

Section 8-(b) : Arrest

The provision about arrest and detention do not violate any of the fundamental rights and are intravires the Constitution.

A. Legal Provisions :

Rule 73 - Notice to show cause :

- 1. No order for the arrest and detention in Civil Prison of a defaulter shall be made unless the Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the Civil Prison, and unless the Recovery Officer for reasons recorded in writing is satisfied -**

Section 8-(b) : Arrest (Contd...)

- a) That the defaulter, with the object or effect of obstructing the execution of the certificate, has, after the drawing upon the certificate by the Recovery Officer, dishonestly transferred, concealed, or removed any part of his property, or**

- b) That the defaulter has, or has had since the drawing up of the certificate by the Recovery Officer, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.**

Section 8-(b) : Arrest (Contd...)

- 2. A warrant for the arrest of the defaulter may be issued by the Recovery Officer if he is satisfied that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Recovery Officer.**
- 3. Where appearance is not made in obedience to a notice issued and served, the Recovery Officer may issue a warrant of arrest of the defaulter**
- 4. The warrant of arrest issued by a Recovery Officer may also be executed by any other Recovery Officer within whose jurisdiction the defaulter may for the time being found.**

Section 8-(b) : Arrest (Contd...)

- 5. Every Person arrested in pursuance of a warrant of arrest shall be brought before the Recovery Officer as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey) :**
- 6. Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him such officer shall at once release him.**
- 7. (Where the defaulter is a Hindu Undivided Family, the Karta thereof shall be deemed to be a defaulter)**

Section 8-(b) : Arrest (Contd...)

B. Conditions to be satisfied before a warrant can be issued:

1 The Recovery Officer is precluded/prohibited from issuing a warrant of arrest unless he is satisfied that -

i (a) The defaulter has, after the drawing up of the certificate by the Recovery Officer dishonestly transferred, concealed, or removed any part of his property with a view to obstruct the execution of the certificate, or

Section 8-(b) : Arrest (Contd...)

i (b) the defaulter, after the drawing up of the certificate by the Recovery Officer refuses or neglects to pay the demand, or has refused or neglected to pay the same even though he has the means to pay the whole or a substantial thereof ; and

ii. The Recovery Officer must record his reasons for his satisfaction regarding the circumstances as mentioned above.

(The satisfaction that is required of the Recovery Officer for proceeding under this rule should be that of an honest and prudent person under identical circumstances.)

Section 8-(b) : Arrest (Contd...)

C.Show Cause Notice :

- 1. Before issuing and serving a show cause notice to the defaulter for his appearance and to show cause as to why he should not be committed to a Civil Prison, the Recovery Officer has to be satisfied that the defaulter is liable to be arrested.**
- 2. Such a notice can be issued even if the defaulter resides beyond the jurisdiction of the Recovery Officer on the ground that the warrant of arrest can be executed within the jurisdiction against the person who resides or carries on business outside jurisdiction, at a time when he comes even temporarily within jurisdiction.**

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- 3. The show cause notice under Rule 73 of Schedule II is not a judicial one, it is only a procedural one and decision regarding arrest and detention is to be taken only after defaulter appears before the Recovery Officer and is heard.**
- 4. The notice contemplated under Rule 73(1)(a) or (b) shall be in Form No. EPFCP-25.**
- 5. Any warrant of arrest issued without the service of a show cause notice is illegal unless there is possibility of absconding by the defaulter and the defaulter is competent to resist the arrest.**

Section 8-(b) : Arrest (Contd...)

- 5. The notice gives the defaulter an opportunity of appearing before the Recovery Officer on the specified date.**
- 6. If the Recovery Officer issues a notice as well as a warrant of arrest simultaneously, it can not be regarded as a proper exercise of discretion on his part, even though such simultaneous action is by itself not illegal.**

Section 8-(b) : Arrest (Contd...)

- 5. Once the defaulter has appeared in response to the show cause notice under Rule 73(1) before the Recovery Officer, he is not to be arrested or detained in Civil Prison unless either enquiry contemplated by Rule 74 is over, or the conditions mentioned in sub-rule(2) (absconding/leaving) and (3)(non-appearance) of Rule 73 are fulfilled.**
- 6. The Authorised Officer may also appear and contest such proceedings.**

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D. When notice under sub-rule (1) can be dispensed with :

- 1. Sub-rule (2) provides for the contingency for the issue of notice under sub-rule(1) to be dispensed with.**
- 2. The Recovery officer may dispense with the notice under sub-rule (1) of Rule 73, and proceed to issue a warrant of arrest straightway if he is satisfied that -**

Section 8-(b) : Arrest (Contd...)

