

Chapter 4

THE ROLE OF POLICE

Introductory

AMONGST INALIENABLE fundamental freedoms guaranteed by the Indian Constitution, the enjoyment of personal liberty has a meaningful connotation only when the safety to ones' life and limb is ensured against physical coercion and restraint. No easy encroachment on this freedom is permitted. Only a just and reasonable procedure can seek to abridge it. It has been judicially canvassed that the reasonable procedure has to satisfy all such tests as are laid down in the constitutional provisions governing equality and other freedoms under articles 14, 19, 20, and 21.¹ When a person, who has been arrested by police on a criminal charge, moves a bail application in the court, he seeks to protect his freedom under the Constitution.²

The police is an important agency of the state to maintain law and order within the body politic. In order to carry out this function effectively, law has authorised a police officer to arrest a person under certain circumstances. It also provides for the grant of bail by a police officer to such person who has been arrested under a warrant issued by the court ; or even when an arrest has been without a warrant.³ Several special Acts also empower police officers to arrest suspected offenders and to grant them bail.⁴ The purpose in granting bail to an accused is to secure his attendance before a judicial authority for prosecuting the matter further.

Police Power to Arrest

The question of granting bail arises only when a person is arrested or detained by a police officer. Arrest signifies the apprehension or detention of a person so that he may be forthcoming to answer an alleged or supposed charge or crime.⁵ The law relating to arrest is mainly based on the English law. Under English law an arrest consists of actual seizure or touching of a person's body with a view to detaining him in custody. However, a mere pronouncing of the words of arrest may not be sufficient to put him under arrest unless the person sought to be arrested submits to the process and agrees to go with the arresting officer.⁶

1. See, *Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C. 597.

2. *Rattan Singh v. State of M.P.*, A.I.R. 1959 M.P. 216.

3. See ss. 46-48, Code of Criminal Procedure, 1973.

4. See Appendix, III, *infra*.

5. *Corpus Juris Secundum* 570.

6. *Halsbury's Laws of England* 342 (3rd ed.).

An accused may thus not forcibly be detained or imprisoned. The general rule is understood to be that an arrest takes place only by touch of body, but a correct view would be that if a person submits to the command and control of the police officer, he is deemed to be under arrest. A police custody commences no sooner a man submits himself to it.⁷ When the accused may be constrained by a threat, or be restrained by the words of implication an arrest is complete. Thus, where a police officer orders one to stop, and the person so ordered obeys the command then he is under an arrest.⁸ Again when an investigating police officer stops an accused on the street for interrogation and if his command to stop is obeyed, this constitutes a valid arrest. However, a mere threat to arrest, which is not accomplished by an overt act on the part of the police officer, does not constitute an arrest.

It may be noted that the elements of arrest are: a purpose or intention to effect an arrest under a real or pretended authority, the actual or constructive seizure or detention of the person to be arrested by a person having power to control him, a communication by an arresting officer to the person whose arrest is sought along with an intention or purpose to effect arrest then and there, as well as understanding by the person whose arrest is sought that it is the intention of the arresting officer to arrest and detain him. Any act which indicates an intention to take him into custody and subjects the person arrested to actual control and will of the person making an arrest is important.

Rights of an Arrestee

Anyone who is being arrested has a right to ask the officer arresting him to indicate what power he has to arrest him. If arrest is made under a warrant, the man who is being arrested is entitled to ask that warrant be shown to him. He has to get himself satisfied that he is being properly arrested. In *re Appaswamy Mudaliar & Ors.*,⁹ it has been held that when a warrant is not shown to the person and an arrest is made, the arrest becomes illegal. It was further held in this case, that a man is entitled to know, the source of authority of the constable or the policeman arresting him and if the constable states a certain power which the man knows he has not got, the arrestee is entitled to object to such an arrest and can refuse to surrender to custody.¹⁰ He can even escape from the custody if he has been arrested. In effecting an arrest, the police officer is empowered to use all such means as are necessary for the purpose of effecting the arrest, but in making an arrest, he cannot use a restraint which is more than necessary to prevent escape.

7. *Harmohan Lal v. Emperor*, 30 Cr. L.J. 128, *U Thwe v. A. Kim Fee*, A.I.R. 1930 Rangoon 131.

