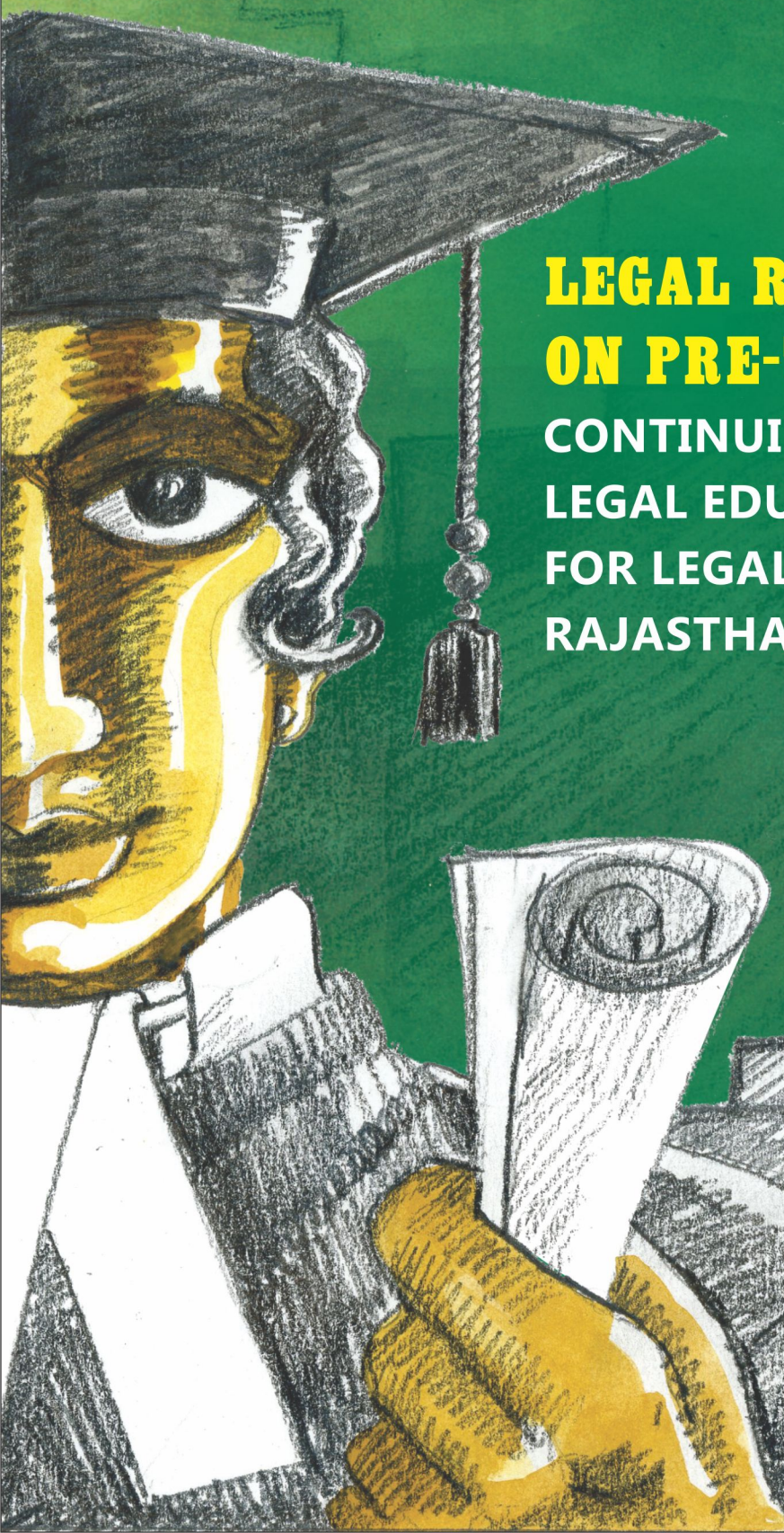


READER

1

# **LEGAL REFRESHER COURSE ON PRE-TRIAL JUSTICE**

CONTINUING  
LEGAL EDUCATION PROGRAMME  
FOR LEGAL AID LAWYERS IN  
RAJASTHAN





I μokbZ i wZ U; k; ÁfØ; k

ds I æa/k ea

fof/kd i μ%Áf' k{k.k

dk; Øe



## MESSAGE & ENDORSEMENT

I n s' k , o a i q " V

**MESSAGE FROM HON'BLE JUSTICE AJAY RASTOGI**  
**CHAIRPERSON, STATE LEGAL SERVICE AUTHORITY,**  
**RAJASTHAN**

*Indeed, it is an ecstasy to acknowledge invitation to join you all as Chief Guest to the Inaugural Session of 'Legal Refresher Course on Pre-trial Justice' being initiated as Commonwealth Human Rights Initiative in collaboration with District Legal Service Authority (DLSA) Jodhpur & State Legal Service Authority, Rajasthan, to which I express my gratitude. Despite ardent wish to attend the Inaugural Session and to address the session: "Vision & Mission of SLSA Rajasthan for early & effective Access to Legal Aid in Police Station, Jails, Courts", I feel myself unable to be there due to my pre-occupations.*

*It is a matter of great pleasure that such a Training workshop is being organised for the legal aid advocates appointed under the model scheme for Remand & Bail Lawyers as well as Panel Lawyers appointed under NALSA's Retainer Lawyers Scheme.*

*I am confident, the Team of (DLSA) Jodhpur and SLSA Rajasthan would deliberate in the direction to contribute constructively in maintaining perception, with which the Training workshop through a continuing legal education programme is being organized, beyond expectations; and have been pleading for the cause of justice in various ways and pleasantly.*

*Organizing a Legal Refresher Course on the subject is an event, when each member of both the Teams with acumen will be able to think over to do justice to the participants by rendering services for better administration of justice. Kindly accept my heartiest felicitations for organisations of the Refresher Course and best wishes for its success and for betterment of the Nation.*



(AJAY RASTOGI)

jktLFkku jkT; fof/kd l ok Ákf/kdj.k dsv/; {k

## न्यायाधीश श्री अजय रस्तोगी का संदेश

कॉमनवेल्थ ह्यूमन राइट्स इनिशिएटिव, जिला विधिक सेवा प्राधिकरण(डीएलएसए-जोधपुर) तथा राज्य विधिक सेवा प्राधिकरण(राजस्थान) के संयुक्त तत्वावधान में आयोजित 'लीगल रिफ्रेशर कोर्स ऑन प्री-ट्रायल जस्टिस' के उद्घाटन-सत्र में आप सबके बीच मुख्य अतिथि के तौर पर शामिल होने का निमंत्रण निश्चित ही अभिभूत करने वाला है और मैं इसके लिए कृतज्ञता ज्ञापित करता हूँ। उद्घाटन-सत्र में शिरकत करने और "विजन एंड मिशन फॉर एसएलएसए राजस्थान फॉर अर्ली एंड इफेक्टिव एक्सेस टू लीगल ऐड इन पुलिस स्टेशन्स, जेल्स, कोर्ट्स" नामक सत्र को संबोधित करने की हार्दिक इच्छा के बावजूद पहले से चली आ रही व्यस्तताओं के निर्वाह के कारण मैं ऐसा करने में अपने को असमर्थ महसूस कर रहा हूँ।

बड़ी खुशी की बात है कि रिमांड एंड बेल लॉयर्स नामक मॉडल योजना तथा एनएलएसए की रिटेनर लॉयर्स योजना के तहत विधिक सहायता करने को नियुक्त अधिवक्ताओं के लिए प्रशिक्षण की ऐसी कार्यशाला का आयोजन किया जा रहा है।

मुझे विश्वास है कि जिस भावना से विधिक शिक्षा कार्यक्रम की निरंतरता में प्रशिक्षण की यह कार्यशाला आयोजित की जा रही है, उस भावना के अनुरूप जिला विधिक सेवा प्राधिकरण, जोधपुर तथा राज्य विधिक सेवा प्राधिकरण, राजस्थान की टीम अपना रचनात्मक योगदान देने की दिशा में अपेक्षा से कहीं ज्यादा आगे बढ़कर प्रयास करेगी।

विषय पर लीगल रिफ्रेशर कोर्स का आयोजन एक विशिष्ट घटना है जिसमें दोनों टीमों के प्रवीण सदस्यगण न्याय के सुयोग्य प्रस्तारण के लिए कार्यशाला के भागीदारों के हक में अनुचिन्तन को समर्थ होंगे। कृपया, रिफ्रेशर कोर्स के आयोजन के लिए मेरी हार्दिक बधाई तथा इसकी सफलता और राष्ट्र की बेहतरी के लिए मेरी शुभकामनाएं स्वीकार करें!

(अजय रस्तोगी)

**MESSAGE FROM MAJA DARUWALA**  
**DIRECTOR, COMMONWEALTH HUMAN RIGHTS INITIATIVE**

*Dear Advocates,*

*This long term training is a platform for learning and demonstrating on any legal issue that can ensure fair trial practices and reduce unnecessary pre-trial detention. As lawyers we are always keen to polish our cognitive/legal knowledge and argumentation skills and yet the scope for this is not always easily available. We are troubled by illegalities and malpractices we see in the court room but wonder how to address them and where to begin. As defense lawyers, we have a commitment to our clients to deliver the best services and provide the best solutions within the norms of fair trial. Yet we lack the biggest ammunition for this, which is the timely access to the most recent judgments, old and new debates within law and legal reform. We wish we had the technical expertise on specialised areas of defense such as remand, bail, evidence and cross-examination, to represent our clients more effectively, but the right mentorship is missing.*

*As advocates, we are different from a range of other professionals. Our task is not merely the delivery of a product or just any service, but to deliver relief and to provide protection to our clients against all forms of rights violation to serve the purposes of justice. But we forget sometimes that as advocates in the legal profession, we have a primary duty towards ensuring legal service and legal aid to the large number of pre-trial detainees who might suffer longer periods of detention than necessary merely because they are poor and cannot afford good lawyers or we were late in our interventions.*

*We forget to peer into the jails or make regular visits to see if there is someone there who needs our counsel. The high walls of the prison with the outside world's indifference towards inmates makes prison a breeding ground for delays and illegalities that even the prison itself would want to be rid of. It is possible that someone was unnecessarily remanded to custody or not produced physically in court merely because we were not appointed, not present, we did not argue, or did not argue well enough.*

*This course is designed to remind us of the duties that we should feel proud to perform as advocates because only we can perform it. Bringing the legal profession closer to jail reform through timely and effective use of remand and bail laws and the use of social protection laws for vulnerable prison populations will lie at the heart of this course on fair trial.*

*As officers of the court we are also expected to know and defend the 'rule of law', both procedurally and substantively. Yet the nature of law seems to escape our grasp in the practices that we come upon in the functioning of the criminal justice system as a whole. Our idealism, convictions and goodwill are constantly tested by the routine of court life, the poverty of debate, competitiveness and a mass of illegalities. In the course of being competitive with our peers we forget how we can encourage, nurture and be a resource to each other and to the many young lawyers who join the courtroom battle every day.*



*To address all this it is indispensable that we have opportunities and learning spaces to enrich our minds and be equipped towards the duties we have to perform, both individually and collectively. This training programme for legal aid lawyers is being initiated in just this spirit. It ensures your interaction with some of the best legal minds and criminal justice actors in Rajasthan and the country who will update and expand your legal knowledge. You will be guided and mentored by some of these inspiring individuals who have great commitment to 'rule of law' and deep knowledge of the legal strategies needed to protect one's client in the fullest sense.*

*On the whole, the course will draw attention to the powers and rejuvenated spirit that the legal profession, particularly legal aid lawyers, can channelize back into the criminal justice system through a revitalized knowledge of the law, vulnerabilities and prejudices and role of reasoning and argumentation; and improved skills of application of the law and effective representation for the indigent. The range of things this course can do, from legal education to changing malpractices in pre-trial detention and during trial, will be moulded by the energy and enthusiasm, interest and commitment all of you will bring to it.*



MAJA DARUWALA

## सीएचआरआई के निदेशक माया दारुवाला का संदेश

प्रिय अधिवक्तागण,

लंबी अवधि का यह प्रशिक्षण एक मंच की तरह है- ऐसा मंच जहां आप उन कानूनों मुद्दों को सीख-जान सकते हैं जिससे अदालती सुनवाई की निष्पक्षता सुनिश्चित होती है और अदालती सुनवाई-पूर्व की अनावश्यक बंदीकरण की घटनाओं में कमी आती है। एक वकील के तौर पर हमें हमेशा ही कानून के अपने ज्ञान और तर्क-कौशल को मांजने-चमकाने की जरूरत होती है लेकिन ऐसा कर पाने के अवसर अक्सर उपलब्ध नहीं होते। अदालत के भीतर जारी अनियमितताओं और कदाचार से हम परेशान रहते हैं और हताशा-भाव से सोचते हैं कि इन बातों का क्या समाधान निकाला जाय और इसकी शुरुआत कहां से की जाय। बचाव-पक्ष के वकील के रूप में हम निष्पक्ष न्याय के मानकों के भीतर रहते हुए अपने मुवक्कील को बेहतरीन सेवा और सर्वश्रेष्ठ समाधान प्रदान करने को प्रतिबद्ध हैं। लेकिन ऐसा कर दिखाने के लिए जो सबसे ज्यादा हथियार जरूरी हैं, जैसे- नवीनतम अदालती फैसलों के बारे में सामयिक जानकारी या फिर कानून और विधिक सुधार संबंधी नयी-पुरानी बहस की जानकारी, उनका हमारे पास अभाव होता है। हमारी यह भी इच्छा होती है कि रिमांड, बेल, एवीडेंस तथा क्रास-एग्जामिनेशन सरीखे बचाव से जुड़े विशिष्ट पहलुओं पर हमें तकनीकी महारत हासिल हो ताकि हम अपने मुवक्कील की पैरवी ज्यादा कारगर ढंग से कर पायें लेकिन ऐसे मामले में हमें सही मार्गदर्शन नहीं मिल पाता।

बतौर वकील हम अन्य पेशेवर लोगों से तनिक हटकर हैं। हमारा काम किसी वस्तु या किसी सेवा को प्रदान करना भर नहीं बल्कि हमारा काम अपने मुवक्कील को राहत दिलाना और इंसाफ के रास्ते पर चलते हुए अधिकार-उल्लंघन के तमाम रूपों से उसे सुरक्षा प्रदान करने का है। लेकिन हम कभी-कभी भूल जाते हैं कि एक अधिवक्ता के तौर पर कानून के पेशे में हमारा प्राथमिक कर्तव्य विचाराधीन कैदियों को विधिक सहायता और कानून की सेवा की अदायगी को सुनिश्चित करना है क्योंकि इस बात की प्रबल आशंका होती है कि गरीबी के कारण ज्यादातर विचाराधीन कैदी अच्छा वकील ना खड़ा

पाने की स्थिति में जरूरत से ज्यादा समय तक कैद भुगतने को बाध्य हों। बहुधा यह भी होता है कि हमीं लोग समय रहते हस्तक्षेप नहीं कर पाते।

हम जेलों के भीतर झांक पाना भूल जाते हैं। क्या जेल के भीतर ऐसा कोई है जिसे हमारे विधिक परामर्श की जरूरत है- यह जानने के लिए जेलों में नियमित आवाजाही जरूरी है लेकिन हम ऐसा नहीं कर पाते। जेल की ऊंची दीवारें जेल के भीतर की दुनिया को अपने दायरे में समेटकर रखती हैं, बाहर की दुनिया जेल के भीतर की दुनिया से निरपेक्ष रहती है और ऐसे में जेल एक ऐसी उपजाऊ जमीन के रूप में तब्दील हो जाती है, जहां अनियमितताओं और विलंब की बेल खूब फलती-फूलती है। अनियमितताओं और विलंब की यह बेल कुछ इस कदर बढ़ती है कि खुद जेल ही इससे छुटकारा पाना चाहता है। इस बात की बहुत आशंका रहती है कि किसी आदमी को गैरजरूरी तौर पर रिमांड के तहत हिरासत में ले लिया जाय या फिर उसे सशरीर अदालत में ना पेश किया जा सके क्योंकि हम जैसा कोई वकील उनकी पैरवी के लिए नियुक्त ना हो, अनुपस्थित रहे, बहस से चूक जाये या फिर बहस करे भी तो तथ्यों को ठीक से पेश ना कर पाये।

इस पाठ्यक्रम का निर्माण हमें उन दायित्वों की याद दिलाने के लिए किया गया है जिनका सिर्फ हमीं निर्वाह कर सकते हैं और एक वकील के रूप में इन दायित्वों का निर्वाह करते हुए हमें गर्व का बोध होना चाहिए। निष्पक्ष सुनवाई से जुड़ा यह पाठ्यक्रम रिमांड और बेल से जुड़े कानूनों के कारगर और समयानुकूल इस्तेमाल और जेल के भीतर कैदी बनकर रहने वाली निरीह आबादी के लिए सामाजिक सुरक्षा के कानूनों के उपयोग के जरिए जेल-सुधार तथा कानून के पेशे को नजदीक लाने की भावना से प्रेरित है।

अदालती अधिकारी के रूप में हमसे अपेक्षा की जाती है कि हम कानून के शासन को प्रक्रिया और अंतर्वस्तु के धरातल पर समझेंगे और उसकी रक्षा करेंगे। लेकिन, जैसे ही हम दंडपरक न्याय-व्यवस्था के कामकाजी धरातल पर उतरते हैं, कानून की प्रकृति पर हमारी पकड़ ढीली जान पड़ने लगती है। रोजमर्रा की अदालती प्रक्रियाओं, बहसों के खोखलेपन, प्रतिस्पर्धा और भारी अनियमितताओं के बीच हमारे आदर्शवाद, प्रतिबद्धता और जन-कल्याण की भावना की जैसे परीक्षा होने लगती है। अपने साथी वकीलों के बीच होड़ में बने रहने की कोशिशों के बीच यह बात भूल जाती है कि हम एक दूसरे को

बढ़ावा दे सकते हैं, परस्पर पूरक साबित हो सकते हैं और एक-दूसरे के लिए तथा अदालती परिसर में रोजमर्रा की कानूनी लड़ाई के लिए दाखिल होने वाले नये वकीलों के लिए संसाधन साबित हो सकते हैं।

इन सारी बातों के समाधान के लिए बहुत जरूरी है कि हमें सीखने-जानने का अवसर और मंच मिले, जहां हम अपने मन-मस्तिष्क को समृद्ध बनायें और व्यक्तिगत तथा सामूहिक रूप से हमें जो जिम्मेदारियां निभानी हैं, उनके लिए अपने को तैयार कर सकें। विधिक सहायता प्रदान करने वाले वकीलों का प्रशिक्षण-कार्यक्रम बस इसी भावना से शुरू किया गया है। इस प्रशिक्षण-कार्यक्रम में भागीदारी करते हुए आपकी भेंट राजस्थान तथा देश के अन्य हिस्सों से आये श्रेष्ठ विधिवेत्ताओं तथा दंडपरक न्याय-व्यवस्था की अहम हस्तियों से होगी जो कानून के आपके ज्ञान को अद्यतन करते हुए उसका विस्तार करेंगे। 'विधि के शासन' के प्रति अत्यंत निष्ठावान तथा मुवक्कील के बचाव के लिए जरूरी कानूनी नुक्तों के गहरे जानकार ऐसे कुछ प्रेरणास्पद व्यक्ति प्रशिक्षण के दौरान आपका मार्ग-दर्शन करेंगे।

साररूप में कहें तो यह पाठ्यक्रम कानून के पेशे, खासकर विधिक सहायता को नियुक्त वकीलों का ध्यान उस ताकत और नव-ऊर्जस्वी कार्य-भावना की तरफ खींचने की कोशिश है जिसको दंडपरक न्याय-व्यवस्था के भीतर कानून की जीवंत जानकारी, कमजोरियों और पूर्वाग्रहों की पहचान, तर्क-कौशल और तर्क-क्षमता के इस्तेमाल, कानून के कारगर उपयोग की युक्तियों तथा गरीब-जन की बेहतर नुमाइंदगी के जरिए जगाया जा सकता है। यह पाठ्यक्रम विधिक शिक्षा से लेकर सुनवाई-पूर्व की नजरबंदी तथा सुनवाई के क्रम में होने वाले कदाचार को रोकने के मामले में जो कुछ कर पाने में मददगार होगा उस पर आपकी उस ऊर्जा, उत्साह, रुचि और प्रतिबद्धता की छाप होगी जिसके साथ आप इस प्रशिक्षण-कार्यक्रम में शिरकत करेंगे।



माया दारुवाला



# CONTENTS

<b>I. OVERVIEW SECTION</b>	
Introducing the Refresher Course on Cr.P.C. <i>by Jaishree Suryanarayanan</i>	<b>17</b>
Access to Justice (An Inmate Perspective) <i>by R.K. Saxena</i>	<b>49</b>
<b>II. ARREST</b>	
<b>Statutory provisions</b>	<b>131</b>
<b>Case law summaries</b>	<b>149</b>
Khatri & Ors. v. State of Bihar & Ors	
Hussainara Khatoon & Ors. v. Home Secretary, Bihar, Patna	
Sheela Barse v. State of Maharashtra	
Joginder Kumar v. State of U.P.	
D. K. Basu v. State of West Bengal	
Nandini Satpathy v. P.L. Dani	
Citizens for Democracy v. State of Assam and Ors.	
Nilabati Behera v. State of Orissa and Ors.	
State of M.P. v. Shyamsunder Trivedi and Ors.	
State of Maharashtra v. Christian Community Welfare Council of India and Anr.	
Jawahar Singh v. State Of Rajasthan	
Moti Bai v. The State	
Master Salim Ikramuddin Ansari and Maharukh Adenwalla v. Officer-in-charge	

### III. REMAND

<b>Statutory provisions</b>	<b>203</b>
<b>Case law summaries</b>	<b>207</b>
Shrawan Waman Nade and Ors. v. State of Maharashtra	
State of Gujarat v. Swami Amar Jyoti Shyam	
Chiguluri Krishna Rao, President, the Bezawada Bar Association v. Station House Officer, II Town Police Station and Ors.	
Assistant Collector of Customs R&I (P.), Bombay v. Shankar Govardhan Mohite and Ors.	
Muman Kamal Sabedi Patel and Ors. v. State of Gujarat	
G.K.Moopanar v. State of Tamil Nadu	
Elumalai v. State of Tamil Nadu, represented by the Inspector of Police	
Chaganti Satyanarayan & Ors. v. State of Andhra Pradesh	
M.A. Dharman, Son of Appukuttan v. State of Andhra Pradesh	
Aslam Babalal Desai v. State of Maharashtra	
Central Bureau of Investigation v. Anupam J. Kulkarni	
Uday Mohanlal Acharya v. State of Maharashtra	
Rajeev Chaudhary v. State (N.C.T.) of Delhi	
Hira Lal v. State of Rajasthan	
Khinvdan v. State of Rajasthan	
<b>IV. WHAT THE LAW COMMISSION AND OTHER COMMISSIONS SAY</b> <b>(Extracts of Select Reports of the Law Commission of India)</b>	
78 <sup>th</sup> Law Commission Report	<b>281</b>
152 <sup>nd</sup> Law Commission Report	<b>284</b>
177 <sup>th</sup> Law Commission Report	<b>289</b>
<b>Selected Recommendations of the National Police Commission</b>	<b>296</b>
<b>NHRC Guidelines on Arrest</b>	<b>308</b>
<b>V. SELF ASSESSMENT QUESTIONS</b>	

## fo"ki; LkPkh

I. सारांश	
राजस्थान के निःशुल्क विधिक सहायता वकीलों के लिए मुकदमा पूर्व न्याय पर रिफ्रेशर dks l dk i fjp; , Tk; Jh l # Zkkjk; UKUK	18
न्याय तक पहुँच: कानूनी सशक्तिकरण (एक बंदी के दृष्टिकोण   \$, vkj-ds/ D/ uk	50
II. fXkj ¶Rkkj h	
oks'kkfUkd Áko/kkUK	131
U; kf; d Qs Yk'a dk l kj	150
[k=h o vU; cuke fcgkj jkT; o vU;	
gd \$ vkjk [kkn u o vU; cuke xg l fpOk] fcgkj jkT; ] i Vuk	
शीला बरसे बनाम महाराष्ट्र राज्य	
जोगिन्दर कुमार बनाम उत्तर प्रदेश राज्य	
डी के बासु बनाम पश्चिम बंगाल	
UkafnUkh l Ri Fkh cuke i h , Yk nkUkh	
fl VhTkUkŁk Qk¶ Mse"daLkh cuke LVSV vkWQ vLke , M vnLkZ	
JheRkh uhYkkcRkh cs°jk ; kuh YkfYkRk cuke mMhLkk jkT; , Oka vU;	
, Ek lkh jkT; cuke ' ; kEkLk¶j f=onh , Oka vU;	
egkj k"V° jkT; cuke Hkkj Rkh; bZ kbZ l epk; dY; k.k i fj "kn v¶ vU;	
tok°j fl p cuke jktLFkkUK jkT;	
Ek"rh ckA cuke jkT;	
EkkLVj LkYkhEk bdkjed huk va kjh v¶ egjg¶k , Muokyk cuke AOkjh vfEkd kjh	

### III. fjekM

0kS/kkfUkd Áko/kkUk

203

U; kf; d QŠ Yk"á dk I kj

208

Jo.k okeu ukMs , oa vU; cuke egkjK"Vª j kT;

गुजरात राज्य बनाम स्वामी अमर ज्योति ध्याम

fpxygh d".kk j ko cuke LVš ku gkml vkfQI j II VkmU

I hek 'kqYd I gk; d dyDVj vkj , .M vkbz %i h-½] cEcbz cuke 'kadj xko/kU ekfgrs , oa vU;

epeu deky I cnh i Vy , oa vU; cuke xqtjkr j kT;

th- ds ei ukj cuke rfeyukMq j kT;

, ypeykbz cuke rfeyukMq j kT;

NxUrh I R; ukjk; .k rFkk vU; cuke vku/z i ns'k j kT;

, e , /eU] I q k % vli pU/Vu cuke] vku/i ns'k j kT;

vl ye ckckyky ns kbz cuke egkjK"Vª j kT;

tk;p C; ij ks cuke vuq e ts dgyd.khZ

mn; e"guiky vkpkij; cuke egkjK"Vª j kT;

jkthOk p%kj h cuke fnYYkh (, Uk Lkh Vh) j kT;

ghjk yky cuke jktLFkkUk j kT;

f[kMOKkUk cuke jktLFkkUk j kT;

### IV. D; k d°rs °Š fOkf/k vk; %k vGj vU; vk; %k

78<sup>th</sup> fOkf/k vk; %k dh fji %V

281

152<sup>nd</sup> fOkf/k vk; %k dh fji %V

284

177<sup>th</sup> fOkf/k vk; %k dh fji %V

289

राष्ट्रीय पुलिस आयोग की संस्तुतियां

296

राष्ट्रीय मानव अधिकार आयोग की दिशा निर्देश

308

### V. LOk-मूल्यांकन के लिए प्रश्न



## Section I: OVERVIEW

हकक I: सारांश

**Introducing the Refresher Course on Pre-trial Justice  
for Legal Aid Lawyers in Rajasthan  
- Jaishree Suryanarayanan**

**I. Introduction to Pre-trial Justice: The Context**

*Raju, a minor is engaged by a trader to unload stolen iron rods. He is arrested by the police even though he was unaware that he was unloading stolen property.*

*Bela has been forced into prostitution and is arrested during a raid.*

*Meena, a widow who lives on the pavement and survives by begging at the Hanuman temple, Connaught Place, Delhi is arrested by the police and taken to the beggar's court.*

*Salim, a college student and a member of an Islamic organisation is arrested by the police on charges of terrorism.*

*Hari, a migrant labourer is arrested by the police on charges of theft.*

In all the above instances, the accused would in all probability undergo prolonged pre-trial detention.