- a) the defaulter is likely to abscond, or**
- b) the defaulter is likely to leave the local limits of the jurisdiction of the Recovery Officer, and**
- c) such likelihood is with the object or has the effect of delaying the execution of the certificate.**

Section 8-(b) : Arrest (Contd...)

E. Warrant of Arrest and who could be arrested ?

- 1. Arrest is possible only if the defaulter is a natural person, i.e. a human being. Thus an individual defaulter can be arrested.**
- 2. By virtue of Rule 81, women, minors and persons of unsound mind are exempted from arrest.**
- 3. Where a defaulter is a Hindu Undivided Family, the Karta thereof shall be deemed to be a defaulter.**
- 4. If the individual defaulter has died after the commencement of the recovery proceedings, then his legal representatives can not be arrested under Rule 85.**

Section 8-(b) : Arrest (Contd...)

- 5. In case of dissolved firm, discontinuance of business by a firm or disruption of Hindu Undivided Family, liability comes on the partners of the firm and the members of the HUF and as such if they are in default they can be arrested.**
- 6. In the case of liquidation of the companies, the liquidators and Directors of Private Companies in liquidation. To the extent they are made personally liable for payment if they are in arrears they can also be arrested.**

Section 8-(b) : Arrest (Contd...)

- 7. Warrant of arrest issued by the Recovery Officer may also be executed by any other Recovery Officer within whose jurisdiction a defaulter may for the time being is found.**
- 8. The warrant of arrest shall be issued in Form No. EPFCP-26.**

Section 8-(b) : Arrest (Contd...)

F. To whom a warrant of arrest be issued ?

- 1. A warrant of arrest must show the name and designation of the person to whom it is issued for execution.**
- 2. If the warrant of arrest does not show the name and designation of the person to whom it is issued, the same is defective and the rescue of a person arrested on such defective warrant of arrest is not an offence under Section 225-B of IPC.**

Section 8-(b) : Arrest (Contd...)

- 3. Since the liability under the Act being of a civil nature, the Recovery Officer can address the warrant of arrest to any person, not necessarily a police officer.**
- 4. It is desirable that such warrants are addressed to the Inspectors/Enforcement Officers working in the Office of the Recovery Officer.**

Section 8-(b) : Arrest (Contd...)

G. Person executing must have warrant in possession :

- 1. The officer executing the warrant must have the warrant in his possession at the time of arrest.**
- 2. The warrant is the justification of arrest by the officer and should not be parted with.**

Section 8-(b) : Arrest (Contd...)

H. Person executing must notify the substance of arrest :

- 1. Section 80 of Criminal Procedure Code lays down that person executing a warrant of arrest shall notify the substance thereof to the person arrested**
- 2. Arresting Officer shall show him the warrant.**

Section 8-(b) : Arrest (Contd...)

- 3. A public servant executing a warrant of arrest, who does not notify as required by this section, will not be discharging his functions in a manner authorised by law.**
- 4. It does not constitute a valid notification if the executing officer merely shows the warrant without affording the defaulter an opportunity to read, or, where a person is illiterate, without explaining the substance.**

Section 8-(b) : Arrest (Contd...)

- 5. The same principles, on analogy, apply to arrests to be made under Rule 73 of the Second Schedule of IT Act.**

Section 8-(b) : Arrest (Contd...)

I. Arrest how made ?

The procedure as laid down in Criminal Procedure Code under Section 46 should be followed.

Section 8-(b) : Arrest (Contd...)

J. Section 46(1) provides -

- 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.**
- 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.**

Section 8-(b) : Arrest (Contd...)

- 3. 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. Thus :**
 - i. Arrest consists of actually seizure or touching the body of a person with a view to his detention.**

Section 8-(b) : Arrest (Contd...)

- iii. The pronouncement of the words of arrest is not an arrest unless the person sought to be arrested submits to the process and goes with the arresting officer.**
- iv. An arrest by mere oral declaration is insufficient. Confinement and rough handling are not permissible and are contrary to law.**
- v. An arrest is completed where there is a submission to the custody by word or action.**

Section 8-(b) : Arrest (Contd...)

