



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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ARREST OF PREGNANT WOMEN: ANALYSING INDIAN AND INTERNATIONAL LAWS.

INTRODUCTION

The topic of arresting pregnant women is multifarious and delicate, as it involves various legal and human rights concerns.

We have to deal with questions of legal, ethics and health when it comes to arresting pregnant women. They are not discriminated when it comes to the execution of justice but are provided with all the safety and health measures as to their condition. **Section 382, Code of Criminal Procedure, 1898**, also specifies that if a woman is found pregnant and she has done an offence which gives death penalty as punishment then she will be awarded life imprisonment instead of death penalty.

This blog covers the legal framework in India as well as in other countries regarding the arrest of pregnant women also the case study.

Legal Framework

In India

In India, pregnant women can be arrested under section 46 (4) of the criminal procedure code, 1973. But as every coin has two sides in the same way there are certain conditions to be fulfilled which includes the safety and well-being of a woman undergoing pregnancy. For example,

women in India cannot be arrested between sunset and sunrise unless some exception arises, even then, female police officer need to take prior permission of a judicial magistrate.

Also under section 382 of the code of criminal procedure, 1898, any women if found guilty of an offence and is granted death penalty but is pregnant then her death sentence will be converted into life imprisonment.

Indian laws do give permission for the arrest of pregnant women but they also provide certain safeguards for the child and the mother.

International Perspective

At global level, the arrest of pregnant women is not prohibited but many countries have their own rules and regulations for the safety and security of the women and her child. If we take an example, the immigration act of 2016 in the United Kingdom states that the pregnant women can only be arrested in exceptional circumstances and only if the exclusion or extradition is imminent.

President Joe Biden, in the US announced in the year 2021 that Immigration and Customs Enforcement (ICE) officers would not arrest or detain those who are pregnant, nursing or postpartum unless the law prohibits their release or in “exceptional circumstances”.

Although every country has its own rules and regulations, there are some general principles which apply globally while arresting a pregnant lady:

- ❖ right to health
- ❖ non-discrimination
- ❖ best interest of the child
- ❖ prohibition of torture and inhuman treatment
- ❖ access to legal representation

Human Rights Considerations

Human rights are for each and every person living in this world whether male or female and that is why the arrest of pregnant women raises multiple issues and concerns at this level. There are many organizations which have documented cases where pregnant women were arrested and they have asked for more safety measures to be adopted for them, one such organization is 'pregnant justice'.

Article 14, 16, 17, 21 and 22 of the Geneva Convention, 1949 clearly states pregnant women are treated as "wounded persons" and are given the same protection and care which is given to a wounded person.

Ethical and Health Implications

Although the legal system of any country does not allow any criminal to move freely in their territory but every case have some exceptions to it and one such exception is related with pregnant ladies which says that arresting them may lead to health problems not only to them but to their unborn child and they may also suffer from stress which will directly impact the child in womb. Hence, the system of every country should follow their rules and regulations by keeping in mind the safety and security of women who are expecting a child.

Case Study: Safoora Zargar's arrest

Facts of the case: Safoora Zargar was a 27 year old sociologist at the Jamia Milia Islamia University and was married 19 months earlier. She got to know about her pregnancy when she felt weak and lazy. One such day police officers came and asked her to come with them as they want to ask some questions regarding her role in the CAA bill which according to the opponents, is against the Muslims. She was questioned for several hours in the police station and then at 10:30 she got arrested on Friday, 10th April.

Court's judgement: on 13th April, the Delhi High Court granted bail to Safoora Zargar on humanitarian grounds and also because of the COVID-19 pandemic. The court said that keeping in mind the pregnancy of Safoora Zargar and the ongoing pandemic she is granted bail as if she is kept in prison there are chances that she may catch an infection which will affect the child as well. She was asked to not involve in any matter related to riots and was also asked to not leave

Delhi without prior permission of the court and must remain in touch with the investigating officer in every 15 days on phone.

Conclusion

In a nutshell, it is observed that the laws allows the arrest of pregnant women but it should consider some of the health and safety measures for her and her child. The unique needs of pregnant ladies must be kept in mind before making laws regarding their arrest worldwide.

This blog aimed to make the readers aware of the rights of pregnant women throughout the world and problems related to their arrest also the legal issues involved in it. Also it is recommended to visit a professional lawyer for more such information related to this topic.

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