

# Police Malpractices

Common Illegalities by the Police  
and the Standards they Breach



# Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

CHRI's objectives are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth Member States.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, Member Governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

CHRI is based in New Delhi, India, and has offices in London, UK and Accra, Ghana.

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## Commonwealth Human Rights Initiative

### CHRI Headquarters, New Delhi

55A, Third Floor, Siddharth Chambers-1,  
Kalu Sarai, New Delhi 110 016  
India  
Tel: +91 11 4318 0200  
Fax: +91 11 2686 4688  
E-mail: [info@humanrightsinitiative.org](mailto:info@humanrightsinitiative.org)

### CHRI London

Room No. 219  
School of Advanced Study  
South Block, Senate House  
Malet Street, London WC1E 7HU  
United Kingdom  
Tel: +44(0) 207 664 4860  
Fax: +44(0) 207 862 8820  
E-mail: [chri.admin@sas.ac.uk](mailto:chri.admin@sas.ac.uk)

### CHRI Africa, Accra

House No.9, Samora Machel  
Street Asylum Down, Opposite  
Beverly Hills Hotel Near Trust  
Towers, Accra,  
Ghana  
Tel/Fax: +233 302 971170  
Email: [chriafrika@humanrightsinitiative.org](mailto:chriafrika@humanrightsinitiative.org)


# **POLICE MALPRACTICES**

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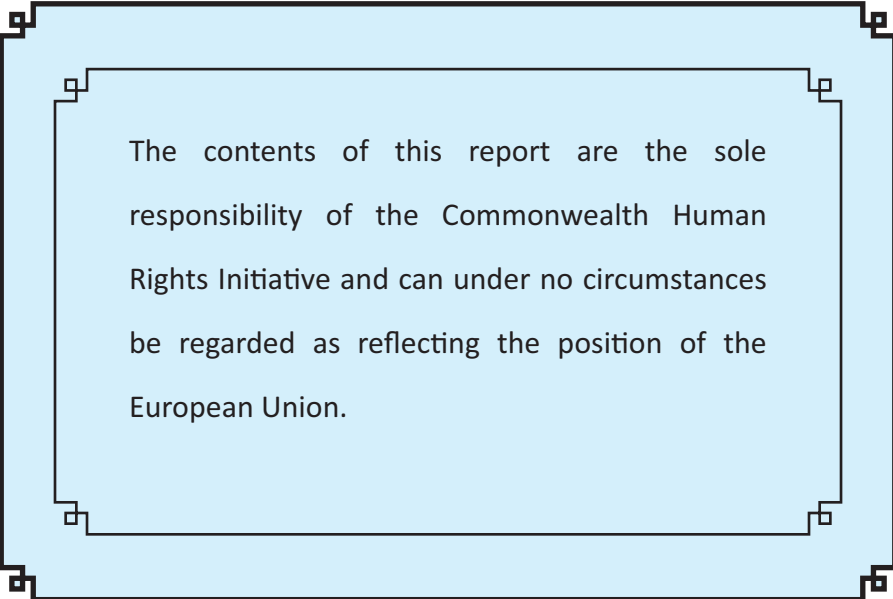
Written by  
**Navaz Kotwal**

Edited by  
**Maja Daruwala**

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This report has been produced with the financial assistance of the European Union. The European Union is made up of 28 Member States who have decided to gradually link together their know-how, resources and destinies. Together, during a period of enlargement of 50 years, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.



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# Introduction

The police are an important component of the criminal justice system, and the first port of call for anyone affected by violence and crime. They are also one of the most visible arms of the State. Despite this, as members of the public, we have little knowledge of the duties, powers and responsibilities of the police, or of our legal rights. The police are bound by the law and have to act in accordance with the law. To ensure the police do not abuse their powers, it is necessary for all of us to know what the law says and what our rights are when dealing with the police.

This book provides a basic account of law and standards on some of the major aspects of the legal process, with a focus on aspects involving the police. It also summarises common police malpractices, to help spread knowledge of what the police is supposed to do as per law against what is often done which amounts to violation of law and procedures.