- vi. When after making a valid arrest, the person arrested is produced before the Recovery Officer, the warrant gets automatically exhausted.**
- vii. A warrant cancelled can not be re-issued.**
- viii. Same warrant ca not be used to arrest the defaulter if the person after making the arrest lets the prisoner go on the strength of the promise of the defaulter to return after a while.**

Section 8-(b) : Arrest (Contd...)

4. Every person arrested in pursuance of a warrant shall be brought before the Recovery Officer as soon as practicable and in any event within 24 hours of his arrest (exclusive of the time required for the journey) provided that if the defaulter pays an amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting, such officer shall at once release his.

Section 8-(b) : Arrest (Contd...)

- 5. Section 82 of the Criminal Procedure Code, a warrant of arrest may be executed at any place in India.**
- 6. Where a defaulter resides outside the jurisdiction of the Recovery Officer who issues the warrant, he used to forward the warrant to the Recovery Officer in whose jurisdiction the defaulter was residing.**
- 7. The Recovery Officer to whom such warrant is so forwarded shall endorse his name thereon, and cause it to be executed against the defaulter.**

Section 8-(b) : Arrest (Contd...)

K. Punishment for resisting arrest:

Resistance or obstruction to the lawful arrest of a person is an offence punishable under Sections 224,225 and 225-b of the IPC.

Section 8-(b) : Arrest (Contd...)

L. Proclamation for person absconding :

- 1. “To abscond” does not necessarily mean “to change place” ordinarily its mean to hide**
- 2. If the Recovery Officer has reason to believe that the defaulter is absconding or concealing himself so that the warrant of arrest may not be served against him, he can take resort to issuing of a proclamation under section 87 of the Criminal Procedure Court he should also records the ground of his satisfaction is based.**

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- 3. If the Recovery Officer is satisfied that the defaulter is absconding, he should publish a written proclamation under section 87 Criminal Procedure Court, requiring the defaulter to appear before him at a specified time and place.**
- 4. A time given for appearance should not be less than 30 days from the date of publishing the proclamation, otherwise the proclamation would be illegal.**

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5. The following is the manner in which the proclamation should be published:

- a) It shall be publicly read in the conspicuous place of the town or village in which such person (defaulter) ordinarily resides;**
- b) It shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and**
- c) A copy thereof shall be affixed to some conspicuous part of the office of the Recovery Officer.**

Section 8-(b) : Arrest (Contd...)

- 6. If the Recovery Officer fails to record the statement about due publishing of proclamation there will be no proclamation according to law.**
- 7. Strict compliance with the provisions is necessary. Failure to appear in response to the proclamation is an offence punishable under section 174 of the IPC.**

Section 8-(b) : Arrest (Contd...)

M. Illegality of arrest - effect of

1. An illegal or irregular arrest can be registered by the persons to be arrested.
2. Any such illegality will not have the effect of violating the recovery proceedings unless such irregularity has, in fact, occasion a failure of justice.

Section 8-(b) : Arrest (Contd...)

N. Person exempt from arrest :

1. Under rule 81, no woman or any person who in the opinion of the Recovery Officer is a minor or of unsound mind shall be arrested.

2. Under Section 135 of the CPC –

I. No Judge, Magistrate or other Judicial officer shall be arrested under civil process .

II. No person is going to and returning from any tribunal in connection with any litigation pending before such tribunal shall be arrested.

