

UNIT-2- ARREST, DETENTION, SEARCH AND SEIZURE

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☆ Arrest and Detention

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☆ **ARREST AND DETENTION**

1.1 **INTRODUCTION**

Arrest and detention is another important phase in investigation of crimes. Timely arrest of the accused persons in serious cases is very vital for proper and effective investigation. It also deters criminals from committing crimes and creates an atmosphere of peace and security in the minds of people and the State. There can not be charge sheet without arrest. The term “arrest” refers to an act of being taken in to custody of a person to be charged with a crime. It is derived from the French word “arreter” means “to stop or stay” and signifies a restraint of the person. In other words, it refers to apprehension of a person by legal authority resulting in deprivation of his liberty.

“Arrest” and “custody” are not synonymous terms. In all arrests there is custody and not otherwise. Arrest consists of seizure or touching of a person’s body with a view to restrain him, whereas custody consists of submission of a person to the custody by word or action.

The police are empowered under CrPC to arrest a person in both cognizable case and non-cognizable case. In cognizable case, the police can arrest a person without a warrant from a

competent Magistrate. However, to arrest a person in non-cognizable case, the police have to obtain a written warrant of arrest from a competent Magistrate under Section 155 CrPC.

1.2 OBJECTIVES

Once you go through this unit, you should be able to:

- explain the circumstances under which the police can arrest a person;
- describe briefly as to the procedures to be followed by the police while making arrest;
- lay down the procedures to be complied with by the police after effecting arrest;
- enumerate the rights of a person arrested;
- set out the consequences that follow on the police of non-compliance with the provisions relating to arrest;
- briefly explain the ambit and scope of detention u/ss 57 and 167 CrPC;
- describe briefly the procedures to be followed by the police in search and seizure u/ss 165,166 and 166A of CrPC;
- lay down the procedures to be followed by the police during search and seizure u/s 100 of CrPC; and
- explain the procedures to be followed by the police in disposal of the seized property.

1.3 CIRCUMSTANCES UNDER WHICH A PERSON CAN BE ARRESTED

A person can be arrested under several circumstances. The police are a machinery of the State vested with powers to arrest persons who have violated or committed offences under law. Section 41 CrPC provides for arrest of a person without warrant from a Magistrate under several circumstances when any person actually concerned or reasonably suspected to be concerned in a cognizable offence; any person who, in the presence of such an officer, has committed or has been accused of committing a non-cognizable offence and refuses to give his true name or address; any person concerned or reasonably suspected to be concerned in any act committed at any place outside India, any person belong to one or more of the categories of persons specified in Section 109 or 110 of CrPC and so on.

The police are also empowered to arrest person(s) under several other circumstances. They can arrest for securing attendance of an accused at trial; to prevent from commission of any offence; to remove obstruction to the police; and for retaking a person who has escaped from custody.

Please answer the following Self-Assessment Question.

Self-Assessment Question 1

Spend 3 minutes

- 1) Enumerate the circumstances under which the police can arrest a person u/s 41 CrPC.

1.4 HOW ARREST IS MADE

Section 46 (1) provides for as to how arrest is to be made. According to the section whether the arrest to be made is with warrant or without warrant, it is necessary that in making such arrest, the police officer or other person making the arrest actually touches or confines the body of the person to be arrested unless there be a submission to custody by word or action. However, an oral declaration of arrest without actual contact or submission to custody will not amount to arrest.

The Code of Criminal Procedure has vested the police with the following powers for effecting an arrest:

(1) Use of force by the Police while making Arrest: - The police may use necessary force to arrest a person if the person to be arrested resists the arrest or attempts to evade the arrest under Section 46(2) of CrPC. However, the power to use necessary force for making an arrest shall not extend to causing the death of a person who is not accused of an offence punishable with death or with imprisonment for life under Section 46(3) of CrPC. The person arrested is not to be subjected to more restraint than is necessary to prevent his escape as set out in Section 49 of CrPC.

(2) The police should not handcuff Accuse in normal circumstances: - The investigating police are restrained from handcuffing the arrested persons without the prior permission from the

concerned Magistrate. Time and again the Supreme Court has emphasized the need for exercising caution while handcuffing a person arrested. The Apex Court is not happy about indiscriminate handcuffing of arrested persons by the police, in spite of the courts warnings. Thus, the Supreme Court has ordered in *Citizens for Democracy v State of Assam*, (1995)3 SCC 743: 1995 SCC (Cri.) 600, that: “In all the cases where a person arrested by the police is produced before the Magistrate and judicial or non-judicial remand is given by the Magistrate, the person concerned shall not be handcuffed unless special orders in this respect are obtained from the Magistrate at the time of the grant of the remand. When the police arrest a person in execution of a warrant of arrest obtained from a Magistrate the person so arrested shall not be handcuffed unless the police have also obtained orders from the Magistrate for the handcuffing of the person to be so arrested. Where a person is arrested by the police without warrant the police officer concerned may, if he is satisfied, on the basis of the guidelines given by us that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated by us.”

