



Socio –Legal Status of Arrested Person

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Introduction

The Arrest is one of the most important subjects of the Criminal Justice System. According to Section 54A, when a person is arrested on charge of committing an offence and his identification by any other person is deemed necessary then the court for the purpose of investigation, having jurisdiction, can direct the person so arrested to subject himself to identification in front of any person or persons as the court may think fit. When the person identifying the arrested person is mentally or physically disabled, in that case, the process of identification will happen before a Judicial Magistrate who will ensure that he identifies with the help of a medium he considered it comfortable.

All human beings have the right to enjoy respect for their liberty and security. It is axiomatic that, without an efficient guarantee of the liberty and security of the human person, the protection of other individual rights becomes increasingly vulnerable and often illusory. Yet, as is evidenced by the work of the international monitoring organs, arrests and detentions without reasonable cause, and without there being any effective legal remedies available to the victims concerned, are commonplace.

An Arrest is an act of taking a person into custody as she may be suspected of a crime or an offence. It is done because a person is apprehended for doing something wrong. After arresting person further procedures like interrogation and investigation is done. It is part of the Criminal Justice System. In an action of arrest, the person is physically detained by the concerned authority.

The Constitution of India has laid down some basic rights for the accused at the time of the arrest. It is part of the Magna Carta (Part-III) of the Constitution. This makes it very crucial in



nature. As in case these rights are not enforced, they can be challenged through a writ petition under Article 32 and 226 of the Constitution. It means that these rights in any way cannot be omitted from enforcing as they are fundamental. In addition to the constitution, it is also mentioned in the Code of Criminal Procedure, 1973. Rights like Right to be informed, right to be presented before a magistrate within 24 hours, right to consult a legal practitioner of choice finds a place in Article 22 as well in CrPC.

Article 9(1) of the International Covenant on Civil and Political Rights reads as follows: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

As to the principle of legality, the Human Rights Committee has held that the grounds for arrest and detention must be “established by law”.¹⁰ In a case where a person was arrested without a warrant, which was issued more than three days later, contrary to the domestic law that lays down that a warrant must be issued within 72 hours after arrest, the Committee concluded that article 9(1) had been violated because the author had been “deprived of his liberty in violation of a procedure as established by law” In other words, remand in custody pursuant to lawful arrest must not only be “lawful” but also “reasonable” and “necessary” in all the circumstances for the aforementioned purposes.

- The general rule is that females are not to be arrested without the presence of a lady constable. Further, no female can be arrested after sunset, but there are exceptions in some cases, where crime is very serious and arrest is important then an arrest can be made with special orders and it depends on facts and circumstances of each case. Separate lock ups should be provided for them.
- The salutary principle that the medical examination of a female should be made by female medical practitioner has been embodied in sec 53(2).



Legal View

In case of State of Maharashtra Vs Christian Community Welfare Council of India [(2003) 8 SCC 546]

In this case, SC departing from long tradition of not arresting women at night and not arresting women in the absence of a female constable, the Supreme Court held that “We do agree with the object behind the direction issued by the High Court, we think a strict compliance with said direction, in given circumstances, would cause practical difficulties to investing agencies and might even room for evading the process of law by unscrupulous accused. While it is important to protect the female sought to be arrested by the police from police misdeeds but it may not possible and practical to have the presence of lady constable. It is issued by the arresting authority that while arresting a female person , all efforts should be made to keep a lady constable present but in circumstances where that arresting officers are reasonably satisfied that such presence of a lady constable is not available or possible and or the delay is arresting caused by securing the presence of a lady constable would impede the course of investigation, such arresting officer for reasons to be recorded either before the arrest or immediately after the arrest be permitted to arrest a female person for lawful reasons at any time of the day or night depending on the circumstances of the case even without the presence of a lady constable”.

The rules originating from the decisions such as Joginder Singh v. State of U.P. and D.K. Basu v. State of West Bengal have been enacted in Section 50-A making 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 in the police station. The magistrate who is observing such arrest is also under an obligation to satisfy himself about the compliance of the police of all the procedures in this regard.



Identification of Person

With new section inserted by the 2005 amendment, sec.54-A says that where a person is arrested on a charge of committing of offence and his identification by any other person or persons is considered necessary for the purpose of investigating of such offence, the court having the 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”

Sec 54-A empowers the court to direct specifically the holding of the identification of the arrested person at the request of the prosecution.

Arrest to be made strictly according to the code (Sec 60A) – “No arrest shall be made except in accordance with the provision of this code or any other law for the time being in force providing the arrest”.

Misuse Of Power

Although, there have been many safeguards provided by the Code and Constitution of India as mentioned above, the fact remains that the power of arrest is being wrongly and illegally used in a large number of cases all over the country. The power is often utilized to extort monies and other valuable property, or for instances that the enemy of the person is arrested. Even in civil disputes, this power is being restored to a basis of a false allegation against the party to a civil dispute at the instances of the opponent.

The vast discretion given by Cr.P.C. to arrest a person even in case of a bailable offence (not only where the bailable offence is cognizable but also where it is non – cognizable) and further power to make preventive arrest (e.g. under section 151 of the Cr.P.C. and several city police enactments), clothes the police with extraordinary power which can be easily abused. Neither there is any in- house mechanism in the police department to check such misuse or abuse nor



does the complaint of such abuse and misuse to higher police officers bear fruit except in some exceptional cases.

Conclusion

There are several serious social-legal and Political consequences of arrests and detention need the special consideration of policymakers and sociologists. It is further noticeable that under the corruption and influence of political and non-political powers, the police administration is not being considered fair and efficient. On the issue of arrest, not only pre-arrest or at the time of arrest, but also after the post-arrest, the proper procedure should be followed which has been laid down in the Indian Statutes.