In the enforcement of criminal law, the might of the state is pitted against the individual accused. Illiteracy, social status, impoverishment, complex legal procedures, high cost of engaging a lawyer and corruption converge to make it very difficult for a person who is arrested and his/her family to assert the right to liberty, and to avoid detention at the pre-trial stage and during pendency of the trial.

The prevailing inequalities make passage through the criminal justice system an extremely unequal experience as a person with the necessary financial resources can, through effective legal representation, avoid pre-trial detention.

Despite all the restraints placed on the police, the power of arrest is often abused and is a big source of corruption. False implications and wrongful arrests are very common resulting in unnecessary pre-trial detention. The National Police Commission has said that nearly 60% of arrests are either unnecessary or unjustified.

A majority of arrests are connected with very minor prosecution and cannot therefore be regarded as necessary for crime prevention. This has disastrous ramifications for the human rights of persons, especially the poor, accused of petty offences or falsely implicated on unfounded charges. They have to undergo prolonged pre-trial detention, especially when they are unable to furnish bail.

*(i) Inadequate use of safeguards for preventing unnecessary pre-trial detention*

An arrested person has certain fundamental rights under our Constitution, which are also statutorily recognized under the Code. The power to arrest is subject to the constitutional mandate of personal liberty being paramount which cannot be taken away except in accordance with procedure established by law<sup>1</sup> and prescriptions in the Code.<sup>2</sup>

The right to be informed of the grounds of arrest,<sup>3</sup> the right to consult a legal practitioner of her/his choice<sup>4</sup> and the right to legal aid at all stages provide safeguards that are essential to enable an arrested person to clear misconceptions if any and to defend herself/himself.

Further, pronouncements by the higher judiciary has contributed immensely to reduce the rigors of the power to arrest of the police by prescribing standards and procedures and by evolving limitations on this exercise of this power by the police in an attempt to balance the individual's interest vis-à-vis the societal interest of crime prevention.<sup>5</sup>

When any investigation cannot be completed in 24 hours and the accusation is well-founded, the police officer is required to send a copy of the entries in the diary relating to the case along with the accused to the nearest magistrate. This has been provided because arrest by police without application of judicial mind by a magistrate is undesirable.

---

<sup>1</sup> Article 21, Constitution of India

<sup>2</sup> Chapter V of the Code, specifically, Sections 41, 41A, 41B, 41C, 41D, 42, 43, 44, 46, 49, 50A, 54, 55A, 56, 57, 58, 60A

<sup>3</sup> *ibid*

<sup>4</sup> *ibid*

<sup>5</sup> See for limitations on arresting powers - *Joginder Kumar v State of UP*, AIR 1984 SC 1349; *DK Basu v State of West Bengal*, AIR 1997 SC 610; *Nilabati Behera v State of Orissa*, (1993) 2SCC 746; See for duty of police to intimate legal aid committee - *Sheela Barse v State of Maharashtra*, AIR 1983 SC 378

Our constitution makers were anxious to make this safeguard an integral part of fundamental rights. The right to be produced before the nearest magistrate within 24 hours from the time of arrest, excluding the time taken to travel to the nearest magistrate, is a fundamental right of an accused under Article 22.

Dr. B.R. Ambedkar's statement on the insertion of Article 15A (which corresponds to Article 22) during the Constituent Assembly Debates is relevant–

*"Article 15A merely lifts from the provisions of the CrPC two of the most fundamental principles which every civilized country follows as principles of international justice.... Making a fundamental change because what we are doing by the introduction of A 15 A is to put a limitation upon the authority both of Parliament as well as of the Provincial legislatures not to abrogate the two provisions because they are now introduced in our Constitution itself."*<sup>6</sup>

Production within 24 hours ensures the immediate application of a judicial mind to the legal authority of the person making the arrest and the regularity of the procedure adopted.<sup>7</sup> The importance of remand proceedings under Section 167 when the accused person is produced for the first time before the magistrate lies in the fact that this is the earliest stage after an accused person is taken in to police custody that allows for judicial scrutiny of the arrest.

Continued detention without the accused being remanded by a magistrate after application of judicial mind is illegal. Emphasizing the importance of remand proceedings, P.N. Bhagawati, J in the Bhagalpur blinding case,<sup>8</sup> held that,

*"Provision inhibiting detention without remand is a very healthy provision. It enables magistrates to keep a check over the police investigation and it is necessary that the magistrate should try to enforce this requirement and where it is found to be disobeyed, come down heavily upon the police."*

The 'remand and bail' provisions in the Code are meant to minimize pre-trial detention, thereby ensuring pre-trial justice.

---

<sup>6</sup> parliamentofindia.nic.in

<sup>7</sup> State of Punjab v Ajaib Singh, 1953 CrLJ 180;

<sup>8</sup> Khatri (II) v State of Bihar, 1981 CriLJ 470: (1981) 1 SCC 627



### *(i) Reality picture*

In reality, prolonged pre-trial detention has become the norm, with the accused not even being produced at the end of the maximum statutory period during which remand is permissible due to lack of police escort! The current practice wherein the magistrate does not ask any questions during the first appearance of the accused and grants remand to either custody without a proper perusal of the documents before him/her and without effective legal representation of the accused destroys the pillars of fair trial.

The term 'judicial custody' implies that the magistrate is the custodian of the accused who is sent to prison, and therefore, the onus is on the magistrate to ensure that the accused is produced before the court with minimum delay and that pre-trial detention is minimized so that individual liberty is not jeopardised. The magistrate also has to ensure the right to fair and speedy trial and should question agencies responsible for obstructing the same.

Mechanical remand during first production and subsequent production results in unnecessary pre-trial detention, which, not only negates a fair trial, but also has attendant administrative consequences, such as over-crowding in prisons. This malpractice is so routine that it is not considered a malpractice any more. The disuse of remand provisions as they are intended to be used have led to unnecessary pre-trial detention of accused persons.

Further, arrests which are on unfounded grounds will result in ineffective and improper investigation. This will enable the real offender to go unpunished, thereby denying justice to the victim. Erosion in the credibility of the criminal justice system can be a dangerous fallout of this denial of justice. Any legal system needs to be responsive to the prevailing social and economic context in order to earn credibility, legitimacy and the respect of its people.

Assisting towards this, the Refresher Course on Pre-trial Justice will dwell on all the safeguards in the Code that will equip a lawyer to resist unnecessary remand to either custody and to argue for application of liberal bail and bond practices, thereby contributing to pre-trial justice.

## II. Significance of Legal Aid Safeguard in Pre-trial Justice

### *(i) Legal Aid as a mechanism for equal access to justice*

The importance of early access to a lawyer to ensure that the rights of an accused are not compromised cannot be emphasised enough. Every accused has the right to be represented by a lawyer of his/her choice under Article 22 (1) of our Constitution.

In our socio-economic context, effective and quality legal aid and services is a necessity for ensuring a more holistic ideal of access to justice. Various expert committees appointed by the central and state governments have deliberated upon the scope of the right to legal aid and its implementation and delivery mechanisms.

These Expert Committees include:

- the committee appointed by the Government of Gujarat in 1971 under the chairmanship of Justice P.N. Bhagwati
- the Expert Committee on Legal Aid appointed in 1973<sup>9</sup> and
- the Juridicare Committee appointed in 1977<sup>10</sup>

The 1977 Juridicare Committee was appointed with a view for establishing an adequate legal service programme in all the states on a uniform basis. This culminated in the appointment of the Committee for Implementing Legal Aid Schemes (CILAS), again by the government of India in 1980.

All these committees recognised the right to legal aid as a fundamental right which has to be guaranteed by the State to ensure equal access to justice.

Provision of legal aid was conceptualised as a mechanism to reduce the rigors of the criminal justice system and to ensure that all have equal access to justice through early and effective legal representation.

---

<sup>9</sup> This committee was appointed by the Ministry of Law and Justice, Government of India under the chairmanship of Justice V.R. Krishna Iyer and submitted the report, *Processual Justice to the People*.

<sup>10</sup> This committee was appointed by the Government of India and consisted of Justices P.N. Bhagwati and V.R. Krishna Iyer and submitted the *Report on National Juridicare: Equal Justice – Social Justice*.

Bringing out the linkages between legal aid and problems of poverty in our socio-economic context, the committees said that:

- preventive and strategic legal aid is necessary to ensure social justice
- legal aid should also include law and institutional reform
- issues of law and poverty need to be addressed

It was recognised by these committees that:

- legal aid should be made available at all stages in the criminal justice system as required by the fair trial standard – on arrest, during investigation, at trial and post trial
- Regular arrangement should be made for legal aid and advice to inmates of prisons and other custodial institutions.

*(ii) Need to institutionalize early access to legal aid*

The right to legal aid at the State's expense was introduced as a directive principle of state policy by a constitutional amendment in 1976. Article 39A makes it obligatory for the State to secure equal justice to all and provide free legal aid by appropriate laws or schemes.

Though the right to legal aid is an unenforceable directive principle, our judiciary has responded to the needs of the poor through creative interpretation of the right to equality and the right to life (Articles 14 and 21) and have made the right to legal aid a fundamental right by reading it into the right to life.<sup>11</sup>

The Supreme Court has held that:

- the right to legal aid is available not only during trial but also at the stage of remand during first production and

---

<sup>11</sup> M.H. Hoskot v State of Maharashtra, AIR 1978 SC 1548

- it is the duty of the magistrate to inform the accused person of this right and provide the accused with a legal aid lawyer.<sup>12</sup>

Laying down a mechanism to ensure early legal representation at the state's expense, the Supreme Court has imposed a duty on the police to intimate the concerned legal aid committee.<sup>13</sup>

Institutionalizing this mechanism will ensure that lawyers appointed by the concerned Legal Services Authority have access to an indigent accused at the police station itself. Thus a legal aid lawyer can represent an accused at the time of first production and argue against unnecessary remand to either custody.

### *The Legal Services Authority Act*

The Legal Services Authority Act (LSAA) was enacted in 1987, but was enforced only from 1996. The Act was enacted to constitute legal services authorities to provide:

- free legal services to the weaker sections and
- to organise *lok adalats*.

The Act prescribes:

- income criteria
- list of persons entitled to legal aid
- a hierarchical structure for the delivery of legal services

---

<sup>12</sup> Khatri (II) v State of Bihar, 1981 CriLJ 470: (1981) 1 SCC 627

<sup>13</sup> Sheela Barse v State of Maharashtra, AIR 1983 SC 378



### **Beneficiaries under the Act**

The Act lists out categories of persons who are entitled to legal services, irrespective of their income, namely:

- a member of a Scheduled Caste or Scheduled Tribe;
- a victim of trafficking in human beings or a beggar;
- a woman or a child;
- a person with disability
- a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial dispute; or
- an industrial workman; or
- a person in custody, including custody in a protective home, or in a juvenile home, or in a psychiatric hospital or psychiatric nursing home; or

Apart from the above categories, any person who satisfies the prescribed income criteria will also be entitled to legal services under the Act.

Legal services authorities at national, state, district and *taluk* levels have been constituted under the Act. The Supreme Court and High Courts have their own legal aid committees.

While the National Legal Services Authority (NLSA) can formulate legal aid schemes for the entire country, the State Legal Services Authorities (SLSA) also frame model schemes for their respective state. The SLSA and the District Legal Services Authorities also conduct legal aid clinics in prisons.

The state of Rajasthan has initiated a Model Legal Aid Scheme for Remand and Bail wherein lawyers are appointed by the District Legal Services Authority to provide legal aid in matters of 'Remand and Bail'. Referred to as 'Remand and Bail' lawyers, they are appointed for a period of 6 months, at the end of which period, fresh appointments are made. Apart from this, lawyers are appointed to a panel as retainers under a NLSA scheme for providing legal aid during the trial of criminal cases.

### **III. Organic Link between Effective Legal Representation and Role of Magistrate under Section 167**

#### ***(i) Arrest, Remand & First Production:***

Effective legal representation coupled with an alert magistracy will pave the way for in equal access to pre-trial justice to all accused persons, especially those who are extremely vulnerable to prolonged detention owing to their impoverishment, gender, religion, caste, age and disability.

During a workshop on remand conducted by CHRI for remand and bail lawyers in Jodhpur,<sup>14</sup> the common experience amongst the lawyers present was that they do not have access to any documents at the stage of first production nor do they have any role at that stage. Remand to either police custody or judicial custody without any intervention by the defense lawyer was considered to be 'normal'.

Invariably the impoverished accused, who is provided a legal aid lawyer, will either not be represented at the stage of first production, or, if represented, the defense lawyer will not be in a position to oppose the remand effectively in the absence of any documents or consultation with the accused or his/her family. An arrested person can be detained in police custody up to 24 hours, during which period the police has to investigate in to the alleged offence.

Section 167 of the Code empowers a magistrate to pass an order of remand detaining the accused to either police or judicial custody. This is meant to act as a check on unjustified and illegal arrest, thereby preventing unnecessary pre-trial detention.

At the time of first production of the accused, the effective representation of the indigent accused by a legal aid lawyer will ensure that constitutional and statutory safeguards pertaining to the rights of an accused are complied with.

---

<sup>14</sup> The workshop was held on 31 January, 2013 and was part of a series of workshops conducted by CHRI in Jodhpur for legal aid and private lawyers.

When an accused is first produced before the magistrate, while there is a positive obligation placed on the magistrate to ensure compliance of all safeguards, a defense lawyer too has the duty towards his/her client to ensure that the client's rights are protected.

A defense lawyer who has had the opportunity to meet and interview his/her client and family members soon after arrest in the police station can prepare well, and through effective argumentation, oppose unnecessary remand during first production itself, instead of waiting till the chargesheet is filed!

On first production, if the magistrate is satisfied that the grounds of arrest are unfounded and without any basis, he has the power to discharge the accused. Section 59 of the Code provides that once the accused is arrested by the police officer, he shall not be discharged except on his own bond, or on bail, or under a special order. If the arrest and detention of the accused cannot be said to be illegal, he can be discharged either on his own bond, or on bail. However, if the arrest is found to be illegal, there would arise no question of releasing the accused on his own bond or on bail and the only proper order would be an order of discharge, i.e. the order of his release by passing of the special order, as contemplated in the latter part of Section 59.<sup>15</sup>

There are enough jurisprudential bases to suggest that the power of a magistrate to remand an accused person under Section 167 is to be exercised after application of the judicial mind. This requires that remand to either custody on first production and to judicial custody subsequently can be given only when the magistrate concludes that such remand is necessary after perusing the entries in the case diary and other material before him.

*(i) Recent Legislative Amendments to the Provisions Relating to Arrest*

The Course will approach the recent legislative amendments to the Cr.P.C. and their import and implications for interventions in the area of early and effective access to counsel to prevent unnecessary arrest and detention.

---

<sup>15</sup> Assistant Collector of Customs v Shankar Govardhan Mohite 1987 (3) BomCR 708: 1988 (15) ECC 141

Significant amendments were made to the 1973 Code in 2008. The changes to the Code are based on jurisprudence evolved by the higher judiciary on pre-arrest and post-arrest safeguards. Now, in bailable cases, a notice of appearance has to be first issued to the accused and the police have to give reasons for an arrest (Section 41 A).

Discussing the import of the amended provisions, a DB of the Allahabad High Court<sup>16</sup> said that normally where an accused has been named in the FIR, and the offence is punishable with up to 7 years imprisonment, the arrest of the accused may not be necessary at the initial stage and her/his attendance may be secured by issuing a notice to her/him to appear before the police officer under Section 41 A of the Code.

In such cases it would be advisable to arrest the accused only after sufficient evidence of her/his involvement in the crime has been collected and the charge sheet needs to be submitted.

The police officer has to record reasons for arresting the accused in a particular case punishable with imprisonment with up to 7 years in a bona fide and honest manner. The Court added,

*“The police officer should not mechanically and routinely write down in the case diary that there is likelihood of the accused running away, or presume that the accused would not respond to the notice to appear under Section 41 A, or that s/he would tamper with the evidence, unless there are strong reasons with concrete material for taking such a view, and this satisfaction along with the concrete reasons for taking the view need to be spelt out clearly in the case diary before the accused is arrested.”*

#### ***(i) Need for Applying Liberal Bail and Bond Practices***

In *Hussainara Khatoon v State of Bihar*,<sup>17</sup> the Supreme Court found that thousands of undertrial prisoners charged of bailable offences were in prison because they were not aware of their right to be released on bail, and because of poverty could not engage a lawyer.

Justice Bhagwati observed that bail provision as provided in our criminal justice administration is anti-poor and denies justice to the poor by keeping them in pre-trial detention for many years and therefore away from their homes.

---

<sup>16</sup> Shaikin v State 2012(134)FLR436

<sup>17</sup> (1980) 1 SCC 98.

A legal aid lawyer will also need to use legal provisions and case law to get the accused released on personal bond to overcome the unequal operation of the law in respect of bail. As the Supreme Court held in *Moti Ram v State of Uttar Pradesh*,<sup>18</sup> the pre-requisite of the surety amounted to a denial of the right of the accused to be released on bail and bail covers release on one's own bond without surety as well. But in practice insistence on local sureties determine whether the indigent accused gets 'bail or jail'.

The time limit of 60/90 days when the accused can be remanded was fixed to put pressure on the police to complete the investigation at the earliest. The failure of the police to do so and file the charge sheet within the prescribed time of 60/90 days will entitle the accused to 'compulsory bail'. An alert lawyer can avail of this provision for 'default bail' and ensure that the accused is not subjected to prolonged pre-trial detention.

### **What can a defense lawyer do towards getting pre-trial justice for the indigent client?**

- ✚ If Section 41 A is applicable, then oppose the arrest and insist on the right of your client to be issued a notice of appearance instead of being arrested (Section 41A)
- ✚ Ascertain from the accused person whether s/he has been informed about the grounds of arrest
- ✚ Ask for a copy of the FIR
- ✚ Ascertain whether arrest memo has been scrutinized by the magistrate (Section 41 B)
- ✚ Apply for bail where possible; ask for release of your client on personal bond with or without surety if s/he is granted bail but is unable to furnish the same
- ✚ Insist on being present during interrogation (Section 41 D)

---

<sup>18</sup> AIR 1978 SC 1594.

Ensure that the police inform any friend, relative or any other person nominated by your client about the arrest and the place of detention (Section 50 A)

- ❖ Ensure that your client is medically examined by a medical officer/registered medical practitioner soon after arrest (female medical practitioner in the case of a female accused) (Section 54)
- ❖ Insist on a medical examination in case your client has any complaint of torture or maltreatment in police custody
- ❖ Ensure that your client is produced before a competent magistrate within 24 hours (excluding the time taken in the journey to the magistrate) (Section 56 read with Section 57)
- ❖ During first production, use Section 59 to argue for discharge of your client in case the grounds of arrest are clearly unfounded
- ❖ Ask for a copy of the remand application filed by the police and argue effectively during first production opposing remand to either custody and ensure that no remand order is passed without the magistrate scrutinizing the case diary and applying his judicial mind to it
- ❖ Be alert and use the provisions for 'default bail' if the chargesheet is not filed within the prescribed period of 60/90 days

## About the Refresher Course

The *Continuing Legal Education Programme On Pre-trial Justice for Legal Aid Lawyers in Rajasthan* will emphasize the role of Remand and Bail Lawyers and Panel Lawyers appointed by the District Legal Services Authority, Jodhpur, in formulating legal and other strategic solutions against unnecessary detention at every critical juncture of the pre-trial stage, from detention and arrest to chargesheet, and subsequently, trial.

The course is designed to help the participating lawyers to identify illegalities in the system that are borne out of systemic malpractices at the levels of the police station, court room and prison, methodologies of court craft and other socio legal practices.

The overarching aim of this course is to develop an understanding of the significance of rule of law, locate the maladies of the system institutionally and emphasize the need for reforms of the criminal justice system. It will aim at a better understanding of the organic link between police reform, jail reform, legal aid reform and judicial reforms for meeting the norms of rule of law.

Effective use of remand and bail laws to minimize pre-trial detention, especially for vulnerable populations, will be the thrust of this course. The accused will be studied within a dual framework of vulnerability and rights, with equal emphasis on the inhuman conditions of detention and their socio-economic impacts as well as the rights to be protected while in detention.

Reiterating the core principles of legal aid, ethics of the advocate's profession and lawyer-client relationship, the course attempts to refine courtroom practices towards reaching the high goal of rule of law.

The expected outcomes of this course are:

- Ensuring early access to counsel: preventing illegal police/judicial custody; No suspect/accused to go undefended in Jodhpur
- Ensuring effective representation: strategizing effective opposition to remand and the best use of release provisions on bail and bond in Jodhpur
- Strengthening public defense in the field of pre-trial detention in Jodhpur.
- Building sensitization towards the impacts of illegal detention and sharpening skills and methods of intervention to change malpractices.

### *How the course will be conducted*

The course will be conducted through a series of workshops and exposures to places of custody - police station and prisons, record room and vulnerable communities. Each workshop will address one or more aspects of the criminal justice system that impacts on fair trial and the rights of the accused will be seen in the context of vulnerabilities and prevailing prejudices. Each workshop will focus on enhancing legal and jurisprudential knowledge, legal skills for strategizing and argumentation, improving lawyer -client relationship and defense preparedness.

The broad areas that will be covered in the course are:

- Refresher Workshop on Cr.P.C
- Case Analysis
- Legal Strategies, Legal Aid & Pro-Bono Lawyering
- New Developments in Evidence

- Law, Justice & Everything in Between
- Rule of Law and Reform of the Criminal Justice System

Readers on each of the above themes comprising select articles, statutory provisions, case laws, extracts of important reports of the Law Commission and other Commissions will be given to the participating lawyers. This is to enable them to refamiliarise themselves with the legal knowledge required for developing skills of opposing unnecessary custody, argumentation, cross-examination and evidence-building.

### **Introducing Workshop No. 1**

The first workshop in this series will provide an overview of criminal procedure with focus on elements of fair trial and provisions intended at minimizing pre-trial detention specifically. It is designed as a refresher module on the provisions of the Code pertaining specifically to arrest, remand, bail and chargesheet. The thrust will be on knowledge and skills required for providing effective representation at the pre-trial stage, both in the *thana* and court, thereby minimizing unnecessary detention.

This workshop aims to achieve the following objectives:

- Better knowledge and internalization of the present day needs and values required to understand and uphold the rule of law principle, constitutional values, legislative intent and the elements of fair trial in order to prevent unnecessary detention
- Better assessment of the illegalities in pre-trial and trial practices
- Better appreciation of individual liberty and effective application of remand and bail procedures
- Understanding the arrangement of powers and duties of various stakeholders of the CJS and how the Code sought to address the possible misuse of powers
- Better understanding of the discretionary powers of the actors of the CJS, their records and reports and interpretation of the same

The workshop will also explore the gap between legislative intent and local practices and will facilitate the listing of specific illegalities, particularly at the pre-trial level, that the lawyers will be able to change through systematic and consistent application of procedural and jurisprudential knowledge during and after the course.



## ACCESS TO JUSTICE: LEGAL EMPOWERMENT

*(An inmate perspective)*

MR. R.K. SAXENA

### **Rationale**

The plight of vulnerable groups in incarceration

The strongest claim to an effective access to justice emanates from those who have lost their right to free movement and are incarcerated through judicial due process, which, from the point of view of social justice often becomes an 'undue process' for the poor, the illiterate and the unconnected rural lot. Those who have the 'ability' to obtain and afford a bail through any of the several legal or illegal door-ways opening in our present criminal justice system, do retain their freedom even while defending themselves against criminal charges in law courts.

Approximately 2.5 lac people awaiting trial from within prison walls form a special disadvantaged group because of their lack of free access to institutions and instruments of justice. Of the total number of 358.37 thousand inmates (both convicts and Undertrials) lodged in prisons of the country at the end of the year 2005, 77% were either illiterate or semiliterate. As many as 14 thousand women were confined in prisons which formed 4% of the total prison population. There is no statistics to testify to the economic status of those who fail to procure their liberty through courts of law either during trial or during pendency of appeals, but an actual survey will show that almost 95% of these inmates belong to poor classes or to lower middle income groups.

Increasing number of Undertrial prisoners in jails of India is a serious problem that needs immediate attention. The eighth decade (71-80) of the past century witnessed a sudden spurt in the admission of Undertrial prisoners in the country. It rose from about 6 lacs in 1970 to more than 10 lacs in 1980 registering an increase of 62%. The daily average population of Undertrial prisoners also rose substantially from 42.5 thousand to 77.5 thousand. Part of it could be attributed to the rise in crime, but slow investigation by prosecution agencies, conservative approach on the grant of bail and delayed disposal of cases by the judiciary were other important factors contributing to this situation.

Ever since, the ratio of convicts to Undertrial prisoners in the country has stayed at 1::2 and in some states prisoners facing enquiry, investigation or trial outnumber convicts by three (UP : 13284-43078), four (WB : 3848-14017) or even seven times (Bihar : 5609-40019).<sup>19</sup>

The problem of swelling Undertrial population and the resultant human suffering needs to be addressed with a multi-pronged strategy :

- Faster investigations by prosecution machinery;
- An alert prison administration,
- Availability of free legal aid and legal counseling,
- Judicious use of the law relating to bail, bond and probation, and
- Stringent application of the apex court rulings in respect of Undertrial and appellant prisoners.

Although the judiciary is the custodian of justice, there are doubtless other agencies and players whose roles are not merely supplementary but key in the administration of justice. They include the Police, Prisons, Prosecution, the Bar, the State Legal Services Authority, the offender or the suspect, complainants and also the public. Some of them are constitutional or statutory while other are individual or private entities coming merely when the process of justice is in place. But the important thing is that their collective role makes up what is known as the criminal justice system. None of them can alone, effectively administer criminal justice, without the support, coordination and cooperation from the others.