8. See generally, ss. 46, 48, and 151, Cr. P.C. 1973.

9. I.L.R. 47 Mad. 442 (1924).

10. See *State of U.P. v. Deoman*, A.I.R. 1960 S.C. 1125; *Santokhi Beldar v. Emperor*, 34 Cr. L. J. 349, 351 (1983).

Statutory Checks on Police Power

Section 41(1) gives very wide powers to an investigating officer in cognizable offences to make arrest. The only limitation is that there should be reasonable and credible information with regard to the offence and also the offender in order to prevent any misuse of power. A reasonable information or suspicion has to depend upon circumstances of each case. The same has to be founded on some definite fact or some tangible proof which may sufficiently establish in the mind of a police officer the reasonableness or credibility of the charge, information or suspicion. The law thus requires the use of great discretion, caution and circumspection while exercising the wide police powers conferred upon a police officer in this regard. If a police officer suspects that a person is involved in a particular crime, he should keep his suspicions secret and if possible, defer the arrest until investigations tend to show his complicity in an alleged crime. It will otherwise be an unnecessary interference with the liberty of the person. But if it is found necessary to interfere with the liberty of the person in order to prevent him from absconding, the police officer can invoke his powers to make an arrest with only so much of restraint as may be necessary.¹¹

Since the decision of *Ramprit Ahir's* case¹² it has been the rule that detention and arrest of members of the public are not matters of caprice. These are to be governed by law and must be conducted upon certain rules and principles which the law clearly lays down. To arrest a person without any justification is one of the most serious encroachments upon the liberty of the person which can well be contemplated. The judicial decisions are to the effect that if an arrest is found *mala fide*, the police officer who makes an arrest is personally liable for the damages.¹³

Police Power to Release on Bail

In addition to the power of arrest on reasonable and credible evidence the Code of Criminal Procedure also empowers an arresting officer to release an arrested person on bail.¹⁴ However, the real situation as it obtains today in the society it is amply clear that police discretion is not always being properly exercised in the matter of arrest. The citizens are being deprived of their liberty and the police has become a kind of terror for the citizens because of their undue harshness with the public in general and the suspects in particular. Our newspapers are replete with examples of police high-handedness. It is a matter of common knowledge that in order to extract information from a suspect, the police beat a person in course of investigation, in custody to the extent that sometime such an

11. See s. 49, Cr. P.C. 1973.

12. *Ramprit Ahir v. King Emperor*, A.I.R. 1926 Pat. 560.

13. See Ramaswamy Iyer, *The Law of Torts* 48 esp. f. n. 829. See also s. 359, Cr. P.C., 1973.

14. See s. 43, 44(1), 50, 59, 169, 436 and 437, Cr. P. C., 1973.

accused person even succumbs to injuries. On many occasions departmental inquiries have been conducted ; but these have been used mainly to cover up the taint. Furthermore, instance are known where in order to secure conviction of an accused, the police has concocted the whole prosecution story and have tutored the witnesses to implicate innocent persons. Such police activities once led a High Court Judge to form an opinion that police is itself an organization of goondas,¹⁵ although the remarks were expunged later by the Supreme Court. Even then an echo of these remarks continue to be heard till today.

Police Role in Democracy

The advent of the new democratic era seeks to confer upon the police a newer role to play. In an address to the trainees at the Central Police Training College, Mount Abu, in October 1958, the then Prime Minister of India, Pandit Nehru remarked that the "police can not function without the closest co-operation of the public" and proceeded to observe that, "the police have functions to-day which are different from those in a non-democratic state. The police has to secure full-co-operation of the public in their task of maintaining law and order. Their efficiency would depend on the extent of co-operation they succeed in getting from the public and that it can help a great deal in the detection of crime."¹⁶ It may be pointed out that with a changed police attitude the spree of crime and anti-social activities may continue to show an upward trend but the police alone cannot be held responsible for it. The police is not expected to assign to itself the role of a mentor and assume for itself the absolute responsibility to correct the distortions in the society. The remedies for these ailments lie elsewhere.

However, this could be done by adhering to the concept of rule of law rather than to act on their self-imposed and overzealous responsibilities aimed at setting right everything in the society in their own manner. It has been an established principle in the United Kingdom that the duty of prosecution is not to secure a conviction. It has a duty to place fairly the relevant evidence before the court.¹⁷ This principle is worth following in any system which claims to have a democratic set-up where the rule of law is given supremacy. One may find himself in accord with the views of a distinguished jurist, Sir John Latham, the late Chief Justice of Australia when he said, "It is not the English view of law that whatever is officially done is law. On the contrary, the principle of English law is what is done officially must be done in accordance with law".¹⁸

The Criminal Procedure Code has vested the police with such powers

15. *Amin v. State*, A.I.R. 1958 All. 293.

16. Speech made by Pt. Jawahar Lal Nehru at Central Police Training College, Mt. Abu (Raj.) October 1958.

17. R.E.V. Heuston, *Essays in Constitutional Law* 41.

18. *Id.* at. 31.

as are necessary for the apprehension of an accused and also for investigation of the crime. However, the basic object of investigatory police powers is misconstrued in police parlance to be a power to secure conviction. This has consequently led the law enforcement agencies to adopt ways and means which not only transcend the bounds of legality but are also socially reprehensible and humanly callous in nature. All these run counter to civilised norms and the precept of the rule of law in a civilised order.

The responses to the prevailing democratic values in the society and also to the precept of rule of law have been attempted through an empirical study detailed in the following chapter. The system of criminal justice on the whole can sustain itself if the interaction in the police milieu can assure that the enforcement practices would follow the law and not *vice versa*.