High Court Ruling on Arresting Women at Night

Why in news?

The Madurai Bench of Madras High Court ruled that legal provision which restricts arrest of a woman after sunset and before sunrise, is directory and not mandatory.

- 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.
    1. No arrest of a woman shall be made after sunset and before sunrise except in exceptional circumstances.
    2. Even in exceptional circumstances, the prior permission of the jurisdictional magistrate must be sought by a woman police officer by making a written report.
- However, the provision does not explain what would constitute an exceptional situation.
- In addition, the provision to ***Section 46(1)*** states that the arresting police officer should not touch the person of the woman, unless it is a woman police offer or if the circumstances otherwise require it.
- **History of Section 46(4) CrPC** – The 135th report of the Law Commission of India on Women in Custody (1989) recommended no women shall be arrested after sunset and before sunrise.
- 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.
- **Madurai high court bench Stance** – Declared the provision directory, not mandatory and ruled following observation.

    1. The rule isn't mandatory, but police can't ignore it completely.
    2. If police break it, they need a good reason, or they'll face questions.
    3. The rule still aims to keep women safe during arrests.
    4. Police must make a list of what counts as "special situations" to bend the rule.
    5. It's flexible but not weak if police follow through properly.
    6. If not watched closely, some might misuse it, but it's still meant to

help women.

- **Other judgements** – In a case, the *Nagpur Bench of the Bombay High Court* that no female persons shall be detained without the presence of a lady constable, and in no case after sunset and before sunrise.
- Supreme Court noted that always following the rule strictly can create real-world problems for police.

Reference

The Hindu | HC Rule About Arresting Women at Night