(3) The Police power to search a place: - Under Section 47 of CrPC the police are empowered to effect search a place and an occupier of a house is under a legal duty to afford to the police, and to any person acting under a warrant of arrest, all the facilities to search the house for the purpose of making arrests. If such facilities are denied or obstructions are put in the search, the police shall have power to use force for getting entry into the house for search and also for the purpose of liberating himself in case he is detained in the house. These powers are subject to reasonable restrictions if the part of the house to be searched is in occupation of any pardanashin woman. In such instances either she should be called out of the house or the search is to done in the presence of a woman or a woman police.

(4) The police power to pursue Offenders any place in India: - under Section 48 of CrPC a police officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest, pursue such a person into any place in India. This provision facilitates the police to conduct and complete investigation of a case in hand promptly and effectively.

In case the arrest is to be made by the investigating police under a warrant, Section 77 of CrPC makes it clear that the warrant may be executed at any place in India. However, when a warrant

of arrest is to be executed outside the local jurisdiction of the court issuing it, a special procedure as prescribed in Sections 78-81 of CrPC will have to be followed.

(5) The police power to obtain assistance: - A police officer can reasonably ask any person to assist him in the taking of or preventing the escape of any other person whom he (the officer) is authorized to arrest under Section 37 of CrPC. The person asked to assist is under a legal obligation to give assistance and any intentional failure on his part is punishable under Section 187 IPC.

(6) Power to require Subordinate Officer to arrest: - An officer-in-charge of a police station, or any police officer holding investigation under Chapter XII of CrPC, can require any subordinate officer to arrest without a warrant (other than in his presence) any person who may lawfully be arrested without a warrant, and shall deliver to the officer so required an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made under Section 55 of CrPC.

(7) Power to re-arrest escapee: - Section 60 of CrPC provides for 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. The person making such re-arrest shall have the same powers and duties as mentioned above in respect of using force for arrest, and of search of place etc.

Please answer the following Self-Assessment Questions.

Self-Assessment Question 2

Spend 5 minutes

- 1) Briefly explain the procedures to be followed by the police while arresting a person.
- 2) Under Section-----of CrPC the police are empowered to search a place for a person.

1.5 AFTER-ARREST PROCEDURES

(1) Search of arrested person: - Whenever an arrested person cannot legally be admitted to bail, or is unable to furnish bail, the police officer making the arrest (or to whom the arrested person is made over after arrest by a private person) may search such a person, and place in safe custody all articles, other than necessary wearing apparel, found upon him. A receipt showing the articles so seized shall be given to such a person. The police's failure to take out a recovery memo is an irregularity and was however held not vitiating the trial. Where the arrested person is a woman the search shall be made by another woman with strict regard to her decency as provided under Section 51 of CrPC.

(2) Seizure of offensive weapons: - The police officer or other person making any arrest may take any offensive weapons from the person arrested which he has in his person, and shall deliver all weapons so taken to the court or officer before which or whom the arrested person is to be produced under Section 52 of CrPC.

(3) Medical examination of accused:- If the offence with which the arrested person is charged is of such a nature and is alleged to have been committed under such circumstances that the evidence as to the commission of the offence would be afforded by the medical examination of such an arrested person, then, at the instance of a police officer not below the rank of a sub-inspector, such examination could be made by a registered medical practitioner in order to ascertain the facts that might afford such evidence. For the purposes of such medical examination such force as is reasonably necessary could also be used. If the person to be so examined is a woman the examination shall be made by, or under the supervision of, a registered lady medical practitioner as provided under Section 53 of CrPC. Such medical examination has been held to be not violation of Article 20(3) of the Constitution as it would not amount to compelling the arrested person "to be a witness" against himself. The examination is not restrictively confined to what is visible on the body itself. It may include testing of blood, sputum, semen, urine, etc. depending upon the nature of the case. If the process of examination is reasonable, then the discomfort, pain or hurt caused to the examinee in such examination is justified under Section 53 CrPC.

By giving an elaborate explanation as to the meaning of 'examination' and 'registered medical practitioner', the Code of Criminal Procedure (Amendment) Act 2005 has incorporated sections 53-A and 54(2) and laid down the procedures for the conduct of medical examination.

