

The police officer who makes an arrest has an obligation and a duty to observe the following mandatory provisions, soon after arrest is made, under the Criminal Procedure Code, 1973:-

- 1) The Police Officer making arrest; shall conduct a personal search on arrestee and shall take all articles other than necessary wearing apparel and place them in safe custody. The Police Officer should prepare a receipt showing the articles so seized and a copy of the same shall be given to an arrestee. Where an arrestee is a woman the search shall be made by another woman with strict regard to decency (Sec.51).
- 2) When the articles seized, u/s 51, are offensive weapons the arresting officer has to send them to the Court before which an arrestee is to be produced (Sec.52).
- 3) Arrest should be entered in an arrest card by the person who made the arrest. It should also be noted in the general diary with all particulars. Time of arrest should be particularly noted. Any articles found on the person also should be entered.
- 4) The Police Officer making arrest has to inform an arrestee of the grounds of arrest and of his right to be released on bail if the offence is a bailable one (Sec.50).
- 5) Arrestee should be produced before the magistrate within 24 hours from the time of arrest (Sec.57).
- 6) The Police officer making arrest has a reason to believe that on examination of an arrested person body, by the registered Medical Practitioner, which will afford evidence as to the commission of an offence he should send the arrested person to medical practitioner for examination (Sec.53).

- 7) The person arrested by police shall not be discharged except on his own bond or on bail or under the orders of a Magistrate (Sec.59).
- 8) In, **Joginder Kumar Vs. State of U. P.-AIR 1994 SC. 1349** the Supreme Court issued the following guidelines for the police officers to observe for effective enforcement of the fundamental rights guaranteed under Articles 21 and 22 (1) of the Indian Constitution.
  - i) The Police Officer shall inform the arrested person when he is in custody that is entitled if he desires to have one friend; relative or other person, who is known to him or likely to take an interest in his welfare; told as far as practicable that he has been arrested and where he is being detained.
  - ii) The entry shall be required to be made in the general diary of Police Station as to who informed of the arrest.

**(B) DONT 'S:-**

A survey conducted by the police commission and research studies reveal that the police invariably employ methods (which should not be in practice), such as-

- 1) Employ unfair methods to elicit confessions;
- 2) Use third degree methods in police lock-ups;
- 3) Detain the arrested persons beyond the statutorily permitted 24 hours in their custody;
- 4) Refuse the arrested persons to get in touch with legal practitioners of their choice;
- 5) Make informal, illegal and arbiter arrest;
- 6) Commit custodial torture, rape and murder;
- 7) Humiliate people and degrade persons in custody;
- 8) Make the detainees to starve and make them to resort to an undesirable option of committing suicide;
- 9) Handcuff the arrested and chain them in lock-ups or parade them in public in chains when they are taken to courts etc.

It is needless to say that these ways of exercising authority are wholly opposed to human rights and human dignity.

## **CHAPTER: VIII**

### **RECENT CASE- LAW ON ARREST**

- (1) In, **SHEELA BARSE Vs. STATE OF MAHARASHTRA, (1983) 2 S.C.C. 96**; the Supreme Court held that the arrested accused person must be informed by the magistrate about his right to be medically examined in terms of sections 54 of the Cr.P.C.
- (2) In, **ARVIND SINGH BAGGA Vs. STATE OF U.P & OTHERS, 1995(1) 173**, The Supreme Court has deprecated the high handedness, illegal arrest and illegal detention of female witness (named as Nidhi) in custody and the state of U.P. was directed to take immediate steps to launch criminal prosecution against all the Police Officers involved in the sordid affair. The Supreme Court has also directed the state of U.P. to pay compensation of Rs. 10.000/-to Nidhi and Rs. 5.000/- to each of the other persons, who were illegally detained and humiliated for no fault of theirs.
- (3) In, **ANUP SINGH Vs STATE OF HIMCHAL PARDESH, AIR 1995 SC 1941**. The Supreme Court held that the Officer In charge of Police Station, who was not physically present all the time during confinement of deceased in the police station, can not escape his criminal liability by passing the buck on the constables ( who were actually responsible for the death of the deceased), because criminal deeds committed by the constables are deemed to have been committed with his tacit consent and connivance. Accordingly, officer in charge of police station, (Aunp Singh, ASI) was convicted along with the two constables.
- (4) In, **D.K. BASU Vs STATE OF WEST BENGAL, 1997 (1) J.T, (SC) I**, The Hon'ble Supreme Court has given the following guidelines, for the police officers regarding arrest of persons, when the Executive Chairman, Legal Aid Services, West Bengal addressed a letter to the Chief Justice of India drawing his attention to certain news items published in various news papers relating to custodial violence. The letter was treated as a writ application under Article 32 of the Constitution and the case was treated as a public interest litigation. The guide lines are as follows:-

