

OUR RIGHTS WHEN ARRESTED / IN POLICE CUSTODY

(3 Poster Series)

(Poster I)

Investigation

- Investigation by any police officer of any male below 15 years or any woman can be made only at the place of residence (Sec.160 Cr. P.C)

Arrest

- Persons arrested must be informed of the full particulars of the offence committed and the grounds for arrest. (Sec.50 Cr. P.C. & Art 22 (1) - Constitution of India)
- All persons arrested / detained must be served a **custody memo** as per Supreme Court directions in D.K. Basu Vs State of West Bengal.
- Persons arrested cannot be detained for more than 24 hours in Police Custody (Sec.56/57 Cr.P.C. & Art 22 (2) Constitution of India).
- An Accused person is entitled to a copy, free of cost, of the Police Final Report, First Information Report (FIR), statements of all persons whom prosecution proposes to examine as its witnesses (Sec 207, Sec. 154, Sec. 161 [3]) confessions and statements if any recorded and any other documents, relevant extracts forwarded to the magistrate.
- The arrested person has a right to consult and be defended by a legal practitioner of his choice (Article 22 (1) of the Constitution of India).
- If the arrested person is poor, he can get free Legal Assistance from the Legal Services Authority (Art 39 A Constitution of India).
- The person arrested, has a right to be examined by a registered medical practitioner (Sec.54) to disprove, the commission of Offence or to prove the ill-treatment of the police or any other suitable reason. (S.54 Cr. P.C).
- In the case of a woman the medical examination has to be made only by a female registered medical practitioner.
- Police are empowered by Sec.41, 42, 151 and 432 (3) of Cr.P.C. to arrest without a warrant.

- Arrest should not be made on mere suspicion (145 Cr. P.C).
- The arrested person is entitled for compensation for groundless arrest / illegal detention.
- The registering of the FIR is not a condition precedent to grant anticipatory bail.
- Warrant of arrest should be in writing and signed by the Presiding officer of the court with seal. Substance of the warrant should be shown or intimated to the person to be arrested.

(Poster II)

Police Custody

- Custody includes surrender of accused before the court and submissions to directions.
- A Magistrate may order for the remand of the arrested person to police custody u/s 167 (3) of the Cr.P.C. The Magistrate should be fully satisfied that there is good ground to remand the accused to police custody.
- If a person is released on bail he cannot be remanded to police custody.
- When remand to police custody is granted (subject to Supreme Court orders in D.K. Basu).
 - I. the accused in police custody can be kept in police lock - up.
 - II. can be taken to any place for purposes of investigation within this period.
 - III. can be kept at any place for purposes of investigation within this period.
- there should always be an entry in the Daily Diary (i.e. General Diary) when accused is taken out of police lock-up or readmitted;
- if the accused falls ill in police lock-up, he must be given medical aid or treatment admitted for in a hospital.
- if an accused dies in police custody, officer - in - charge shall immediately inform the nearest Executive Magistrate empowered to hold inquests, for investigation u/s 176 Cr.P.C. and intimated to the National Human Rights Commission within 24 hours.

- detention of accused for longer than 24 hours when not produced for remand and beyond period of remand without orders of Magistrate is illegal and Police Officer is liable u/s 342 IPC and u/s 29 of the Police Act.
- Accused may engage a counsel during proceedings of remand and accused may raise an objection that the police is not entitled to custody.

Bail

- Person accused of a bailable offence has right to be released on bail. It is the duty of the police officer incharge to intimate this. Bail not Jail is the Rule of Law.
- An accused person surrendering before the Magistrate has a right to bail or demand judicial custody.
- The provision of bail to women, sick and old age persons is given priority subject to the nature of the offence.
- Once the accused is granted bail by invoking Sec. 205 Cr.P.C. he need not attend the court (unless it is a condition of bail) before chargesheet is filed and process issued .
- If no charge -sheet is filed before the expiry of 60/90 days as the case may be, the accused in custody has a right to be released on bail.
- If the arrested person is remanded to judicial custody by the Magistrate on Sundays or holidays, the bail application should be considered on the Sunday or the holiday itself.
- In non-bailable offences, the Magistrate has the power to release on bail without notice to the other side if charge sheet is not filed within a period of sixty days.