# Types of Offences: Cognisable and Non-cognisable

## Cognisable Offences

- Offences which the police can investigate WITHOUT a warrant from the Magistrate

## Non-cognisable Offences

- Offences which the police can investigate only WITH a warrant from the Magistrate

The First Schedule to the Criminal Procedure Code (CrPC) classifies offences as cognisable or non-cognisable



# First Information Report [FIR]

## What is an FIR?

- An FIR is the first information report which is provided by any person who has knowledge of the commission of a cognisable offence to a police officer under Section 154 of the CrPC. To report an offence, an FIR must be registered
- In a cognisable offence, the police must register the FIR
- It can be filed by the victim, a witness to the crime, a police officer, or anyone who has knowledge of the crime
- Once an FIR is registered, the police are duty bound to start the investigation of the case
- No police officer can refuse to register an FIR if the offence(s) being reported occurred outside their police station's jurisdiction. S/he is bound to register the FIR (this is called a zero FIR) and forward it to the concerned police station



## Procedure for registering an FIR

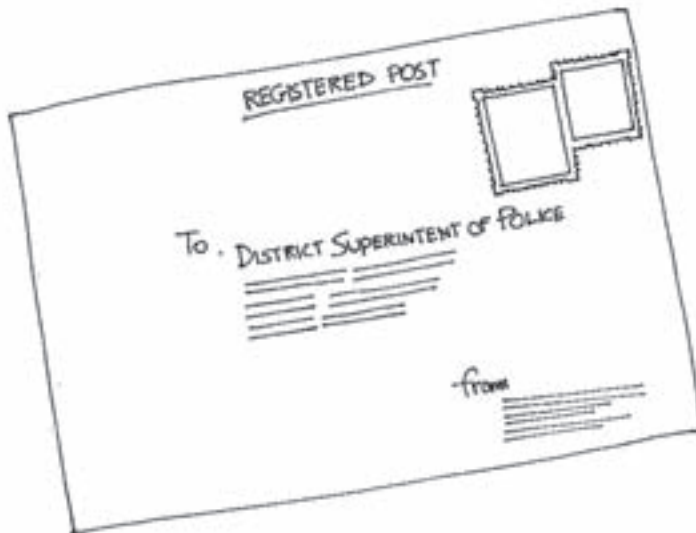
- An FIR can be given in writing or given orally to the police officer
- If you cannot write, the police officer must ask you to narrate the information so s/he can write it in simple language as close as possible to your own words
- The police must read the information back to you
- The FIR must be signed by you. Sign it only after you are sure that the information recorded by the police is as per the details you gave
- An FIR for any of the gender-based sexual offences under Sections 326A, 326B, 354, 354B, 370A, 376, 376A, 376B, 376C, 376D, 376E or 509 of the Indian Penal Code (IPC) must be recorded by a woman police or woman officer if an aggrieved woman gives information herself. If the victim is mentally or physically disabled (even temporarily), the FIR must be recorded at her residence or location of her choice in the presence of an interpreter/special educator, and it must be video-graphed
- A copy of the FIR must be given free of cost to you
- The date and contents of every FIR should be entered in the police station's General Diary



## What should happen once an FIR is registered?

### The police officer has to:

- Send a copy of the FIR to the Magistrate with the authority to take cognisance. This should be done on the same day the FIR is registered with no delay
- Send a copy of the FIR to the Circle Inspector and to the district Superintendent of Police (SP)
- Proceed to investigate



## What if the police refuses to register the FIR?

### You can:

- Send information about the crime in writing to the district SP by registered AD post, if the information discloses the commission of a cognisable offence, the SP may investigate the case or order investigation by a junior officer
- Complain to the Magistrate if the SP does not take action
- The Magistrate can inquire into the case, or ask for an investigation by the police or any other person s/he thinks fit
- If you are a female victim of a sexual offence, you can file an FIR against the police officer concerned for refusal to register your complaint under Section 166A(c) of the IPC



## Common Malpractices

### The Police may:

- Refuse to register the FIR
- Not believe you
- Ask you for a bribe
- Ask you to compromise
- Try to change the facts
- Tell you that it is a non-cognisable case
- Tell you that you do not have to sign it
- Not read it back to you
- Refuse to give you a copy
- Not make an entry in the General Diary



# Investigation

As soon as a crime is reported, the police must:

- Consider the facts of the case
- Gather panchas and experts whose help will be required during the investigation
- Go to the scene of the crime
- Perform the *Panchnama*