Let us, therefore, briefly discuss the role that some of these agencies can play in mitigating the problem of pre-trial detention.

---

<sup>19</sup> Prison Statistics India – 2005, National Crime Records Bureau, Ministry of Home Affairs, Government of India – pp 35-36.

## The Police and the Prosecution

Police, by law, do not have punitive powers over suspects. As a conduit in the process of the administration of justice, the police are required to produce the suspect before a court of law as soon as possible. When presenting the suspect before a Magistrate the police are expected to have put together all evidence relevant to the case. The manner in which a suspect is handled by the police during these first stages of the criminal justice process is crucial as it tells the suspect what kind of justice to expect. But the treatment meted out to the poor, the illiterate and to women at the hands of police and prosecution during investigation and enquiry, is by and large so unworthy of human dignity that it tends to become a punishment without trial.

The police and prosecution will have to bring about an attitudinal change in favour of faster investigation. These departments should augment their resources both financial and human to cope with the rise in crime. In third Hussainara Khatoon case (1980) 1 SCC 98 Justice Bhagawati observed:

*The state cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The state is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the state. It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, ....*

In our courts all over the country today, blame is placed on judicial officers for backlog of and pending criminal cases. These cases are pending, not for reasons attributable to the courts alone, but largely for reasons attributable to investigators, prosecutors and lawyers in defended cases. There are many murder cases, for example, pending in the subordinate courts awaiting committal to senior courts because committal records are not ready.

The truth of the matter is that there are instances where such cases have been pending on such excuses for periods even as long as one year. There are, equally, many cases in the subordinate courts which cannot proceed to full trial because the prosecution is not ready for lack of witness, police files, exhibits, or even for lack of sufficient number of state prosecutors.

This allusion to shortcomings is not an attempt at criticism but to identify areas of weakness in criminal justice administration system so that remedial measures can be taken to deal with the problem of rising undertrial population in prisons.

Police need to understand that all its efforts of investigation are futile if it does not enjoy cooperation and coordination with the prosecution, and equally well, the vice versa. Both need to work in close association with each other. It is also necessary to take strict action against persons connected with the system for their failure to perform their prescribed role according to the requirements of law. It must be ensured that derailment or delay in proceedings resulting from *mala fide* intention, negligence or ignorance must be duly and promptly punished. The departments must evolve mechanisms of control and monitoring to ensure responsibility for lapses in performance of the role not only by government functionaries but also others such as witnesses and advocates vitiating the process of justice.

All those associated with the CJS need to bring a change in the paradigm and the way of thinking; they are all working for the same goal - vindication of law, punishment of law-breakers, reformation of the offender and the ultimate safety of the society.

## **The Prisons**

Most Undertrial prisoners are poor, illiterate, and from rural background

Prisons are the custodians of judiciary. Not only do they keep persons convicted of offences for executing the sentence awarded to them, but they also house a large number of those who have been remanded to judicial custody pending enquiry, investigation and trial. Prison functionaries are bound by judicial orders to keep them safe and to produce them before the court as when required.

It is a duty incumbent upon them to ensure that no remand prisoner is illegally or unnecessarily held in prison, and if there is any such instance, it is immediately brought to the notice of concerned court or Magistrate. It is also expected of prison functionaries that they safeguard the legal rights of remand prisoners and assist in decongesting prisons by facilitating legal non-custodial treatment to them wherever possible.

Prisons are typically the end product of the process of administration of criminal justice in any country (except for offenders placed on community based programs). The operation of these institutions thus has a great impact on the experience and meaning of rights and justice in that country. They also provide an important ground for study and research on the entire structure and process of administration of justice.

In India, gaining access to a prison is a formidable task. Under the garb of 'security' these institutions have for ages been successful in conserving their obscurity. The opaque and impregnable walls of prisons and the concealed method of functioning of prison personnel, combined with the indifference of the community outside towards inmates, make prisons a fertile breeding ground for human rights abuses. Prisons are managed through archaic laws and rules, the observance or violation of which is generally out of reach of public scrutiny. An appreciation of the actual conditions of detention is blocked by the presence of several layers of security procedures which hide facts, or make them remote and out of date by the time they are discerned.

Without going into detail of the deficiencies that these custodial institutions suffer with regard to living and health conditions, it would suffice from our point of view to refer to the level of the protection of residuary rights of incarcerated inmates. There are certain aspects that deserve immediate attention and require legal empowerment of both prisoners and prison functionaries for the improvement of existing situation.

### **Non-production of Undertrial Prisoners before Courts**

Video linkage facility in prisons needs critical review

An effective response to crime requires a judicial structure which limits the use of incarceration to serious cases and gives prisons the opportunity to provide positive regimes which can help prevent re-offending. While custody is necessary to protect the public from serious offenders, using it for those for whom community treatment would be more appropriate does not help to reduce the level of crime. Much greater use should be made of those community based measures (bail, probation, bond and personal recognizance)

both for adults and young offenders, which are successful in preventing re-offending.

The use of pre-trial imprisonment should be avoided where possible: A large number of remand prisoners are later acquitted or given non-custodial sentences. After the introduction of section 428 in the CrPC the refusal of bail to such remand prisoners tantamount to sentence of imprisonment without offence. Moreover, the unacceptable conditions in which many remand prisoners are detained are a denial of the presumption of innocence.

Keeping people in custody is indeed expensive<sup>20</sup> - it is several times more costly than supervising them on probation or community service. It goes without saying that overcrowded prisons are inhumane : in several states thousands of prisoners, including many who are not convicted, are held in barracks two to three times more in number than their actual capacity, at any one time.<sup>21</sup>

Excessive numbers prevent the Prison Service from providing full and positive regimes for all prisoners which can equip them to lead law-abiding lives on release. The entire time of prison personnel is spent on counting heads, securing them against escape and feeding them twice a day. Moreover, in an overstretched system many prisoners are transferred far from their home areas, reducing contact with families and increasing dissatisfaction and tension in prisons. The pressure of numbers also increases the likelihood of disturbances in penal establishments.

There must be a concerted effort to reduce the number of both convicted and un-convicted prisoners by an increased use of constructive community sentences and of bail in appropriate cases. Such a reduction in the use of custody would enable the Prison Service to cater more constructively for a more manageable number of prisoners, particularly those that fall under the category of insurgents, terrorists, hardened criminals and recedivists. It could then provide greater opportunities for work, training and education, effective programmes to combat offending behaviour, improved physical conditions, more adequate preparation for release, and increased opportunities for contact with the outside world.

---

<sup>20</sup> All India average of expenditure per inmate was Rs.10,474 during the year 2005-6. (Prison Statistics India - 2005 - NCRB, Snapshota)

<sup>21</sup> At the close of the year 2005, there were more than 358 thousand inmates in the prisons of India as against the declared capacity of about 246 thousand.

“Prison reforms and modernisation” cannot be treated as synonymous with “creating more space for incarceration”. More prisons and more barracks *are* necessary but that is not the end of the process of reforms and modernization. Increased accommodation in prisons requires an equivalent increase in manpower to secure it for custodial purposes. It is time ripe for the MHA to monitor how much of the increased space under the centrally sponsored schemes (CSS) has been commissioned and put to use by various states. State governments are not willing to spend any money on prisons. The situation of vacancies in security staff (even for the existing jails) is alarming. In several states (including MP, Rajasthan, Karnataka, Andhra Pradesh, CG) more than 25% posts of security guards and supervisory staff are lying vacant. In several states newly constructed prisons and barracks have not been put to use for want of staff. Therefore the situation of overcrowding continues unabated.

Not only this, the lack of sufficient staff leads to dependency on inmates for maintaining some kind of *order* in the prison, and that in turn is the beginning of all kinds of corruption and malpractices. We cannot think of reformation in that situation. It is therefore necessary to convince state governments:

- To review and reorganize prison cadres in the perspective of present security needs and the situation of added space in prisons;

To reorganize training and refresher courses both for freshers and for the existing staff in the perspective of new trends in crime and corrections; and

- To provide for leave-reserve and training-reserve staff so as to cater for better trained and more alert security personnel.

An alert prison administration can contribute to the solution of problem of accumulation of remand prisoners by –

- Keeping liaison with district legal service authority for free legal support to Undertrial prisoners,
- Regularly producing such prisoners physically before courts or through video-conferencing,
- Discouraging willful and pretentious absence of accused on the date of hearing,
- Ensuring requisition of escorting police guards in time,
- Providing appropriate transport facilities, and
- Organizing meeting of Review Committees for undertrial prisoners regularly.

## **The role of Judiciary**

Undertrial Prisoners' Review Committee – need for sensitization

Judiciary can play a vital role in facilitating a common man's access to justice. In a welfare state such as ours the judiciary needs to ask itself whether it should continue to be a 'court of law' in which justice is incidental to the application of a wooden law; or should it become a 'court of justice' by bringing about an attitudinal change, interpreting and administering law to deliver real justice, particularly to the weak, the poor, the vulnerable illiterate and to women.

The role of judiciary with regard to Undertrial prisoners can be viewed from two angles : (a) the role before an accused is sent to the prison and (b) the role after the accused is incarcerated as an Undertrial prisoner.



(a) The role of judiciary in facilitating common man's access to justice, before he is remanded to judicial custody as an Undertrial prisoner, can, by their own verdict through apex court directives, be summarized as follows -

- Providing all deserving accused parties the help that is available through free legal service, both for counseling and for assistance during investigation and prosecution.
- Grant of liberal bail, particularly to accused from vulnerable sections. (Hussainara Khatoon's Cases) – *A large number of men and women charged with trivial offences are interminably kept behind bars under abysmal conditions eventually ceasing to be human beings. One reason is the highly unsatisfactory bail system. It suffers from a property oriented approach which proceeds with the erroneous assumption that risk of monetary loss is a deterrent against fleeing from justice. The courts mechanically and as a matter of course insist that the accused produce sureties and the latter must establish their solvency. This operates harshly against the poor. The result is that they are fleeced by the police and touts, or they are sent to rot in jails.*
- Mr. Justice Krishna Iyer (in Motiram's case (1979 1 SCR 335) noted that the poor are priced out of their liberty in the justice market. He lamented that *thousands of poor people were in jail simply because they could not afford bail or did not know how to make the application. Magistrates must abandon the antiquated concept that pretrial release could be ordered only against money. The concept is outdated and did more harm than good.*
- Grant of release on personal bond : *If the court is satisfied that the accused has roots in his community and is not likely to abscond then the accused ought to be released on personal bond.* (Hussainara Khatoon' case)

Nabachandra's case (AIR 1964 Manipur 39) relates to bail and remand. *There seems to be a notion among the police that it is their duty to prolong the detention of accused persons...Under no circumstances should the police pray for detention of a person unless it is absolutely necessary for the purpose of investigation of the case. If they understand this aspect of their duty, unnecessary opposition to bail applications and unnecessary applications for remand would cease.*

The court can always exercise a second layer of supervision over the powers of police to arrest and detain suspects or accused, and can substantially reduce the incidence of custodial treatment of offenders through judicious application of legal provisions, and can place them back in the community pending trial and prosecution.

(b) Judiciary's role, after the accused is incarcerated as an Undertrial, rests in sticking to certain mandates and guidelines issued by higher and apex courts:

- No remand should be extended mechanically and without the actual production of the accused in the court or before the trial Magistrate through video-conferencing (Sec.167(2)(b) of CrPC. *The Magistrate must peruse the diary and be satisfied therefrom that remand is necessary and if the diary is not produced the accused may be released and neither bail nor bail bond may be necessary. "There is an impression among the police that the remand of an arrested person should be done by the magistrate as a matter of course. The sooner this impression is got rid of the better it will be."*(Nabachandra's Case (AIR 1964 Manipur 39)
- The trial should proceed with reasonable speed. *Speedy trial is,...an essential ingredient of 'reasonable, fair and just' procedure guaranteed by article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial of the accused.* (Justice Bhagwati – Husainara Khatoon's Case – AIR 1979 SC 1369.)
- In the context of the delay caused by the prosecution, their Lordships forthrightly observed in Champalal Punjaji Shah's Case (1981 Cri. LJ 1273): *We are not unmindful of the delays caused by the tardiness and tactics of the prosecuting agencies.*

*We know of the trials which are over-delayed because of the indifference and somnolence or the deliberate inactivity of the prosecuting agencies. Poverty-struck, dumb accused persons, too feeble to protest, languish in prisons for months and years on and awaiting trial because of the insensibility of the prosecuting agencies.....Denial of speedy trial may with or without proof of something more lead to an inevitable inference of prejudice and denial of justice. It is prejudice to a man to be detained without trial. It is prejudice to a man to be denied a fair trial. A fair trial implies a speedy trial.*

- Right of the accused to be tried speedily encompasses all stages – investigation , enquiry, trial, appeal, revision and retrial. (A.R.Antulay' Case)
- Extended functions of the judiciary over accused sent to prisons should be exercised meticulously. Judicial officers are nominated on several committees and boards constituted for monitoring the functions of Prisons. One such committee in relation to Undertrial prisoners is the District Level 'Review Committee' which must meet at least twice (and if possible more) in a year.

### **Undertrial Prisoners Review Committees (UPRC)**

Some of the states in the country have already appointed UPRCs for a periodical review of Undertrial prisoners confined in the prisons of a district. Where there is none, a list of all Undertrial prisoners is sent by concerned prison superintendents to the District & Sessions Judge for the purpose of a scan if any person is detained for an unduly long period of time pending trial. This status study of Undertrial inmates is an essential aspect of prison procedures and should be followed religiously.

The Review Committee should appraise the cases of all Undertrial prisoners to ensure that cases falling under one or more of the following categories are referred to concerned courts for appropriate action under directions (and with the exceptions mentioned therein) of the Supreme Court of India in Common Cause Vs Union of India 1996, namely :

- (a) Undertrials accused of an offence punishable with imprisonment up to 3 years and who have been in jail for a period of 6 months or more and where the trial has been pending for at least 1 year, shall be released on bail;
- (b) Undertrials accused of an offence punishable with imprisonment up to 5 years and who have been in jail for a period of 6 months or more and where the trial has been pending for at least 2 years, shall be released on bail;
- (c) Undertrials accused of an offence punishable with imprisonment for 7 years or less and who have been in jail for a period of 1 year and where the trial has been pending for at least 2 years, shall be released on bail;
- (d) The accused shall be discharged where the criminal proceedings relating to traffic offences have been pending against them for more than 2 years;
- (e) Where an offence compoundable with the permission of the court has been pending for more than 2 years, the court shall after hearing public prosecutor discharge or acquit the accused;
- (f) Where non-cognizable and bailable offence has been pending for more than 2 years, without trial being commenced the court shall discharge the accused;
- (g) Where the accused is discharged of an offence punishable with fine only and not of recurring nature and the trial has not commenced within a year, the accused shall be discharged;
- (h) Where the offence is punishable with imprisonment up to one year and the trial has not commenced within a year, the accused shall be discharged; and

Where the offence is punishable with an imprisonment up to 3 years and the case has been pending for more than 2 years the criminal courts shall discharge or acquit the accused as the case may be and close the case.

The principles laid down in Common Cause case are not self-executory. They need constant monitoring, guidance and direction to the learned magistrates in charge of dispensation of criminal justice at the lower level, before whom Undertrial prisoners are produced for extension of the period of remand.

The Review Committee should also look into the following cases of prisoners and refer them to concerned courts/magistrates for appropriate action :

- (i) Non-criminal persons of unsound mind sent to prison for observation under provisions of repealed Lunacy Act or The Mental Health Act of 1980. No such person can be kept in prison after the directions of the apex court in Sheela Barse's case.
- (j) Woman Undertrial prisoner whose husband is also in the jail and whose children are left out side without any guardian or protection.
- (k) Inmates detained under section 109 Cr.P.C. for unduly long periods.
- (l) Inmates detained under section 107/151 Cr.P.C. in whose case the amount of bail and/or bond is prohibitively high and against the directions of higher judiciary.
- (m) Undertrial prisoners who have been in jail for a period more than half of the maximum sentence awardable. After the insertion of Section 436A in the CrPC such accused person is entitled to be released on personal bond with or without sureties.
- (n) Undertrial prisoners who should be released as a result of the provisions of Section 428 of Cr.P.C.
- (o) A persons who falls within the ambit of Section 346(1) read with explanation below, as amended by Cr.P.C. Amendment Act, 2005.

“Decongestion” of prisons has two facets : one, providing more space for the increased number of inmates and two, community treatment of offenders. The second facet is more effective and less expensive. In its practical implication it means (a) sending lesser number of offenders to the prison and (b) applying provisions of existing law and directives to put those back to the community who are already in prison.

Both these aspects require great coordination between various agencies of the CJS. While prison functionaries need to review the existing prison population in the perspective of various directives issued by the apex court with regard to convicts and Undertrials in Common Cause cases, the lower judiciary has to be more considerate (if not liberal) in following the directives.

A judicious application of the provisions of sections 167, 360, 361, 428, 436 of the Cr.PC and a prudent use of the provisions of Probation of Offenders Act can go a long way in mitigating the problem of overcrowding in prisons. The Ministry of Justice can perhaps issue appropriate directions to the states in this regard. What is needed is to increase the number and role of Probation Officers and to make the services of voluntary probation officers both socially attractive and financially remunerative in order to draw suitable individuals and NGOs for this purpose.

Release of Undertrial prisoners will lessen congestion in jails and help more efficient prison management. The process needs high degree of coordination between the judiciary, the police and the prison administration, which unfortunately is lacking at present. It is the duty of prison functionaries to inform the concerned judicial or executive Magistrate, if a provision of law is contravened by keeping a prisoner in custody.

### **Non-production of Undertrial prisoners before courts**

Section 167 (2) (b) of the CrPC mandates that “no Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;”

This provision is further strengthened by Explanation II below this section which says that “If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorizing detention.”

The main purpose of this provision is to vest an important humanitarian responsibility on the judiciary to ensure (a) that the accused person is alive and has not escaped lawful custody (b) that (s)he has not been subjected to unwanted torture or physical abuse during investigation, enquiry or trial (c) that the accused person, who is under ‘presumption of innocence’, has been provided with legally acceptable conditions of detention in the custodial institution including legal aid (d) that his/her case is appropriately considered if (s)he offers to plead guilty for seeking relief under any law in force, (e) that in view of section 428 of the CrPC his/her period of detention during investigation, enquiry, or trial does not exceed the highest punishment awardable in the case and (f) that the case be considered for non-custodial relief if it falls within the ambit of any law or rulings passed from time to time by the higher judiciary.

In a large number of cases, however, accused persons in judicial custody, facing investigation, enquiry or trial, are not (actually) produced before the trial magistrate for the purposes of extending the period of remand. In all such cases, it is only the warrant of the Undertrial prisoner that goes to the court from the jail and the period of remand to judicial custody is routinely extended without giving any chance to the accused to make any request to the court in person. This is not only a grave violation of a mandatory provision of the law but a violation of the rights of a prisoner who bears the presumption of innocence and is being constantly denied the occasion to put up any lawful request to the trying court.

If the production warrants of accused undertrial prisoners of a jail are checked it shall be evidently revealed that quite a large number of production warrants bear the remark that the accused is not being produced before the court because necessary police escort is not available. This has become such a common practice that prison officials have now rubber seals routinely stamped on the back of production warrant that say –

*Mananiya Nyayalaya,  
Nivedan hai ki aaj dinank ..... ko paryapt police bal na milne ke  
karan abhiyukta ka kewal warrant bheja ja raha hai. Kripaya aagami peshi  
tarikh dene ki kripa Karen. Yahi vinaya hai.*

*Jailor.*

Literally translated into English this means :

Hon'ble Court

It is submitted that due to non-availability of appropriate police force the accused is not being produced, only the warrant is being sent. Kindly fix next date of peshi (and inform). This is our request.

Jailor.

Precisely this amounts to violation of three kinds : one, that the Jailor who was bound by the production warrant to produce the remanded prisoner before the court on due date has conveniently (and with impunity) failed to obey the directions of the court; second, that the state which enjoys the prerogative of taking away the liberty of a person has failed to process him through the established criminal justice procedures on the pretension of lack of sufficient resources to provide appropriate police force to escort the accused to the court as demanded by section 167 (2) (b) of the CrPC; and three, that the jailor who is not a party to the case has requested the court to extend the period of remand of the accused, and the court routinely extends it without realizing its detrimental effect on the life of the accused and his dependent family.

It needs to be seen that this practice is assuming alarming proportions and Undertrial prisoners keep complaining in vain to visiting authorities that their period of remand is being extended for months together without their being produced before the trying Magistrates. This does not only amount to unwanted incarceration; but is also a denial of opportunity to the accused to put up any lawful request or submission to the Magistrate either himself or through his lawyer for grant of bail or for availing benefit of the Probation of Offenders Act or plea bargaining or for release from custody under any other law in force.



Section 167 of the CrPC needs to be stringently followed even in the matter of putting up challan against the accused Undertrial prisoner. Justice PN Bhagwati observed in *Hussainara Khatoon & Others Vs State of Bihar* "When an Undertrial prisoner is produced before a Magistrate and he has been detained for 90 days or 60 days, as the case may be, the Magistrate must, before making an order of further remand to judicial custody, point out to the Undertrial prisoner that he is entitled to be released on bail. The State Government must also provide at its own cost a lawyer to the Undertrial prisoner with a view to enabling him to apply for bail in exercise of his right under proviso (a) to sub-section (2) of section 167 and the Magistrate must take care to see that the right of the Undertrial prisoner to the assistance of a lawyer provided at State cost is secured to him and he must deal with the application for bail in accordance with the guidelines laid down by us .... We hope and trust that every Magistrate in the country and every State Government will act in accordance with this mandate of the court. This is the constitutional obligation of the State Government and the Magistrate, and we have no doubt that if this is strictly carried out, there will be considerable improvement in the situation in regard to undertrial prisoners and there will be proper observance of the rule of law." (1980) 1 SCC 108.

#### Video-Linkage facility in prisons

The criminal justice system enthusiastically welcomed the video-linkage facility between courts and prisons introduced in Andhra Pradesh in January 2001 and in other states later. This system was intended to overcome the problem of non-production of Undertrial prisoners regularly before the magistrates in compliance of Sec. 167 CrPC, due to non-availability of police escort. It was thought that the system would reduce overcrowding in prisons, as Undertrial prisoners would be '*produced*' before the magistrates through video and that would give the prisoners more access to bail or to plea bargain by admitting guilt. Prisons and Police departments welcomed this system as that saved them lot of routine administrative work. But more than five years of implementation of the system have exposed its weaknesses more than its gains.

Every time the prisoner is produced electronically before the magistrate, the latter is expected to take into account the changes in the circumstances of the case and judiciously decide on granting or rejecting bail. But the system is just used for routinely extending the remand periods of the prisoners once in 14 days. In most cases no legal counsel is representing the prisoners in the electronic courtroom and magistrate receives no briefings from the prosecution.

Since prison officials are present in the prison video-linkage rooms, the prison grievances, especially of long staying prisoners, are not reaching the magistrates. It seems non-production of UTs physically in the courts is substantially reducing their capacity to negotiate for bails with the judiciary and arrange for their sureties.

It appears that the video-linkage between courts and the accused in prison has replaced the substance of judicial hearing. The system is just saving some time and expenditure of criminal justice system. In the whole process the ends of justice are getting defeated for the accused prisoner. Video conferencing seems to subvert the intent and spirit of Section 167 of the Criminal Procedure Code.

### **Free Legal Aid**

A potential instrument of justice to the poor and the vulnerable

An important development in the criminal justice system of the country, which all stakeholders in prison management should know and make use of, is the availability of free legal aid.

Article 39A, a fundamental constitutional directive, added to Part IV of the Constitution of India by Forty-second Amendment in the year 1976, states :

*“39A. Equal justice and free legal aid. – The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”*

The purpose of central legislature to introduce this Article in the Constitution of India was to create mechanisms for making justice accessible not only to the poor, illiterate and ignorant but also to those suffering from '*other disabilities*' such as that of incarceration. The gloomy prison barrack and extremely stringent jail-rules cut off an inmate from the world outside, and make it extremely difficult for him to seek legal help. Legal remedies, both civil and criminal, are often beyond the physical and financial reach of most of them who come from the lower strata of the society. Therefore, in pursuance of the directives under Article 39A of the Constitution, the Legal Services Authorities Act was passed in the year 1987 and enforced on November 9, 1995. This Act paved way for, both, pre-litigation dispute redress programs and for post litigation processes of legal assistance and speedy disposals. It is because of this extended coverage of legal aid that this Act has an edge over provisions under section 303 and 304 of the Criminal Procedure Code, which impart right of legal aid to accused at state expense in certain cases.

State Legal Service Authority in each state is by law mandated to monitor and coordinate legal service programs in the state for achieving the objects of social justice as contained in the fundamental directive 39A of the Constitution of India by providing legal aid, legal literacy, legal awareness, Lok Adalats. and support in resolving legal problems of people in the state, particularly those who are below poverty line in tribal, backward and remote areas.

Para Legal Clinics need to be established at various levels of justice administration. Such Clinics should aim at promoting legal awareness and providing legal advice even for pre-litigation stage. Through NGOs and government agencies having roots in public they can educate people that their grievances in regard to public utility services can be redressed very quickly by Permanent Lok Adalats established in each district and at each Taluka in a district. These clinics can refer cases to the permanent Lok Adalat where sincere efforts are made to adjudicate problems by reconciliatory efforts.

Since 'persons in custody' are specifically included in the list of persons entitled to legal services in the Act, it is the duty of prison officials and prison visitors to educate prisoners about the provisions of the Act and the services available through the network of legal mechanism created under it. If prison inmates or the members of their family outside prison have disputes which are either compoundable or related to 'Public Utility Services', they can avail the services of Lok Adalats for an early settlement.

As a novel step 'Legal Aid Cells' for Undertrial as well as convicted prisoners can be opened in all the prisons – Central, District or sub-jails. This scheme of free legal aid to the poor, and to such socially handicapped persons as those in prisons, is a great step forward for achieving the goal of 'justice for all'. It needs to be taken in the right spirit not only by the advocates offering their services to local legal services authority, but by all agencies of the criminal justice system and by NGOs working for community welfare.

One of the targets of prison reforms should be the provision of legal aid to inmates awaiting trial, because ready access to lawyers by economically marginalized inmates is not a practical reality. Legal aid functionaries of India should take lessons from Kenya where para-legal aid clinics run both by the government judicial system and by NGOs/CBOs have successfully empowered prisoners through legal literacy programmes, teaching law and procedures through forum theatre and interactive learning techniques to enable prisoner to apply law in their own cases. For achieving this objective it will be necessary to adopt an inclusive approach of promoting partnership with non-government agencies interested in prison work and to grant them access to prisons on a sustained basis, even if that demands some kind of accreditation of these organizations.

