

Provisions regarding Detention ,Arrest and Bail

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Your laws your rights

INTRODUCTION

Arrest and detention are such procedures that immediately take away the liberty of a person and therefore it is crucial that appropriate procedures during established by law must be followed in this regard

Charu khurana Vs union of India

Bail denotes the provisional release of an accused in a criminal matter in which the court is yet to announce a judgment.

DETENTION (ARTICLE 22)

Hussainara Khatoon case

Preventive detention means detention of a person without trial. In total there are 7 clauses

1 to 2 deals with punitive detention 3 is an exception and clauses 4 to 7 deals with preventive detention.

Under Section 151 of The Criminal Procedure Code, 1973 (CrPC)

Criminal justice and detention

Detention under criminal procedure court

Arrested person may not be detained for more than 24 hours according to section 57 of CRPC

Length of period of detention

Preventive detention laws

Habeas corpus

Preventive detention in India dates from British rule in the early 1800s, and continued with such laws as the Defence of India Act 1939 and the Preventive Detention Act 1950.

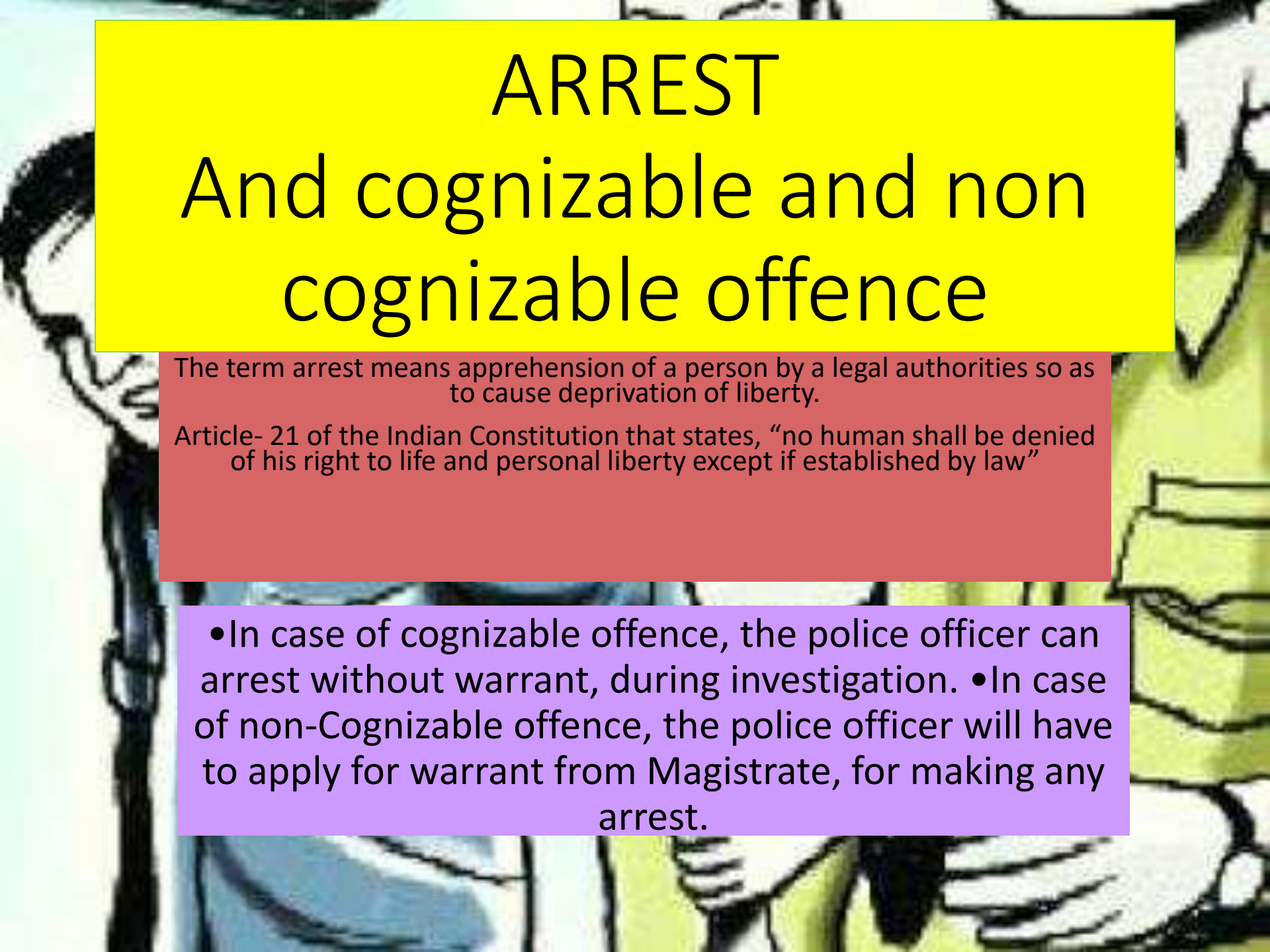
Examples of Preventive Detention Laws since Independence