Section 53-A CrPC makes special provisions for rape cases. It is enacted that in a rape case the accused could be sent for medical examination by a registered medical practitioner working in a hospital run by the Government or local authority and in their absence within a radius of 16 kilometers, any other registered medical practitioner acting at the request of a police officer not below the rank of sub-inspector. For the purpose of such examination such force as is necessary can also be used.

The registered medical practitioner has to prepare the report with supporting reasons for his conclusions on each aspect, detailing the names and address of the accused and the person taking the accused to the medical practitioner, age of the accused, marks of injury on the person of the accused, the description of material taken from the accused person for DNA profiling and other material particulars. The exact time of the commencement and completion of examination will also be noted in the report and a copy of the report will be sent to the police officer and the magistrate. In case of the examination taking place at the instance of the accused under sub-section (1) a copy will be given to him also under Section 54 CrPC. Accused persons who are on bail can also be subjected for medical examination.

Section 311-A CrPC authorizes the Magistrate to direct any person including an accused to give specimen signatures or handwriting for the purpose of investigation or other proceedings. But this order shall not be made if he was at any time arrested in connections with such investigation.

(4) Reports of arrest to be sent to District Magistrate: - Every police officer- in- charge of a police station is required to report to the District Magistrate the cases of all persons arrested without warrant, within the limits of his station under Section 58 CrPC.

(5) Person arrested not to be discharged except on Bond or Bail: - A person who has been arrested by a police officer shall not be discharged except on his own bond or on bail or under the special order of a Magistrate under Section 59 CrPC.

Please answer the following Self-Assessment Questions.

Self-Assessment Question 3*Spend 4 minutes*

- 3) How is search of an arrested person made by the police?
- 4) Under Section-----of CrPC the police are empowered to seize offensive weapons.
- 5) Briefly explain the procedures to be followed by the police while subjecting an accused for medical examination.
- 6) Under Section -----of CrPC the police are not suppose to discharge the accused except on Bond or Bail

1.6 RIGHTS OF ARRESTED PERSON

The Code of Criminal Procedure, the Indian Constitution, various judgments of the Supreme Court and other International Human Rights Covenants and Conventions have laid down several standard procedures as to the rights of arrested person. These rights are enforceable at different phases of arrest of a person and violation of which would invite serious disciplinary and penal action against the delinquent police officer.

(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 under Section 50 CrPC. This is a precious right of the arrested person and has been recognized by the Constitution under Article 22(1). Timely information of the grounds of arrest serves the arrested person in many ways. It gives him an opportunity to remove any mistake, misapprehension or misunderstanding, if any, in the mind of the arresting authority. It also enables him to apply for bail, or for a writ of *habeas corpus*, or to make other expeditious arrangements for his defence.

Under Section 50-A CrPC it obligatory on the part of the police officer not only to inform the friend or relative of the arrested person about his arrest etc., but also to make an entry in a register maintained by the police. The Magistrate is also under an obligation to satisfy himself about the compliance of the law by the police in this regard.

(2) Right to be informed of right to Bail: - Every police officer arresting, without a warrant, any person other than a person accused of a non-bailable offence, is required to inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf under Section 50(2) CrPC. Only when he fails to arrange sureties he need not be released on bail.

(3) Right to be produced before a Magistrate without delay: - In case of every arrest, whether the arrest has been made with or without a warrant, the person arresting is required, without unnecessary delay and subject to the provisions regarding bail, to produce the arrested person before the Magistrate or officer-in-charge of a police station having jurisdiction in the case under Sections 56 and 76 of CrPC.

(4) Right to consult a Legal Practitioner: - Both the Constitution and the provisions of the CrPC respectively recognize the right of every arrested person to consult a legal practitioner of his choice under Article 22(1) and Section 303 of CrPC. The right begins from the moment of arrest. The consultation with the lawyer may be in the presence of the police officer but not within his hearing.

(5) Right of an arrested Indigent Person to free legal aid and to be informed about it: - In *Khatri v. State of Bihar*, (1981) 1 SCC 627, the Supreme Court has held that the State is under a constitutional mandate (implicit in Article 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. However, this constitutional right of an indigent accused to get free legal aid may prove to be illusory unless he is promptly and duly informed about it by the court when he is produced before it. The Supreme Court has therefore cast a duty on all Magistrates and courts to inform the indigent accused about his right to get free legal aid.

(6) Right to be examined by a Medical practitioner: - If any arrested person alleges, at the time when he is produced before a Magistrate or at any time during the period of his detention in custody, that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, then the Magistrate, on the request of the arrested person, is

required to direct the examination of his body by a registered medical practitioner. However, the Magistrate need not give such a direction if he considers that the request for medical examination has been made by the arrested person for the purpose of vexation or delay or for defeating the ends of justice under Section 54 CrPC.