## What is a Panchnama?

- It is a record of what the panchas see
- It begins with the names, ages, occupations and addresses of the panchas
- It must contain the reason it is being done, and information about the exact location of the scene of crime
- After it is written up, it must be signed by the panchas
- It should contain the date and the time it was started, and the time it ended

### Panchas are:

- Independent, respectable and unbiased members of the community called in to verify the police version



## When is a panchnama done?

The police must perform a Panchnama in the presence of panchas during:

- An investigation into a death
- Search or seizure of articles



## Post Mortems

### What is a post mortem?

- In cases where death has occurred, following the panchnama, the body has to be sent for a post mortem (PM) examination. This is to determine the cause of death
- Only a police officer, not lower in rank than a Sub-Inspector, can send the body for PM examination

### Post mortems are done:

- When the cause of death is not known, or there are suspicious or unnatural circumstances
- To find out if the death was suicidal, homicidal or accidental

## The post mortem report will indicate:

- Time of death
- Gender of the deceased
- Probable cause of death

## How they must be done:

- Only a certified doctor who has a letter of authority from the police can do a PM. His/her rank must not be below that of a subordinate medical officer
- Once the corpse is received, the medical officer must give a receipt for it



## Duties of Medical Officers:

- Record all external and internal injuries on the corpse in detail
- Record the presence of any foreign body found in the corpse
- Preserve and keep the foreign body safely
- Record the cause of death
- Send a copy of the report to the concerned police station and to the Superintendent of Police

The police officer and the medical officer are jointly responsible for conducting a PM

The body must be handed over to the relatives of the deceased after the PM examination is completed

## Common Malpractices

### Most often PMs are:

- Done at the crime scene itself
- Performed by compounders and other non-doctors
- Completed in a very short time
- Done without making a thorough or detailed examination
- Once the body is cut open, it is not properly sewn up again



## Investigation

### At the crime scene, the police must:

- Gather witnesses who may have information about the offence
- Take photographs
- Look out for and collect fingerprints or footprints of the culprits
- Call in forensic experts
- Ask for a police dog squad for serious crimes like murder
- Draw a site map of the crime scene



### At the crime scene, the police must:

- Collect evidence and ensure no evidence is tampered with or lost
- Seal the crime scene
- Record all items that have been recovered in a register called the *Muddamal* Register
- Provide first-aid to injured persons, and ensure anyone with serious injuries is sent for medical help
- Send any dead body or bodies for post mortem examination
- Maintain all details of every step of the investigation in the case diary



## Case Diary

### What is the case diary?

- It is a record of every step taken in the investigation of each case by the Investigating Officer, in his/her own handwriting
- It should be maintained on a day-to-day basis throughout the investigation
- Investigating officers are to ensure that the case diary is in their safe custody at all times
- It should be sent to supervisory officers on a daily basis. They have a duty to examine it, check the progress of the investigation, and give advice if necessary

## In brief, the case diary contains:

- Numbered pages
- What time the information was received
- Time at which the investigation began and closed
- Places visited and time spent in each place
- Details of complainant and all accused
- Details of arrests made
- Complete record of all steps taken in investigation
- Full description of crime scene(s) and site maps
- Details of all individuals examined – witnesses, suspects, accused
- Grounds for and details of all searches made, and any property recovered
- Details of theories and leads, steps taken to verify, and outcomes
- Advice or orders from supervising officers
- Names of all police officers associated with the case



### What a case diary cannot be used for:

- Neither the accused nor the complainant is entitled to a copy of the case diary
- The case diary is only to be used by the Investigating Officer to refresh his/her memory during examination in court
- It cannot be used as evidence in court. But it can be asked to be produced in court to aid the trial



### **A case diary can be called for by the court to:**

- Find out if the investigation has been conducted properly
- Summon witnesses not mentioned in the list supplied by the prosecution
- Bring other relevant material on record to help in the case



## Common Malpractices

### What really happens too often

#### The Police usually:

- Reach the crime scene at leisure
- Do not cordon off or preserve the crime scene
- Do not perform the Panchnama according to procedure
- Do not register the items recovered from the crime scene in the Muddamal Register
- Do not seal the items recovered. This makes evidence less reliable and can result in acquittal
- Do not send the items recovered for analysis, so they lie in the police station malkhana. As a result vital evidence deteriorates



# Questioning Witnesses

## By whom, where and how

A witness is not an accused. A witness is questioned by the police if s/he has information and/or knows the relevant facts in a case

### By whom:

- By the Investigating Officer
- No police officer below the rank of a Head Constable can question a witness

## Where:

- A witness can be called for questioning to the police station only through a written order
- A child under the age of 15 years, women, anyone above the age of 65, or a mentally or physically disabled person, cannot be called to a police station for questioning. They can only be questioned in their homes in the presence of their relatives or friends.

