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Detention and Questioning of Suspects

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Basically, the right of police detention of suspects in the course of police patrol unfolds an acute necessity of detaining suspected individuals in the course of law enforcement vis-a-vis their right to be free from all restraints and interferences of others. It is a matter of common knowledge that that the practice to detain persons, found in suspicious circumstances is much in vogue particularly with the metropolitan police. The practice may consist of detention right at the place of confrontation, or by taking the suspect to the police station for further investigation, such an arrest has doubtful legal validity yet it has assumed a procedural formalism by designating the detention as "arrest for investigation". In practice the detention in police custody remains an actual fact although at times a cover up is given by the police by recording the arrest as being under one of the preventive powers conferred upon the police or under such prophylactic provisions as are given under the code or other laws to prevent the commission of offences by bad characters.

The detention simultaneously involves two seperate issues of frisking and questioning. There is no gain saying that these practices have grown out of necessities of administration, because the practices would have "the effect of facilitating the discovery of criminals and evidence of their guilt and of lessening the exclusion of relevant evidence from their trials". However, the legality of such practices under the existing law remains questionable. The fact is that such detentions are widespread and a gap continues to remain between police practices and the law is a matter of concern and debate. It is to be seen if the law should be made to conform to the practice or the law enforcement may be strengthened by legalising the common police practices.

Legal discussions and decisions on the subject are marked by ambivalence. The legal approach has usually been to treat these seperate issues of detention, frisking and arrest - as a single problem. This leads as to the basic issue of the area of power which the police are supposed to possess or do possess in dealing with the matters of effective law enforcement.

Generally, a police detention of a suspect is an interference with liberty which is subject to the constitutional mandate of freedom of movement and a mere suspicion on the part of the police officer to ascribe criminality to any free citizen with whatsoever patterns of behaviour he might be exercising the same, cannot ordinarily be understood to constitute a reasonable restriction on his right to move freely. Accordingly, the issue of the right to stop and question a citizen becomes identical with the issue of the right to take a person into custody.

The assumptions that have a colonial past still continue to endow the police the power to detain, question and even frisk an individual who might be found placed in not very suspecting situations. The need for intervention in such a situation is not being questioned, but the questionability arises because of the police power to do so under the present law.

The legal sources for police action lie in the investigatory powers, preventive powers as well as in the prescribed duties of police officers. The investigatory powers are meant to include "all the proceedings for the collection of evidence conducted by a police officer". The power comes into operation after the commission of a crime.

Preventive jurisdiction of the police fall into three categories viz., (i) prevention of cognizable offences (ii) prevention of injury to public property (iii) inspection of weight and measures. Section 151 of the code empowers a police officer to make arrests in emergent situations arising out of the above circumstances. In addition a police officer is empowered to do many more things mentioned in the code. He can arrest a person without warrant on the basis of reasonable suspicion, may also demand aid from citizens in the prevention or suppression of breach of peace and may command an assembly of five or more persons to disperse if there is likelihood of breach of peace and may disperse them by use of force in case of their failing to do so.

Section 23 of the Police Act 1861, inter alia, includes a duty "to prevent the commission of all breaches of law generally" as well as to detect and

bring offenders to justice to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists..." The neglect or violation of this statutory duty exposes a police officer to departmental disciplining and may even entail upon him a legal penalty.

It may also be noted that s.149 of the Code provides that

Every police officer may interpose for the purpose of preventing, and shall to the best of his ability, prevent the commission of any cognizable offence.

The foregoing provisions relating to preventive jurisdiction of the police are sufficiently wide in sweep and could not be pruned at the time of enactment of these provisions, because the awareness of personal freedom in terms of constitutional right was totally absent. The wider amplitude of police powers was confined to situations wherein cognizable offence were likely to be committed. However, the practices to interpose the liberty of a person by trying deeper into the antecedents and circumstances of a person whether the situation warranted it or not had hitherto been assumed valid and legal. Legality of actions arising out of this power could find a test in civil actions for false imprisonment, but in this country the remedial actions in the law of tort has been be moaningly at a low ebb. Elsewhere too tort remedies for police violations of individual rights have not proved attractive deterents.

The need to stop a person and question about his presence in a surrounding are essential preliminaries for law enforcement officials who are to be entrusted with the keeping of law and order in the community. It is understandable that a police officer has a right to make inquiry in a proper manner of anyone upon the public streets at a late hour as to his identity and the occasion of his presence, if the surroundings are such as to indicate to a reasonable man that the public safety demands such identification. But such a situation may not necessarily be ripe enough to invoke police power of arrest without warrant which the police men so often use to meet the above exigency. As noted above the power to stop a person and inquire of him about his antecedents and movements may constitute an unnecessary interference with his right of movement. Refusal to answer to the queries of the police officer may consequently furnish a ground for arrest although strictly speaking refusal to answer alone is not contemplated to be the basis for taking into custody under the law of arrest until and unless reasonable suspicions are lurking in the mind of the police officer

that a crime has been committed and the presence of the person accosted by the police at the spot has a bearing with the commission of the crime.

In view of the above remarks it may be submitted that the existing law of arrest is being used for the purpose for which it is not meant to be applied. Thus, the law is deficient insofar as the police power to stop question and frisk a person is concerned. It would be desirable that if the police practices are to continue in this regard these may well be legalised with a defined scope so that an interference with the freedom of movement is legitimised.