According to the direction of Supreme Court, the arrested accused person must be informed by the Magistrate about his right to be medically examined in terms of Section 54 CrPC.

Please answer the following Self-Assessment Questions.

Self-Assessment Question 4

Spend 5 minutes

- 1) Explain briefly the rights of an arrested person in light of various provisions of CrPC and Article 22(1) of the Indian Constitution.
- 2) What provision of CrPC provides right to an accused to be examined by a medical practitioner?

E. Guidelines to the Police issued By the Supreme Court

Hon'ble justices Dr. A. S. Anand and Kuldeep Singh of Supreme Court in *D.K.Basu v. State of West Bengal* [(1997)1 SCC 416: 1997 SCC (Cri.) 92], have laid down the following guidelines for the police who are in to investigation and policing:

- (1) 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 who handle interrogation of the arrestee must be recorded in a register.
- (2) 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 attested by at least one witness, who may either be 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.
- (3) 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 outside 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.

- (4) 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.
- (5) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director, Health Services of the State or Union Territory concerned. The Director, Health Services should prepare such a panel for all tehsils and districts as well.
- (6) Copies of all the documents including the memo of arrest referred to above should be sent to the *Illaga* Magistrate for his record.
- (7) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout interrogation.
- (8) A police Control Room should be provided at all districts and State Head Quarters, where information regarding the arrest and the place of 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.

Failure to comply with the requirements herein above mentioned shall, apart from rendering the official concerned 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 county having territorial jurisdiction over the matter.

The right to compensation for the victims of unlawful arrest and detention has been recognized by the Supreme Court in *Nilabati Behera v. State of Orissa* (1993)2 SCC 746. Section 358 of CrPC provides for compensation to persons groundlessly arrested. As per the section the police officer who made an arrest of a person without any valid reason is suppose to pay compensation under the order of the magistrate.

Please answer the following Self-Assessment Questions.

Self-Assessment Question 5*Spend 4 minutes*

- 1) List out the guidelines set out for the police in *D.K. Basu v. State of West Bengal*.
- 2) Under section -----of CrPC the police officer who has made wrongful arrest is suppose to pay compensation.

1.8 CONSEQUENCES OF NON-COMPLIANCE WITH THE PROVISIONS RELATING TO ARREST

Non-compliance of the provisions of arrest will result in several serious consequences on violators. A trial will not be void simply because the provisions relating to arrest have not been fully complied with. Though the illegality or irregularity in making an arrest would not vitiate the trial of the arrested person, it would be quite material if such a person is prosecuted on a charge of resistance to or escape from lawful custody. 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 IPC. If the public servant having authority to make arrests knowingly exercises that authority in contravention of law and effects an illegal arrest, he can be prosecuted for an offence under Section 220 of the IPC. Apart from this special provision, any person who illegally arrests another is punishable under Section 342 of the IPC for wrongful confinement. If the arrest is illegal, it is a sort of false imprisonment, and the arrested person is entitled to claim damages from the person who made such an arrest.

Please answer the following Self-Assessment Question.

Self-Assessment Question 6*Spend 3 minutes*

- 1) Under what provisions of the Indian Penal Code the police can be prosecuted for violation of procedures of arrest?

1.9 DETENTION OF THE PERSON ARRESTED

There are two Sections-57 and 167- CrPC provide for detention of accused person. The legislative intention of incorporating these two sections is to expect investigation undertaken by the police is promptly and effectively completed in the first instance within 24 hours under Section 57, if not, under Section 167 within 15 days from the date when the person arrested was first produced before the Magistrate.

(1) Detention of Accused under Section 57 CrPC: - In case of every arrest, the police officer making arrest is required to produce the arrested person without unnecessary delay before the Magistrate; and it has been categorically provided that such a delay in no case shall exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court under Section 57 and proviso to Section 76 CrPC. If it is not complied with, the detention shall be unlawful. When the arrested person is produced before the Magistrate it is his duty either to release him on bail or to remand him. Such remand would continue till the trial is over. Illegal detention may entail award of compensation by the court. The tendency of police officers authorized to arrest, to note the time of arrest in such a manner that the accused's production before the Magistrate would well within 24 hours of the arrest. This perverse act of the police officers came to be criticized by Apex court and many High Courts in many instances. The Courts ruled that the arrest commences with the restraint placed on the liberty of the accused and not with the time of arrest recorded by the police officer. The right has also been incorporated in the Constitution as one of the fundamental rights under Article 22(2). This right has been created with a view (i) to prevent arrest and detention for the purpose of extracting confessions, or as a means of compelling people to give information; (ii) to prevent police stations being used as though they were prisoners- a purpose for which they are unsuitable; and (iii) to afford an early recourse to a judicial officer independent of the police on all questions of bail or discharge. This healthy provision contained in Section 57 enables Magistrate to keep a check over the police investigation and it is necessary that the Magistrate should try to enforce this requirement and where it is found disobeyed, he should punish such erring police indiscriminately without being soft towards them.

