

SYNOPSIS

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35. When police may arrest without warrant:

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person--

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(a) who commits, in the presence of a police officer, a cognizable offence; or

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:--

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary--

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

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Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this subsection, record the reasons in writing for not making the arrest; or

(c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(d) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or

(e) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(f) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

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(i) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 394; or

(j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 39, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(4) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a

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competent Court in this behalf, arrest him for the offence mentioned in the notice.

(7) No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age.

### **36. Procedure of arrest and duties of officer making arrest:**

Every police officer while making an arrest shall--

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be--

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest.

### **37. Designated police officer:**

The State Government shall--

(a) establish a police control room in every district and at State level;

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(b) designate a police officer in every district and in every police station, not below the rank of Assistant Sub-Inspector of Police who shall be responsible for maintaining the information about the names and addresses of the persons arrested, nature of the offence with which charged, which shall be prominently displayed in any manner including in digital mode in every police station and at the district headquarters.

### **38. Right of arrested person to meet an advocate of his choice during interrogation:**

When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.

### **39. Arrest on refusal to give name and residence:**

(1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses on demand of such officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on a bond or bail bond, to appear before a Magistrate if so required:

Provided that if such person is not resident in India, the bail bond shall be secured by a surety or sureties resident in India

(3) If the true name and residence of such person is not ascertained within twenty-four hours from the time of arrest or if he fails to execute the bond or bail bond, or, if so required, to

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furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

#### **40. Arrest by private person and procedure on such arrest:**

(1) Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, but within six hours from such arrest, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of sub-section (1) of section 35, a police officer shall take him in custody.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 39; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

#### **41. Arrest by Magistrate:**

(1) When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

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(2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

## **42. Protection of members of Armed Forces from arrest:**

(1) Notwithstanding anything contained in section 35 and sections 39 to 41 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.

(2) The State Government may, by notification, direct that the provisions of sub-section (1) shall apply to such class or category of the members of the Force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section shall apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

## **43. Arrest how made:**

(1) In making an arrest the police officer or other person making the same 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:

Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a

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female, the police officer shall not touch the person of the woman for making her arrest.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) The police officer may, keeping in view the nature and gravity of the offence, use handcuff while making the arrest of a person or while producing such person before the court who is a habitual or repeat offender, or who escaped from custody, or who has committed offence of organised crime, terrorist act, drug related crime, or illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency-notes, human trafficking, sexual offence against children, or offence against the State.

(4) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

(5) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

#### **44. Search of place entered by person sought to be arrested:**

(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any

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person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under sub-section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

(3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

#### **45. Pursuit of offenders into other jurisdictions:**

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A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India.

46. No unnecessary restraint:

The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

47. Person arrested to be informed of grounds of arrest and of right to bail:

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

48. Obligation of person making arrest to inform about arrest, etc., to relative or friend:

(1) Every police officer or other person making any arrest under this Sanhita shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information and also to the designated police officer in the district.

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(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.

49. Search of arrested person:

(1) Whenever,--

(i) a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; and

(ii) a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail, the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person.

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(2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

50. Power to seize offensive weapons:

The police officer or other person making any arrest under this Sanhita may, immediately after the arrest is made, take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Sanhita to produce the person arrested.

51. Examination of accused by medical practitioner at request of police officer:

(1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of any police officer, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

(3) The registered medical practitioner shall, without any delay, forward the examination report to the investigating officer.

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Explanation.--In this section and sections 52 and 53,--

(a) "examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

(b) "registered medical practitioner" means a medical practitioner who possesses any medical qualification recognised under the National Medical Commission Act, 2019 (30 of 2019) and whose name has been entered in the National Medical Register or a State Medical Register under that Act.

## **52. Examination of person accused of rape by medical practitioner:**

(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometres from the place where the offence has been committed, by any other registered medical practitioner, acting at the request of any police officer, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without any delay, examine such person and

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prepare a report of his examination giving the following particulars, namely:--

(i) the name and address of the accused and of the person by whom he was brought;

(ii) the age of the accused;

(iii) marks of injury, if any, on the person of the accused;

(iv) the description of material taken from the person of the accused for DNA profiling; and

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without any delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 193 as part of the documents referred to in clause (a) of sub-section (6) of that section.

53. Examination of arrested person by medical officer:

(1) When any person is arrested, he shall be examined by a medical officer in the service of the Central Government or a State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made:

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Provided that if the medical officer or the registered medical practitioner is of the opinion that one more examination of such person is necessary, he may do so:

Provided further that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

(2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person.

54. Identification of person arrested:

Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction may, on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit:

Provided that if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Magistrate who shall

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take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with and the identification process shall be recorded by any audio-video electronic means.

55. Procedure when police officer deposes subordinate to arrest without warrant:

(1) When any officer in charge of a police station or any police officer making an investigation under Chapter XIII requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made and the officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

(2) Nothing in sub-section (1) shall affect the power of a police officer to arrest a person under section 35.

56. Health and safety of arrested person:

It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.

57. Person arrested to be taken before Magistrate or officer in charge of police station:

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate

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having jurisdiction in the case, or before the officer in charge of a police station.

### **58. Person arrested not to be detained more than twenty-four hours:**

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not.

### **59. Police to report apprehensions:**

Officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

### **60. Discharge of person apprehended:**

No person who has been arrested by a police officer shall be discharged except on his bond, or bail bond, or under the special order of a Magistrate.

### **61. Power, on escape, to pursue and retake:**

(1) If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India.

(2) The provisions of section 44 shall apply to arrests under subsection (1) although the person making any such arrest is not

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acting under a warrant and is not a police officer having authority to arrest.

62. Arrest to be made strictly according to Sanhita:

No arrest shall be made except in accordance with the provisions of this Sanhita or any other law for the time being in force providing for arrest.