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### What did the HC rule about arresting women at night?

The Madurai Bench of the Madras High Court in *Deepa versus S. Vijayalakshmi and Others* ruled that the legal provision in the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which restricts the arrest of a woman after sunset and before sunrise, is directory and not mandatory. In this case, a woman was arrested at 8pm. A single Judge of the High Court held that the arrest was in breach of Section 46(4) of the Code of Criminal Procedure (CrPC). However, a two-Judge Bench of the High Court, in an appeal, held that Section 46(4) of the CrPC was directory and not mandatory.

#### What are the safeguards?

Two safeguards are provided under Section 43(5) of BNSS (which corresponds to Section 46(4) of CrPC) for the arrest of a woman by the police. First, no arrest of a woman shall be made after sunset and before sunrise except in exceptional circumstances. Second, even in exceptional circumstances, the prior permission of the jurisdictional magistrate must be sought by a woman police officer by making a written report. Section 46(4) of the CrPC is a beneficial provision incorporated to ensure the safety of women. However, the provision does not explain what would constitute an exceptional situation. In addition, the proviso to Section 46(1) states that the arresting police officer should not touch the person of the woman, unless it is a woman police officer or if the circumstances otherwise require it.

#### What did the Madras HC rule?



The Madras High Court said that Section 46(4) of CrPC does not spell out the consequence of non-compliance of the provision. If the provision was intended to be mandatory, the legislature would definitely have provided for the consequences of non-compliance. A police officer who effects arrest, carries out a public duty. The Court underlined that there could be a situation where a heinous offence is committed by a woman in the night and the magistrate may not be available for obtaining permission. Under such a situation, the accused woman may escape. Therefore, such mechanical adherence to procedure can injure public interest.

### **What is history of Section 46(4) CrPC?**

The 135th report of the Law Commission of India on Women in Custody (1989) recommended that ordinarily no women shall be arrested after sunset and before sunrise. If there are exceptional cases, prior permission of the immediate superior officer shall be obtained, or if the case was of extreme urgency, then an arrest report with reasons shall be made to the immediate superior officer and to the magistrate. Similar recommendations were made in the 154th report of the Law Commission in 1996, and Section 46(4) of CrPC was inserted with some changes in 2005.

### **What has the Supreme Court said?**

In a case, the Nagpur Bench of the Bombay High Court directed the State to issue directions to all police officials that no female persons shall be detained without the presence of a lady constable, and in no case after sunset and before sunrise. Here, the Supreme Court observed that a strict compliance with the said directive in a given circumstance would cause practical difficulties.

### **Will the ruling dilute the provision?**

The Court has clearly said that despite holding Section 46(4) of CrPC/43(5) as directory and not mandatory, the provision cannot be rendered futile by the police. While failure to adhere to the statutory requirement may not lead to the arrest being



declared illegal, the officer may have to offer explanation for the inability to comply with the provision. The Court also directed the police to issue guidelines, clarifying as to what constitute exceptional circumstances.

## **Bill on simultaneous polls will fail legal challenge, former CJI tell House panel**

In its current form, the Bill on simultaneous elections will not sustain a legal challenge in the Supreme Court, former Chief Justice of India U.U. Lalit said, in a submission before the [Parliamentary Joint Committee reviewing](#) the legislation on Tuesday. According to sources, Justice Lalit said that the provision to curtail the tenure of State Assemblies in order to synchronise the polls runs counter to the basic structure of Constitution, which is protected by the Kesavananda Bharati judgement.

The Parliamentary Joint Committee, headed by BJP MP P.P. Chaudhary is reviewing the Constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024, which was introduced in the Lok Sabha on December 17, 2024. The Bill seeks to empower the Election Commission of India to conduct simultaneous elections for the Lok Sabha and all State Assemblies.

To synchronise the elections, the Bill includes a provision enabling the President to set an “appointed date”, through a notification issued on the first sitting of the Lok Sabha post the general election. This “appointed date” would mark the beginning of the new electoral cycle. State Assemblies formed after that date and before the completion of the Lok Sabha’s term would conclude their own term before the subsequent general election. After this, elections to the Lok Sabha and all State Assemblies would be held simultaneously.

**Suggests staggered approach**



According to sources, Justice Lalit supported the underlying principle of the legislation, but said that curtailing the tenure of all State Assemblies on the “appointed date” will not pass legal scrutiny in the Supreme Court. He made a distinction between the “non-substantial” or “peripheral” tenure of a State Assembly versus the “substantial term”.

The former Chief Justice said that if 30% to 40% of the tenure of an Assembly is yet to be concluded, this would fall under the category of a “substantial” term, and curtailing it would be considered a violation of the basic structure of the Constitution. Instead, sources said, Justice Lalit suggested a staggered approach, with State Assemblies being disbanded in batches.

#### **‘Assemblies not subservient’**

At this point, an Opposition member of the panel pointed out that the electoral cycle has evolved organically, without any Constitutional fiat, from the initial elections during colonial rule under the 1935 Government of India Act till the Parliamentary and Assembly electoral cycle diverged after the 1967 election. Justice Lalit, according to sources, conceded that the proposed legislative intervention could stunt such an organic evolution.

The curtailment of the tenure of State Assemblies has been a major concern for several political parties, including the Janata Dal (United), which is a partner in the ruling BJP-led National Democratic Alliance, and also leads the NDA government in Bihar. Rajya Sabha MP and JD(U) national general secretary Sanjay K. Jha, who is a former member of the panel, had raised this question. Congress MP Manish Tewari, while opposing the introduction of the Bill in the Lok Sabha, had also argued that the State legislatures stand on an equal constitutional footing with the Parliament and therefore cannot be made subservient, as this legislation aims to do.



The panel's discussion with Justice Lalit went on for nearly three hours, with several interventions and questions from the Opposition members, sources said.

### **Cutting costs**

Former Law Commission of India chairperson Ritu Raj Awasthi also appeared before the panel. Arguing in support of the legislation, Justice Awasthi called it a "transformative idea" which will address challenges such as "policy paralysis, governance inefficiencies, excessive election-related expenditure, and the prolonged deployment of security and administrative personnel".

Justice Awasthi argued, as per sources, that simultaneous elections would allow for cost optimisation. The Parliamentary polls are funded by the Union government, while Assembly elections are funded by the State. The average expenditure per Assembly constituency for the 2019 Lok Sabha election and subsequent State Assembly elections revealed that both incurred nearly the same costs. In certain cases, Justice Awasthi pointed out, citing the examples of Delhi and Haryana, the Assembly election expenditure even exceeded that of the Lok Sabha election.

IAS officer Niten Chandra, secretary of the high-level Ram Nath Kovind-led committee on simultaneous elections, and E.M. Sudarsana Natchiappan, a senior advocate and former Congress MP who had headed a 2015 parliamentary panel that favoured simultaneous polls, also appeared before the panel but could not share their views due to the paucity of time.

The meeting began with more than an hour of wrangling over procedures. Opposition members demanded that a consolidated list of the witnesses to be called to appear before the panel must be shared. The next meeting of the panel is scheduled for March 10.