(2) Detention of Accused under Section 167: -Under the Section 57 CrPC police officer is empowered to detain in custody a person arrested without warrant for a period not exceeding 24

hours under all the circumstances of the case. If the investigation could not be completed within that period, the police should forward the accused to the nearest Magistrate under sub-section (1) of Section 167. The Magistrate can then authorize his detention in such custody as he thinks for a term not exceeding fifteen days. When an arrested accused is produced before the Magistrate he may release him on bail, or he may order his detention in police custody. If he does neither, the Magistrate would take the accused to judicial custody.

If the police officer conducting investigation of a case requires the accused for further police custody, he has to file an application to the Magistrate with the copies of case diaries and requesting the Magistrate, with specific reasons, to pass order to hand over the accused for police custody. The Magistrate can legitimately rely on the entries in the case diaries and if he finds that the accused has volunteered to disclose the incriminating articles to the crime and his presence is inevitable to effect such recovery then the Magistrate may remand him to police custody not exceeding 15 days in offences falling under the Indian Penal Code and such other laws. However, for certain offences under the amended Unlawful Activities (Prevention) Act, 1967 Local Acts such as Maharashtra Control of Organised Crimes Act, 1999 the police custody can be granted by the Magistrate beyond 15 days and not exceeding 30 days as the investigation of such cases require longer time as their ramifications are often extended across the States and the Country. However, the police should be warned that they should not resort to use of any threat or any other kind of force in any form- physical or psychological-against the accused to elicit information while he is in their custody.

Where a person is not arrested by the police, but surrenders himself before the court, remand order under Section 167 cannot be passed, as he is not in police custody when the police apply for remand. However, if he is taken to judicial custody on such surrender, the police officer who is investigating the case against that accused can approach the Magistrate with an application to issue body warrant to prison authorities to produce the accused before the court, hear him and then pass suitable orders to hand over him to the police officer for investigation.

Please answer the following Self-Assessment Questions.

Self-Assessment Question 7*Spend 3 minutes*

- 1) Under Section----- of CrPC the police can detain in their custody for 24 hours?
- 2) Briefly explain the procedures laid down u/s 167 of CrPC as to detention of a person.

☆ Search and Seizure

Search and seizure is also a significant stage in the process of effective investigation. There are two ways by which the police can effect search and seizure. One under a warrant issued under any of the provisions of Sections 93, 94, 95, and 97 and the other is without a warrant under any of the provisions of Sections 103, 165 and 166. General provisions as to search and seizure are set out in Section 100 of CrPC. The procedure laid down in the section is generally followed in offences committed under the Indian Penal Code as well as in special and local laws with a little variance. Thus, in all circumstances of search and seizure, the investigating police should follow the procedures laid down under Sections 100 and 165 CrPC.

The readers should also know that there are certain special and local acts such as the Narcotic Drugs and Psychotropic Substances Act, 1985 which provide for separate search and seizure procedures to be followed by the investigating police.

The police may have to effect search and seizure in one or more places. One at the scene of crime and the other at places where the persons involved in crime are hiding and places where the incriminating articles to crime are kept or concealed.

1.10 SEARCH AND SEIZURE AT THE SCENE OF CRIME

As soon as the investigating police officer arrives at the scene of crime, he should, as a golden rule, never alter the position of the scene of crime, pick up, even touch any object before it has been minutely described in an official note, and a photograph taken of it. He should contact the man who reached the scene first and make enquires. He should ensure that the scene of crime is not interfered with. He should not allow any unauthorized person to meddle in the inspection of

the scene. He should avoid crowding at the spot and all thoughtless interference, as they always result in the destruction of clues. He should never leave the inspection of the scene to his subordinates especially those who are untrained. He should never take anything to be trivial but make his inspection thorough and minute; and search methodically, patiently and in a definite order. He should summon some local and independent witnesses to assist him to draw panchanama as required under Section 100 of CrPC .