## How:

- A witness must be examined very soon after the event so their memory is fresh
- A witness must be thoroughly examined
- The statement of the witness must be recorded in the language s/he understands
- The police cannot bribe, threaten or coerce a witness in any way
- The signature of the witness cannot be taken on his/her statement to the police





# Search

## No general powers to search

The Police have no general power to search a person or a place under the law. Searches have to be done in very controlled circumstances. A general 'fishing' search is not allowed.

## Police can conduct a search with a warrant from a Magistrate, or even without a warrant if:

- The police officer reasonably believes that an item necessary for the investigation would be found in a specified place
- That item needs to be obtained without delay

# How a search can be done

## The police officer must:

- Specify the item and place that needs to be searched
- Record the reasons for the search
- Submit these details to a Magistrate who will then issue a search warrant





## Search Warrant

### What a search warrant should contain:

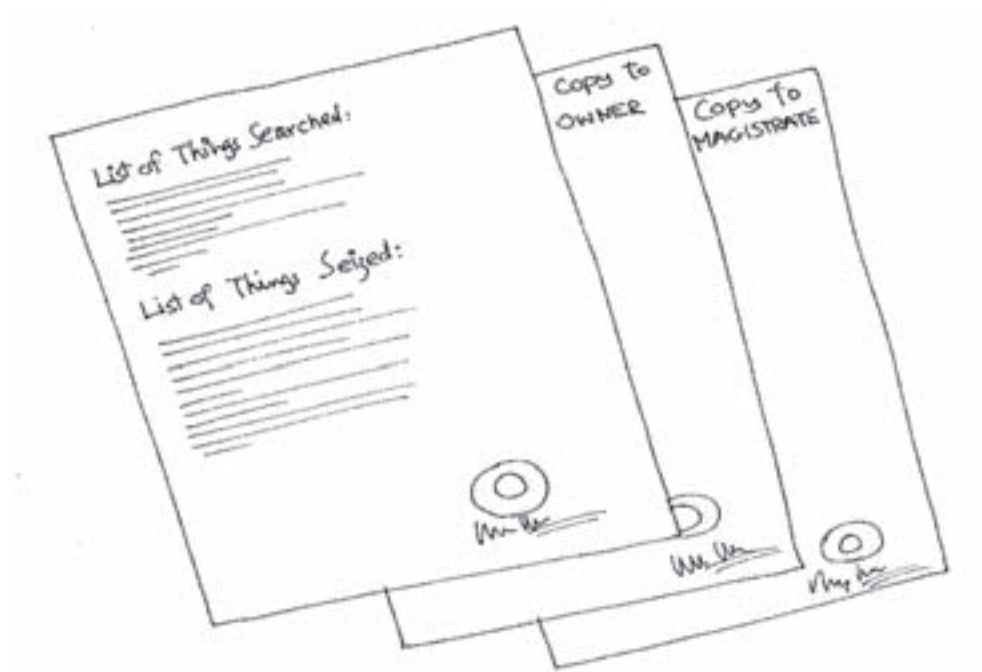
- The name and designation of the police officer conducting the search
- The description of the place to be searched
- The reason for the search
- The authority given to the police officer to enter the said premises with reasonable force if required, and seize any property related to the crime
- Date of issue of the warrant
- Seal of the court and the signature of the Magistrate