Some of the drawbacks that emerge from the present functioning of free legal services need to be mentioned here:

- It appears that free legal aid scheme, in all its ramifications and implications, has not been adequately publicized. It needs to be given wide publicity not only among various agencies of criminal justice system but also in rural areas through panchayatraj network, in prisons through prison welfare officers, in Law Colleges through teaching staff and in the community through selected NGOs. An important task of the Legal Services functionaries is to spread legal literacy and awareness. All legal service programmes and schemes must work to instill in the minds of disadvantaged sections of society the confidence that our administration of justice is committed to provide equal justice to all.
- There is a general feeling that persons availing free legal aid fight an unequal battle in the judiciary because the other party, with better financial resources can secure more able legal assistance and thus deprive them of equal justice. It is generally seen that advocates who offer their services for this scheme are comparatively very junior and inexperienced. It is the duty of Legal Service Authorities to ensure that the poor and the incarcerated, to whom they provide legal aid do not remain under the impression that they are getting comparatively inferior legal assistance. Well-established and senior advocates can be encouraged to 'donate' a small part of their precious time for the service of the poor and deserving.
- The work of empanelling experienced and good lawyers for legal aid purposes can be achieved through increased interaction with the legal fraternity to motivate them to take up cases of the poor and the vulnerable. Regular meetings with the Bar Council and the local bar associations would help in achieving this purpose. Lawyers who render outstanding services under this welfare scheme should be publicly recognized and felicitated.
- To have access to legal services and to be defended in the court of law is one of the residuary rights of a prisoner. Poor and disadvantaged, particularly women who form a special category, must get this facility at state expense. But advocates associated with legal aid work show reluctance in visiting prison inmates and many of them lack that professional propriety that imparts satisfaction to clients.

The benefit of Lok Adalats is not reaching prison inmates in the proportions in which it should. One reason could be that Lok Adalats are not held in prison premises where a large number of under-trial prisoners are lodged. But the other and the more important reason is that members of the Bar do not encourage their clients to persuade opposite parties for compromise and to approach Lok Adalats for fear that they shall lose their income if legal procedures for settlement of disputes are so drastically abridged. This apprehension appears to be ill-founded because there is already so much of litigation that having matters settled will increase the turn over and will not in any way affect the overall income.

- Some efforts should be made to involve senior law students in legal aid and awareness programmes in prisons. It is an initiative that must be pushed because the involvement of law students in these programmes will not only assist the Legal Services Authorities and their beneficiaries, but also the law students themselves. They will realize in advance as to how to deal with litigants and how best to apply law for the benefit of clients whom they are likely to face after their graduation. Internship with legal service authorities for a prescribed period can be made an essential requirement for the award of a degree of LL.B., LL.M., or for registration as a practicing lawyer.
- Lok Adalats are the most effective alternate dispute resolution mechanism for the kind of litigation that is prevalent in the subordinate judiciary. Yet this mechanism has been successful only in respect of limited kinds of litigation, say, in the matter of recovery of land acquisition compensation or motor accidents claims. The principle reason why Lok Adalats have not been showing effective disposals in other kinds of matters is because there is reluctance on the part of members of the Bar to do so. This also is perhaps because of their apprehension of losing their income. But on the balance of social justice the cost of incarceration and consequential suffering should weigh more than transient benefits.

- Commenting on the negative approach of state governments on the issue of settling disputes through Lok Adalats, Hon'ble Justice G.B. Pattanaik, the then Judge of the Supreme Court of India, while addressing a Seminar organized for the State Legal Authorities in the premises of Madras High Court, remarked :

*"...But, what is distressing, which I felt all these years and even feel today is that no Government is coming forward to dispose of the matters in which the government is concerned through this Lok Adalat system... ... Today, the veteran litigant in every court is the government and therefore, if the government does not come forward with the necessary will, with the necessary intention that even their cases could be disposed of through this medium, this movement may not take that much of speed as it ought to... ... I have come across instances where even if the State Government is called upon to pay a sum of Rs.10,000/-, they would not enter into a settlement, later on they would pursue the matter right up to the Supreme Court."*

- The honorarium for lawyers who opt to appear for the accused under the legal aid scheme is unrealistically low. It should be made more attractive to improve the quality and reach of legal services for vulnerable sections of the society.

The work of tackling petty offenders should be brought within the compass of Legal Services Authorities and special efforts should be made to procure services of legal practitioners' fraternity for this purpose. With special training organized with the help of voluntary organizations working in the field of prison reforms and legal aid, these legal practitioners can be grouped into legal clinics and counselors. It can be made mandatory for the police to refer cases of petty offender to such clinics for appropriate advice on whether the offender should be given a community treatment or be subjected to structured judicial processes.

Legal Aid system as envisaged under Article 39A of the COI has drastically failed in its ground application. It needs a second thought and restructuring. Lok adalats and Jail Adalats need to be more frequent and effective in dealing with petty offenders. Even executive magistrates need to rethink and review the appropriateness of putting so many people in prisons for so long a time under preventive provisions such as 107, 109, 151 Cr.PC.

## Under-utilisation of Probation of Offenders Act

### Negative role of Advocates

Judicial system all over the world is recognizing that imprisonment alone is not going to solve the problem of increasing crime rates. It is with this perspective that some welfare laws have been enacted to prevent incarceration and to divert the offender to community based treatment. Probation of Offenders Act 1958, is one such law, which, if effectively used, can make a dent on the present scenario of overcrowding in prisons.

A majority of pretrial and convicted prisoners belong to the category of first-time offenders. Prison statistics show that repeat and habitual offenders comprise between 5 to 6 percent of all persons convicted of crimes in the country.<sup>22</sup> The portion of habitual offenders among Undertrial prisoners is even lower. By a rough estimate, around 90 per cent of the offenders (convicted and Undertrial) fall under the category of first-time offenders. Even if we deduct the exceptions falling under various sections of the “Probation of Offender Act,” and sections 360 of the CrPC, almost 50% of this population should be eligible for the mandatory benefit of non-custodial correctional treatment envisaged under these special provisions.

It is a sad commentary on the criminal justice system that these provisions are not applied in the spirit in which the laws were intended. Some of the judicial magistrates, during personal interaction, admitted that they were afraid of being labeled as ‘pro-offender’ judges (entailing adverse remarks in their Annual Appraisal Reports) if they applied these provisions as frequently as they were intended. Section 6 of the Probation of Offenders Act and Section 361 of the CrPC mandate that if (in the case of certain categories of offenders) the provisions of these *social* legislations are not applied, the trial magistrate/judge shall have to record reasons for not doing so. But in large majority of cases this mandate is violated with impunity.

---

<sup>22</sup> Out of the total number of 108 thousand convicts in the prisons of the country at the end of the year 2005 around 10 thousand (5.2%) were recidivists according to Prison Statistics India, NCRB, MHA, Government of India – p. iv.



If first-time offenders are informed at any stage during protracted trial that according to section 12 of the Probation of Offenders Act “a person found guilty of an offence and dealt with under the provisions of Section 3 (release after admonition) or under 4 (release on probation of good conduct) shall not suffer disqualification, if any, attaching to a conviction of an offence under such law,” many of them will prefer to admit their guilt rather than suffer the drudgery of a dungeon any more.

A discrete and judicious use of these provisions can reduce the number of Undertrial prisoners as well as the length of their detention; but it seems, neither the advocates nor the judiciary vigorously utilize the social and humanitarian aspects of these provisions. The state sponsored free legal aid functionaries need to educate Undertrial prisoners through legal clinics about the implications of these provisions for their own life and for the life of their dependents.

#### Negative role of advocates

It appears that legal practitioners functioning at the level of lower judiciary are not interested in the early disposal of the cases of Undertrial prisoners. There is a tacit but unfounded belief that the use of provisions of Probation of Offenders Act or of Section 360 of the CrPC shall perhaps adversely affect their professional income. Even contact between advocates and their clients in prisons is negligible; as a result they lose track of the case and keep on seeking extension of the date of hearing resulting into extension of remand to custody by sheer callousness.

#### **Non-starters – cases of mentally sick criminal offenders**

##### Cases of mentally sick criminal offenders

The trial of mentally sick inmates (particularly those declared incorrigible or *schizophrenic paranoid*) simply does not begin. If (the trial) Magistrate is of the opinion that the person referred to (a competent medical officer for examination of his mental condition) is of unsound mind and consequently incapable of making his defense, he shall record a finding to that effect and shall postpone further proceedings in the case.<sup>23</sup>

---

<sup>23</sup> Section 328 of the Criminal Procedure Code.

This, in many cases, amounts to indefinite postponing of trial and indefinite incarceration of the mentally sick accused. The court waits for a report from medical authorities certifying that the accused is fit to defend himself, which is obviously not available in the case of incorrigibles. The family of the mentally sick is not interested in taking charge of the accused on bail and/or bond and therefore such inmates keep staying in prisons for years together.

The cases of 70 year old Jagjivan Ram Yadav of Faizabad District Jail, who was released after 38 years in prison without trial and that of Rajaram, who was released after 37 years on the intervention of some human right organizations, have been reported internationally in the month of February, 2006.<sup>24</sup> A state-wise thorough examination of mentally sick prison inmates in the country might reveal more such cases of gross negligence.

Most of the states in the country have no asylum for keeping and caring for the mentally sick for the rest of their life. One such facility for criminally charged mentally sick persons should be created in each state and it should be located within or adjacent to the state mental hospital or the psychiatric center. This facility should be under the administrative control of the IG of prisons; but the care and treatment of inmates should be left to the medical department. All mentally sick incorrigible criminal prisoners should be shifted from regular prisons to this facility and their prison record should be maintained by an officer of the Prison department. Section 329 of the CrPC maintains that the time spent in the discernment of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Magistrate or the court. Therefore, those of them who have served incarceration during such examination for a period equal to the highest sentence awardable in the offence for which they have been arrested and remanded to judicial custody, shall be shown as released from prison in accordance with the provisions of Section 428 of the CrPC, and shifted to the mental hospital/psychiatric centre under provisions of the Indian Mental Health Act.

The cases of those accused of an offence punishable with death or life imprisonment shall be referred to concerned government for consideration of withdrawal of case (at least) after 14 years of incarceration, following the spirit of Section 433A of the CrPC.

---

<sup>24</sup> *Hindustan Times*, Monday, February 6, 2006 and *Nav Bharat Times*, Sunday, February 12, 2006.

## **Juveniles in Prisons**

### **Need for immediate intervention**

It is a matter of grave concern that inspite of the enactment and enforcement of the Juvenile Justice Act with the proclaimed objective “to ensure that no child *under any circumstances* is lodged in jail or police lock-up”, children between the age-group of 16-18 continue to be arrested, remanded to judicial custody and confined to prisons in the country. National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, Government of India has been reporting that the number of juveniles falling within the aforesaid age-group of 16-18 years, confined in jails from year to year, for four years (2002 to 2005) has been 3813, 2138, 1021 and 1338.

Incredible though it may seem in view of the mandatory provisions of the JJ Act, it is a matter of immediate attention and study as to the circumstances in which juveniles in such large number are kept in jails (particularly in the prisons of Uttar Pradesh, Haryana, Karnataka and West Bengal). The Ministry of Justice and the Departments of Women and Child Development should investigate this issue for immediate remedial measures.

## **Custody of Women**

### **The problem of single woman in jails and sub jails**

A statement on access to justice and legal empowerment will drastically fail if we do not take into account the plight of women in conflict with law, particularly those who have been confined to custodial institutions. Those who are convicted, are congregated in remote centralized institutions where their relatives find it difficult to approach and meet them; but those who face trial, are kept in local prisons (district jails or sub-jails) under conditions which demand serious attention.

Lack of lady warders, particularly at sub-jails, is causing untold misery to women inmates who stay alone in desolate barracks within prisons for men. Violation of human rights in prisons is common but women are particularly vulnerable to human rights abuse and discrimination of varying degrees.

The main reason is that they do not have separate prisons and at most places have no women staff either for their secure confinement or for medical and other examinations. Special needs of women inmates who are pregnant or who are accompanied with infants are generally ignored. These violations are invisible and committed with impunity because of non-accountability and lack of transparency in prison administration.

Most jail rules provide for the method of keeping women inmates in prisons and in sub-jails. One such rule reads as follows :

*Female prisoners not to remain alone in female ward.* – When, however, there is only one female prisoner in the female ward, and there is no female warder or overseer, and the prisoner is likely to be there for more than seven days, the Superintendent shall arrange beforehand for another female prisoner from the nearest jail to be sent to keep her company, or to send the prisoner to an adjacent Jail. In extraordinary circumstances the Superintendent may allow a female friend to visit the prisoner and live with her in the jail. If the female prisoner has no friend who will stay with her, the Superintendent shall entertain a female as an extra warder to keep her company.

This important rule for the upkeep of women inmates is followed more in its violation than adherence. At most of the District Prisons or Sub-jails there is no separate sanctioned post for lady warders. This is so perhaps for two reasons : one, the uncertainty of the presence of women Undertrial prisoners at these institutions, and two, the constant change in the number of women Undertrial prisoners, if there are any. It is because of this uncertainty that the aforementioned rule has been construed in a manner that provides several alternative arrangements for the upkeep of a single woman inmate at a jail or sub-jail.

But provisions of alternative arrangements in this rule (which was framed more than half a century back) have become hackneyed and impractical for various reasons –

- Calling a woman inmate from the nearest jail may cause hardship to that other woman because it may deprive her of the proximity to her relations and family members. If she is transferred to another jail, without her willing consent, just to give company to a woman prisoner, it would be a violation of her right to live with minimum restraints;
- Sending a single woman to the nearest jail or sub-jail (where other women inmates might be lodged) causes procedural difficulties of production of the inmate before the concerned court on the date of hearing. She will have to be shifted from one prison to the other for appearing before the judicial magistrate on each such date, causing problems of transfer, availability of woman guards and the risk of violation of her personal security.
- Searching for a woman friend who can give company to a single woman prisoner, or could willingly opt to stay with her in the horrifying prison conditions, is a tough job – almost impossible for the scanty prison staff to execute. This alternative is also wrought with the possibility of a complaint of illegal confinement because prison rules unconditionally prohibit the locking up of any person in the prison without a valid warrant of custody from a competent authority.
- To ‘entertain a female as an extra warder’ is not possible now because prison superintendents have been divested of their powers to recruit persons on temporary, casual or daily-wage basis.

Since the population of Undertrial prisoners is always changing it is difficult to predict or anticipate when and at which prison the number of women Undertrial prisoners would be reduced or raised to a ‘single woman’. The Prison Department is not in a position to say at how many jails and on how many occasions there was a single woman Undertrial prisoner in a year. An intervention by Visitors of prisons can perhaps raise some hope in such cases. They can exercise their influence in providing the services of lady home-guards for such temporary phases at jails and sub-jails where there are no lady warders.

Rules for segregation of women prisoners from their men counterparts make it essential to keep them not only out of reach of male prisoners but also out of their sight. Therefore, the construction of women enclosures within jails for men is such that the gates of their enclosure, and the wards within the enclosure shall not be in the same line of sight so that no passer-by could violate their privacy. If, on one hand, this ensures total segregation, it also, in essence, results in complete isolation (an illegal solitary confinement) of a woman inmate, if she is alone and there is no lady warder to keep watch on her. This precisely is the situation in almost all sub-jails and most of the district jails in the country.

The problem of keeping women Undertrial prisoners in jails where there is no woman guard and no proper enclosure to keep them safe must cause concern and draw sufficient attention of state authorities. Why can the state not think of some proper arrangements for keeping them in jail, if there is law to curtail their liberty? Does the state have right to restrain their freedom if it has no funds to provide for lady warders to keep watch over them and to construct appropriate prisons to keep them in? Should the state not confer with the Judiciary and devise ways to release such women on bail (or on personal recognizance if they have roots in the community) until there are proper arrangements for their confinement in prisons? Should the state government not appoint a committee of women officers from the prison, the judiciary, the police and some women social organizations, to make a one time review of all women Undertrial prisoners in jails where there are no women guards, and to suggest some concrete ways to improve their lot.

There should be some provision for appointment of temporary lady warders or lady home guards when women are admitted to sub-jails. A panel of lady home-guards should always be available at Jails and sub-jails having no sanctioned strength of lady warders, so that the services of one or two of them could be procured when a single women prisoner is lodged in the prison.

## **Prison Visiting System**

### **Prospective approach**

Reviving and reinforcing Prison Visiting System (PVS) as a tool for community involvement in correctional work – PVS being the only window in prison walls that legally offers and allows a social intervention in closed institutions. Non-official Prison Visitors need community support for their legal empowerment to work effectively in prisons.

Almost all Jail Rules in the country contain provisions, framed under section 59 (25) of the Prisons Act of 1894, for the 'Appointment and Guidance of Visitors of Prisons'.

The plan of appointing persons, official and non-official, to serve as visitors to jails is a very valuable part of the Indian system of jail administration. It insures the existence of a body of free and unbiased observers, whose visits, if regularly conducted and appropriately attended to by state authorities, can serve as a guarantee to the Government and to the public, that the provisions of the Prisons Act and Prison Manual are duly observed. It can also speedily bring to light any drawback, malpractice, discontentment or abuse in the prison system, and provide occasion to the government to address them in time before they assume serious dimensions.

The existence and perpetuation of the institution of non-official visitors is especially valuable as supplying a training ground where members of the public can obtain an insight into jail problems and learn to take an interest in prisons and prisoners. Experts in the field of correctional work and bodies appointed from time to time by the government for prison reforms have repeatedly emphasized that it is of great importance to create such an interest in the public mind and the appointment of non-officials is one of the best methods of promoting this end.

It is a matter of great concern that Prison Visiting System, a very potential social tool affecting the life of prison inmates, has run into disuse and has become a fruitless paper formality resulting from neglect and indifference over the years.

Social and ideological developments concerning conservation of human rights in custodial institutions seriously demand that the system be revived and revitalized in order to be effective and result oriented.

A close look at the existing rules for the appointment and guidance of prison visitors shall reveal that several of its provisions have become outdated and need amendment. Those that can apply are not being followed in the right spirit. There are a number of procedural failings that lead to loss of accountability, both on the part of prison officials and prison visitors.

One basic drawback that the present Visiting System suffers from is that the state departments of Home and Justice, which are responsible for the appointment of NOVs in the state, cease to have any contact or communication with them after the formality of appointment. They have not evolved any mechanism by which to ensure that the appointment letters have reached the designated NOVs, or that those appointed have willingly accepted the assignment.

The system of prison visitors is considered by prison staff as an un-necessary intrusion in their work. Non official visitors are not considered as credible functionaries by prison officials because (as generally contended) they are appointed solely on the grounds of their political affiliations, with no consideration to qualifications or experience. They are discounted in their intentions and discouraged from attending to their assignment.

Non-official visitors in turn reduce their functions to mere perfunctory ritual when there is no cooperation from prison staff and little encouraging response on their visiting notes from appointing authorities. Non-official visitors are not even aware of their duties or rights as prison visitors. They have never been acquainted with the rules made for their guidance, nor have they been informed of the administrative or correctional functions of prisons and prison officials.

A large number of non-official visitors have never visited the jail for which they have been appointed, and still some of them have been repeatedly appointed to the position because there is no answerability for non-performance.



There is no recognition or reward for those few who take out time to visit jails and write their visiting reports. Perhaps a timely action on the suggestions made by a non-official visitor or a letter of thanks to some of them who make valuable suggestions could prompt them for more interest in their work.

Even the visits of ex-officio visitors of prison are not so regular and purposeful as intended in the rules. Of the several official visitors of prisons enumerated in rules many have never visited any of the prison institutions of their respective states.

Obviously, the picture of the current operation of the System of Prison Visitors at the jails of the state is dismal. A very well-intentioned and efficacious system has been rendered sick and dysfunctional due to protracted neglect. It operates in a casual, purposeless manner, and needs to be revived and re-activated. If properly managed, it is capable of yielding very good results both for the department and for prison inmates. It has the potentials of addressing and redressing some of the serious infirmities suffered by prison system as a whole. It can also open a window into prisons for community participation in correctional activities.

### ***Prospective Approach***

We are all aware of the fact that the obscurity that covers the institution of prison makes it a fertile breeding ground for human rights abuse. Barring a few institutions, prison conditions in general are appalling in the country. Most of these afflictions result not from any malfeasance of the prison staff but from the collective neglect of the whole system. Those who can deliver goods do not know how to do that. Those who know have no means to remedy the ills. There is lack of effective communication. Those who communicate lack perseverance. There is no linkage, no monitoring, no deadlines, no evaluation and therefore no result.

The Commonwealth Human Rights Initiative (CHRI), an international organisation with its headquarters in New Delhi, has for the past some years been doing remarkable work in the field of reviving and strengthening the Prison Visiting System in some of the states. CHRI believes that there is a ray of hope within the system for bringing about a change. To increase monitoring and scrutiny of the system from within, CHRI has focused on prison visitors and prison doctors as key agents of change. The system of Prison Visitors (particularly the institution of Non-official Visitors) has great potentials, and therefore to restore and revitalize this system CHRI has successfully made some simple interventions, such as :

- Organizing workshops to bring together members of the judiciary, police, prisons, human rights organizations, women organizations, non-government agencies and, most importantly, non-official visitors of prisons with the objective of sharing views and pooling commonly agreeable measures for improvement;
- Interacting with prison officials to clear misgivings that have precipitated as a result of faulty implementation of rules governing the appointment and guidance of prison visitors;
- Interacting with official visitors and other government functionaries with a view to ensuring their cooperation and support for credible and constructive social intervention in the improvement of prison conditions; and
- Organizing orientation and training programmes for Non-official visitors of prisons to acquaint them with various aspects of the system including, among other things,
  - their rights and duties as prescribed in prison rules,
  - effective coordination with the prison department and the government,
  - exposure to good practices elsewhere in the state and in the country,
  - possibilities of making prisons accessible to non-government agencies and organizations interested in the reformation and rehabilitation of offenders,
  - prisoners' residuary rights and general redress mechanisms,
  - skills to initiate community involvement in prisons without substituting the primary responsibility of the State, and
  - making investigative visits with humanitarian approach and writing effective visiting notes.

These commendable efforts of the CHRI deserve active support and cooperation of state governments.

### **Community participation in correctional work**

An essential component of prison reforms

Prison regime and government resources (allocated for prison management) have never been sufficient to reform and rehabilitate offenders committed to custody. It has always been realized that government efforts to achieve restorative justice need to be effectively supplemented by community participation in correctional work. As a prison functionary responsible for managing prisons for three decades, I am witness to the fact that the emotional satisfaction that inmates derive from community's involvement in correctional programmes has no match in government run activities. While inmates look at government interventions with a tinge of apathy and suspicion, they have great respect for voluntary groups and individuals coming to prisons with the aim of their welfare both during incarceration and after their release.

Prisons management cannot provide (from the ranks of its own staff) all the necessary skills and experience needed to assist prisoners in their emotional reconciliation, reformation and rehabilitation. Therefore, by establishing working links between prisons and the community, it would be easier for prison functionaries, whose job is to deal with the welfare and resettlement of prisoners, to make full use of skills and help available from the community and from voluntary organizations offering services of qualified and professionally trained volunteers.

We, at CHRI, wish to see the adoption of such community involvement in prisons that would strengthen links between prisons and community-based organizations (CBOs), non-government organizations (NOs) and individuals genuinely interested in prison reforms and professionally equipped to implement them.

Some of the areas of correctional work in which community participation has potentials of valuable and productive results are:

- Legal empowerment and legal aid;
- Status study of Undertrial prisoners (both one-time and periodical);
- Voluntary probation services;

- Medical assistance and drug de-addiction;
- Vocational training in employable skills;
- Moral discourses and spiritual practices; and
- Use of prison labour by private entrepreneurs.

Gainful employment is an essential facet of correctional regime, but using community resources for employing prison labour is open to abuse and exploitation. There have been instances though, when controlled and guided interventions have paid dividends. Innovative and enterprising prison officers have entered into collaboration with private stakeholders to run production units within prison campus (or outside) securing both rehabilitative work-experience and earnings to participating inmates. Its objective was to produce marketable goods and services under conditions similar to those in small to medium manufacturing plants in the private sector to reduce institutional operational costs while providing employment opportunities and on-the-job training to prisoners.

Innovative contracts entered into with private companies can successfully cover production units such as computer data processing, garment making, men's hairdressing, car and scooter servicing, and so on. Caution, however, has to be taken that such use of prison labour does not violate any of the laws governing employment and payment of wages.

The efforts of PRAYAS, a field action project of the Centre for Criminology and Justice, Tata Institute of Social Sciences, Mumbai, in the field of legal aid to prison inmates deserve mention in this strategy paper. For the past several years this voluntary organization is involved in rendering legal aid and advice to prisoners and their families; ensuring implementation of policies, laws, procedures and practices affecting inmate rights; supporting children and families of incarcerated persons; and facilitating post-release rehabilitation of offenders.

Rotary Club and Lion's Club have set excellent examples of holding medical camps (both diagnostic and therapeutic) for inmates suffering from lack of appropriate medical care at several prisons of the country. SARAA, a Jaipur based NGO of art lovers has successfully tagged-in a garment and home furnishing exporter of repute with the Women's Reformatory of Central Prison Jaipur, to provide creative and remunerative work to women prisoners. There are several other such organizations participating in correctional work, but they have all gained trust and repute through hard work and commitment to welfare of inmate community.

"For successful community involvement in prisons to occur, both community groups and prison officials have to work together, making joint decisions to achieve a better acceptance of each other....There is a need for a process of mutual cooperation and coordination between prison administration and community groups, which would see...the extent of community involvement in correctional processes; and also in creation of accountability of such groups in the process. This would ensure a better working relationship between the prison staff and community, and prevent them from having a hostile attitude towards each other. Increased cooperation may result in improved perception on both sides, with prison administration being willing and able to relinquish some of their controlling role in favour of welfare activities of the institution."<sup>25</sup>

For an effective community involvement in correctional work two things seem imperative:

1. Establishment of a network of NGOs, CBOs, interested groups and individuals independent of the Prisons Department. This network would serve to provide information and education which would strive to empower communities and encourage their involvement in prisons. It would reach out to members of community and educate them on correctional processes and their social implications.
2. Accreditation of such organizations and individuals by the state for carrying out correctional programmes in prisons. National policy on prisons should encourage community participation in correctional work and should lay down criteria for accreditation.

---

<sup>25</sup> Introductory note to "Community Participation in Prisons: A Civil Society Perspective" compiled and presented by CHRI at the National Roundtable on Scoping Study on March 25, 2008 : page 10.