the first Preventive Detention Act was passed in the year of 1950. Maintenance of Internal Security Act (MISA), 1971. The conservation of the Foreign exchange and also the Prevention of Smuggling Activities (COFEPOSA) National Security Act (NASA), 1980.

Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985. Repealed in 1995

The prevention of Illicit Traffic in the Narcotic Drugs and also the Psychotropic Substances Act (PITNDPSA), 1988.

Prevention of Terrorism Act (POTA), 2002. Repealed in 2004.

A cartoon illustration of a man in a blue shirt and a woman in a yellow shirt. The man is on the left, looking towards the right. The woman is on the right, looking towards the left. They appear to be in a conversation or a scene related to the text.

ARREST

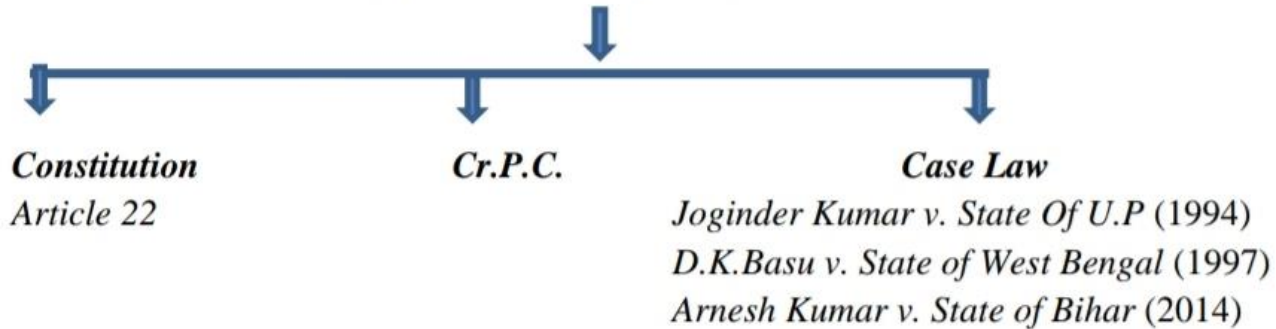
And cognizable and non cognizable offence

The term arrest means apprehension of a person by a legal authorities so as to cause deprivation of liberty.

Article- 21 of the Indian Constitution that states, “no human shall be denied of his right to life and personal liberty except if established by law”

- In case of cognizable offence, the police officer can arrest without warrant, during investigation.
- In case of non-Cognizable offence, the police officer will have to apply for warrant from Magistrate, for making any arrest.