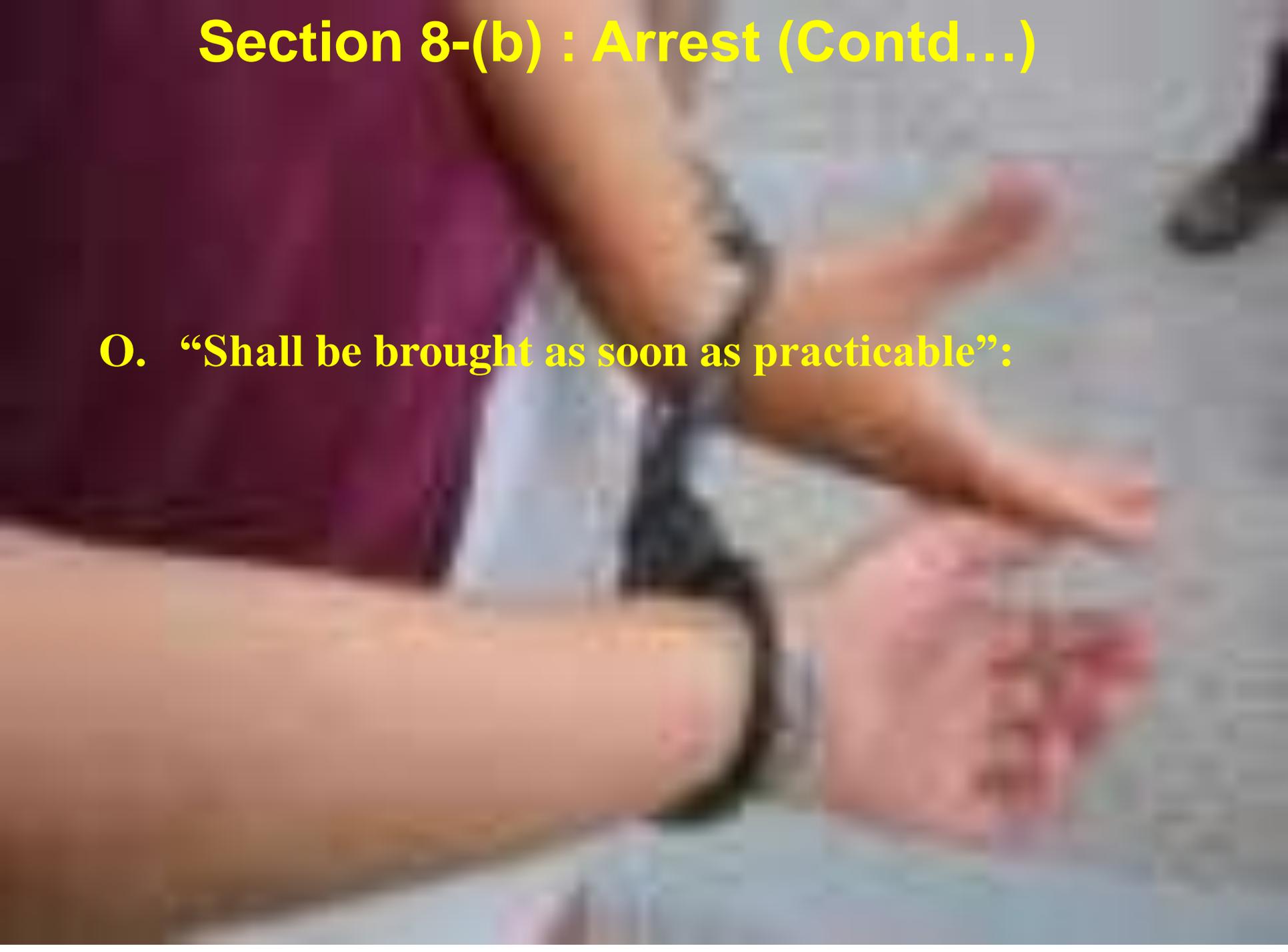
Section 8-(b) : Arrest (Contd...)

N. Person exempt from arrest :

III. This exemption is not available under section 135 (3) of the CPC to the judgement-debtor under an order for immediate execution or where such judgement-debtor attends to show cause why he should not be committed to freezen in execution of the decree.

Section 8-(b) : Arrest (Contd...)

O. “Shall be brought as soon as practicable”:



Section 8-(b) : Arrest (Contd...)

P. “Release from arrest “

- 1. Notice to show-cause why a warrant of arrest should not be issued under Rule 73(1) of the Income Tax(Certificate Proceedings) Rules,1962 in Form No. EPFCP-25.**
- 2. Warrant of Arrest under Rules 73(3) & 73(3) in Form No. EPFCP-26.**
- 3. Hearing :**

Section 8-(b) : Arrest (Contd...)

- a) When the defaulter (Certificate Debtor) appears in pursuance to a notice or is brought before the Recovery Officer, the Recovery Officer is under obligation to hold a formal hearing.**
- b) In the first instance the Recovery Officer has to lead the evidence in the first instance in support of execution of arrest.**
- c) When a prima facie case is made out by the Authorised Officer that the Recovery Officer must give the defaulter an opportunity of showing cause as to why he should not be committed to the civil prison.**

Section 8-(b) : Arrest (Contd...)