3. The state, for instance, could look at the track record of an organisation in concerned field of work, examine the competence of its voluntary or paid workers and test their knowledge of prison rules regarding security and contrabands, before granting an accreditation.

The government could also consider the appointment of Prison Advisory Committee at state level with sufficient representation of concerned citizens on it. This will pave ground for the community to have a say in policy formulation on matters of correctional work and prison management. It would provide the Department of Prisons with valuable information and suggestions about community concerns and opinions surrounding prisons and prisoners issues.

### **Effecting coordination between Criminal Justice Agencies**

The need of the day

A systematic probe into prevailing prison conditions in most of the states of the country would reveal two distinct pictures, one, that overcrowding is one of the major problems facing most prisons in the country and that excessive length and use of pretrial detention is a major cause of overcrowding; and, two, that all ills of prisons are not the making of prison set up itself – many of them emerge out of the lack of cooperation from, and coordination with, other agencies of the criminal justice system, such as the judiciary, police, prosecution, free legal aid and probation services.

A more fundamental reason for the problems with pretrial detention is the discordance and disharmony within the system for administering criminal justice in India. The problems of governance and coordination are common in most other developing countries, but public confidence in the administration of justice in this country has, for many years, been very low. A time has come for all of the agencies of the criminal justice system to work together and to redouble efforts to restore this confidence. This is a task that rests, not only on any one agency but on each one of them – the judiciary, the Bar, the police, the prosecution, prisons, public, the politician and all stakeholders in the criminal justice system. It is a task to which all must show true commitment and should not shift blames on each other.

The absence of coordination between institutions in India is endemic. In spite of the fact that the common objective of all these agencies is the same – the protection of society against disorder and the vindication of law – they largely fail to achieve this objective due to lack of concerted efforts. Each agency wants, and makes, efforts to do the best, but the system as a whole fails to deliver the common objective. Each agency therefore passes the blame for the failure of the system to other sister agencies. It is like a sports team studded with star players trying to win the game with individual efforts, but flops as a team to make it to the goal.

It is the need of the day that representatives of all these agencies and concerned citizens be provided some common forum at district, state as well as national level to discuss problems that demand collective discernment by justice providers. Below mentioned are some of the questions of justice system that affect the life of common man and that need to be widely discussed:

*Are bigger and more capacious prisons the only answer to solve the problem of overcrowding; or can we think of some other methods of reducing the population of Undertrial prisoners that causes this problem?*

*Are too many arrests necessary for maintaining law and order in the society? Can appropriate discretion be used immediately after the commission/reporting of crime to sort the chaff from the grain and to restrict detention to the minimum necessary?*

*Can the process of criminal justice sustain even if offenders of minor nature are liberally released on bail, bond or unsupported personal recognizance instead of confining them to custodial care?*

*Can women offenders, who have roots in the family and the society, be more readily granted bail, bond or unsupported personal recognizance without risking the due process of law?*

*Can Undertrial prisoners be made to work and be paid minimum wages in order to support their family outside?*

*Should Undertrial Prisoners Review Committees comprising members of the local criminal justice machinery be formed at every district and sub-division, and empowered to release or recommend to appropriate authorities the release of inmates who deserve community based trial rather than custody based trial?*

*Should such Committees visit prisons for review of cases of Undertrial prisoners every month or every fortnight?*

*How best can unnecessary delays, postponement of hearing and non-production of accused before the magistrates be avoided so as to curtail further incarceration of Undertrial prisoners.*

*Can the cases of women and young offenders remanded to judicial custody be queued up separately for early disposal?*

*Can courts of some judicial magistrates be held once in a month or fortnight within the prison premises?*

*Can the amount of bail/bond be justifiably linked to the socio-economic status of the accused?*

*At what level should overcrowding in prisons be treated as unacceptable? (In some of the prisons the inmate population is 4 to 5 times the capacity)*

Participating functionaries of the system would certainly realize that there is a lack of inter-agency understanding of roles in the justice process, that some archaic statutes require re-examination, that things are not irremediably miserable and that they could be dealt with both at the policy level and at local level.



## राजस्थान के निःशुल्क fof/kd I gk; rk odhyka ds fy, epneki iol U; k; ij रिफ़ेशर कोर्स का परिचय

- Tk; Jh I w Jkkj k; UKuk

1- epnek iol U; k; dk ifjp; % I nHkZ

jkt# नाम के किशोर dks , d 0; kikh }kjk ykgs dh NM+ dks xkM# I s mrkjus ds fy, j[kk tkrk gA ifyl ml s fxj/fkj dj yrh gs tcf d ml s ekye Hkh ugha Fkk fd og pkjh dh I Ei fRr dks mrkj jgk gA

cyrk dks os; kofuk ea tejnLrh Hkst fn; k जाता है और दबिश@jM ea ifyl ml s fxj/fkj dj yrh gA

ehukj , d fo/kok gs tks QmikFk ij jgrh gs vkj fnYyh ds dukM/ lys ds gupeku efnj ea Hkh[k ekx dj viuk xqtjkj dgrh gA ifyl }kjk fxj/fkj dj yh tkrh gs vkj ml s fHk[kkfj; k dh vnkyr ea yk; k tkrk gA

I yhej , d fo/kkFkhZ gs vkj , d bLykfed I kBu ds I nL; dks ifyl }kjk vkradkn ds vkjsi ea fxj/fkj dj fy; k tkrk gA

gjhj , d iokl h etnjj dks pkjh ds vkjsi ea fxj/fkj dj fy; k tkrk gA

Åij mYyf[kr I Hkh mnkgj. kka ea ijh I EHkkouk gs fd vkjsi h cgr yas I e; ds fy, epnek iol fgjkl r ea Hkstk tk, xk

आपराधिक न्याय के प्रवर्तन में, आरोपी व्यक्ति के विरुद्ध राज्य की शक्ति गहरा प्रभाव रखती है। अशिक्षा, सामाजिक स्तर, निर्धनता, जटिल कानूनी प्रक्रिया, वकील रखने का लंबा खर्चा और भ्रष्टाचार एक साथ feydj vkjsi h 0; fDr vkj ml ds ifjokj ds fy, epnek iol vkj bl dh fopjk/khurk dh vof/k ea Lorark ds vf/kdkj dh ekx dkj cgn dfBu cuk nrs gA

ipfyr vl ekurk vki jkf/kd U; k; izkkyh dh jkg dks cgn vl eku vuMko cuk nrh gs D; kfd , d 0; fDr ftl ds ikl आवश्यक आर्थिक संसाधन है, प्रभावकारी dkuuh ifrfuf/kRo }kjk epneki iol fgjkl r I s cp I drk gA

पुलिस के ऊपर हर प्रकार की पाबंदी लगाने के बावजूद, गिरफ्तारी की शक्तियों का हमेशा n#i; kx होता है और यह भ्रष्टाचार का एक बड़ा I kr gA >Bs ds ea Qd kuk vkr ग़लत गिरफ्तारी बहुत आम है जिसका परिणाम है अनावश्यक क़ैद। राष्ट्रीय पुलिस आयोग ने 60 प्रतिशत गिरफ्तारियों को या तो अनावश्यक या vU; k; iMkZ crk; k gA

अधिकांश गिरफ्तारियां बहुत छोटे अभियोजन से जुड़ी होती हैं और इसलिए इसे *vij/k/ks jkdlus ds fy*, आवश्यक नहीं समझा जा सकता है। इसका लोगों के मानव अधिकार के लिए विनाशकारी प्रभाव होता है, विशेषकर गरीब, लघु अपराधों *ds vkjksi h ; k ccfu; kn vkjksi ka ij >Bs ds ka ea Qa k; s tkus okys ykxka ds fy, A mlga epnek iol dñ ea yacs le; rd jguk i*ड़ता है, विशेषकर तब जब *os tekur i Lrr djus ea l eFkZ ugha gkrA*

### (i) मुकदमा पूर्व अनावश्यक कैद रोकने के लिए बचाव का अपर्याप्त उपयोग

, *d fxj¶rkj 0; fDr dks gekjs l fo/kku us dñ ekfyd vf/kdkj fn; s gñ ftlga l fgrk ds varxñr dkuuh ekU; rk nh xbl gA fxj¶rk* करने की शक्ति का उपयोग व्यक्तिगत स्वतंत्रता के सांवैधानिक अधिदेश के अधीन ही हो सकता है जिसमें *0; fDrxr Lorark l okñ fj gks ftl s mfpr fu/kkñr dkuuh i fØ; k<sup>26</sup> vkñ l fgrk ea mYYkf[kr fof/k ds cxñ Nhuk ugha tk l drkA<sup>27</sup>*

*fxj¶rkjh ds vk/kkj ds ckjs ea l fpr fd; s tkus dk vf/kdkj]<sup>28</sup> vius il n ds dkuuh l ykgdkj l s la dñ djus dk vf/kdkj<sup>29</sup> vkñ l Hkh pj. kka ea dkuuh l gk; rk dk vf/kdkj tks , d fxj¶rkj 0; fDr dks fdl h Hkh rjg dh xyrQgeh dks nj djus ; k vius cpko dk vol j iñku djus ea l eFkZ cukrk gA*

*vkxñ mPp U; kypालिका के निर्णयों ने पुलिस के गिरफ्तार करने की शक्ति की dBkjrk dks de djus ea ekun. M o i fØ; k fu/kkñr djds vkñ i fyl }kjk bl शक्ति के उपयोग को सीमित करने में, व्यक्तिगत लाभ और अपराध रोकने के सामाजिक लाभ में संतुलन स्थापित करने के उद्देश्य से बहुत vf/kd ; kxnku fn; k gA<sup>30</sup>*

*tc dkbZ tkp 24 ?ka/ka ds Hkhrj ij h ugha dh tk l drh vkñ vkjksi i q[ rk gkñ i fyl vf/kdkjh dks Mk; jh ea ds ds baekt dh , d i fr ds l kFk vkjksi h dks utñhdh eftLVV ds l e{k Hkstuk gkrk gA , s k bl fy, gS D; kf d U; k; k/kh'k }kjk U; kf; d l e> ds mi ; kx ds cxñ i fyl }kjk dh xbl fxj¶rkjh vufr gA*

<sup>26</sup>*vupNn 21] Hkjr dk l fo/kku*

<sup>27</sup>दण्ड प्रक्रिया संहिता का अध्याय 5, विशेष कर, धाराएं 41, 41क, 41ख, 41ग, 41घ, 42, 43, 44, 46, 49, 50क, 54, 55क, 56, 57] 58] 60d

<sup>28</sup>ogh

<sup>29</sup>ogh

<sup>30</sup>देखें गिरफ्तारी की शक्तियों को सीमित करने के लिए—जोगिन्दर सिंह बनाम उत्तर प्रदेश राज्य, ए-*vkblvkj-1984* , I -I h-1349] *Mh-dsवासु बनाम पश्चिम बंगाल सरकार*, ए-*vkblvkj- 1997* , I -I h- 610, नीलबती बहरा बनाम उड़ीशाराज्य (1993), 2 एस-I h-I h- 746]ns[ka fof/kd सहायता समितियों को सूचित करने के पुलिस के दायित्वों के लिए—शीला बार्स बनाम महाराष्ट्र राज्य, ए-*vkblvkj- 1983* , I -I h-378

gekjs l fo/kku cukus okys bl l j {kk dks ekfyd vf/kdkjka dk , d egRo i wkl Hkkx cukuk pkgrs FkA fxj ¶rkjh ds le; ls 24 ?k/k ds Hkhrj utndh eftLVV ds le{k iLrqr fd; s tkus dk vf/kdkj] ftl ea eftLVV ds ikl ys tkus ea ; k=k ea 0; rhr gkus okyk le; l fEefyr ugha gS vuPNn 22 ds vrxr vkjsi h dk ekfyd vf/kdkj gA

l oSkkfud l Hkk ds le{k cgl ds nkjku vuPNn 15 d dks l fEefyr djus ij tks vuPNn 22 ds vuq lk gS MkWch-vkj-vEcndj dk oä0; ikl fxd gS

BvuPNn 15 d dny n-i z l a ds nks l okf/kd ekfyd fl ) karka ds i ko/kkuka ea से उठाया गया है जिसे प्रत्येक सभ्य देश अंतरराष्ट्रीय न्याय के सिद्धांत के रूप ea ekurk gS---, d eny ifjorlu djuk D; kfd ge vuPNn 15 d ds i kDdFku ls tks dj jgs gS og l d n vkj i karh; fo/kkf; dk ds vf/kdkjka ij , d l hek ca/ku Mkyuk gS rkfd og nks i ko/kkuka dks fujLr u djs D; kfd vc os Lo; gekjs l fo/kku ea l fEefyr dj fy; s x; s gA <sup>31</sup>

24 ?k/k ds Hkhrj iLrqr] fxj ¶rkj djus okys 0; fDr ds dkuuh vf/kdkj vkj उपयुक्त प्रक्रिया की नियमितता पर तुरंत न्यायिक बुद्धि को सुनिश्चित करता gA<sup>32</sup>/kkjk 167 ds vrxr fjekM i fØ; k dk egRo tc vkjsi h 0; fDr dks i gyh ckj eftLVV ds le{k iLrqr fd; k tkrk gS bl ckr ea fufgr gS fd i fyl }kjk fxj ¶rkjh ds ckn ; g igyk vol j gkrk gS tks fxj ¶rkjh dh U; kf; d Nkuchu dk vol j inku djrk gA

eftLVV ds fjekM vkj U; kf; d cf) ds mi ; kx ds cxj vkjsi h dks Yxkrkj fgjkl r ea j [kuk voSkkfud gA fjekM i fØ; k ds egRo ij cy nrs gq i h-, u- भगवती, न्यायाधीश ने Hkkxyig vkj [k QkMtus okys ds ea dgk fd] BfjekM ds cxj fgjkl r dks jksdus dk i ko/kku , d cgn LoLFk i ko/ku gA ; g eftLVV को पुलिस जांच पर नियन्त्रण करने में समर्थ बनाता है और यह आवश्यक है कि मजिस्ट्रेट को इस आवश्यकता को लागू करने का प्रयत्न करना चाहिए और जहां bl dh voKk gkrh i kbz जाए, इसे पुलिस से सख्ती से पेश आना चाहिए।<sup>33</sup>

fjekM vkj tekur^ dk i ko/kku epnek i ol dñ dks de djus ds fy, vkj इस प्रकार मुकदमा पूर्व न्याय को सुनिश्चित करने के लिए है।

<sup>31</sup>parliamentofindia.nic.in

<sup>32</sup>i atkc j kT; cuke vtk; c fl g] 1953 fØ-y-t- 180

<sup>33</sup>[krjh wñ cuke fcgkj j kT; ] 1981 fØ-y-t- 470] w1981w1 , l -l h-l h- 627-

(i) okLrfod rLohj

okLro eđ epnek iŋl ych dñ fu; e cu pđk gđ ftl eā vkjksi h dks vf/kdre oŝkkfud vof/k ds vr eā Hkh tc fjekM vuŋr gđ ekxđ {kh ifyl dh deh ds dkj.k eftLVŠV ds le{k iLŋr ugha fd; k tkrk gA orŋeku iŋpyu] ftl eā eftLVŠV igyh iLŋr ij dkbz l oky ugha iNrk gđ vkđ ml ds le{k iLŋr nLrkostkā ij mfpr voykdu fd; s fcuk vkđ vkjksi h dh vkđ l s mfpr dkuuuh प्रतिनिधित्व के बगैर उसे किसी एक की हिरासत में भेज देता है, यह निष्पक्ष मुकदमे के स्तम्भ को नष्ट कर देता है।

‘न्यायिक हिरासत’ शब्द इस बात को सूचित करता है कि मजिस्ट्रेट आरोपी का j {kd gđ ftl s tsy Hkstk x; k gđ vkđ bl fy,] bl dk nkf; Ro eftLVŠV ij gđ fd वह यह सुनिश्चित करें कि आरोपी को अदालत के समक्ष न्यूनतम विलंब के बाद iLŋr fd; k tk, vkđ ; g fd epnek iŋl fgjkl r dks de fd; k tk l ds rkfd व्यक्तिगत स्वतंत्रता खतरे में न पड़े। मजिस्ट्रेट को निष्पक्ष और शीघ्र मुकदमा Hkh सुनिश्चित करना होता है और उन एजेंसियों से प्रश्न करना चाहिए जो इसमें बाधा Mky jgh gkA

i fke vkđ ml ds ckn dh iLŋr eā ; kf=d रिमांड का परिणाम है अनावश्यक मुकदमा पूर्व कैद, जो, न केवल एक निष्पक्ष मुकदमे को नकारता है बल्कि संबंधित प्रशासनिक परिणके Hkh gđ ts s fd tsyka eā vR; f/kd HkhMA ; g djhfr bruh l kekU; gđ fd vc bl s djhfr ekuk Hkh ugha tkrk gA fjekM ds iko/kkuka dk इसके उपयोग के मकसद के विरुद्ध अनुपयोग, आरोपी के अनावश्यक मुकदमापूर्व dñ dkj .k Hkh gA

vxđ cœfu; kn vk/kkj ij dh xbz fxj ¶rkfj; kā dk ifj.kke vuŋpr vkđ ċHkkoghu tkp ds #i eā l keus vkrk gA ; g okLrfod vij/kh dks nM l s cp fudyus dk vol j nsxk] bl iđkj i hfMŋr dks U; k; l s ofpr dj nsxA U; k; l s ofpr djus dk , d [krjukd urhtk आपराधिक न्याय व्यवस्था की विश्वसनीयता में deh gks l drk gA fdl h Hkh कानूनी व्यवस्था को, अपने लोगों की विश्वसनीयता, वैधानिकता vkđ l Eeku iklr djus ds fy, iŋfyr l kekftd o vkfFkd l nHkz ds ifr प्रतिक्रियाशील होने की आवश्यकता है।

इसके लिए सहायता करना, मुकदमा पूर्व न्याय पर रिफ्रेशर कोर्स संहिता के सभा l j {k.kkā ds vkl ikl gh jgsk tō एक वकील को अनावश्यक रिमांड या fgjkl r jkodus ; k mnkjoknh tekur ds vkonu vkđ c/ki = iŋpyuka ij cgl djus ds fy, rđ kj djsxk] bl iđkj os epnek iŋl U; k; eā ; ksxnku dj l dxA

epnek i wZ U; k; e fof/kd l gk; rk l j {k.k dh l j {kk

1- fof/kd l gk; rk l eku U; k; ds fy, 0; oLFkk ds : lk e

आरोपी के अधिकारों से समझौता नहीं किया गया है यह सुनिश्चित करने के लिए वकील तक शीघ्र पहुंच के महत्व पर पर्याप्त रूप से बल नहीं दिया जा सकता।  
gekjs l fo/kku ds vuPNn 22¼1½ ds vxr i R; d vkjki h dks viuh il n ds odhy l s l i dZ djus dk vf/kdkj gA

हमारे सामाजिक-आर्थिक संदर्भ में,, न्याय तक पहुंच के एक अधिक समग्र आदर्श mi yC/k djkus ds fy, i Hkkodkj h , d xq koRrk okyh dkuuh l gk; rk o l ok , d आवश्यकता है। केन्द्र और राज्यों द्वारा नियुक्त कई विशेषज्ञ समितियों ने कानूनी l gk; rk ds vf/kdkj ds dk; &{k=} bl ds dk; kJo; u vkj forj.k ; ækofy ds ckjs में विचार-विमर्श किया है।

इन विशेषज्ञ समितियों में सम्मिलित हैं:

- गुजरात सरकार द्वारा न्यायाधीश पी- u-Hkxorh dh v/; {krk e 1971 e fu; Dr l fefrA
- 1973<sup>34</sup> es नियुक्त विशेषज्ञ समिति और
- 1977<sup>35</sup> e fu; Dr tijhMhds j l fefr

1977 e tijhMhds j l fefr dh fu; Drh l Hkh jkT; ka e , d l eku vk/kkj ij lk; klr dkuuh l okvka dks LFkkfir djus ds fy, dh xbZ FkhA ftl dk l eki u fQj Hkkjr l jdkj }kjk 1980 e dfeVh QkY yhy , M fLde ¼CILAS½ ds xBu ij gvkA

bu l Hkh l fefr; ka us dkuuh l gk; rk ds vf/kdkj dks ekfyd vf/kdkj ds : lk e igpkuk g ftl dh xkjMh jkT; }kjk U; k; rd l eku igp ds fy, nh tkuh pkfg, A

fof/kd l gk; rk ds i ko/kku dks vkj kf/kd U; k; iz.kkyh dh dBkjr dks de करने की यंत्रावलि के रूप में और यह सुनिश्चित करने के लिए कि सभी को vkj fEHkd pj.k e i Hkkodkj h dkuuh i frfuf/kRo }kjk U; k; rd igp iklr g l dfYi r dj fy; k x; k Fkka

<sup>34</sup>इस समिति की नियुक्ति कानून एवं न्याय मंत्रालय, भारत सरकार द्वारा न्यायाधीश वी-व्ज- कृष्णा अय्यर की अध्यक्षता में की गई Fkh vkj bl us ylxla ds fy, i frfO; kRed U; k; uked fjikVZ i Lrq fd; k

<sup>35</sup>bl l fefr dh fu; fDr Hkkjr l jdkj }kjk dh xbZ Fkh ftl e U; k; k/khश पी-, u- भगवती न्यायाधीश एवं वी-व्ज- कृष्णा अय्यर bl e l fefyr Fk vkj bl us राष्ट्रीय न्याय देखरेख l eku U; k; % l kekftd U; k; uked fjikVZ i Lrq fd; kA

fof/kd I gk; rk vkj gekjs I kekftd&vkfFkd I nhkZ es xjhch ds chp tMko  
को दर्शाते हु, ] I fefr; k us dgk fd%

- सामाजिक सहायता को सुनिश्चित करने के लिए निवारक एवं सामरिक कानूनी सहायता आवश्यक है
- fof/kd I gk; rk es dkuu vkj I LFkxr I qkkj dks Hkh I fEefyr fd; k tkuk pkfg,
- कानून और गरीबी के मुद्दे को सम्बोधित किये जाने की आवश्यकता हैA

bu I fefr; k }kjk bl ckr dks ekU; rk nh xbZ Fkh fd%

- fof/kd सहायता को आपराधिक न्याय प्रणाली के निष्पक्ष मुकदमे के मानकों द्वारा आवश्यक सभी चरणों में –गिरफ्तारी पर, जांच के दौरान, और मुकदमा तथा मुकदमे के पश्चात उपलब्ध कराना चाहिए।
- tsy vkj vU; fgjkl rh I LFkkuk ds dfn; k dks dkuuh I gk; rk vkj I ykg dk fu; fer izku fd; k tkuk pkfg, A

2- शुरुआत में कानूनी सहायता तक igp dks I LFkxr cukuk pkfg,

jKT; ds [kp i j dkuuh I gk; rk ds vf/kdkj dk] 1976 es , d I kofkfuद संशोधन द्वारा राज्य की नीति के तौर पर नीति निदेशक के रूप में परिचय dj; k x; k FkA vuPNn 39 d jKT; }kjk mfpr dkuuk vkj Ldhek }kjk I Hkh ds fy, I eku U; k; dks I jfkr djus dks vfuok; I cukrk gA

हालांकि, विधिक सहायता का अधिकार अप्रवर्तनीय नीति निदेशक है, हमारी U; k; i kfydk us xjhck dh t+ jrka dk] I ekurk vkj thou thus ds vf/kdkj ¼vuPNn 14 , 21½ ds jpukRed vuPNn }kjk mRrj fn; k gS vkj dkuuh I gk; rk ds vf/kdkj dks thou thus ds vf/kdkj ds I kFk i <+ dj bl s ekfyd vf/kdkj cuk fn; k gA<sup>36</sup>

mPpre U; k; ky; us ekuk gS fd%

- fof/kd I gk; rk dk vf/kdkj u dpy epnes ds nkj ku mi yC/k gS cfYd eftLVV ds I e{k igyh ckj i Lr fd; s tkus ij Hkh vkj

<sup>36</sup>, e, p-हॉर्कॉट बनाम महाराष्ट्र राज्य, ए-व्कल्व्क-1978 , I I h 1548

- ; g eftLVW dk nkf; Ro gS fd og vkjksi h dks bl vf/kdkj ds ckjs es cryk, vkj dkuuh l gk; d odhy mi yC/k dj k; A<sup>37</sup>

ikjEHk es ljdkjh [kp] ij dkuuh ifrfuf/kRo dks l fufश्चित करने के लिए mPPkre U; k; ky; us ifyl ij ; g nkf; Ro Mkyk gS fd og l Ec) dkuuh l gk; rk l febr dks bl ds ckjs es cryk, A<sup>38</sup>

bl 0; oLFkk को संस्थागत बनाना यह सुनिश्चित करेगा कि fof/kd l ok, a ikf/kdj.k }kjk fu; Dr odhy Lo Fkkus ij yk, x, , d fu/kk vkjksi h rd igpsk A

bl idkj , d dkuuh l gk; d odhy vijk/kh dk ifrfuf/kRo eftLVW ds समक्ष प्रथम प्रस्तुति पर ही कर सकता है और किसी भी हिरासत में अनावश्यक : lk l s Hksts tkus ds fo: ) ftjg dj l drk gA

*fof/kd l ok, a ikf/kdj.k vf/kfu; e*

fof/kd l ok, a ikf/kdj.k vf/kfu; e ¼, y-, l -, -, -½ dks 1987 es cuk; k x; k Fkk] yfdu bl s ykxw day 1996 es fd; k x; k FkkA bl vf/kfu; e dks fof/kd l ok, a ikf/kdj.k ds xBu ds fy, cuk; k x; k Fkk rkfd ; g mi yC/k dj k l d%

- detkj oxk ds fy, eqfir dkuuh l ok, a vkj
- yk d vnkyrk dk vk; kstu djus ds fy,

*vf/kfu; e fu/kkFjr djrk g%*

- vk; ekunM
- fof/kd l gk; rk ds fy, ; kX; 0; fDr; k dh l iph
- fof/kd l okvka dks ink dju ds fy, oxhdir l j puk

<sup>37</sup>[krjh ¼¼¼ cuke fcgj jkT; ] 1981 f0-y-t- 470] ¼1981¼1 , l -l h-l h- 627

<sup>38</sup>शीला बासे बनाम महाराष्ट्र राज्य, ए-व्कल्व्क-1983 , l -l h-378

## vf/kfu; e ds vrxr ykHkFkhz

vf/kfu; e ds vrxr mu ykxka dh Js kh dks l phc) fd; k x; k gS tks vk; dk fopkj fd; s cxj dkuuh l okvka dks i klr djus dk vf/kdkj j [krs g] tS s fd%