- I. The Police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel's who handle interrogation of the arrestee must be recorded in a register.
- II. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be arrested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- III. A person who has been arrested or detained and is being held in custody in a police statione interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is him self such a friend or a relative of the arrestee.
- IV. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives out side the district or town through the Legal Aid Organization in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- V. The person arrested must be made aware of this right to have some one informed of his arrest or detention as soon as he is put under arrest or is detained.
- VI. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- VII. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at the time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
- VIII. The arrestee should be subjected to medical examination by a trained doctor every 48 hours of his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Service of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

- IX. Copies of all the documents including the memo of arrest referred to above, should be sent to the IIIaqa Magistrate for his record.
- X. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- XI. A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of the custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.
- XII. Failure to comply with the requirements herein above mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the Country, having territorial jurisdiction over the matter.

These requirements are in addition to the Constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with safeguarding all the rights and dignity of the arrestee.

Further, the Supreme Court has directed that the amount of compensation, to the victim, as awarded by the writ court and paid by the state to redress the wrong done, may in a given case be adjusted against any amount which may be already paid to the claimant by way of damages in civil suit.

## **CHAPTER – IX**

### **CONCLUSION**

Police Officers are entrusted with wider powers of arresting a person without warrant. But this power of arrest must be in accordance with Law not otherwise. Arrest is undoubtedly a serious interference with the fundamental right of the personal liberty of the citizen, which includes an arrestee or an accused, guaranteed under Articles 21 and 22 of the Constitution of India and it has to be strictly in accordance with the Law so as to be escaped, the arresting authority, from punishment.

In order to exercise effectively the power of arrest by a police officer, he must be well versed with legal provisions relating to arrest, Supreme Courts guidelines and its decisions on arrest up to date, particularly, when arresting women, children, judicial officers, M.L.A's & M.Ps and public servants etc. Moreover, the police should enforce the provisions relating to arrest firmly and impartially without fear of favour, malice or vindictiveness. And also the police should project their image as the protector of Human Rights.

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- (2) Directorate of Enforcement Vs. Deepak Mahajan, AIR 1994 SC 1775.
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- (4) Prem Shankar Shukla Vs. Delhi Administration, AIR, 1980 SC 1535.
- (5) Sunil Gupta Vs. State of M.P. 1990 SCC (Cr.) 440.
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- (7) Christian Community Welfare Council of India Vs. Govt. of Maharashtra, 1995 Cr. L.J. 4223 (Bom.)
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- (11) Joginder Kumar Vs. State of U.P., AIR, 1994 SC 1349.
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- (13) Arvind Singh Bagga Vs. State of U.P. and others 1995 (1) SCJ 173.
- (14) Anup Singh Vs. State of Himachal Pradesh, AIR 1995 SC 1941.
- (15) D.K. Basu Vs. State of West Bengal, 1997 (1) J.T. (SC) 1.



## QUESTIONS

1. What is meant by arrest and custody? Is arrest different from Custody?
2. What are the safeguards of on arrestee under the Indian Constitution as well as under the universal declaration of human rights (1948)?
3. Write a critical note on 'hand cuffsings'.
4. Who are empowered to arrest a person without warrant under the Cr.P.C. 1973?
5. What are the procedural safeguards of a female accused on arrest and search?
6. Can An M.P. or M.L.A. be arrested? If so, state procedure of it?
7. Explain the rights of an arrestee?
8. What are the consequences of illegal arrest and use of third degree method by the Police?
9. Explain the procedure after arrest?
10. What are the Do's and Dont's on the part of police officer, to observe, regarding arrest?
11. What are the guidelines for the police officers regarding arrest, which are enumerated by the Supreme Court in D.K. Basu Vs State of West Bengal?

Annexure – 1

**1. FORM OF ARREST WARRANT**

**(See Section 70 Cr. P. C.)**

To (name & designation of the person or persons who is or are to execute the warrant).

Whereas (name of accused) of (address) stands charged with the offence of (state the offence), you are here be directed the said ..... and to produce him before me. Herein fail not.

Dated, this ..... day ..... 19.....

(Seal of the court)

(Signature)

**Annexure – 11**

**ENDORSEMENT OF ARREST WARRANT**

**( See Section 71 )**

This warrant may be endorsed as follows :-

If the said \_\_\_\_\_ shall give bail himself in the sum of rupees \_\_\_\_\_ with one surety in the sum of rupees \_\_\_\_\_ (or two sureties each in the sum of rupees \_\_\_\_\_) to attend before me on the \_\_\_\_\_ Day of \_\_\_\_\_ and to continue so to attend until otherwise directed by me, he may be released.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_.

(Seal of the Court)

(Signature)