Rights of arrested person



Constitution of India

Provisions	Rights of Arrested Person
Article 22(1)	<i>Right to be informed the grounds of arrest</i>
Article 22(1)	<i>Right to consult legal practitioner of his choice</i>
Article 22(2)	<i>Right to be produced before Magistrate</i>
Article 22(2)	<i>No detention beyond 24 hours.</i>

Code of Criminal Procedure

Provisions	Rights of Arrested Person
Section 41B (c)	<i>Right to be informed his friend or relative(Section 41B)</i>
Section 41D	<i>Right to meet an advocate of his choice</i>
Section 49	<i>Right not to unnecessary handcuffed</i>
Section 50 (1)	<i>Person arrested to be informed of grounds of arrest</i>
Section 50 (2)	<i>Person arrested to be informed about right to bail</i>
Section 54	<i>Right to be medically examined</i>
Section 56	<i>Right to be produced before Magistrate without delay</i>
Section 57	<i>No detention beyond 24 hours</i>

Arrest by police (without warrant)

The CrPC provides detailed provision related to arrest journey requires the permission of the magistrate but there are certain cases in which the police can arrest without an order from magistrate and without warrant

There are other acts also where the power has been given to the police to arrest without warrant such as section 34 of police act 1961 section 64 of Indian forest act 1927 section 20 of arms act 1959 section 13 of explosive act 1884 section 145 ,146 ,151 ,152, 153 ,154 ,162, 180 of railway act 1989 section 7 of fisheries act 1897

MC Abraham case

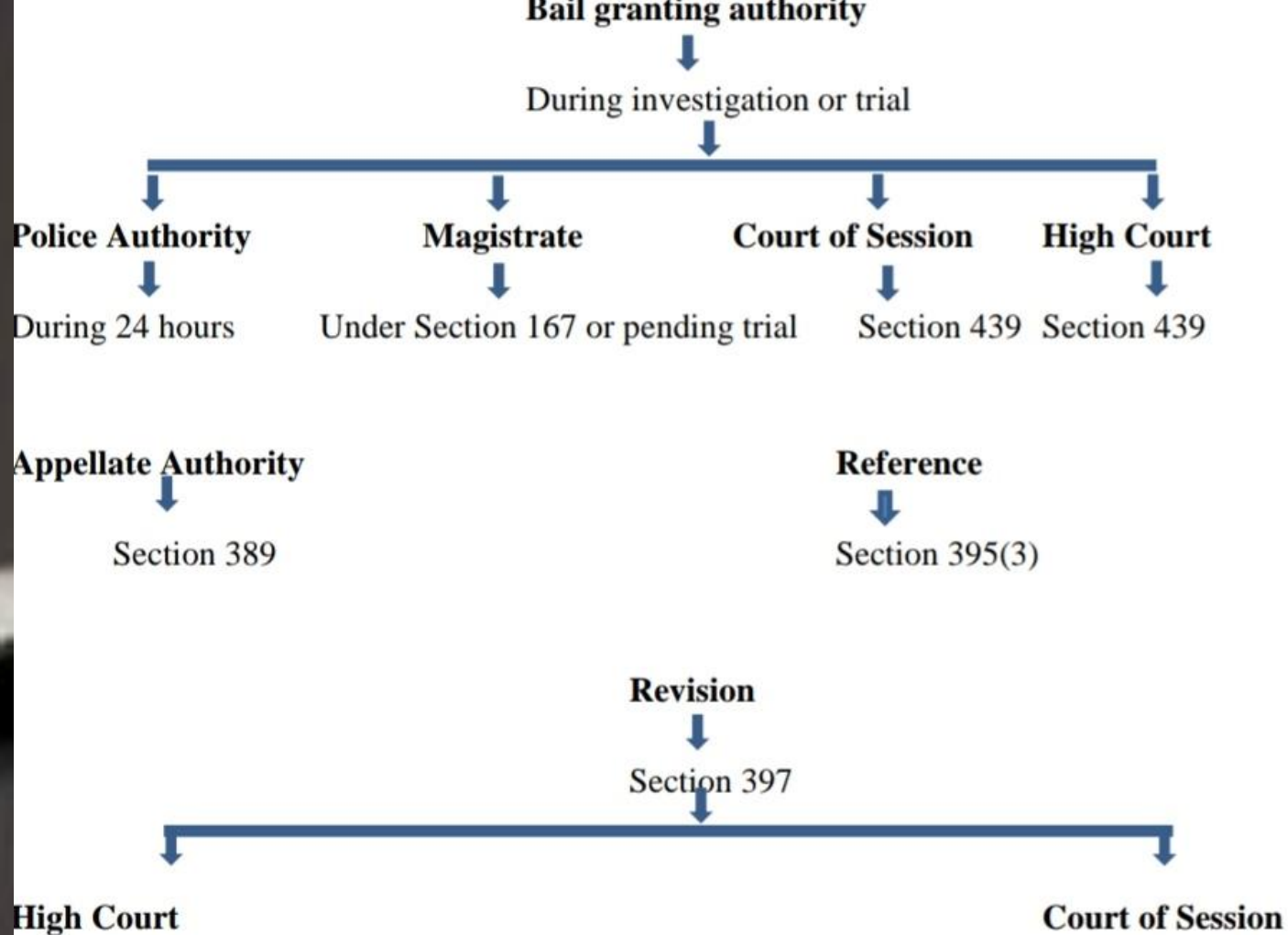
Procedure of arrest and duties of office making arrest and control room at districts