- vuq ifpr tkfr ,o tutkfr dk dkbZ l nL;
- ekuo rLdjh dk i hfMfr 0; fDr ; k fHk [kkjh
- efgyk ; k cPps
- fodykx 0; fDr
- fdl h vokfNr deh l s i hfMfr 0; fDr tS s fd l kefgd foink] uLyh fgd k] tkrh; vR; kpkj] ck< l w[kk] Hkda ,o vksn; kfxd >xMka l s i hfMfr] ; k
- vksn; kfxd dkexj] ; k
- किसी हिरासत में कैद व्यक्ति जिसमें सम्मिलित है कोई शरण प्रदान वाला घर, किशोर बंदी गृह या मनोरोग अस्पताल या मनोरोग नर्सिंग होम, या

mij kDr Js kh; ka ds vykok] dkbZ Hkh 0; fDr tks fu/kkFjr vk; ; kx; rk dks i jk djr k gk] og bl dkuu ds vrxr dkuuh l okvka ds ; kx; gksxka

इस कानून के अंतर्गत विधिक सेवाएं प्राधिकरणों का गठन राष्ट्रीय, राजकीय, ft-yk ,o rkYkndk Lrj ij fd; k x; k gA mPpre U; k; ky; ,o mPPk U; k; ky; ka dh Loã vi uh dkuuh l gk; rk l fefr gA

जहां राष्ट्रीय विधिक सेवाएं प्राधिकरण (एन-, y-, l -, -) देश भर के लिए कानूनी l gk; rk Ldhe r\$ kj dj l drk gS ogha jkT; dkuuh l ok, a i kf/kdj . k ¼, l -, y-, l -, -½ Hkh vi u&vi us jkT; ka ds fy, ekMy Ldhe cukrs gA , l -, y-, l -, - vkj ft-yk fof/kd l ok, a i kf/kdj . k tsyka ea dkuuh l gk; rk fDyfud Hkh pykrs gA

jkTlFkku jkT; us fjekM vkj tsy ds fy, , d ekMy dkuuh l gk; rk Ldhe की शुरुआत की है जहां जिला विधिक सेवाएं प्राधिकरण (एस-, y-, l -, -½ }kj k odhyka dks ^fjekM vkj tekur\* ds ds ka ea dkuuh l gk; rk nsus ds fy, fu; Dr fd; k tkrk gA ftlga ^fjekM vkj tekur\* odhy dgk tkrk gS mlg 6 eghus dh vof/k ds fy, fu; Dr fd; k tkrk gS ftl ds var ds ckn] ubl fu; fDr; ka dh tkrh gA bl ds vykok] , u-, y-, l -, - ds , d Ldhe ds vrxr odhyka dk] vki kf/kd ds ka ds epdneka ea dkuuh l gk; rk nsus ds fy, , d i suy ea fjVuj ds : lk ea j [kk tkrk G



I. i Hkkoh dkuuh i frufuf/k vkj /kkjk 167 ds rgr U; k; k/h'k dh Hkfredk ds chp cfu; knh tMko

(i) fxj¶rkjh] fjekM vkj i Fke i s kh %

I rdZ vkj I tx n. Muk; d ds I kFk&I kFk i Hkkoh dkuuh çfrufuf/kRo I s I Hkh vkjksi h 0; fDr; k] [kkI dj mu ykxka dh epnek i nZ ds U; k; rd I eku : i I s igp I fuf'pr gsrh gS tks vius yEcs dkj kokl ds vxks ijh rjg I s fuLI gk; gA mudh , s h nxfRr mudh nfjnh @dækyh] fyæ] /kel ] tkfr] mez vkj viærk ds dkj . k gA

tki/ki g ea fjekM vkj tekur ds odhyka ds fy, I h, pvkj vkbZ }kj k fjekM ij dk; Z kkyk ds nkj ku odhyka us vius vke vuHkoka ea crk; k fd mudh nLrkostka dh i Fke i LrfRr dh voLFkk ea mu rd dkbZ i ggp ugha cu i krh gS vkj bl voLFkk ea mudh dkbZ Hkfredk Hkh ugha gsrh gA cpko i {k ds odhy dh i fyl fgjkl r ; k U; k; kf; d fgjkl r ea fjekM ds I e; dkbZ gLr{ksi u gksuk , d ^l keku; \* pyu gA

nfjnz vkjksi h] ftUga dkuuh I gk; rk i ggpkus ds fy, , d odhy fn; k tkrk gS ml dk igyh i s kh ea u rks dkbZ çfrufuf/kRo fd; k tkrk gS ; k vxj ml dk çfrufuf/kRo fd; k x; k] rks , d s cpko i {k dk odhy dkbZ nLrkost u gksus ; k vkjksi h vkj ml ds i fjokj ds I nL; ka ds I kFk dkbZ ckrphr@I ykg&e' kfojk u gksus ds dkj . k fjekM dk i Hkkoh <æ I s fojks/k dj i kus ea vl eFkZ jgrk gA i fyl fgjkl r ea fxj¶rkj 0; fDr dks 24 ?kæ/s rd j [kk tk I drk gS bl vof/k ea i fyl dks vkjkfRr vij k/k dh tkp djuh gksxA

bl I fgrk dh /kkjk 167 U; k; k/h'k dks ; g 'kFDr nrh gS fd og vkjksi h dks ; k rks i fyl ; k U; k; kf; d fgjkl r dh fjekM ij Hkstus dk vkn's k nA , d k djus dk è; s vU; k; i wZ vkj xj &dkuh fxj¶rkjh dh tkp djuk vkj bl iækj epnek i nZ dh vuko' ; d dñ dks jksduk gA

vkjksi h dh igyh i s kh ds I e; dkuuh I gk; rk i ggpkus okys odhy }kj k xjhc vkjksi h ds i Hkko' kkyh çfrufuf/kRo I s ; g I fuf'pr gksk fd fdl h vkjksi h ds vf/kdkj ka I s I æf/kr oSkfud I g {kk dk i jk i kyu fd; k x; k gA

tc fdl h vkjsi h dks U; k; k/h'k ds l keus i gyh ckj i s'k fd; k tkrk gš ml l e; U; k; k/kh'k dk ; g mÜkjnkf; Ro gkrk gš fd og vkjsi h dh l Hkh rjg dh l j {kk dk vuq kyu djA cpko i {k ds odhy dk Hkh vi us epfDdy ds i fr ; g drD; gš fd og ; g l fuf'pr djs fd ml ds epfDdy ds vf/kdkjka dh j {kk gks jgh gA

cpko i {k ds odhy ds i kl ; g vol j gš fd og fxj¶rkjh ds rj r ckn vi us epfDdy vkš ml ds i fjokj ds l nL; ka l s i fyl Fkkus ea gh fey yš ftl l s og vi uh vPNh rš kjh dj l ds vkš vi us i Hkko'kkyh rdkæ l s ml dh i gyh i s'kh ea gh ml s vuko'; d fjeM ea Hkstus dk fojkš djs ctk; bl ds fd og vkjsi &i = cuus dk bñtkj djA

i gyh i s'kh ea gh vxj U; k; k/kh'k bl ckr l s l aqV gks tkrk gš fd fxj¶rkjh dk dkbZ l j&i š ; k dkbZ vk/kkj ugha gš rks , d s ea ml ds i kl vkjsi h dks fjgk dj nus dk vf/kdkj gA bl l fgrk dh /kkjk 59 ea dgk x; k gš fd vxj , d ckj vkjsi h i fyl }kj k fxj¶rkj dj fy; k x; k rks ml s vi us Lo; a ds ckM ; k tekur ; k fdl h fo'ks'k vkn's'k ds vykok fdl h vkš vk/kkj ij fjgk ugha fd; k tk l drk gA vxj vkjsi h dh fxj¶rkjh vkš dñ xš &dkuuh ugha dgh tk l drh gš rks , d s ea ml s ml ds vi us ckM ; k tekur ij fjgk fd; k tk l drk gA yfdu vxj ml dh fxj¶rkjh xš &dkuuh i kbZ tkrh gš rks , d s ea , d k dkbZ l oky gh ugha mBrk gš fd ml s vi us Lo; a ds ckM ; k tekur ij fjgk fd; k tk l drk gš vkš l epr vkn's'k gh ml dh fjgkbZ dk vkn's'k gksxk ; kuh fo'ks'k vkn's'k i kfj r djs vkjsi h dh fjgkbZ dk vkn's'k nsuk] tš k /kkjk 59 ds ckn ds Hkkx ea voyksdu fd; k x; k gA

; g l pko nus ds i ; k r fof/'kkL=k l Eer vk/kj gš fd /kjk 167 ds rgr fdl h vkjsi h 0; fDr dks fjeM ea Hkstus ea U; k; k/kh'k dks U; kf; d l e> l s vi uh 'kfDr dk mi ; kx djuk gksxA bl ds fy, i gyh ckj i s'k gkus ij ; k rks fgjkl r ea fjeM vkš ckn ea U; kf; d fgjkl r ea rHkh Hkstk tk l drk gš tc eftLVV dh bl Mk; jh dh i fof"V; ka vkš ml ds i kl ekštn nLrkostka dks ns[kus ds ckn bl fu"d"kZ ij i gprk gš fd , d k fjeM t#jh gA

**(ii)** fxj¶rkjh l s l æf/kr i ko/kkuka ea gky ea fd, x, oškkfud l d kks'ku% ; g i kB; Øe l hvkji hl h vkš ij ke'kZ rd mudh 'kh?kZ vkš i Hkkoh i gp ds {ks=ka ds gLr{ksi ka ds fy, mudk vFkZ fudkyus ea gky ds oškfud l d kks'ku mi yC/k dj k, xk ftl l s vuko'; d fxj¶rkjh vkš dñ dh jkdFkke dh tk l dA

o"kl 2008 ea 1973 dh l fgrk ea cM\$ l d kks/ku fd, x, A bl l fgrk ea ; s  
cnyko U; k; 'kkL= ij vk/kkfjr gā ftluga mPp U; k; i kfydk }kjk fxj¶rkjh i nōz  
vkšj fxj¶rkjh mijkar dh l g{kk ds vk/kkj ij fodfl r fd; k x; k gā vc  
tekur fn, tkus ; kš; ekeyka ea vkjksi h dks l cl s igys i s kh dk , d ukfVI  
tkjh djuk gksxk vkšj i fyl dks vkjksi h dh fxj¶rkjh ds dkj.k crkus gksx  
(/kkjk 41 , A

l d kksf/kr i ko/kkuka ds fufgrkFkZ ij ppkZ djrs gā bykgkckn mPpre U; k; ky;  
us dgk fd vkerkšj ij tggk vkjksi h dk , QvkbZvkj ea uke gš vkšj bl vijk/k  
dh l tk 7 l ky rd ds dkjkkol dh gš , s ekeys ea 'kq#vkrh voLFkk ea  
vkjksi h dh fxj¶rkjh t#jh ugha gš ml s bl l fgrk dh /kjk 41 , ds rgr  
i fyl vf/kdkjh ds l keus mi fLFkr gksus dk , d ukfVI tkjh djds ml dh  
mi fLFkr dks l g f{kr j [kk tk l drk gā

bu ekeyka ea vkjksi h ds vijk/k ea 'kkfey gksus l a/kh i ; klr l cir , df=r  
djus ds ckn ml s fxj¶rkj fd; k tkuk pkfg, vkšj bl ij , d vkjksi &i = i s k  
djuk t#jh gā

i fyl dks 7 o"kl rd dh l tk fn, tkus okys [kkl ekeys ea vkjksi h dks  
fxj¶rkj djus ds dkj.k dks ; FkkFkZ : i l s vkšj bZekunkjh l s fj dkmZ djuk  
gksxkA vnkyr dk vkxs dguk Fkk ----- "i fyl dks ds l Mk; jh ea e'khu dh  
rjg vkšj fuR; Øe ea ; g ugha fy[kuk pkfg, fd , s h l Hkkouk gš fd vkjksi h  
Hkkx tk, ; k ; g eku yuk fd vkjksi h /kjk 41 , ds rgr mi fLFkr gksus ds  
ukfVI dk tcko u ns ; k og l cirka ds l kFk NM&NM+ djš tc rd fd , s k  
fopkj j [kus ds i hNs Bkd dkj.k u gks vkšj vkjksi h dks fxj¶rkj djus l s igys  
ds l Mk; jh ea Li "V : i l s ; g fopkj cukus ds Bkd dkj.k crk, jA\*\*

**(iii)** mnkjoknh tekur vkšj ckM ds pyu dks ykxw djus dh t#jr %

gd Šukjk [kknw cuke fcgkj jkT; ds ekeys ea l okPp U; k; ky; us i k; k ds  
epnek >y jgs gtkjka dšh ftu ij tekur ; kš; vkjksi yxk gš os tsy ea  
gh Fks D; kfd muga tekur ij fjgk gksus ds vi us vf/kdkj dk i rk gh ugha gš  
vkšj os xjhch ds dkj.k fdl h odhy dk [kpZ mBk i kus ea vl {ke gā

U; k; efrZ Hkxorh us i k; k fd gekjh vki jkf/kd U; k; 0; oLFkk ea tekur i kus  
dk tks i ko/kku ekšm gš og xjhc fojks/kh gš vkšj tks xjhcka dks epnek&i nōz  
dh dšh ea cjl ka rd cuk, j [kdj vkšj muga muds ?kj l s nij j [kdj muga  
U; k; l s mi f{kr djrk gā

dkunuh l gk; rk i gpkus okys odhy dks vkjksi h dks 0; fDrxr ckM ij fjpgk  
djokus ds fy, dkunuh iko/ku vkj ds l a/h dkunuh dk Hkh mi; kx djuk  
gksxk ftl l s tekur ds l a/k ea dkunuh ds vl eku ifjpkyy ij fot; gkfl y  
dh tk l dA eksh jke cuke mUkj ins'k jkT; ds ekeys ea l okPp U; k; ky;  
dk ekuuk Fkk fd xokgh nus dh iol 'krz l s tekur ij fjpgk gksus okys vkjksi h  
ds vf/kdkj dh vogsyuk gsrh gs vkj tekur ea vkjksi h Lo; a ckM Hkj dj  
fcuk xokgh ds Hkh fjpgk gks l drk gA yfdu 0; ogkj ea LFkkuh; xokg is'k  
djus ij tkj fn; k tkrk gs ftl l s ; g r; gsrk gs fd xjhc vkjksi h dks  
^tekur feysxh ; k tsy\*A

60@90 fnuka dh l e; &l hek ftl ea vkjksi h dks fjeckM ij j[kk tk l drk gA  
bl l hek dk fu/kkZ .k bl fy, fd; k x; k ftl l s ifyl ij tYnh l s tYnh  
tkjp ijh djus dk ncko cuk jgA , d k djus vkj 60@90 fnuka dh fu/kkZjr  
vof/k ea vkjksi &i = nkf[ky djus ea foQy gksus l s vkjksi h ^vfuo; l tekur\*  
dk gdnkj gks tkrk gA , d l tx odhy ^pd tekur\* ds bl iko/kku dk  
ykhk mBk l drk gs vkj ; g l fuf'pr dj l drk gs fd vkjksi h yEcs l e;  
rd epnek iol dh l tk dk ik= u cuA

cpko i{k odhy xjhc @ detkj epfDdy dks epnek&iol dk U; k; fnykus  
ds fy, D; k&dN dj l drk gA

- ❖ vxj 41 , ykxw gksus ; kx; gs rks ml dh fxj¶rkjh dk fojks'k dja vkj  
vi us epfDdy dks fxj¶rkj djkus dh ctk; ml s is'k gksus dk ukfVI ikus  
ds ml ds vf/kdkj ij gh tkj Mkya (/kkjk 41 , A
- ❖ vkjksi h 0; fDr l s ; g l fuf'pr dja fd D; k ml s ml dh fxj¶rkjh ds  
vk/kkj dh tkudkj nh xbl gA
- ❖ vi us epfDdy l s , QvkbZvkj dh , d i fr dh ekx dja
- ❖ ; g l fuf'pr djs fd D; k U; k; k/h'k }kjk fxj¶rkjh i =kd dh tkjp dh xbl  
gs ; k ugh (/kkjk 41 chA
- ❖ tc dHkh l Hko gks tekur ds fy, vkonu dja vxj vki ds epfDdy dks  
tekur fey xbl gs yfdu og bl dh vki pkfjdrk ijh dj ikus ea vl eFkZ  
gs rks , d s ea ml s xokg ds l kFk ; k ml ds fcuk 0; fDrxr ckM ds vk/kkj  
ij fjpgk djus dh ekx dja
- ❖ iNrkn ds nkjku ogkj mi fLFkr jgus ij tkj na (/kkjk 41 MhA

- ❖ ; g l fuf'pr dja fd vki ds epfDdy dh fxj¶rkjh ds rgar ckn LokLF; vf/kdkfj; ka@ iath¶r MkDVjka efgyk vkjsi h ds ekeys ea efgyk MkDVj }kjk ml ds LokLF; dh tkp dj yh xbl gA
- ❖ vxj vki ds epfDdy us ifyl fgjkl r ea ; kruk ; k n¶; bkgj dh f'kdk; r dh gS rks ml ds MkDVjh ij h{k.k dh ekx dja
- ❖ ; g l fuf'pr dja fd vki ds epfDdy dks 24 ?ka/s ds Hkhrj l q kX; U; k; k/h'k ds l keus i s'k fd; k x; k gS (ftl ea U; k; ky; rd i gpus ea yxus okyk l e; ' kkfey ugha gS (/kkjk 57 ds l kFk /kjk 56 i <A
- ❖ igyh i s'kh ds nkjku vxj vki ds epfDdy dh fxj¶rkjh dk dkbz Li "V vk/kkj u i s'k fd; k x; k gS rks , s s ea vius epfDdy dks fjpgk djus l æ/kh rdZ nA
- ❖ ifyl }kjk nk;j fjekM ds vkonu dh , d i fr dh ekæ dja vksj igyh ckj miLFkr gkus ij fgjkl r ea fjekM dk fojks/k djrs gq i Hkko'kkyh <æ l s viuk rdZ j [ka vksj ; g l fuf'pr dja fd tc rd fd eftLVV }kjk ds Mk;jh dh tkp u dh tk, ; k bl ekeys ea tc rd fd og vius U; kf; d fnekx dk mi; kx u djs rc rd dkbz fjekM&vkns'k u ikfjr gkus nA
- ❖ vxj 60@90 fnuka dh fu/kk¶jr l e; l hek ea vkjsi &i = ugha nkf[ky gkrk gS rks , s s ea l pr jga vksj ^pid tekur\* ds iko/kkuka dk mi; kx dja

i ¶' p; kl ds ckjs ea

jktLFkku ea dkuuh l gk; rk i gpus okys odhyka ds fy, epnek&i nZ U; k; ij tkjh dkuuh f'k{kk dk; De epnek i nZ ds i R; sd egUoi nZ pj.k ea dkjokol vksj fxj¶rkjh l s ydj vkjsi &i = vksj fQj epnes rd vuko'; d dñ ds fo#) dkuuh rFkk vU; j.ku¶rd l ek/kku djus ds fy, tks/ki g ds ftyk dkuuh l ok i kf/kdj.k }kjk fu; ¶r fjekM vksj tekur ds odhyka vksj i suy odhyka dh Hkfedk ij tkj nsxA

bl i k B; Øe dks l ghkxh odhyka dks enn djus ds fy, x<k x; k g\$ ftl l s os  
bl 0; oLFkk ea 0; klr x\$ &dkunh pyuka dh igpku dj l d\$ tks fd i f\$yl Fkku\$  
vnkyr d{k v\$ t\$y ds Lrj ij 0; ofLFkr <æ l s fd, tkus okys n\$ kpkj k\$  
vnkyrh pkykdh@/k\$rk rFkk vU; l kekftd&dkunh pyuka l s mi tk g\$A

bl i k B; Øe dk eq[; è; s; dkunh 'kkl u ds egÙo dh l e> fodfl r djuk]  
l kLFkkfud : i l s bl 0; oLFkk ds etZ dk irk yxkuk v\$ vijkf/kd U; k;  
0; oLFkk ea l q'kkj djus dh vko'; drk ij tkj nsuk g\$A bl dk è; s; dkunh  
'kkl u ds ekudka dks ijk djus ds fy, i f\$yl ] t\$y l q'kkj] dkunh l gk; rk  
0; oLFkk ea l q'kkj v\$ U; kf; d l q'kkjka ds chp ds enyHkr tMko dh vPNh  
l e> cukuk g\$A

bl i k B; Øe dk eny eel fjekaM v\$ tekur ds dkunh dk i Hkkoh <æ l s  
mi; k\$ djuk g\$ ftl l s epnek i wZ dh d\$ dks de fd; k tk l d\$ [kkl dj  
detkj] ekgrkt vkcknh ds fy, A vkjksi h dh n\$ki w k\$rk v\$ ml ds vf/kdkj  
ds n\$gjs ekin. M dk vè; ; u fd; k tk, xk] ftl ea d\$ dh vekuoh;  
i f\$yl LFkr; ka v\$ muds l kekftd&vkfFkd i Hkko] l kFk gh l kFk d\$ ds n\$ku  
vf/kdkjka dh j {kk ij tkj fn; k tk, xkA

dkunh l gk; rk] odhy ds i s'ks ea ufrdrk v\$ odhy&epfDdy ds fj'rs ds  
eny fl ) klrka dks n\$gjkrs gq bl i k B; Øe ea dkunh 'kkl d ds mPp m\$ s' ; ka  
dks ijk djus ds fy, vnkyrh pyuka ea l q'kkj ykus dk iz; kl fd; k tk, xkA  
bl i k B; Øe ds vi f\$kr i f\$.kke bl i d\$ l s g\$

- ❖ ijke'kZ rd 'kh?kz igp l fuf'pr djuk % x\$ &dkunh i f\$yl @U; kf; d  
fgjkl r dks jksduk] tks/ki g ea dkbZ Hkh vkjksi h fcuk l g {kk ds u j g\$A
- ❖ i Hkkoh i frfuf/kRo l fuf'pr djuk % fjekaM dk i Hkkoh <æ l s fojks/k  
djus dh j.kuhfr] tks/ki g ea tekur v\$ ckM ij fjgkbZ ds i ko/kuka  
dk l cl s vPNs <æ l s mi ; k\$xA
- ❖ tks/ki g ea epnek&i wZ dh d\$ ds {ks= ea l koZtfud l g {kk dks etcr  
djuka
- ❖ x\$ &dkunh d\$ ds i Hkkoka dh fn'kk ea l onu'khyrk c<kuk v\$  
d\$Fkvka dks cnyus ds fy, gLr{ksi djus ds rjhdk v\$ d\$ kyrk dks  
cgrj cukuka

ds s bl i k B; Øe dks l pkyu fd; k tk, xk\

bl i k B; Øe ea vud dk; Z kkyk vka dk vk; kstu vkj fgjkl r & ifyl Fkkuk  
vkj tsy] fjdKMZ d{k vkj detkj l epk; ka ds LFkku dk Hkæ.k djds mudk  
tk; tk fy; k tk, xkA i R; sd dk; Z kkyk ea vijkf/kd U; k; 0; oLFkk ds mu , d  
; k ml l s T; knk i gya vka dk l æks/ku fd; k tk, xk ftudk U; k; kfpr epnes vkj  
vkj ksh ds vf/kdkj ka ij cjk i Hkko i Mærk gš ftluga detkj h vkj gkoh nġkxg ds  
l anHkZ ea vkædk tk, xkA i R; sd dk; Z kkyk ea dkuu vkj fof/k' kL=k ds Kku]  
dkuuh dġkyrk dks dġnz ea j [kk tk, xk ftl l s odhy&epfDdy ds chip ds  
fj'rs rFkk l ġ [kk dh rš kjh dh j .kuhfr cukbz tk l dš rkfdzdrk cus vkj muea  
l q'kkj gkA

bl i k B; Øe ea ftu foLr r {ks=ka dks 'kkfey fd; k tk, xk os bl i zdkj l s g&

- ❖ l hvkj i hl h ij i q'p; kZ dk; Z kkyk
- ❖ dš dk fo'ys'k.k
- ❖ dkuuh j .kuhfr; kj] dkuuh l gk; rk vkj i ks&cksuks odkyr
- ❖ l cir ea ubl i xfr
- ❖ dkuu] U; k; vkj l c dġN v/kj ea
- ❖ dkuuh 'kkl u vkj vijkf/kd U; k; 0; oLFkk ea l q'kkjA

mijkDr fo" k; ka ij pġunk ys[k] oškfud i ko/kku] dš ds dkuu] dkuu vk; ksx  
rFkk vU; vk; ksx ds egŭoiw kZ fj i kVka dks l gHkkfxrk fuHkkus okys odhyka dks  
l kš k tk, xkA bl l s os vuko'; d fgjkl r] rd&ford] i q% i jh{k.k rFkk l cir  
cukus dh dġkyrk fodfl r djus l æ/kh vko'; d dkuuh Kku l s voxr gkA

dk; Z kkyk l a[; k I dk i fj p;

bl Ja[kyk dh i gyh dk; Z kkyk ea U; k; kfpr epnes vkj i ko/kuka ds ?kVdka dks  
dġnz ea j [kdj vijkf/kd dk; Z kkyh dh i jh tkudkj h i nku dh tk, xh ftl dk  
è; s epnek&iwZ dh dš dks ?kVuk gš bl s fxj ġrkjh] fjekM] tekur vkj  
vkj kš i = l s l æf/kr l fgrk ds i ko/kkuka ij i q'p; kZ ekM; y ds : i ea x<k  
x; k gš bl dk tkj Kku vkj dġkyrk ij gkxk ftl dh Fkkuk vkj vnkyr nkuka  
epnek&iwZ dh voLFkk ea i Hkko i fruf/kRo mi yC/k djkus ea t#jr i Mæh gš  
vkj bl i zdkj vuko'; d dš dks de djuk gš

bl dk; Z kkyk dk mís' ; fuEufyf[kr y{; ka dks gkfl y djuk g&

- ❖ vPNk Kku vkj vkt ds fnuka dh t#jrk vkj eW; ka dks vkRel kr djuk gS ftl l s vuko'; d dñ dks jkdus ds fy, dkunh 'kkl u ds fl ) kUrka l oYkfud eW; ka oYkfud mís' ; ka vkj U; k; kfpr epnes ds eny rUoka dks l e>k vkj ekuk tk l dñ
- ❖ epnek&iwZ vkj epnes ds pyuka dh voYkrkvka dk vPNs <æ l s vkdyu
- ❖ 0; fDrxr Lorærk rFkk fjekM o tekur dh i fØ; k dk i Hkko'kkyh <æ l s fd, tkus okys iz; kx dk cgrj eW; kadu
- ❖ l ht; l ds fofHkUu l jkdj ka ds vf/kdkj ka vkj drD; ka ds i æ/kh vkj fdl i dkj l s l fgrk ea 'kfDr; ka ds l Hkkfor n#i; kx dks l ækf/kr fd; k tkrk gS mu ij l e> c<kuk
- ❖ l ht; l ds ik=ka dh foosdk/khu 'kfDr; ka muds fj dKwZ rFkk fj i kSV vkj budh 0; k[; k dh vPNh l e> cukukA

bl dk; Z kkyk l s oYkfud mís' ; vkj LFkkuh; pyuka ds chp dh nñh dk i rk pysx vkj fof'k"V voYkrkvka [kkl dj epnek&iwZ ds Lrj ij voYkrkvka dh l iph cukus ea enn feyxh ftl l s odhy bl i kB; Øe ds nkj ku vkj ml ds ckn i fØ; kRed vkj fof/k'kkL=k l æ/kh Kku dk 0; ofLFkr vkj fujarj iz; kx dñ ds cnyko ykus ea l {ke gkæA