(Poster III)

SUPREME COURT JUDGEMENT (1996)

D.K. BASU Versus State of West Bengal

Requirements to be followed in all cases of arrest or detention

- The Police personnel carrying out the arrest and handling the interrogation should bear accurate, visible and clear identification. The particular of all such police personnel must be recorded in a register.
- That the police officer carrying out the arrest of the arrestee shall prepare a memo or arrest at the time of arrest and such memo shall be attested by at least one witness.
- A person who has been arrested or detained shall be entitled to have one friend or relative or other person known to him.
- The time, place of arrest and venue of custody must be notified by the police where the next friend or relative lives through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- The person arrested must be made aware of this right to have someone informed of his arrest or detention
- An entry must be made in the diary at the place of detention regarding the arrest of the person disclosing the name of the next friend and the names and particulars of the police officials in whose custody the arrestee is.
- The arrestee should be also examined at the time of his arrest and major and minor injuries, if any present on his / her body, must be recorded at that time. the “Inspection Memo” must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
- The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody
- Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
- The arrestee may be permitted to meet his lawyer during interrogation.

- A police control room should be provided at all district and state headquarters, where information regarding the arrest shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest.
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- The requirements, referred to above flow from Articles 21 and 22 (1) of the Constitution and **NEED TO BE STRICTLY FOLLOWED**.

Powers of Magistrates

1. All magistrates have the duty to inspect any police station, prison, and any other custodial institution at any time. (Supreme Court Judgement in Sunil Batra Vs Delhi Prison Administration II AIR, 1980 SC 1579 at PP 1598 / 99.)
2. A magistrate may himself arrest or order any person to arrest an offender (Section 44 CrPC) if the offence is committed in his / presence or within her local Jurisdiction.
3. The magistrate shall on request of the accused order for an examination by a doctor during the period of detention.[Section 54 CrPC]
4. An accused shall not be detained by a police officer for more than 24 hours without the order of remand by the Magistrate.[Section 57 CrPC]
5. Officers incharge of the police station shall report to the Magistrate, the cases of all persons arrested. [Section 58 CrPc]
6. No person who has been arrested by a police officer shall be discharged except on his own bond, or on bail, or under the special order of a magistrate. [Section 59 CrPC]
7. A magistrate can issue a search warrant for persons wrongfully confined and direct for search and if found shall be immediately taken before a magistrate.[Section 97 CrPC]
8. The magistrate can make an order upon a complaint with regard to abduction or unlawful detention of a woman or a girl child and order for an immediate restoration of such woman or a girl child to their liberty. [Section 98 CrPC]
9. A magistrate may order for maintenance of wife, children, parents and dependents. [Section 125 CrPC]
10. A magistrate shall order for removal of unlawful obstruction from any river, channel or other public place on receipt of report from the police and recording such evidence.[Section 133 CrPC]

11. A magistrate is empowered to order investigation of any cognizable case and direct them to file a report following which to hold an inquiry into the same. [Section 156 CrPC]
12. A magistrate may record confession or statement in the course of investigation and satisfy himself that the statement is voluntary. [Section 164 CrPC]
13. A magistrate may release an accused on bail if the final report (charge sheet) has not been filed by the prosecution before the court within 60 days – 90 days (Section 167 CrPC)
14. A magistrate may inspect all police records of a case to aid in an inquiry or trial (Section 172 CrPC)
15. A magistrate shall hold inquiry when there is a doubt regarding the cause of the death of a person (Section 174 CrPC) or a woman commits suicide within seven years of her marriage.
16. A magistrate shall inquire into the death of a person in police custody and shall record evidence and allow relatives of the deceased to remain present at the enquiry (Section 176 CrPC) including enforcement of the Supreme Court order in D.K.Basu Vs State of West Bengal regarding arrest / custody memo.
17. A magistrate can take cognizance upon receiving a complaint from any person, police report or on his own knowledge of an offence committed (Section 190 CrPC).
18. After examination a magistrate of competent jurisdiction shall try and frame charges on the accused in writing and shall explain the same to him (Section 240 CrPC).
19. Based on recorded evidence, a magistrate shall discharge the accused if no case is made against him (Section 245 CrPC)
20. A magistrate shall assign a pleader through the legal aid at the expense of the state for defending the accused who has no means to defend himself (Section 304 CrPC)
21. A magistrate shall postpone a case if he finds an accused person insane, and order a doctor to examine him and ensure for his safe custody. (Section 328 CrPC)

22. A magistrate may order including the loss of time and inncurance of loss compensation to a person arrested by a police officer without sufficient grounds and the same shall be collected from the complainant (Section 358)
23. A magistrate can record dying declaration of a person (Section 32 / Indian Evidence Act)

Women's Rights in Custody

In Police Custody.....