- d) The obligation to hold the hearing does not depend on whether the defaulter has or has not shown cause in response to the notice under Rule 73(1).**
- e) No order on commitment can be made unless the Recovery Officer is satisfied, on any of the grounds set forth in Rule 73(1) or (2), that the commitment of the defaulter to the civil prison is necessary.**
- f) The burden of proving this will be obviously on the Authorised Officer and not on the defaulter.**

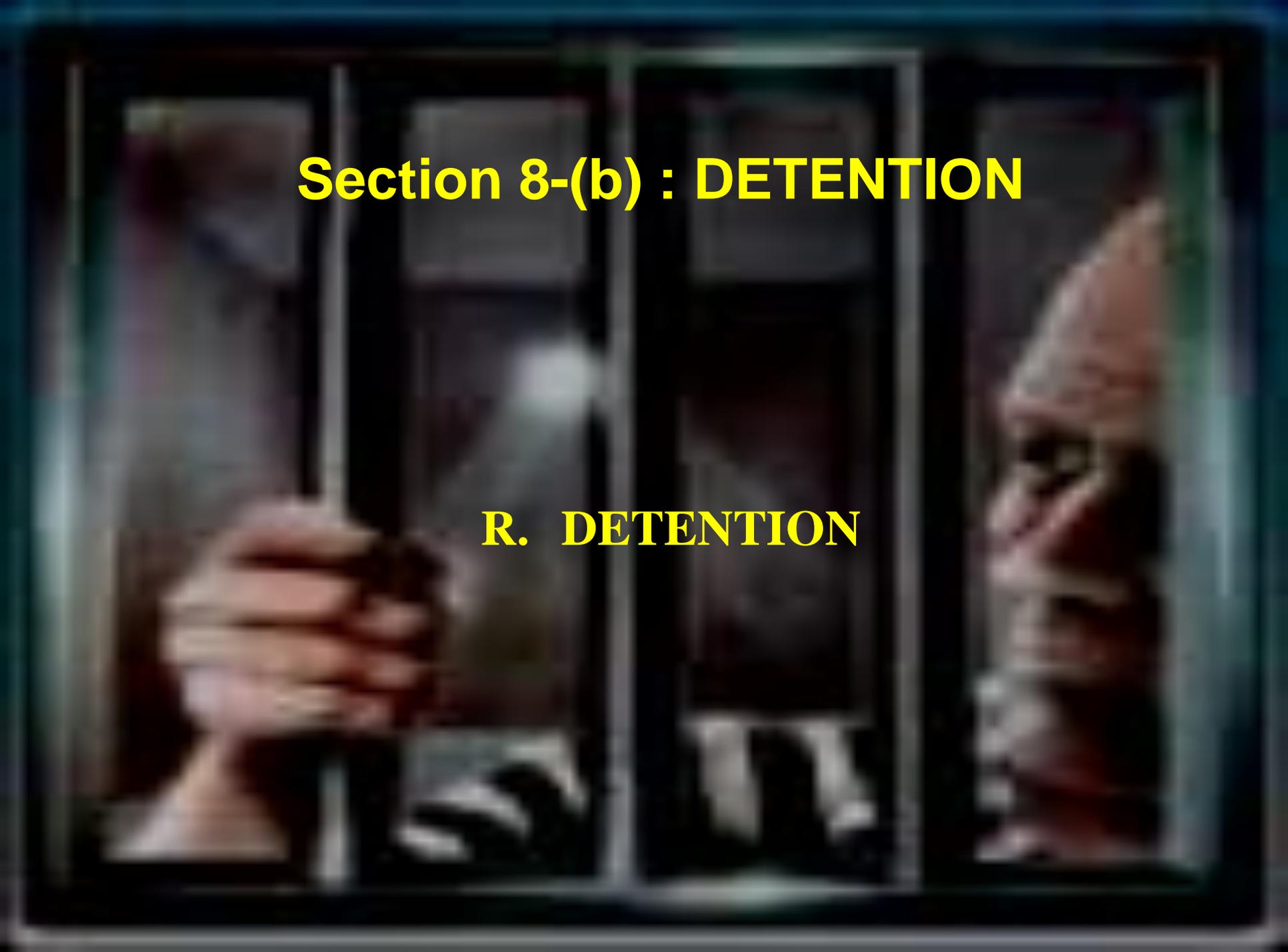
Section 8-(b) : Arrest (Contd...)