## U; k; rd igp: कानूनी सशक्तिकरण (, d cnh के दृष्टिकोणसे)

vkj-dsl DI suk

vkfpr;

, d iHkkodkj h 'U; k; rd igp\* dk lcls etair nok mu ykxka dh fLFkr l s tle yrk gS ftl gkaus vius Lora=ki wld ?kieu&fQjus ds vf/kdkj dks fdl h 'mfpr\* U; kf; d i fØ; k ds varxlr [kks fn; k gS ftl gaus tsy ea cn dj fy; k गया है, यदि जिसे सामाजिक दृष्टिकोण से देखा जाए तब वह प्रायः गरीबों, अशिक्षितों और असंबद्ध देहात के लोगों के लिए 'अनुचित' प्रक्रिया हो जाती है। ftuds ikl tekur yus dh ; kx; rk vkj {kerk gS o} orZeku U; kf; d 0; oLFkk ds varxlr bl ds fy, mi yC/k vkj [kys gq dbZ dkuiuh vkj xj dkuiuh दरवाजों से प्रवेश करके, अपनी स्वतंत्रता को तब भी संभाले रखते हैं जब वे vnkyr ea vius Aij yxs vkj jkf/kd vkj ksa ka ij cpko dj jgs gkrs gA

Rkdjhcu 2-5 yk[k ykx tsy dh nhokjka ds i hNs l s epnes dh i rh{kk dj jgs हैं और वह विशेष प्रकार के सुविधाहीन समूह बनते हैं क्योंकि उनके पास न्याय पाने के लिए साधन और संस्थानों तक निर्बाध रूप से पहुंच नहीं है। वर्ष 2005 के अंत में देशभर की tsyka ea cn dgy 358-37 हजार बंदियों (दोषसिद्ध अपराधी vkj fopkj k/khu½ ea l j 77% vशिक्षित या अर्धशिक्षित थे। 14 हजार महिलाएं tsyka ea cn Fkha tks tsy dh dgy tul a[; k dk 4%gA bl ckr dks fl ) djus ds fy, dkbZ vkadMk ugha gS fd tks epnes ; k vi hy ds nkj ku vnkyr }kj k vi uh Lora=rk dks i klr ugha dj i k; s mudh vkfFkd Lrj D; k Fkh] yfdu , d वास्तविक सर्वे में यह प्रदर्शित होगा कि इन बंदियों में से तकरीबन 95% os ykx gS tks ; k rks xjhc oxZ l s vkrs gS ; k fupys e/; e oxhZ gA

Hkkjr dh tsyka ea c<rh l a[; k , d xHkhj l eL; k gS ftl ij rjar /; ku fn; s जाने की आवश्यकता है। पिछली शताब्दी के आठवें दशक ¼71&80½ ea विचाराधीन बंदियों के प्रवेश में अचानक उछाल आ गया। यह 1970 में 6 लाख l s c<dj 1980 ea rdjhcu 10 yk[k rd gks x; k vFkkZr~ 62%of) ntZ dh xbA fopkj k/khu cfn; ka dh nFud vkj r tul a[; k Hkh enyr% 42-5 gt kj l c<dj 77-5 gt kj gks xbA bl dk dN Hkkx vijk/kka ea of) ds dkj .k gS yfdu vfHk; kstu , tfl ; ka ds }kj k /kheh tkp] tekur eatj djsr l e; : f<eknh i) fr vkj U; k; i kfydk }kj k ds ka dk foyम्बित निष्कासन इस स्थिति ds fy, ftEenkj dN vU; egRo i wZ dkj d FkA

तब से, देश में दोषियों और विचाराधीन कैदियों का अनुपात 1:2 का रहा है और दोषियों से तीन गुना (पश्चिम बंगाल: 3848&14017½ vkj ; gka rd fd l kr xpk %fcgkj% 5609&40019½ rd c<+ xbl FkhA<sup>39</sup>

fopkj/khu cfn; ka dh l eL; k vkj bl ds i fj.kkeLo: lk gkus okyh ekuo i hMk को बहुआयामी कार्यनीति के साथ संबोधित करने की आवश्यकता है:

- vfHk; kstu ra= }kj k rst+ tkp
- सतर्क जेल प्रशासन
- निःशुल्क विधिक सहायता और विधिक सलाह की उपलब्धता
- tekur] ca/ki = vkj i fjoh{kk l Ecfl/kr dkuuuka dk U; k; l Eer mi ; ksx] vkj
- fopkj/khu rFkk vihykFkhz cfn; ka ds ckjs ea mPpre U; k; ky; }kj k fn; s x; s fu.kz; ka dk dMkbZ l s ikyuA

gkaykfd] U; k; i kfydk U; k; dh l j {kd g] fu%l ang bl ds vfrfjDr nil jh dbZ , s h , tfl ; ka g] ftudh Hkfedk u dby ijd g] cfYd U; k; ds l pkyu ea cgr vge g] ftl ea l fEefyr g] ifyl ] ty] vfHk; kstu] odhy&l epk; ] jkT; fof/kd l ok, a i kf/kdj .r, **संदिग्ध या अपराधी, शिकायतकर्ता और जनता** HkhA bues l s dN l oYkkfud ; k oYkkfud g] vkj tcf d nil js 0; fDr ; k futh vfLrRo g] tks dby rc gh gjdr ea vkrs g] tc U; k; dh i fØ; k viuh txg ij gkA yfdu] egRoiwZ ckr ; g g] fd bl dh l xfr Hkfedk dks vkij kf/kd U; k; 0; oLFkk dgrs g] bues l s dkbZ Hkh vdsys nil js ds l g; ksx] l gk; rk vkj l keatL; ds cxj vkij kf/kd U; k; dks i HkkoiwZ : lk l s **न्याय—प्रशासन नहीं कर सकता।**

bl fy,] epnek iwl cn dh l eL; k dks de djus ea ; g , tfl ; ka D; k Hkfedk fuHk l drh g] bl ij ge l f{klr ppkZ djrs g]

<sup>39</sup>भारत में जेलों के आँकड़े—2005, नेशनल क्राइम रिकॉर्ड ब्यूरो, गृह मंत्रालय, भारत सरकार—पेज 35–36-

i fɪl vɪʃ vɪh; kstɪ

कानून द्वारा पुलिस को संदिग्धों के विरुद्ध कोई दण्डात्मक शक्ति प्राप्त नहीं है।  
U; k; l pkyu dh i fɪl; k ds okgd ds rkʃ ij i fɪl dks l fɪnX/k dks ftruh  
जल्द हो सके अदालत के समक्ष प्रस्तुत करना की आवश्यकता होती gAtc vnkyr  
के समक्ष पुलिस संदिग्ध को प्रस्तुत करती है, तब यह आशा की जाती है कि उसने  
ds l s l c) l Hkh l crk dks , df=r dj fy; k gkA vki jkf/kd U; k; i fɪl; k ds  
bl igys pj.k ea i fɪl ftl < k l s l fɪnX/k ds l kFk crkb djrh gS og  
egROI kZ gkrk gS D; kfd bl l s vkj k h dks ; g i rk yxrk gS fd ml s fd l i xkj  
ds U; k; dh viʃkk j [kuh pkfg, A yfdu] i fɪl vɪʃ vɪh; kstɪ }kj k xjhck  
अशिक्षितों और महिलाओं के साथ जांच या इंक्वायरी के दौरान में जो बर्ताव किया  
tkrk gS og l kekU; r% ekuo xfjek ds brus v; kX; gkrk gS fd og epnes ds  
cxʃ n.M i kus l eku gkrk gA

पुलिस और अभियोजन को तीव्र जांच की दिशा में अपने रुझान में बदलाव लाना  
gkxkA vi jk/kk ea c<krjh l s fui Vus ds fy, bu foHkkxk dks vi us vkfFkd vkʃ  
ekuo nkuk l d k/kuk ea of) djuh pkfg, A rhl jʃ gʃ ſvkjk [kkrũ ds ds ea  
न्यायाधीश श्री भागवती ने अवलोकन किया था:

“राज्य, शीघ्र न्याय दिलाने के संवैधानिक कर्तव्य को आर्थिक या प्रशासनिक  
असमर्थता का हवाला देकर टाल नहीं सकता है। राज्य शीघ्र न्याय सुनिश्चित कराने  
के संवैधानिक अधिदेश के अंतर्गत बंधा हुआ gS vkʃ bl ds fy, tks Hkh djuk  
आवश्यक है वह राज्य द्वारा किया जाना चाहिए। यह इस अदालत का भी संवैधानिक  
nkf; Ro gS fd] turk ds ekfyd vf/kdkj k ds vfHkHkkod] -----i gjnkj ds rkʃ ij  
आरोपी के शीघ्र मुकदमा के अधिकार को सुनिश्चित करने के लिए राज्य को  
आवश्यक निर्देश जारी करके जिसमें राज्य सकारात्मक कार्यावाही कर सकता है  
ftl ea tkp ; a=kofy ea c<krjh djuk o etar djuk u, vnkyrk dh LFkki uk  
djuk vkʃ u; s vnkyr ?kj cukuk l fefyr gS-----\*\*

देश के सभी स्थानों पर हमारी अदालतों में पिछले कार्यों क < j yxkus ds fy,  
न्यायिक अधिकारियों को दोष दिया जाता है। जो केस विचाराधीन हैं वह केवल  
vnkyrk ds dkj .k gh ugha gʃ cfYd bl ds dkj .kk dk l EcU/k tkp] vɪh; kstɪ  
vkʃ cpko i fɪk ds odhyk l s Hkh gʃ mnkgj .k ds rkʃ ij] fupyh vnkyrk ea  
gR; k ds dbZ ds cMh vnkyrk ds l q nZ djus ds fy, fopkj k/khu gʃ vkʃ , s k  
bl fy, ugha gks i k jgk gS D; kfd l q nZxh %committal% fj dKlWZ r\$ kj ugha gʃ bl  
ckr dh l PpkbZ ; g gS fd , s s Hkh dbZ mnkgj .k gʃ tgka bl i xkj ds cgkuk ds  
कारण केस एक वर्ष की अवधि तक भी fopkj k/khu jg tkrs gʃ

bl h iɔdkj fupyh vnkyrkə eə , s s dbʒ ds fopkj k/khu gʃ tks i j s epnes ds fy, vksx bl dkj .k ugha c<+ i krs gʃ D; kfɪd vfhk; kstu xokg dh deh] i fɪl  
**फाईल की कमी, प्रदर्शित वस्तु %exhibit% dh deh vkʃ ; gka rd l jdkjh odhykə dh**  
 lk; kʌr l a[; k eə deh ds dkj .k Hkh gkrh gʃA

dfe; kə dk ; g mYys[k vkykpuk djus dh vkʃ i z; Ruk ugha gʃ cfYd vki jkf/kd  
 U; k; l pkyu 0; oLFkk dh dfe; kə dks igpkuus ds fy, gʃ rkfd tsykə eə  
 fopkj k/khu cfn; kə dh c<rh l a[; k dks ns[krs gq bl ds mi pkj ds mi k; fd; s tk  
 l dʌ

**पुलिस को यह समझने की आवश्यकता है कि जांच की ओर इसका सारा प्रयत्न**  
 0; Fkʌ gʃ ; fn bl eə vfhk; kstu dk Hkh mruk gh l keɪtL; vkʃ l g; ksx vkʃ ml h  
 iɔdkj vfhk; kstu dks i fɪl dk l g; ksx u i klr gkʌ nksukə dks , d nɪl j s ds  
**निकट सहयोग से काम करने की आवश्यकता है। यह भी आवश्यक है कि उन लोगों**  
 ds fo: ) dBkj dk; bkg h dh tk, tks 0; oLFkk l s tMʃ gq gʃ vkʃ tks dkuu  
**द्वारा आवश्यक और निर्धारित भूमिका के अनुसार काम करने में विफल हुए हों।**  
**यह सुनिश्चित किया जाना चाहिए कि** cjh uh; r] yki jokgh ; k vKkurk ds  
 i fɪ .kke ds : lk eə vius nkf; Rok l s gVus ; k foyɔ djus ds fy, rjɔ vkʃ  
 mfpr n.M fn; k tk, xkʌ foHkx dks fu; æ.k vkʃ ekʌuVfjɔ dh , s h ; ækofy  
 fodfl r djuh pkfg, ftl l s u dɔy l jdkjh inkf/kdkfj; kə dh Hkfiedk ds  
**अंतर्गत कार्यनिष्पादन की जिम्मेदारी सुनिश्चित हो सके** cfYd U; k; i fØ; k dks  
**दूषित करने वाले अन्य लोग जैसे कि गवाहों और वकीलों की भूमिका की जिम्मेदारी**  
**भी सुनिश्चित हो सके।**

**आपराधिक न्याय प्रणाली से जुड़े सभी लोगों को अपने निदर्शन और सोचने के ढंग**  
**में बदलाव लाने की आवश्यकता है, वह सभी एक ही मकसद ds fy, dke dj jgs**  
 gʃ&dkuu dk i fɪrikyu] dkuu rkʌtus okykə dks n.M] vi jkf/k; kə dk l q'kkj vkʃ  
**समाज की सर्वश्रेष्ठ सुरक्षा।**

ty

**जेल, न्यायपालिका की संरक्षक है। इसमें न केवल उन दोषियों को रखा जाता है**  
 ftl gə vnkyr us nf.Mr fd; k gʃ vkʃ ftl ds n.M dk dk; kʌo; u gksuk gʃ cfYd  
 bl eə j [ks tkus okys ykxkə eə , s s vkj kfi ; kə dh l a[; k Hkh cgr vf/kd gkrh gʃ  
 ftl gə U; kf; d fgjkl r eə j [kk x; k gks vkʃ ftl eə bDok; jh] vuq ʌ'kku vkʃ  
**सुनवाई अभी जारी है। जेल पदाधिकारी, उन्हें सुरक्षित रखने और जब आवश्यकता**  
 gks rc vnkyr eə çLrɪ करने के लिए न्यायिक आदेशों से बंधे होते हैं।

उनका यह एक आवश्यक कर्तव्य है कि वह यह सुनिश्चित करें कि किसी भी रिमांड बंदी को जेल में गैरकानूनी और अनावश्यक तरीके से न रखा जाए, और vxj , d k dkbz mnkgj .k gj bl s rjar l EcfU/kr vnkyr ; k eftLVV ds /; ku में लाना चाहिए। जेल पदाधिकारियों से यह भी आशा की जाती है कि वह रिमांड cfn; ka ds dkuuh vf/kdkjka dh j {kk dj vkj tgka rd l EHko gks mlg xj fgjkl rh mi pkj nxdj tsyka ea HkhM+ de djus ea l gk; rk djA

किसी भी देश में जेल, आपराधिक न्याय प्रशासन प्रक्रिया का अंतिम परिणाम है ½fl ok; mu vijkf/k; ka ds tks l epk; ij vk/kkfjr dk; Øeka ea yxk; s x; s हैं)। इस प्रकार इन संस्थानों की कार्यप्रणाली का उस देश में न्याय और vf/kdkjka ds vuHko vkj vFkZ ij cgr iHkko iMrk gA og U; k; iशासन की प्रक्रिया के संपूर्ण संरचना पर अध्ययन और शोध के लिए महत्वपूर्ण आधार भी mi yC/k djks gA

भारत में, जेलों तक पहुंच पाना एक डरावना काम है। 'सुरक्षा' के वेष में यह संस्थान वर्षों से अपनी अस्पष्टता को सुरक्षित रखने में सफल हुए हैं। जेल की अपारदर्शी व अस्पष्ट दीवार और जेल कर्मचारियों के काम करने की छुपी हुई i)fr rFkk tsy ds ckgj dfn; ka ds ifr l epk; dh cijokgh , d l kFk feydj] tsyka dks ekuokf/kdkjka ds nq; bgkj ds fy, , d mi tkÅ ituu LFkku mi yC/k djks gA tsyka dk iC/kku igkus dkuuka o fu; eka ds varxir fd; k tkrk gS ftl ds vuq kyu ; k mYYka?ku dh tkp djuk vkerkj ij turk dh igp l s ckgj gkrk gA fgjkl r dh fLFkfr dk okLrfod eq; kadu l j {kk i fØ; k ds dbz ijrka ds mi yC/k gkus ds dkj .k vo: ) gks tkrk gS tks rF; ka dks Nq;k nrk gS ; k tc rd og ckgj vk ikrk gS rc rd ml s vl æ) vkj vi pfyr cuk nrk gA

; g vfHkj {k.k l LFkku jgu&l gu o LokLF; voLFkk dh ftu dfe; ka l s xLr हैं उनका विस्तारपूर्वक वर्णन किये बगैर हमारे दृष्टिकोण के लिए यह पर्याप्त gksxk fd ge cnh j [ks x; s ykxka ds ckdh cps vf/kdkjka ds l j {kk ds Lrj dks देखें। कुछ ऐसे पहलु हैं जिन पर तुरंत ध्यान दिये जाने की आवश्यकता है और orleku i fjLFkfr ea l qkkj ykus ds fy, dfn; ka vkj tsy inkf/kdkfj; ka nksuka के ही कानूनी सशक्तिकरण की आवश्यकता है।

vnkyr ds l e{k fopkj/khu cfn; k dks iLrqr u djuk  
tsyk ea fofM; ks fyadst जुड़ाव पर आलोचनात्मक समीक्षा की आवश्यकता

vijk/kk dks , d iHkkodkj h tokc nus ds fy, , d , d s U; kf; d l jupuk dh  
t+ jr gs tks ykxka dks dñ ea Mkyus ds mi; ksx dks l æhu ds k rd l hfer  
dj ns vkj tsk के अवसर दें कि वह इतना सकारात्मक शासन उपलब्ध करायें जो  
vijk/kk ds nkjg kus dks jksdus ea l gk; rk dj l dñ bl s muykxka ds fy, mi; ksx  
djuk ftuds fy, l kep kf; d mi pkj vf/kd mfpr gkxk vijk/k ds Lrj dks de  
करने में मदद नहीं करता है। व्यस्क एवं किशोर दोनों i d kj ds vijkf/k; k ds fy,  
cgr vf/kd mi; ksx mu l enk; ij vk/kkfjr mik; k t e kur] ifjoh{kk} c/ki =]  
vkj 0; fDrxr epydk½ dk mi; ksx fd; k tkuk pkfg, tks vijk/kk ds nkjg kus  
dks jksdus ea l Qy gkA

tgka l EHko gks epnek i d l dñ l s cpuk pkfg, % fjeM dñ; k dh , d cMh  
l a[; k ckn ea fjk gks tkrh gs; k mUga xj fgjkl rh n.M i klr gkrk gA n-i l a  
की धारा 428 के प्रवेश के बाद ऐसे रिमांड कैदियों को जमानत देने से इंकार  
djuk mUga vijk/k ds cxj cñh gkus ds n.M nus l eku gA bl ds vykok ftl  
voLथा में कई रिमांड बंदी कैद करके रखे जाते हैं वह, उनके निर्दोष होने की  
ifj d Yi uk l s bdkj gA

ykxka dks dñ ea j [kuk okLro ea egxk<sup>40</sup> gkrk g& ; g] mUga l kep kf; d l xk ; k  
i f j oh{kk ds nkj ku l j j okbzt+ djus l s dbz xuk vf/kd egxk gkrk gA dgs cxj  
; g ekuk tk l drk gs fd vfrl dñr tsy vekuoh; gkrs g% dbz j kT; k ea  
हज़ारों बंदी जिनमें कई ऐसे भी सम्मिलित होते हैं जो दोषी नहीं हैं उन्हें ऐसे  
cñ dka ea j [kk tkrk gs ftl ea , d l e; ea ml dh fu/kkfjr okLrfod {kerk l s  
nks& rhu xuk vf/kd ykx j [ks x; s gkA<sup>41</sup> cfn; k dh vR; f/kd l a[; k l Hkh cfn; k  
को ऐसे साकारात्मक प्रशासन उपलब्ध कराने से रोकती है जो रिहा होने के बाद उन्हें  
dkuu dk i kcn gkdj thou ; ki u djus ds fy, rñ kj dj l dA tsy  
i nkf/kdkfj; k dk i j k l e; ykxka ds fl j fxuu] mUga Hkkxus l s l j f{kr j [kus  
और दो बार भोजन देने में ही गुजर जाता है। इसके अलावा आवश्यकता से अधिक  
[khph bl 0; oLFkk ea dbz cfn; k dks muds ?kj ds {ks= l s cgr nj LFkkukarfjr  
dj fn; k tkrk gs ftl l s i f j okj l s mudk l a d l de gks tkrk gs rFkk tsk ea

<sup>40</sup>वर्ष 2005-2006 के अनुसार भारत में प्रति कैदी औसत खर्चा था 10,474 रु] Hkkjr ea tsk ds vkdM&2005&, u-l h-vkj-ch-  
,सैनपशॉट)

<sup>41</sup>वर्ष 2005 के अंत में, भारत के जेलों में घोषित 246 हज़ार की क्षमता के विरुद्ध 358 हज़ार से अधिक कैदी थे।

वर्ष और तनाव बढ़ जाता है। संख्या के दबाव में बढ़ोतरी के कारण दण्ड स्थापित  
जुस एक्सएमएच डी। एहकुक हक़ीक़ ग़रह ग़

सिद्धदोषी और विचाराधीन दोनों प्रकार के बंदियों की संख्या को कम करने के  
 fy, l j p u k R e d l k e p k f ; d n . M v k j m f p r d s k a e a t e k u r d s m i ; k s x } k j k  
 l x f B r i z ; R u f d ; k t k u k p k f g , A f g j k l r d s m i ; k s x e a b l i x d k j d h d e h  
 t s y l x k d k s c f n ; k a i j v f / k d l j p u k R e d : l k e a r F k k v f / k d d k c w j [ k u s  
 योग्य संख्या का ध्यान रखने में सक्षम बनाएगा विशेषरूप से उन बंदियों पर ध्यान  
 j [ k u s e a t k s v k r a d o k n h ] f o n k g h ] v k o r h z v i j k / k h ; k d B k j v i j k / k h d h J s k h e a  
 आते हैं। तब इसमें काम, प्रशिक्षण और शिक्षा के लिए, आपराधिक व्यवहारों से  
 f u i V u s d s f y , i H k k o d k j h i k s x k e ] c g r j H k k f r d f L F k f r ] f j g k b z d s f y , v f / k d  
 m l k ; P r r s k j h v k j c k g j h n f u ; k l s l a d z d s v f / k d v o l j m i y C / k g k s  
 l d x A

B t s y l q / k k j v k j v k / k f u d h d j . k p d k s B d f n d j u s d s f y , v f / k d L F k k u c u k u p  
 d s i ; k z o k p h d s : l k e a u g h a n s [ k u k p k f g , A v f / k d t s y k a v k j v f / k d c j d k a  
 की आवश्यकता है लेकिन वह सुधार प्रक्रिया और आधुनिकीकरण की प्रक्रिया का  
 v a r u g h a g A t s y k a e a c < s g q f u o k l L F k k u k a d k s l j f { k r d j u s d s f y , f g j k l r h  
 मकसदों से, मानव संसाधनों में भी समानरूप से बढ़ोतरी की आवश्यकता हैं। यह  
 x i g e a k y ; d s f y , i w k z l e ; g s ; g e k u u V j d j u s d s f y , f d d t a e h ;  
 i k ; k f t r ; k s t u k d s v / k h u c < s g q e k U ; r k i k l r L F k k u d k f d r u k H k k x f o f H k U u  
 j k T ; k a } k j k m i ; k s x f d ; k x ; k g A j k T ; l j d k j a t s y k a i j d k b z i g k [ k p l u g h a  
 d j u k p k g j g h g A l j { k k d e p k f j ; k a d s [ k k y h L F k k u d h f L F k f r ¼ ; g k a r d f d  
 o r z e k u t s y k a e h c g n [ k r j u k d g A d b z j k T ; k a e a l j { k k x k M k a v k j l k ; z o s k h  
 d e p k f j ; k a ¼ l j j o k b z t j h L V k Q ½ d s 25 % l s v f / k d i n f j D r i M s g A d b z  
 राज्यों में (मध्य प्रदेश, राजस्थान, कर्नाटक, आंध्र प्रदेश, केन्द्र शासित राज्य  
 l f f e f y r g A u ; s c u k ; s x ; s t s y k a v k j c j d k a d k s d e p k f j ; k a d h d e h d s  
 d k j . k m i ; k s x e a u g h a y k ; k x ; k g A b l f y , ] t s y k a e a H k h M + d h f L F k f r y x k r k j  
 t k j h g A

u d o y ; g ] i ; k l r d e p k f j ; k a d h l a [ ; k e a d e h t s y e a 0 ; o L F k k d k s c u k ,  
 j [ k u s d s f y , d f n ; k a i j f u H k j j g u s d s f y , c k / ; d j r h g s v k j c n y s e a o g k a  
 से हर प्रकार के भ्रष्टाचार और दुराचार की शुरुआत होता g A m l f L F k f r e a g e  
 c j k b z ; k a d s l q / k k j d h c k r u g h a l k p l d r A b l f y , ] j k T ; l j d k j k a d k s ; g  
 विश्वास दिलाने की आवश्यकता है:

- वर्तमान सुरक्षा आवश्यकताओं और जेल में बड़े हुए स्थानों के परिप्रेक्ष्य में  
 t s y d M j k a d h l e h { k k v k j m l u g a i p u x f B r d j j