## Procedure to be followed

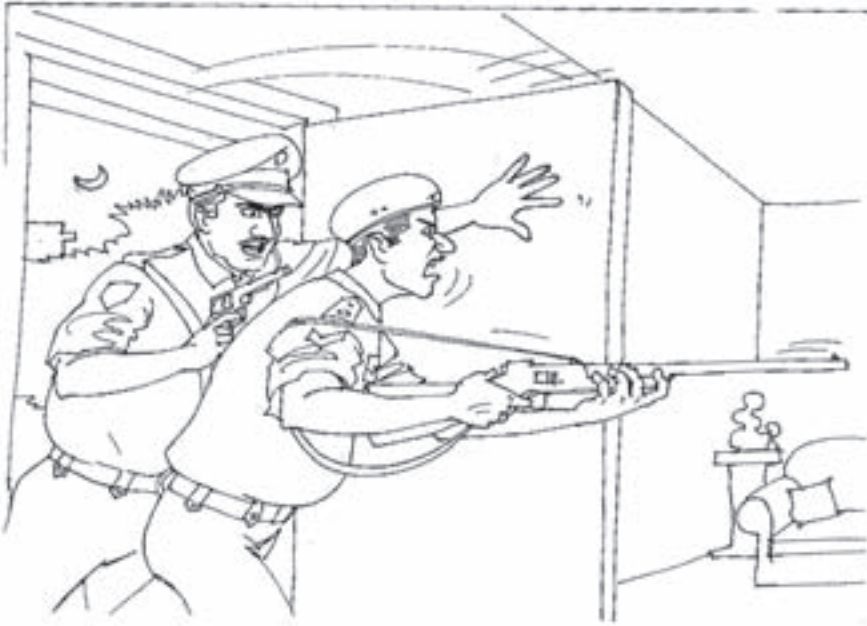
### The police officer must:

- Give a copy of the search warrant to the owner of the premises
- Call two or more known residents of the locality to witness the search
- Conduct the search in the presence of the witnesses
- Make a list of all things seized and get the list signed by the witnesses



### The police officer must:

- Allow the owner of the premises to be present at the search
- Give the owner a copy of the list of things searched and seized
- Conduct the search before sunset
- If the search is conducted at night, the reasons for this necessity must be recorded
- Report the seized items to the Magistrate on the same day



## Common Malpractices

### Generally, the police:

- Barge into your house using unnecessary force
- Do not show you the search warrant
- Do not call in witnesses
- Do not allow the owner of the premises to be present
- Do not make a list of all things searched and seized. Cash and valuables are often taken away by the police during searches
- Conduct the search in the middle of the night



# Arrest

## Procedure for Arrest

### When making an arrest, the police must:

- Immediately tell the arrested person the grounds for his/her arrest
- Inform the arrested person that s/he can consult and be defended by a lawyer. If the arrested person cannot afford a lawyer, s/he is entitled to free legal aid
- Take the arrested person before a Magistrate within 24 hours
- Adhere to the procedures laid down in the CrPC for anyone accused of any offence punishable up to 7 years
- Inform the arrested person that s/he is entitled to bail if arrested for a bailable offence
- Inform a relative or friend of the arrested person of the arrest and record the name and contact details of the person informed in the General Diary
- Prepare a Memo of Arrest to record the date, time and place of arrest signed by at least one independent witness
- Send the arrested person for a medical examination by a government medical officer at the time of arrest. A copy of the medical report must be given to the arrested person

- Record the arrest in the General Diary, case diary, and arrest register
- Record the physical condition (major and minor injuries) of the arrested person, if s/he requests, in an “Inspection Memo”. A copy must be given to the arrested person
- Inform the Police Control Room in District/State Headquarters of every arrest made

Search of the arrested person must be done in the presence of witnesses. All items taken from the arrested person must be kept in police custody. A receipt for these items must be given to the arrested person.

Handcuffs can only be used if the police officer has reason to believe that the arrested person will attempt to escape from custody, or injure him/herself or others

Any weapons found on the arrested person should be seized after recording in the panchnama and handed over to the court

No arrest can be made in a place of worship

No woman can be arrested between sunset and sunrise save in exceptional circumstances and only with the prior permission of a judicial magistrate

A woman arrested can be searched only by a female police officer or by another female with strict regard to decency





# Interrogation

## Rights of a person being interrogated

- You cannot be hit or slapped or intimidated or threatened
- You can ask for a lawyer to be present
- You can refuse to answer questions that may go against you
- You must be taken to a doctor to confirm that no violence has been inflicted on you



## Common Malpractices

### What really happens

#### The police usually:

- Use unnecessary force
- Do not tell the person why s/he is being arrested
- Handcuff the arrested person
- Do not produce the arrested person before the Magistrate within 24 hours
- Do not immediately record the arrest, show the arrest at a later date, and produce the arrested person before a Magistrate within 24 hours of the false date
- Do not inform a relative or friend of the arrested person
- Do not inform the arrested person s/he can have a lawyer present
- Use third degree methods