Q. Custody pending hearing :

- a) Pending conclusion of the inquiry, the Recovery Officer may, in his discretion, order the defaulter to be detained in the custody of such Officer as the Recovery Officer may think fit or release him on his furnishing security to the satisfaction of the Recovery Officer for his appearance when required.**
- b) This Rule corresponds to Rule 40(2), Order XXI of the CPC.**

Section 8-(b) : Arrest (Contd...)

- c) **The Recovery Officer is given discretion under this Rule, either to order detention of the defaulter under the custody of an Officer, as he may think fit, or to release him on his furnishing security to the satisfaction of the Recovery Officer for his appearance whenever required.**
- d) **The security referred to, is one other than personal security of the defaulter.**



Section 8-(b) : DETENTION

R. DETENTION

Section 8(b) : DETENTION

R. Detention :

- 1. When the inquiry contemplated under Rule 75 is concluded, the Recovery Officer may make an order for detention of the defaulter in the Civil Prison.**
- 2. In such a case, if the defaulter is not already arrested, the Recovery Officer shall cause him to be arrested.**

Section 8(b) : DETENTION (Contd...)

- 3. Under this Rule, the Recovery Officer has discretion to refuse to order the arrest and detention of the defaulter who is unable to pay.**
- 4. The Recovery Officer has no power to order detention under this Rule unless he is satisfied on evidence that the circumstances mentioned in Rule 73(1) & (2) exist.**

Section 8(b) : DETENTION (Contd...)

- 5. Where the Recovery Officer orders detention of the defaulter in Civil Prison, the warrant of detention shall be in Form No. EPFCP-27.**
- 6. A person, against whom an order of detention is passed, may be detained in the Civil Prison of the district in which the Office of the Recovery Officer is situated, or, where there is no suitable accommodation in such Civil Prison, in any other place which the State Government may appoint for the detention of persons ordered by Civil Courts of such district to be detained.**

Section 8(b) : DETENTION (Contd...)

S. Days of Grace prior to Detention :

- 1. The proviso gives a further and last chance to the defaulter to pay the arrears before he is sent to prison.**
- 2. In order to enable him to satisfy the arrears, the Recovery Officer may leave him in the custody of the arresting officer, or any other officer for a period not exceeding fifteen days, or in the alternative, he may release the defaulter on his furnishing adequate security (not his personal security) for his appearance at the expiry of the said period.**

Section 8(b) : DETENTION (Contd...)

- 3. If the defaulter fails to make the payment within the said period, the Recovery Officer will pass an order for detention of the defaulter, on the expiry of the said period.**
- 4. The proviso requires that there must be an order of the Recovery Officer ,leaving the defaulter in the custody of a particular officer, specified therein, with a direction that the defaulter should be produced before him (RO) after expiry of the specified period.**

Section 8(b) : DETENTION (Contd...)

T. Release :

In his discretion the Recovery Officer may not make an order of detention and shall release the defaulter if he is already under arrest.

Section 8(b) : DETENTION (Contd...)

U. Detention in Prison :

- 1. The defaulter who is committed to prison shall be detained therein :**
 - i. for a period of six months if the amount of demand in the certificate exceeds Rs. 250/- (Rs. 50/- under C.P.C.) ; and**
 - ii. for a period of six weeks in any other case.**
- 2. The Recovery Officer has no power to fix shorter periods than those prescribed in the Rule.**

Section 8(b) : DETENTION (Contd...)

V. Release from Prison :

1. The defaulter who is committed to Civil Prison and detained therein can be released from the prison under the following circumstances :

- a) Where the amount mentioned in the warrant of arrest has been paid to the Officer-In-Charge of the prison; (as per Form No. EPFCP-27, amount due includes further interest etc. from the period commencing immediately after the date of the issue of the warrant of detention) or**

Section 8(b) : DETENTION (Contd...)

- b) Where the Authorised Officer who issued the certificate requests for the release on any other ground than those mentioned under Rules 78 & 79, in such an event, the specific order of the Recovery Officer also has to be obtained before the defaulter is so released.**

Section 8(b) : DETENTION (Contd...)