The investigating police officer effecting the search should take down accurate and detailed notes, supported by accurate sketches drawn to scale, showing the whole lay-out and the exact places where the articles, etc., were found. An article is in a certain room or on a particular table. Its exact position must be noted and, if necessary, an enlarged sketch of that portion of the scene must be drawn by a qualified draftsman. In all important cases photograph and videograph should be taken of the scene and of the objects on which any useful clues are found. Sketches are useful in criminal investigation and prosecution as they reduce the length of case diaries and make a much more exact impression on the mind than written reports. They make lucid explanation of an intricate case fairly easy. They introduce method into investigation and help judges, magistrates, and others to an accurate understanding of case. They also enrich the powers of observation of investigating police officer. The sketches should be prepared to scale indicating the compass point and mentioning the distance correctly. Invariably he should use a ruler, scale and compass for measurements at the scene of crime. He should use the expressions such as 'on the right' and 'on the left;' North, South, East and West for directions and for distance measurement 'inch', 'feet', 'meter' etc.

Please answer the following Self-Assessment Question.

Self-Assessment Question 8

Spend 4 minutes

- 1) How is search at the scene of crime is conducted by the police?

1.11 SEARCH AND SEIZURE AT DIFFERENT PLACES UNDER SECTIONS 165 AND 166 READ WITH SECTION 100 CRPC

Section 165 CrPC is enacted as an exception to this general law of searches because it is recognized that in certain exceptional emergencies it is necessary to empower responsible police officers to carry out searches without first applying to the courts for authority. The legislature has, however, attempted to restrict and limit the powers of the police under the section and provided the concerned citizens with safeguards in order to prevent the abuse of the powers. As set out in Section 165 CrPC an officer-in-charge of a police station or an investigating officer, having reasonable grounds for believing that anything necessary for the purpose of investigation of any offence which he is authorized to investigate may be found in any place within the limits of the police station of which he is in charge or to which he is attached and that such thing cannot in his opinion be otherwise obtained without undue delay, may search the place. Before making the search, the investigating police officer must record his grounds of his belief; specify therein the thing for which the search is made. This is known as “*record of reasons*.” If the investigating police officer is unable to conduct the search in person, he may require any officer subordinate to him to make the search, after recording in writing his reasons for so doing. The subordinate police officer so deputed should be given order in writing specifying the place where and the thing for which the search is to be made. Copies of records made above should be sent to the nearest Magistrate empowered to take cognizance of the offence.

When a search has to be conducted in the jurisdiction of another station, whether in the same or a different district, an officer-in-charge of a police station making an investigation may require under sub-section (1) of Section 166 CrPC, the officer-in-charge of the former station to make a search or cause search to be made. But, where there is reason to believe that the delay occasioned by such a procedure might result in evidence being concealed or destroyed, the investigating police officer may, under sub-section (3) of the Section 166 of CrPC, make the search himself or cause the search to be made, in which case, he shall forthwith send a notice of the search together with a copy of the list prepared under Section 100 CrPC to the officer-in-charge of the police station, within the limits of which the place searched is situated and to the nearest Magistrate empowered to take cognizance of the offence.

Under section 166 A of CrPC the investigating police officer is empowered to write a letter to the competent authority for investigation in a country or place outside India.

Please answer the following Self-Assessment Questions.

Self-Assessment Question 9

Spend 3 minutes

- 1) Under what section of CrPC the investigating police are expected to make *record of reasons*?
- 2) Explain briefly the procedures set out in Sections 165, 166 and 166A of CrPC as to the procedures of search to be followed by the police.

1.12 PROCEDURES TO BE FOLLOWED DURING SEARCH AND SEIZURE U/S 100 OF CRPC

The investigating police officer while conducting search has to bear in mind the following procedures and follow them accordingly. Any deviations or violations of the procedures laid down under the Section 100 of CrPC will adversely affect the prosecution case and vitiate the trial as well. The procedures in simplified form are as follows:

1. The free ingress and reasonable facilities are to be made under both for search under a warrant as well as for a search without a warrant.
2. The police officer or other conducting the search is empowered to enter the place and in order to effect an entrance into such a place can break open an outer or inner door or window of any house or place if after notification of his authority and purpose, and demand of admittance duly made, he could not otherwise obtain admittance. Section 47(2) provides a safeguard in favour of a pardanashin woman and the same would apply in case of a search also. Further, it has been held that if in the exercise of the power or the performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance. This accords with common sense and does not seem contrary to any principle of law.
3. In order to obviate the chance of any person stealthily taking away on his person any article or thing for which the search of a place is to be made, sub-section (3) of Section 100 provides

for the search of such a person. The provision is necessary to prevent the object of the search getting frustrated. If the person to be searched is a woman, then, in order to protect her modesty it has been provided that the search shall be made by another woman with strict regard to decency.