#### If you are a victim of these abuses, you can:

- Complain in person, or send a written complaint, to the SP
- File a complaint with the appropriate Magistrate
- Make a complaint to your State Human Rights Commission, if there is none in your state, you can complain to the National Human Rights Commission
- Make a complaint to your Police Complaints Authority if there is one in your state
- File a writ petition in your state's High Court, or the Supreme Court
- Register an FIR against the police officer who illegally arrested or detained you



## Bail

- Bail is the release of an arrested person from custody on certain conditions
- These conditions usually include that the arrested person will appear before the court or police when asked to
- The arrested person must follow all the conditions set by the court

## Is bail a right?

- Yes in some cases. This depends on whether the offence is bailable or non-bailable. The First Schedule to the CrPC classifies offences under the IPC as bailable or non-bailable.

If you have been in detention for a period that extends up to half of the maximum period of imprisonment specified for the offence you are accused of, you can be released by the court on a personal bond with or without sureties. This does not apply if you are accused of an offence punishable by death

## Bailable Offences are:

- Offences of a less serious nature - most offences with punishment up to three years imprisonment are usually bailable

## If you are arrested for a bailable offence:

- You have a right to be released on bail immediately after arrest, and the arresting officer must inform you of this right
- You may be released after giving a bond with or without sureties for your appearance in court. If you cannot afford bail, you will be discharged on executing a bond without sureties for your appearance
- If you are not able to give bail within a week of the date of your arrest, this is enough ground for the police or court to presume that you cannot afford bail and should be discharged as indicated above
- You will have to assure the court that you have roots in the community and that you will not run away

**OR**

- You can ask a respected person of the community to give a guarantee that you will not run away, and if you do, s/he will have to pay the amount of the surety



## Non-Bailable Offences

### These are:

- More serious offences, usually crimes that carry more than 3 years of punishment such as murder, rape and dacoity
- In non-bailable offences, the appropriate court has the discretion to grant bail

## How can you apply for Bail?

- You have to apply for bail in court
- There will be a bail hearing
- In court, the lawyer for the prosecution may:
  - i. oppose the bail on the grounds that you will interfere with the evidence or threaten the witnesses
  - ii. agree to the bail but on certain conditions
- The defence lawyer may argue in your favour that:
  - i. you are not involved in the crime
  - ii. you have roots in society and will not run away
  - iii. you will respect all conditions set out in the bail

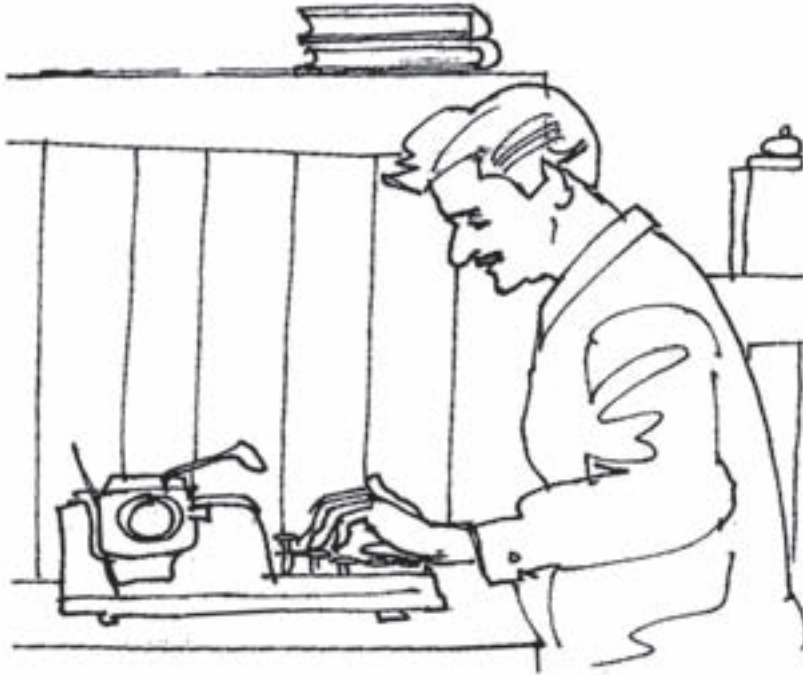
## Grounds for granting Bail

### The court must consider the following before granting bail:

- The seriousness of the crime
- Whether you will run away if released on bail
- Whether you will tamper with the evidence