- 2. As per main rule, the defaulter detained in the Civil Prison has to be released after the expiry of the prescribed period of detention. However, he can be released earlier in the above mentioned circumstances.**
- 3. In case of release under Rules 78 & 79, the defaulter can again be re-arrested and committed to Civil Prison for a period not exceeding in aggregate the period laid down in this rule.**

Section 8(b) : DETENTION (Contd...)

W. Release does not discharge liability.

X. Immunity from re-arrest :

- i. A defaulter who has been released shall not be re-arrested under the certificate in execution of which he was detained in the Civil Prison.**
- ii. The immunity granted depends not only upon the defaulter having been arrested, but upon his having been detained in jail under the arrest.**
- iii. Where the defaulter is arrested, but is liberated on some valid plea, he is liable to be re-arrested in execution of the same certificate.**

Section 8(b) : DETENTION (Contd...)

Y. Release :

Where the defaulter is arrested in execution of the certificate the Recovery Officer may order him to be released if he is satisfied that :-

- a) the defaulter has disclosed the whole of his property, and**
- b) has placed the property so disclosed, at the disposal of the Recovery Officer and has not committed any bad faith. The act of bad faith may be with respect to the disclosure or the placing of property at the disposal of the Recovery Officer.**

The order of release is issued in Form No. EPFCP-28.

Section 8(b) : DETENTION (Contd...)

Z. Re-arrest :

If the Recovery Officer has any ground to believe that the disclosure made by the defaulter is untrue, he may order for re-arrest of the defaulter in execution of the same certificate.

The total period of detention under the arrest and re-arrest shall not exceed six weeks or six months as the case may be.

Section 8(b) : DETENTION (Contd...)

Z-1. Release on ground of illness :

- i. The Recovery Officer may cancel the warrant of arrest before actual arrest where the defaulter is suffering from serious illness. This applies to the case where the defaulter is arrested but not committed to Civil Prison.**
- ii. The Recovery Officer can release the defaulter if he is not in a fit state of health to be detained in the Civil prison.**
- iii. After the defaulter is committed to Civil Prison, he may be released by the Recovery Officer on the ground of defaulter's serious state of health or the existence of a contagious or infectious disease in the prison.**

Section 8(b) : DETENTION (Contd...)

- iv. The defaulter may be re-arrested but the total period of detention under the arrest shall not exceed six weeks or six months as the case may be. But before re-arrest and detention in Civil Prison under Rules 78(2) & 79(4), the Recovery Officer shall have to issue a suitable show-cause notice.**

Section 8(b) : DETENTION (Contd...)

Z-2 Entry in to the dwelling house :

- 1. For the purpose of making an arrest under the Schedule, the provisions of this Rule have to be strictly complied, namely :-**
 - a) No entry into the dwelling house can be made before sunrise or after sunset is to be traced to the maximum of effected at any time on any day. But if such arrest is to be made in a dwelling house, the same shall have to be made on any day between sunrise and sunset.**

Section 8(b) : DETENTION (Contd...)

- b) The outer door of a dwelling house can be broken open if and only if**
- i. such dwelling house or a portion thereof is in the occupancy of the defaulter and**
 - ii. the defaulter or other occupant refuses or in any way prevents access thereto.**

But once access is gained into the house, the arresting officer can break open any door of any room or apartment if he has reason to believe that the defaulter is likely to be found there.

Section 8(b) : DETENTION (Contd...)

- c) Where any room is in the actual occupancy of a woman, who according to custom does not appear in public, the arresting officer shall not enter the same unless :-**
 - i. he has given her notice that she is at liberty to withdraw, and**
 - ii. he has given her reasonable time and facility for withdrawing.**

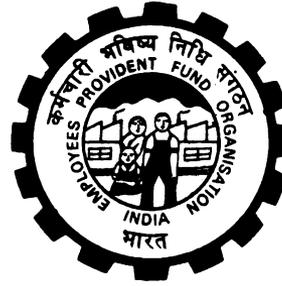
Section 8(b) : DETENTION (Contd...)

**Z-3 Prohibition against arrest of woman, or minor etc.
(Rule 81):**

The Recovery Officer shall not order the arrest and detention in the Civil Prison of

- a) a woman, or**
- b) any person who, in his opinion is a minor or of unsound mind.**

This Rule prohibits the Recovery Officer from arresting or detaining any woman, or any person who, in his opinion, is a minor or of unsound mind.



THANK YOU

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