- Custody includes surrender of accused before the court and submissions to directions.
- A Magistrate may order for the remand of the arrested person to police custody u/s 167 (3) of the Cr.P.C. The Magistrate should be fully satisfied that there is good ground to remand the accused to police custody.
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- Accused may engage a counsel during proceedings of remand and accused may raise an objection that the police is not entitled to custody.
- **Right to file a case through the judicial magistrate against the police officer.**
- **Discrimination, gender discrimination, caste discrimination, religious discrimination.**

In Prison

- As per many judgement of SC and Prison Manual Jail Authority should be provided basic needs, like adequate place, drinking water, toilet, food and medical checkups, rather than these, should be provided facilities for woman special needs.
- No woman should be kept in General Prison. For Sub-jails and Women Homes only woman officials should be appointed.
- Should ensure the special needs of the women before their pregnancy and after their pregnancy as per the body of principles for the protection of all persons under any form of detention or imprisonment.

While Sexual Abuse....

- Compliant should be filed within the nearby police station under Section 375 of IPC and this is to be done as earlier as possible. Complainant should check the FIR whether it is filled according to the complaint given and a copy of the FIR should be received from the police.
- Victim should take immediately to the hospital for medical check up with the recognised Doctor.
- Dresses of the victim should be sent to medical investigation. Till the medical check up is completed victim should not take bath, change or wash the clothes.
- A case should be filed in the Sessions Court with the help of the lawyer having the medical report. (If the crime is proved then the accuser should be

punished under Section 376 of IPC for 14 years of imprisonment or 10 years imprisonment with penalty).

In Dowry case

- If the dowry is requested then immediately complaint should be filed to the nearby police station under Sec 4 of the Dowry Prohibition Act 1961.
- The First Information Report (copy of FIR) should be received immediately after the complaint is filed.
- In city areas for getting this type of complaints, separate wings were functioning. We can give our complaints there (In Chennai, Thiyagaraya Nagar, Adayar, Thiruvanmiyur, Ashok Nagar, Anna Nagar areas this wings are functioning).
- In all the Districts Social Welfare Officers are appointed as Dowry Prohibition Officers, complaints should be given to them.
- A husband or relative of husband of a woman subjecting her to cruelty – filed the complaint u/s 498 A IPC.

Dowry Deaths....

- Where the death of a woman is caused by any burns or body injury or **occurs** – within 7 years of her marriage – it is considered as dowry death.
- Immediately complaint should be filed under Section 304 B of IPC to the nearby police station.
- R.D.O. investigation should be asked immediately.

Dying Declaration.....

- Dying Declaration from a person who is in serious condition should be collected for getting reason and the statement should be recorded.
- If the person is not able to speak, we may urge to get a statement with his hand written.
- After getting the dying declaration we must get the signature or thump imprison of the person.
- Dying Declaration can be given to the judicial magistrate, police officer, doctor who was given the treatment, social worker or any one.

- While recording the dying declaration, with 2 evidence u/s 32 of the Indian Evidence Act.

Eve Teasing

- If eve teasing occurred, we should file a complaint nearby the police station u/s 4 of the Eve Teasing Act and u/s 506 (2), 509 IPC.
- Received the F.I.R. copy (if the crime is proved then the accuser should be punished upto 1 years regime of imprisonment and 10 thousand penalty).

If Sexual Abuse occurred in work place.....

- Should be constitute one complaint all in every work place.
- Should select a woman – a leader for all.
- After receiving the complaint, all of them should be investigated and submit the report (This is applicable to all the government or private organisations)
SC-Judgement – 1997.