

## **GUIDELINES FOR THE ARREST OF WOMAN**

Sub : Police – Orders of the Hon'ble High Court  
dt:16.03.2023 in W.P.No.29972 of 2015 –  
Guidelines framed for the arrest of woman - Reg.

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In the judgement cited, while deciding the issue of arrest of a woman after sunset and before sunrise, the Hon'ble High Court has, inter-alia, directed to frame appropriate guidelines to ensure compliance with the mandates u/s 46(4) of the Criminal Procedure Code, 1973 even in exceptional, urgent and emergent situations.

2. Chapter V of the Criminal Procedure Code, 1973 i.e S. 41 – 60A, provides for the arrest of persons. Under this chapter, the process of arrest has been dealt with in fair detail. The provisions of this chapter have conferred the police with extensive powers for carrying out the process of arrest. However, certain reasonable restraints have been imposed on the exercise of such powers by the police, in some matters, especially those concerning with the arrest of women.

3. Section 46 of the Code provides as follows:-

(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:

- (i) Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.
- (ii) 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.
- (iii) 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.
- (iv) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within

whose local jurisdiction the offence is committed or the arrest is to be made.

**4. The Hon'ble Supreme Court in Sheela Barse Vs State of Maharashtra, (AIR 1983 SC 378) has laid down the following guidelines to be followed by the police while arresting Women:**

1. First, the Police Officer is duty bound while making arrest to see that arrested females are segregated from men and kept in female lock-up in the Police Station. He / She must also make sure that if there is no separate lockup: women are kept in a separate room. Also, Women Police Officers should be associated where females are being arrested.
2. Second, the cops arresting women must avoid the time between sunset and before sunrise; this guideline was issued after several instances of sexual and physical exploitation in Police Stations by the cops themselves.
3. Third, according to the guideline women and girls should not be called to the Police Station or to any place other than their place of residence for questioning. Also, while the inquiry is being done, the time must be chosen the arrestee is not embarrassed.
4. Fourth, in cases where medical examination of the arrestee or any other women has to be done, it should be carried out only under the supervision of female medical practitioners. Also, arrestee should be given all necessary pre-natal and post-natal care.
5. Fifth, the cops must avoid arresting pregnant women and choose the option only if there is no other option as it's not just the matter of the arrested woman but also the safety of the foetus which could get damaged in hustle - bustle. Also, labouring women must never be restrained.
6. Last but not the least, girls and women should be guarded by female constables / police officers and if any questioning is done, it must done in presence of female cops.

5. The Hon'ble High Court of Madras in the case of **"Roshan Beevi v. Joint Secretary, Government of Tamil Nadu"** has held that there cannot be a second opinion that the method and the execution of arrest of a person intended to be arrested should be performed only in the manner prescribed in the statute and the other methods of performance are forbidden, otherwise the whole provision of S.46, Cr.P.C would be nugatory and functionless. If the method of arrest is not performed in the manner known to law and as prescribed U/s 46, Cr.P.C, it will render the section on existent or otiose.

6. In view of section 46 of the Code and the law laid by the Hon'ble Apex Court and High Court, the following guidelines are issued for strict adherence by the police:-


- i. No woman shall be arrested after sunset and before sunrise.
- ii. In exceptional circumstances only, arrest of a woman can be done after sunset and before sunrise with the following preconditions:
  - a. Such arrest shall only be carried out by a woman police officers; and
  - b. Prior permission from the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be done shall be obtained.
- iii. Prior permission from the Judicial Magistrate of the first class may also be obtained electronically / digitally if situation warrants. Such records obtained electronically / digitally shall be preserved in a proper manner and such permission through electronic means shall be resorted to only in unavoidable circumstances.
- iv. When a woman is to be arrested, her submission to custody shall be taken on an oral intimation of arrest and unless the circumstances otherwise require, or unless the police officer is a female, the police officer shall not touch the accused woman for making her arrest – Section 46(1) of the Code.
- v. The grounds of arrest shall be informed to the arrested woman – Section 50(1) of the Code.
- vi. A woman shall be informed of her right to be released on bail after the arrest of a woman without a warrant for an offense other than a non-bailable one, and after arranging sureties on her behalf – Section 50(2) of the Code.
- vii. Police Officer making an arrest has to immediately give the information regarding such arrest and the place where the arrested person is being held to any of him / her friends, relatives, or such other persons as may be disclosed or

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- viii. Only female police officer can search the arrested woman with strict regard to decency – Section 51(2) of the Code.
  - ix. No male police officer can search the arrested woman. However, he can search a arrested woman's house.
  - x. If the accused woman is brought for medical examination, her medical examination shall be conducted only by, or under the supervision of, a female registered medical practitioner – Section 53(2) of the Code.
  - xi. When the arrested woman is brought for medical examination, her medical examination shall be conducted only by, or under the supervision of, a female medical officer and in case the female medical officer is not available, by a female registered medical practitioner – Sections 54(1) of the Code.
  - xii. Arrested woman shall not be detained in custody for more than 24 hours without a special order of a Magistrate – Section 57 of the Code.
  - xiii. Arrested woman should be segregated from men and kept in All Woman Police Station .
  - xiv. Women should be guarded by female constables/ police officers. They must be questioned in the presence of police women.
  - xv. All necessary pre-natal and post-natal care should be provided to females who are arrested. Restraints should only be used on pregnant women a a last resort. Their safety or the safety or their foetus should never be put at rise. Women must never be restrained during labour.

7. The above guidelines and the judgments of the Hon'ble Apex court and the High Court referred to above shall be strictly adhered to by all the police officials. Any deviation will be viewed seriously and appropriate disciplinary action will be taken against the personnel if any deviation is found.

8. All the Commissioners of Police in Cities and the Superintendents of Police in Districts and the Heads of the other investigation agencies shall sensitize their subordinates under their Jurisdiction in this regard.

**(xxx - please send your suggestions through E Mail Id: tndgpcrimewing@gmail.com.)**

  
For Director General of Police