The detailed procedure of duties of a police officer in this regard is prescribed under section 41b of CrPC. It directs that 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.

A wooden gavel and a pair of metal handcuffs are shown on a dark surface. The gavel is positioned vertically in the center, and the handcuffs are on either side, with one cuff partially open. The background is a dark, textured surface.

BAIL

The expression 'bail' means a security deposited to appear before the court for release. Originally, the word is derived from an old French verb 'bailer' which means 'to give' or 'to deliver'. A bail is granted to an accused after presenting a bail bond to the court. Section 436 provides for the release on bail of a person accused of a bailable offense. Section 436 of Cr. P.C. is mandatory in nature and the court or the police have no discretion in the matter.



Section 436. In what cases bail to be taken.- (1)

- ❖ When any person other than a person accused of a non-bailable offence
- ❖ is arrested or detained without warrant by an officer in charge of a police station, or
- ❖ appears or is brought before a Court, and
- ❖ is prepared at any time while in the custody of such officer or at any stage of the proceeding



Bailable and Non - Bailable offences

State vs Ranjit Singh

Non -bailable offences are serious offence which cause a use impact on the society and therefore the court has to be cautious in granting bail to them.

Bailable offences

bailable offence” means an offence which is shown as bailable in the First chedule, or which is made bailable by any other law for the time being in force and are less serious offence.

Reasons for releasing on bail to be recorded

In Talab Haji Hussain Vs madhurkar purshotamm mondkar held that section 437 (4) required that whenever the court is going to use his discretionary discretion under section 437 (1) and (2) it shall be recorded in writing.

In case of women or sick or infirm

the court may direct the person to be released on bail in above cases in such person is under the age of 16 or is a woman or is a sick or infirm provided the court may also directed that a person refer to the clause 2 be released on bail if it is satisfied that it is just and proper to do so or for any other special reason.

A wooden gavel with a brass head and metal handcuffs are visible in the background, set against a dark, textured surface. The gavel is positioned diagonally from the top left towards the center. The handcuffs are located at the bottom and right edges of the frame.

There are three types of bail

- 1) Regular bail- It means release of accused from custody to ensure his presence in the trial.
- 2) Interim bail-may be granted when the court is satisfied that the object of the accusation against accused is to injure his reputation and humiliate him.
- 3) Anticipatory bail- is a direction to release a person on bail, issued even before the person is arrested.

Conclusion

Laws of arrest detention and will have a direct and implication on the life of the arrested person not because they pose serious after effects of the connection but they are those general procedure which go simultaneously with the trial of the case.

THANK
YOU

A 3D rendering of a neon sign that reads "THANK YOU". The sign is composed of glowing red neon tubes with a white inner core, mounted on a dark metal frame with visible electrical components and wiring. The background is a dark blue gradient.