### Conditions as below can be imposed with the grant of bail:

- You may be asked to visit the police station at regular intervals
- You must cooperate with the police during questioning
- You must appear before the court when summoned
- You will not leave the country and you will surrender your passport



# Completion of Investigation

## Once an investigation is completed:

- A chargesheet is filed in court through the public prosecutor  
**OR**
- The police file a final report

## After hearing the Public Prosecutor and the Defence:

- The court can reject the chargesheet and the accused will be discharged  
**OR**
- The court can accept the case, frame the charges, and post the case for trial

# The Chargesheet

## A complete record of the investigation

### What it contains:

- The names of all the parties and witnesses
- The nature of the case
- The name of the arresting officer
- Whether the accused has been released on bond
- Names and addresses of absconding accused (marked in red ink)
- The articles and items recovered
- The charge, with the offences and sections of law
- The determination of whether any offence appears to have been committed, and if so, by whom

### The chargesheet must be accompanied by:

- Copy of the FIR
- All documents, reports, or relevant extracts upon which the prosecution proposes to rely
- All statements of witnesses
- Any weapons or articles as evidentiary value

# Final Report

## A final report is submitted when:

- The police find there is not enough evidence against the accused to send him/her for trial
- There is no case made out against the accused to send him/her for trial
- The case may be made out, but the identity of the accused cannot be established

## On receiving a final report, the court can:

- Accept the final report and close the case and release the accused
- Reject the final report and direct the police to further investigate the case
- Frame charges and direct the case to be posted for trial



[illegible]

# CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to justice and access to information. It does this through research, publications, workshops, information dissemination and advocacy.

## Access to Justice

**Police Reforms:** In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In South Asia, CHRI works to strengthen civil society engagement on police reforms. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

**Prison Reforms:** CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractices. A major area is focussed on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.

## Access to Information

CHRI is acknowledged as one of the main organisations working to promote access to information across the Commonwealth. It encourages countries to pass and implement effective right to information laws. We routinely assist in the development of legislation and have been particularly successful in promoting right to information in India, Bangladesh and Ghana where we are the Secretariat for the RTI civil society coalition. We regularly critique new bills and intervene to bring best practices into governments and civil society knowledge both in the time when laws are being formulated and when they are first being implemented. Our experience of working across even in hostile environments as well as culturally varied jurisdictions allows CHRI to bring valuable insights into countries seeking to evolve and implement new laws on right to information. In Ghana, for instance we have been promoting knowledge about the value of access to information which is guaranteed by law while at the same time pushing for introduction of an effective and progressive law. In Ghana as and when the access to information law comes into being we intend to build public knowledge in parallel with monitoring the law and using it in ways which indicate impact of the law on system accountability – most particularly in the area of policing and the working of the criminal justice system.

## Strategic Initiatives Programme

CHRI monitors member states' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Ministerial Action Group, the UN and the African Commission for Human and People's Rights. Ongoing strategic initiatives include: Advocating for and monitoring the Commonwealth's reform; Reviewing Commonwealth countries' human rights promises at the UN Human Rights Council and engaging with its Universal Periodic Review; Advocating for the protection of human rights defenders and civil society space; and Monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening.

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**SO House**

6, Special Institutional Area

New Delhi 110067 (India)

Phone: +91-11-26862064 or +91-11-26863846

Fax: +91-11-26862042

[www.southasia.fnst.org](http://www.southasia.fnst.org)

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**Delegation of the European Union to India**

5/5, Shantiniketan, New Delhi - 110 021

Phone: +91-11-66781919

Fax: +91-11-66781955

Website: [http://eeas.europa.eu/delegations/india/index\\_en.htm](http://eeas.europa.eu/delegations/india/index_en.htm)



**CHRI Headquarters, New Delhi**

55A, Third Floor, Siddharth Chambers-1,

Kalu Sarai, New Delhi 110 016, India

Tel: +91 11 4318 0200 Fax: +91 11 2686 4688

E-mail: [info@humanrightsinitiative.org](mailto:info@humanrightsinitiative.org)