4. The search is to be made in the presence of at least two independent and respectable inhabitants of the locality in which the place to be searched is situated. However, if no such inhabitant of the said locality is available or willing to be a witness to the search, the search can be made in the presence of persons of other locality. What is more important to be emphasized is the respectability of the witness rather than his locality or independence. The object of the provision is to guard against possible chicanery and unfair dealings on the part of the persons authorized to search and ensure that anything incriminating which may be said to have been found in the premises searched was really found there and was not introduced by the members of the search-party. The presence of witnesses at a search is always desirable and their absence will weaken and may sometimes destroy the admissibility of the evidence as to the finding of the articles.

Sub-section (4) of Section 100 also lays down that the officer or other person making the search is to call the above-said persons [panch witnesses] to attend and witness the search and they make for this purpose issue a written order to them. If a person so ordered to be a witness neglects or refuses without reasonable cause to attend and witness a search, then according to sub-section (8) of Section 100 he shall be deemed to have committed an offence under Section 187 IPC.

5. As far as possible a search has to be conducted in daylight. If information is received after dusk necessitating the immediate search of a house and if it is apprehended that delay till daybreak might result in evidence being concealed or destroyed, the house should be sealed and guarded and if that is not possible, search should be conducted during the night itself.
6. Before entering the premises to be searched, the exterior of the place shall be inspected to see whether facilities for introducing property from outside exist.

7. Before commencing search the investigating and the panch witnesses should ensure that mutual search of each other is done.
8. Search and seizure must be systematic and thorough.
9. Women should be allowed to withdraw while effecting search and seizure.
10. Indiscriminate search and damage to property should be avoided.
11. The occupant of the place of search, or his nominee, shall in every case be permitted to attend during the search. Denial of such permission may cause suspicion as to the reliability of the discoveries made out. However, where the securing of the presence of the occupier or his nominee might cause such delay as to frustrate the purpose of the search, it may be permissible to dispense with his presence.
12. List of all things seized in the course of the search and of the places in which they are respectively found shall be prepared by the police officer or other person making the search and shall be signed by the panch witnesses. The signature of the accused on the search is not required under law.
13. A search list shall be prepared in quadruplicate, all the copies being signed by the police officer making the search and the witnesses to the search. One copy will be handed over to the owner or occupant of the house, the second copy should be sent to the Magistrate and the third copy should be sent with the case diary to the superior officer to whom case diaries are sent. The fourth copy will form the station record.

Please answer the following Self-Assessment Question.

Self-Assessment Question 10

Spend 10 minutes

- 1) Describe the procedures to be followed u/s 100 of CrPC by the investigating police while effecting search and seizure.

1.13 DISPOSAL OF THE SEIZED PROPERTY

The police are not empowered to dispose of the property seized without the order of the competent court. Under sub-section (2) of Section 102 CrPC the police are empowered to hand over the custody of the property seized which could not be retained in their custody for want of accommodation to any person on execution of a bond with a direction to produce before the court as and when required. So also the where the property seized under sub-section (1) is subject to speedy and natural decay and if the entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police. In all other cases and circumstances court is empowered to dispose of the property seized as per the provisions of Sections 457 and 458 CrPC.

Please answer the following Self-Assessment Question.

Self-Assessment Question 1

Spend 3 minutes

1) Lay down the procedures to be followed by the police vide u/s 102 of CrPC for disposal of seized property.

1.14 SUMMARY

- Arrest and detention is an essential phase in investigation of crimes. Arrest refers to apprehension of a person by legal authority resulting in deprivation of his liberty.
- The police are empowered under CrPC to arrest a person in both cognizable case and non-cognizable case. In cognizable case, the police can arrest a person without a warrant from a competent Magistrate. In non-cognizable case, they have to obtain a written warrant of arrest from a competent Magistrate.
- The police are empowered under Section 41 CrPC to arrest a person without warrant from a Magistrate under various circumstances. They can effect arrest by touching or confining a person unless he submits himself to custody by word or action vide Section 46(1). They are vested with power vide Section 46(2) to use minimum force necessary to effect arrest of a

person when he resist such arrest. However, they are not supposed to handcuff a person accused of an offence except under extra-ordinary circumstances. They are empowered under Section 47 to search any place for a person accused of crime or against whom warrant is issued by the court by complying certain procedures. They are empowered under Section 51 to search of an arrested person and to seizure of incriminating articles from his possession.

