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TOPIC: ARREST OF FEMALE IN CIVIL MATTERS

Arrest of Female in Civil Matters

Introduction

Law is set of rules, statutes and precedents, which are applicable within specific areas mentioned and within a given jurisdiction. With the vital aspect of delivering justice, there are two categories of Law, i.e. Civil Law and Criminal Law. Civil Laws are codified set of legal rules. Here the cases involve conflicts between people or institutions such as business, typically over money, also tort claims, breach of contract claims, equitable claims, landlord or tenant issues, etc.

In Civil Procedure Code, a decree is passed by the court to decide the rights and liabilities of the persons. One of the ways in civil law to pass a decree is by “arrest and detention”. The law relating to arrest and detention in the CPC has been dealt with under Section 51 to 59 and Rules 30 to 40 of Order XXI.

Arrest and detention

The decree for arrest and detention may be passed in the following cases given under Order XXI:

- Under Rule 30, a decree for the payment of money can be executed by the arrest and detention of the judgment debtor.
- Under Rule 31, where the decree is for a specific moveable property, it can be executed by the arrest and detention of the judgment debtor.
- Under Rule 32, where the decree is for specific performance of the contract or an injunction, the court can execute the decree by arrest and detention of the judgment debtor.

Certain classes of persons that are exempted from arrest and detention

1. Women, as per Section 56,
2. Judicial officers, as per Section 135(1),
3. Where a matter is pending, their pleaders, mukhtars, revenue-agents, and witnesses acting in obedience to a summons, under Section 135(2),
4. Members of legislatures, as per Section 135A,
5. Classes of persons, whose arrest according to the State Government, might be attended with danger or inconvenience to the public, under Section 55(2), and
6. Where the decretal amount is less than two thousand rupees, under Section 58(1A).

Procedure

The procedure to be followed for arrest and detention is provided under Section 55. It says that a judgment debtor can be arrested at any hour or any day during the execution of a decree, and after such arrest, the person must be presented before the court. However, there are certain restrictions regarding entry and time. They are as follows:

1. That no dwelling house shall be entered after sunset and before sunrise.
2. That no outer door shall be broken in order to enter the house unless such a house is the occupancy of the judgment debtor, in case he refuses to prevent access thereto.
3. Where the room is in occupancy of a woman who is not the judgment debtor and does not appear in public due to the customs, the officer shall give reasonable time and facility to her to withdraw there from.
4. Where there is a decree for the payment of money, and the judgment debtor pays the full decretal amount and the costs of the arrest to the arresting officer, he shall not be arrested.ⁱ

The vital intention of this legislation is definitely to safeguard women. Increase in violence against women even in this era has caught the eye of the masses wherein there are debates around for actual legal reforms. So because of these issues still surfacing and it has been seen that even police officers violate the law misbehave with women at times of arrest. The basic agenda in law reformation should be equality of all classes.

The United Nations Women Report 2011 emphasizes the inclination of the ‘justice chain more gender-responsive’, citing that reporting of sexual crimes has been found to correlate positively in the presence of women police officers.ⁱⁱ

Law says

The Supreme Court of India at different occurrences has notified the Government to pass effective laws and uplift the Principles of Equality towards safeguarding the arrest of women. The laws make it mandatory that women shall be handled by female police officers, no arrest can be made after sunset and before sunrise, pregnant women shall be provided with comfortable needs during their arrests.

All the above mentioned issues that arises have turned into a compulsion of special rights against arrest of females in civil matters.

Provisions relating to arrest of women

➤ Constitution of India

Constitution of India provides for provision authorizing the parliament to make special laws in respect of women.

Article 15(3) - Nothing in this article shall prevent the State from making any special provision for women and children.

This provision enables the parliament to pass laws giving special privileges to women.

➤ The code of civil procedure 1908

Section 56 - Prohibition of arrest or detention of women in the execution of a decree for money
Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

➤ Prohibition against arrest of a woman

Section 132 of the Code of civil procedure 1908 - Exemption of certain women from personal appearance

(1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

Which provides that there are exceptions where the women can be arrested.

Law as held by apex court and high courts against the arrest

Different courts have set down that women cannot be arrested in execution of a decree for money including damages or compensation etc wherein money is to be paid in the following cases :

- V.M. ABDUL HAMEED Vs RAMANI

The judgment text read as - The frailty of a woman cannot also be exploited by the decree holder in a suit for money. Not even a notice to show cause against her arrest and detention can be issued. Such threats by the decree holder to squeeze out money cannot be countenanced in law.

- MARY CHACKO Vs JANCY JOSEPH

It was held that when Civil Court is executing an order which is passed by the Forum, it cannot order arrest of a woman for recovery of the amount by the virtue of Section 56 of the CPC. Hence, it was held in the abovementioned case that woman cannot be arrested in recovery money in consumer court cases.

- VEENA MADHUKANT Vs STATE BANK OF INDIA

The issue which was raised in the said case was ‘Whether a woman can be arrested and detained in civil prison in proceedings for recovery of debt certified by the Debts Recovery Tribunal’ it was held that the recovery officer for the purpose of realizing the debts which are due under the Banks and Financial Institutions Act, 1993 is not authorized to arrest and detain a woman in view of the specific provision.

- SMT. KAMLESH Vs SITA DEVI AND OTHERS

The tribunal have ordered the arrest of a woman but the court after analyzing the Provision of Section 56 of the Civil Code & Section 69 of the Punjab Act held that the Tribunal could not have ordered for the arrest & detention of the petitioner who is a lady. Hence, arrest warrant issued against woman was quashed & the order passed by the Tribunal was set aside.

- INDEPENDENT THOUGHT Vs UNION OF INDIA

Apex court referred to number of cases and held that Apex court while discussing discussed and upheld woman cannot be arrested.ⁱⁱⁱ

Law as held by the apex court and high courts when women can be arrested

- MANUKONDA MANGAMMA Vs CHEELI ROSAMMA and E.R. RANGANATHAN Vs SAROJAMMAL

It was held that women can be arrested in execution case of violation of injunction order.

- RADHIKA PURUSHOTHAMAN AND ANOTHER Vs KALA MANIVANNAN AND ANOTHER

It was held that woman can be arrested in criminal cases, consumer act in criminal proceedings but in MARY CHACKO Vs JANCY JOSEPH it was held that woman cannot be arrested in recovery money in consumer court cases.

- CYRIL BRITTO Vs UNION OF INDIA AND OTHERS

Apex court referring to Section 56 of Civil procedure code held that it is valid and discrimination is justified.^{iv}

Conclusion:

The purpose of arrest and detention is to give relief to a decree-holder and commit the judgment debtor to the civil prison if he does not pay the decretal amount despite having means to pay the same. However, it also protects honest debtors, where his inability to pay is supported by a reasonable cause. The court has to afford the right to be heard to the debtors in order to ensure proper justice.

It is also settled that the women are treated special in India. They cannot be arrested in cases where decree is passed for money either in money suit, damages suit, or compensation suit including Motor Vehicle accident cases. But they can be arrested in criminal cases where there is discrimination among men and women.

ⁱ <https://blog.ipleaders.in>

ⁱⁱ <https://lawtimesjournal.in>

ⁱⁱⁱ <https://indiankanoon.org>

^{iv} <https://dejurenexus.com>