- Section 52 provides for as to how to seize offensive weapons from the possession of the arrested person. Section 53 entails the police to subject the accused for medical examination. Section 54 entitles the arrested person right to get him examined by a medical officer and it is the bounden duty to arrange the same through Magistrate. Section 57 mandates the police not detain a person arrested for an offence beyond 24 hours and try to complete the investigation within the said time or else he shall be produced before the court for necessary orders under Section 167. Section 58 expects the police who effected arrest of a person to send him up arrest report to the District Magistrate. Section 59 envisages the police to release of arrested person on execution of his own bond or bail.
- The police can seek the help of the court under Section 311A CrPC to take the signatures, blood samples, or finger prints of the arrested person for the purpose of investigation.
- Vide Section 50 CrPC in every case of arrest, with or without a warrant, the police should communicate to the arrested person, without delay, the grounds for his arrest. This is a precious right of the arrested person and has been recognized by the Constitution under Article 22(1). Under Section 50-A CrPC it obligatory on the part of the police officer not only to inform the friend or relative of the arrested person about his arrest etc., but also to make an entry in a register maintained by the police. Every police officer arresting without a warrant any person other than a person accused of a non-bailable offence, is required to inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf under Section 50(2) CrPC. Both the Constitution and the provisions of the CrPC respectively recognize the right of every arrested person to consult a legal practitioner of his choice under Article 22(1) and Section 303 of CrPC.

- The police are not supposed to make wrongful arrest and confinement. If they indulge in such acts they are liable for prosecution under sections 220 and 342 IPC. Court can also award compensation from the pay of the delinquent police.
- **Search and seizure** is a significant step in the process of effective investigation. Section 165 empowers the investigating police to search any place for the purpose of investigation within their police station limits without prior search warrant from the court and by making *record of reasons*. Section 166 CrPC empowers the investigating police search or cause to be searched a place in other police station limits.
- The investigating police while effecting search and seizure have to follow certain procedures laid down under Section 100 of CrPC. The investigating police officer conducting the search is empowered to enter the place and in order to effect an entrance into such a place can break open an outer or inner door or window of any house or place if after notification of his authority and purpose, and demand of admittance duly made, he could not otherwise obtain admittance. In order to obviate the chance of any person stealthily taking away on his person any article or thing for which the search of a place is to be made, sub-section (3) of Section 100 provides for the search of such a person. If the person to be searched is a woman, then, in order to protect her modesty the search shall be made by another woman with strict regard to decency.
- The search is to be made in the presence of at least two independent and respectable inhabitants of the locality in which the place to be searched is situated. Before commencing searches the investigating and the panch witnesses should ensure that mutual search of each other is done. Women should be allowed to withdraw while effecting search and seizure. Indiscriminate search and damage to property should be avoided.
- A list of all things seized in the course of the search and of the places in which they are respectively found shall be prepared by the investigating police and shall be signed by the panch witnesses. A search list shall be prepared in quadruplicate, all the copies being signed by the police officer making the search and the witnesses to the search.

1.15 TERMINAL QUESTIONS

- 1) Describe the procedures to be followed by the police while arresting a person.
- 2) What are the procedures the police are expected to follow after arrest of a person?
- 3) Explain detention procedures as laid down u/ss 57 and 167 of CrPC.
- 4) How does search and seizure to be conducted by the investigating police u/ss 165, 166 and 166A of CrPC?
- 5) Explain the procedures to be followed by the investigating police while conducting search and seizure u/s 100 of CrPC?

1.16 ANSWERS AND HINTS

- 1) Procedures laid down u/ss 46, 47, 48, 77, 37, 55, 60 of CrPC.
- 2) Procedures laid down u/ss 51, 52, 53, 53A, 311A, 58, 59 of CrPC.
- 3) Procedures laid down u/ss 57 and 167 of CrPC.
- 4) Procedures laid down u/ss 165, 166, and 166A of CrPC.
- 5) Procedures laid down u/s 100 of CrPC

Terminal Questions

- 1) Refer to section 1.4 of the unit.
- 2) Refer to section 1.5 of the unit.
- 3) Refer to section 1.9 of the unit.
- 4) Refer to section 1.11 of the unit.
- 5) Refer to section 1.12 of the unit.

1.17 WORK ASSIGNMENT

The readers are advised to visit the nearest police station and request the officer-in-charge of the police station to allow them to see Prisoners Search Register, Sentry Guard Register, Arrest

Card, Search Warrant and List, Property Form and so on. This will help the readers to acquaint themselves with the process of arrest of accused persons involved in crime during investigation in consonance with the various procedures laid down under CRPC and the mandates of the Constitution of India and also how search and seizure is effected by the investigating police. They may also interact with the police at the police station so that they can get their doubts clarified which will in turn broaden their outlook and understanding of the topic.

1.18 REFERENCES AND SUGGESTED READINGS

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