- विजय/क वक्तु ल वक्तु धि उबल फोपक/ककक दस विजय; ए उ; स वक्तु ओरकु कर्मचारियों के लिए ट्रेनिंग और रीफ्रेशर पाठ्यक्रमों को दोबारा संगठित करें, वक्तु
- अवकाश-आरक्षित व प्रशिक्षण-आरक्षित कर्मचारियों को उपलब्ध कराना ताकि बेहतर प्रशिक्षित और अधिक सतर्क सुरक्षा कर्मि; क दक /; कु ज [कक तक ल दA

एक सतर्क जेल प्रशासन, जेल में रिमांड बंदियों के ल एग धि ल एL; क दक ग्य फुदक्युस ए फुEu : i l s ; कxनकु नs l द्रक ग%&

- फोपक/कु धि कfn; क दस एfn दकुuh l ग; रक i गpकुस दस fy, ft yk fof/kd l ok, a i kf/kdj . k l s l केतL; कुक, j [कुक]
- , d s कfn; क को नियमित रूप से अदालत के समक्ष शारीरिक रूप से या ohfM; कs दकाYfl x } कक i Lnr djuk]
- वक्तुसि ह } कक l fopkfjr वक्तु cgकुक djds l pोकbz धि रकjh [k+ ij vuq fLFkfr दस grkRl kfgr djds]
- मांग के अनुसार समय पर संरक्षक पुलिस गार्डों को सुनिश्चित करा कर,
- mfpr i fjogu l fo/kk मि yC/k djक dj] वक्तु
- फोपक/कु धि कfn; क दस fy, fu; fer : lk l s वकोf/kd l eh {kk ehfVx vk; kftr djक djA

U; क; i कfyदक धि Hkrfedक

, d vke vkneh धि U; क; rd i ggp कुकुस ए U; क; i कfyदक cgn egRoi w kZ Hkrfedक fuHkk l द्रह गA , d dY; k. कdkjh jkT; t s fd gekjs jkT; ए न्यायपालिका को अपने आप से यह प्रश्न पूछना चाहिए कि क्या इसे ऐसे 'कानून धि vnkyr\* कुस jgुक pkfg, ft l ए U; क; , d dBkj fof/k धि i; fDr दकुuh से जुड़ा हुआ है या सोच में बदलाव लाकर, कानून के स्पष्टीकरण और कानून का उपयोग वास्तविक न्याय दिलाने के लिए विशेष रूप से कमजोरों, गरीबों, अशिक्षितों, महिलाओं एवं अन्य अतिसंवदेनशील वर्ग को इसे 'न्याय की vnkyr\* ए i fjofr r gकुक pkfg, A

फोपक/कु धि कfn; क दस l cu/k ए U; क; i कfyदक धि Hkrfedक को दो दृष्टिकोण l s ns [कक तक ल द्रक ग% d ½ वक्तुसि ह दस tsy ए Hksts tkus दस i gys U; क; i कfyदक धि Hkrfedक वक्तु ¼ [k/ U; क; i कfyदक धि Hkrfedक tc वक्तुसि ह दस फोपक/कु धि कfn धि दs : lk ए tsy ए cn dj fn; क tkrk गA

vke vkneh dh U;k; rd igqp cukus esa ml s fopkj k/khu dñh ds : lk esa U;k; kf; d fgjkl r esa Hksts tkus ds igys dh U;k; ikfydk dh Hkfredk dks सर्वोच्च अदालत के निर्देशों के सारांश के अनुसार निम्न रूप में चर्चर fd; k tk l drk g

- I Hkh ; kX; vkjksi h i kfVZ; k dks efr dkuuh l gk; rk ds rkj ij mi yC/k सहायता देना, परामर्श और जाप rFkk vfHk; kstu nkuk esa l gk; rk i gpkukA
- उदार जमानत की मंजूरी, विशेषतौर पर अतिसंवेदनशील वर्ग के आरोपियों dksA ¼gd su vkjk [kknu ds ½ & NkV&ekV s vij k/kk esa vkjksi h efgykvk vkj पुरुषों की एक बड़ी संख्या को अंतहीन रूप से बहुत खराब ओLFkk esa tsy में रखा गया है फलतः वह मनुष्य की तरह रह ही नहीं पाते। इसका एक कारण उच्चकोटि की असंतोषजनक जमानत व्यवस्था है। यह संपत्ति vfHkfol; Lr i) fr tks bl ckr ij vkxs c<rh gS fd vkFFkd upl ku dk खतरा न्याय से भागने को रोक सकता है। अदालतें मशीनी < l s vkj vke dk; ½ z kkyh ds rkj ij vkjksi h ij tekurh i Lrr (चर्चर) djus dk ncko Mkyrh gS vkj ml ij . k pdkus dh {kerk dks LFkkr fr djus dk ncko Mkyrh gA ; g xjhck ds fo: ) dBkjrki kZ : lk l s dke djrk gA ftl dk ifj. kke ; g gkrk gS fd og ifyl vkj nykyk }kj k fupkM+ fy; s tkrS g vkj tsyk esa l Mus ds fy, Hkst fn; s tkrS gA
- न्यायाधीश श्री कृष्णा अय्यर(मोतीराम के केस में, 1979 1 एस-1 h-vkj- 335½ esa ukV fd; k Fkk fd U;k; ds cktkj esa xjhck dh vktknh dh dksbl dher ugha gA ml gkaus [kn tkrS gq dgk fd gtjk fu/kZ 0; fDr dpy bl dkj. k tsy esa gS D; kf d og tekur yus esa l eFkZ ugha gA ; k ml g tekur ds fy, vkonu djuk ugha vkrk gA eftLVV dks bl ikphu vo/kkj. kk dks cnjuk gkxk fd epnek i nZ dñ; k dh tekur dpy i g k ds cnys gh est; dh tk l drh gA
- 0; fDrxr caki = ij fjkbl dh vkKk nuk% अगर अदालत इस बात से संतुष्ट gS fd vkjksi h dh tM l epk; l s tM gS vkj ml ds Hkxus dh l EHkkouk ugha gS rc ml s 0; fDrxr caki = ¼epydk½ ij fjk dj nuk pkfg, A ¼gd su vkjk [kknu dk ds ½

- Ukckpæ dk ds ¼, -vkbZvkj- 1964 ef.ki g 39½ tekur vkj fiekM l s l EcflU/kr gA , d k yxrk gS fd ifyl ds chp , d /kkj.kk gS fd mudk nkf; Ro gS vkjksi h dh dñ dks c<kuk----fdl h Hkh ifjLFkfr ea ifyl dks vkjksi h ds dñ ds fy, fourh ugha djuh pkfg, fl ok; ml l e; ds fy, जब केस की जांच के लिए इसकी बहुत अधिक आवश्यकता हो। अगर वह vi us drD; ds bl i gyw dks l e>rs gA tekur dk fojk/k djus ds fy, अनावश्यक आवेदन और रिमांड के लिए अनावश्यक आवेदन बंद हो जाएंगे।

vnkyrd ifyl dh l fnX/kk vkj vkjkfi ; k dks fxj¶rkj djus vkj fgjkl r ea रखने की शक्तियों पर हमेशा ही पर्यवेक्षण की दूसरी परत के रूप में काम कर l drh gS vkj emy : lk l s fgjkl r ea n¶; bgjk dks dkuuh i ko/kkuk ds U; k; l Ec) : lk l s dk; kDlo; u l s de dj l drh gS vkj mDga epdnes vkj vfhk; kstu ds fopjk/khu gkus dh vof/k ea oki l l epk; ea Hkst l drs gA

¼[k½ U; k; i kfydk dh Hkfiedk tc vkjksi h dks fopjk/khu dñh ds : lk ea tsy ea Mky fn; k tkrk gS tks mPp U; k; ky; vkj l okPp U; k; ky; }kjk tkjh dN दिशा-निर्देशों और अधिदेशों के पालन ij fuHk¶ djrh g%

- कोई भी जमानत मशीनी रूप से और अदालत या ट्रायल मजिस्ट्रेट के समक्ष वीडियो कांफ्रेंसिंग के अंतर्गत वास्तविक शारीरिक प्रस्तुती के बगैर नहीं दिया tkuk pkfg, ¼kkjk 167 n-i z l a ¼2¼¼[k¼A eftLVV dks Mk; jh dks /; ku l s i<uk pkfg, vkj bl ckr l` संतुष्ट होना चाहिए कि रिमांड आवश्यक है vkj vxj Mk; jh i Lr¶ ugha dh tkrh gS rc vkjksi h dks fjk dj nsuk pkfg, vkj bl ds fy, u rks tekur vkj u gh tekurukes dh t+ jr gksrh gA bi ifyl ea ; g /kkj.kk gS fd eftLVV }kjk , d fxj¶rkj 0; fDr dk fiekM l keU; : lk l s fd; k tkuk pkfg, A ftruh tYnh ; g /kkj.kk l eklr gks tk, mrug vPNk gA Ukckpæ dk ds ¼, -vkbZvkj- 1964 ef.ki g 39½

- मुकदमा उचित गति से चलना चाहिए। शीघ्र गति का मुकदमा है,---vuPNn 21 ds vrxlr nh xbl ^fopkji w k¶ LoPN vkj U; k; l ær\* i fØ; k dh xkjMh का एक आवश्यक तत्व है और यह राज्यों का कर्तव्य है कि वह ऐसी प्रक्रिया अपनायें जिससे आरोपी को शीघ्र मुकदमा सुनिश्चित हो सके।
- अभियोजन के कारण विलंब होने के संदर्भ में, चंपालाल पंजाजी शाह के केस ¼1981 fØ-y-t-] 1273½ ea mfpr : lk l s voyksdu fd; k% ge fnekx l s

ۋەھك; كس i {k ds , tfl ; ka } kjk l qrh vkj pkyka ds dkj . k gkus okys foyr  
l s vutku ugha gA

ge , s epneka ds ckjs ea tkurs gftue vfHk; kxi {k dh , tfl ; ka }kjk लापरवाही और निद्रालुता या जान बूझकर काम न करने के कारण आवश्यकता से vf/kd विलंब हुआ है। अभियोजन एजेंसियों की असंवेदनशीलता के कारण गरीबी ds ekj} xpx} fojks/k djus ea vl eFkZ o nqly dñh eghuka vkj} I kyka rd tsyka ea HkVdrs jgrs g}---शीघ्र मुकदमे से इंकार किसी और प्रमाण के साथ या ml ds cxj} U; k; I s badkj ds vfuok; Z i fj. kke dk iDk}xg g} ; g , d 0; fDr dks epnes ds cxj} dñh djus dk iDk}xg g} ; g , d 0; fDr dks U; k; I Eer मुकदमे से इंकार का पूर्वाग्रह है। एक न्यायसम्मत मुकदमे का तात्पर्य है शीघ्र epneka

- आरोपी को शीघ्रतापूर्वक विचारण का अधिकार इसके सभी चरणों ea iklr है—जांच, इन्क्वायरी, मुकदमा, अपील, परिशोधन व दोबारा मुकदमा पर भी।  
¼, -vkj-vrmys dk ds ½
- tsy ea Hksts x, vkjka h ds ifr U; k; ikfydk ds foLrkfjr dk; ka dk mi ; kx /; kuiDd fd; k tkuk pkfg, Atsy ds dk; ka dh fuxjkuh djus ds fy, U; kf; d vf/kdkfj ; ka dks dbZ I fefr; ka vkj} fudk; ka ds I nL; ds : lk ea eukuh fd; k tkrk g} fopkj/khu dñh; ka ds I ECU/k ea , s h gh एक समिति है जिला स्तरीय 'समीक्षा समिति' जिसकी आवश्यक रूप I ehVhaX I ky ea nks ckj¼; fn I EHko gk} vkj} vf/kd I a[; k ed} gkuh pkfg, A

fopkj/khu cfn; ka dh I eh{kk I fefr¼; wi h-vkj-I h-½

देश में कुछ राज्यों ने पहले ही जिला जेलों में बंद विचाराधीन कैदियों की vkof/kd I eh{kk ds fy, ; wi h-vkj-I h- dh fu; fDr dj yh g}A tgg , s k ugha g} ogka tsy vf/k{kd }kjk I Hkh fopkj/khu dñh; ka dh I uph ftyk o I = U; k; ky; dks ckjh dh I s ; g tkap djus ds fy, Hksth tkrh gS fd dgha dkbZ fopkj/khu dñh epnes dh fopkj/khurk ea vuqpr : lk I s ycs I e; rd dñh u gk}A fopkj/khu dñh; ka dh fLFkr dk ; g v/; ; u tsy ifØ; k dk , d महत्वपूर्ण पहलू है और इसका निष्पूDd ikyu fd; k tkuk pkfg, A

I eh{kk I fefr dks I Hkh fopkjk/khu dñn; k ds ds k dk en; kadu dj uk pkfg,  
 ताकि वह यह सुनिश्चित कर सके कि निम्नलिखित श्रेणियों में से किसी एक या  
 vf/kd ds varxjr vkus okys ds k dks I Ec) vnkyrk es dktleu dkWt+ cuke  
 Hkkjr x.kjTय, 1996 के केस में उच्चतम न्यायालय के निर्देशों (और उसमें  
 mYyf[kr vi oknk ds I kFk½ ds varxjr mfpr dk; bkgf ds fy, Hkst fn; s tk, d  
 vFkkjr%

वर्षों का कारावास है और जो कम से कम 6 महीने से जेल में रह चुके हों और जिसमें मुकदमा 1 वर्ष से विचाराधीन है, उन्हें जमानत

¼[k½ fopkjk/khu dñh tks fdl h , d s vijk/k ds fy, vkjksi h gñ ftl dk n.M 5 वर्षों का कारागार है और जो कम से कम 6 महीने या उससे अf/kd vof/k fy, जेल में रह चुका हो और जहां मुकदमा कम से कम 2 वर्षों से विचाराधीन है, उन्हें tēkur ij fjk fd; k tk, xk]

¼½ fopkj k/khu dñh tks fdl h , d s vij k/k ds fy, vkj kñ h gñ ftl dk n.M 7 वर्ष या उससे कम के क़ैद का है और जो कम से कम 1 वर्ष तक जेल eñ jg चुका हो और जहां मुकदमा कम से कम 2 वर्षों से विचाराधीन है, उन्हें ज़मानत i j f j g k f d ; k t k , x k ]

अपराध सम्बन्धी आपराधिक कार्यवाही में मुकदमा 2 वर्षों से विचाराधीन है,

1/4/2025 tgka vnaलत की आज्ञा द्वारा शमनीय अपराध 2 वर्षों से विचाराधीन हो, अदालत सरकारी वकील की बात सुनने के बाद आरोपी को या तो दोषमुक्त कर

और जमानती अपराध, मुकदमा प्रारम्भ हुए बगैर 2 वर्षों से

¼½ tgka vkjksi h dks , s s vi jk/k ea NkM+ fn; k tkrk g\$ ftl dk n.M dxy  
जुर्माना चुकाना हो और वह पुनरावर्ती प्रकृति का न हो और मुकदमा एक वर्ष के  
Hkhrj i kjEHk u gvk gks] आरोपी को दोषDr dj fn; k tk, xkA

(ज) जहां अपराध के लिए केवल 1 वर्ष तक के कारागार का दण्ड है और जहां मुकदमा 1 वर्ष के भीतर प्रारम्भ न हुआ हो, आरोपी को छोड़ दिया जाएगा, और

जहां अपराध के लिए 3 वर्षों तक के कारागार का दण्ड है और मुकदमा 2 वर्षों  
l s fopkj k/khu gk] vki jkf/kd U; k; ky; t] k d] gks ml ds vu] kj vkj k] h dks  
छोड़ देगी या दोषमुक्त कर देगी और केस को बंदकर देगी।

dkleu dklit+ d] e] fu/kk]jr fl ) kr Lor%dk; k]Uor gkus okys ugha g]A mlUg]A  
निपुण मजिस्ट्रेट को निरन्तर निगरानी, मार्गदर्शन और निर्देशन को t+ jr g] tks  
fupys Lrj ij vki jkf/kd U; k; ds forj.k ds iHkkjh g] ftuds le{k  
fopkj k/khu d]n; k] ds fjekM c<kus ds fy, cLrq fd; k tkrk g]A

l eh{k k l fefr dks d]n; k] ds fuEufyf[kr d] k] dks Hkh /; ku e] j [kuk pkfg,  
vk] ml s l Ec) vnkyr@eftLV] ds ikl mfpr dk; bkg h ds fy, Hkst nsuk  
pkfg, %

¼½ detkj fne x ds x] & vki jkf/kd ykx] dks j] i kxyi u vf/kfu; e ; k  
ekufl d LokLF; vf/kfu; e 1980 ds v]x]r ns[k js[k ds fy, tsy e] ugha  
भेजा जाएगा। शीला बारसे के केस में सर्वोच्च न्यायालय के निर्देश के बाद ऐसे  
fdl h Hkh d]h dks tsy e] ugha j [kk tk, xkA

¼V½ efgyk fopkj k/khu d]h ftl dk ifr Hkh tsy e] g] vk] ftl ds cPps ckj  
fdl h vfHkHkkod ; k l j {k.k ds ckj NM x; s g]A

¼B½ n-i z l a dh /kkj 109 ds v]x]r cgr ycs le; l s d]n e] jgus okys  
gokykrhA

¼M½ tks n-i z l a dh /kkj 107@151 ds v]x]r d]h g] vk] ftuds d] e]  
जमानत और/या बंधपत्र की राशी उच्च न्यायपालिका के निर्देशों के विरुद्ध और  
निषेधात्मक ढंग से बहुत अधिक है।

¼<½ fopkj k/khu d]h tks n.M.kh; d]n dh vk/kh ; k ml l s vf/kd vof/k tsy  
e] 0; rhr dj pps g]A n-i z l a e] /kkj 436 d ds tkM] tkus ds ckn , s  
vkj k] h dks 0; fDrxr epydk ij tekurnkj ds l kFk ; k ml ds cx] tekur  
ij fjgk gkus dk vf/kdkj g]A

¼.k] fopkj k/khu d]h ftUg] n-i z l a dh /kkj 428 ds i fj.kkeLo: lk fjgk fd; k  
tkuk pkfg, A

¼Fk½ , d k dkbZ Hkh 0; fDr tks n-i z l a dh /kkjk 346¼1½ vk\$ n-i z l a संशोधन  
vf/kfu; e 2005 ds varxlr uhps dh xbZ 0; k[; k ds l kFk bl dh i fjf/k e vkrk  
gkA



तयका स BHKH+ de djup ds nks igyw g%, d] c<g dfn; ka ds fy, vf/kd LFkku mi yC/k djuk vkj nkj vijkf/k; ka dk l keqkf; d mi pkjA nll jk igyw vf/kd i Hkkodkj o de egxk gA bl ds 0; ogkfj d dk; kldo; u ea bl dk eryc gS ¼d½ tsyka ea de l a[; k ea dfn; ka dks Hkstuk vkj ¼[k½ orëku dkuuuka ds प्रावधानों और निर्देशों का उपयोग करके उनलोगों को वापस समुदाय ea ykuk tks igys l s tsy ea gA

vkj jkf/kd U; k; iz kkyh ds bu nkuu igyw/ka ea fofHkUu , tfl ; ka ds chp cMk सामंजस्य स्थापित करने की ज़रूरत है। जबकि जेल पदाधिकारियों को सिद्धदोषी o fopkj/khu dfn; ka ds l EcU/k ea tsy dh orëku tul a[; k dh] dkue dkt+ केस में सर्वोच्च न्यायालय द्वारा जारी विभिन्न निर्देशों के परिप्रेक्ष्य में समीक्षा करने की आवश्यकता है। इन निर्देशों को मानने में निचली अदालतों को अधिक विचारशील(यदि उदार न भी हों) होने की आवश्यकता है।

tsyka ea c<rh gbl HkhM+ dh l eL; k dks de djus ea n-izl a dh /kkjk 167]360]361]428]436 dk U; k; l ær iz; ks vkj vij k/kh i fjoH{kk vf/kfu; e ds i ko/kkuu ds cf) ekuh l s mi ; ks djus l s cgr vf/kd l gk; rk fey l drh gA शायद न्याय मंत्रालय इस सम्बन्ध में राज्यों को उचित निर्देश जारी कर सकता है। जिसकी आवश्यकrk gS og gS i fjoH{kk vf/kdkfj; ka dh l a[; k vkj Hkrfedk ea c<krjh vkj LoPNk l s vkus okys i fjoH{kk vf/kdkfj; ka dks l kekftd vkj लाभकारी रूप से अधिक आकर्षक बनायें ताकि सुयोग्य व्यक्तियों और संगठनों dks bl dk; l ds fy, fy; k tk l dA

fopkj/khu dfn; ka dh fjkbl l s tsyka ea HkhM+ de gksxh vkj bl l s tsy i xaku में सहायता मिलेगा। इस प्रक्रिया में पुलिस, न्यायपालिका और जेल प्रशासन के बीच ऊंची डिग्री के सामंजस्य की आवश्यकता होगी, दुर्भाग्य से जिसकी कमी orëku ea gA tsy i nkf/kdkfj; ks dk ; g nkf; Ro gS fd og l Ec) U; kf; d ; k dk; ldkfj .kh eftLVV dks l fpr dj ; fn fdl h dñh dks fgjkl r ea j [kus l s dkuu ds fdl h i ko/kku dk mYyaku gsrk gA

fopkj/khu cfn; ka dks vnkyr ds l e{k i Lrr u djuk

n-izl aकी धारा 167(2)(ख) का अधिदेश है कि "कोई भी मजिस्ट्रेट gijkl r ea fdl h dñh dks rc rd vf/kdr ugha djsxk tc rd vkjka h dks ml ds l e{k i Lrr u fd; k tk, Aß

bl i ko/kku dks uhps mYyf[kr 0; k[; k II }kjk vkj vf/kd etarh feyrh gS tks dgrk gS fd vxj ; g l oky mBrk gS fd vkjsi h dks eftLVd ds l keus iLr fd; k x; k है या नहीं, इसकी पुष्टि कैंद अधिकृत करने के आदेशपत्र पर उसके gLrk{kj l s dh tk l drh gS

इस प्रावधान का मुख्या उद्देश्य है न्यायपालिका पर यह सुनिश्चित करने के लिए एक egRoi kZ ekuoh; ftEenkh Mkyuk fd ¼d½ vkjsi h thfor gS vkj og U; k; kfpr fgjkl r l s Hkxk ugha gS ¼k½ fd ml ds l kFk tkp] bDok; jh vkj epnes ds vrjky ea vokfNr प्रताड़ना या शारीरिक शोषण नहीं किया गया है, (ग) कि आरोपी व्यक्ति जो 'निर्दोषता की परिकल्पना' के अधीन है, को हिरासती संस्थान में dkuu }kjk Lohdk; l volFkk ea j [kk x; k gS ftl ea dkuu l gk; rk Hkh l fEefyr gS ¼?k½ fd ml ds ds dks mfpr : lk ea ekuk tk, xk vxj og vi us xukg day djrk@djr h gS vkj fdl h ykx dkuu ds vxr jkgr ekark@ekarh gS ¼M½ fd n-i:la dh /kkjk 428 ds vxr tkp] bDok; jh vkj epnes ds vrjky ea ml dh dñ dh vof/k vf/kdre n.Muh; vof/k l s vf/kd u gks xbl gk ¼p½ fd अगर वह किसी कानून या समय समय पर उच्च न्यायालयों द्वारा दिये गये आदेशों ds vxr bl dh ifj/k ea vkrk gS rc ml ds ds ij xj fgjkl rh jkgr ds fy, fopkj fd; k tk, A

gkaykd] cMh l a[; k ea U; kf; d fgjkl r ea tkp] bDok; jh vkj epnes dk l keuk dj jgs vkjki ; dks okLrfod : lk l s fjeM dh vof/k c<kus ds fy, eftLVd ds l e{k iLr ugha fd; k tkrk gA , d s l Hkh ds ka ea fopkj/khu dñh dk केवल वारंट ही अदालत जाता है और आरोपी द्वारा अदालत में श्कjhfd : lk l s cLr gq cxj vkj vnkyr ds l e{k fdl h iñkj ds fuonu fd; s cxj] fgjkl r dh vof/k fu; fer : lk l s c<k nh tkrh gA ; g u day vfuok; l dkuu ds i ko/kku dk xkhj mYyaku gS cfYd dñh ds vf/kdkj ka dk mYyaku Hkh gS ftl s 'निर्दोषता की परिकल्पना' Hkh iñr gkrh gS vkj ftl s l quokl djus okyh vnkyr ds l e{k iLr gsdj fdl h iñkj ds dkuu ekax ds vol j l s Hkh yxkrkj ofpr j [kk tkrk gA

vxj tsy ds vkjsi h fopkj/khu dñ; ka ds iLr okj dks psd fd; k tk, rc] इससे स्पष्ट रूप से यह पता चलेगा कि बगर vf/kd l a[; k ea iLr okj ij यह टिप्पणी अंकित होगा कि जेल में आवश्यक मार्गसंरक्षक पुलिस उपलब्ध न होने ds dkj .k vkjsi h dks vnkyr ds l e{k ugha iLr fd; k tk jgk gA ; g bruk l keU; ipyu gks x; k gS fd tsy vf/kdkj; ka ds ikl vc , d j c j l hy ekstn gkrk gS ftl l s iLr okj ds ihNs fu; fer : lk l s Blik yxk; k tkrk gS tks dgrk gS

ekuuh; U; k; ky; ]

fuonu g\$ fd vkt fnukd-----dks lk; klr ifyl cy u feyus ds dkj.k  
अभियुक्त का केवल वारंट भेजा जा रहा है। कृपया आगामी पेशी की तारीख देने  
dh dik djA ; gh fou; gA

tsyj

निश्चित रूप से इससे तीन प्रकार का उल्लंघन होता है: एक, जेलर जो रिमांड में  
j [ks x; s dñh dks iLrfr okjM }kjk uh; r rkjh[k+ij vnkyr ds l e{k iLrfr  
करने के लिए बाध्य था, आसानी से(दण्ड से मुक्ति के साथ) अदालत के निर्देशों  
dk ikyu dju में असफल हो गया। दूसरा, राज्य जो अपने विशेषाधिकार का  
mi ; ksx djds ykxka dh Lorærk Nhu l drk g\$ og ml 0; fDr ds l kFk  
LFkkfi r vkijkf/kd U; k; i fØ; k ds varxlr 0; ogkj djus ea bl cgkus l s  
vl Qy jgk g\$ fd ml ds ikl n-izl a dh /kkjk 167¼2¼¼[k½ ds varxlr j [kh xbl  
ekax ds vuq kj vkjksi h dks vnkyr rd ys tkus ds fy, lk; klr l d k/ku ugha  
g\$ tks vnkyr rd ys tkus ds fy, mfpr ifyl xkMZ mi yC/k dj k l dA vkj  
rhu] ; g fd tsyj tks dd ea ikVhZ ugha g\$ ml us vnkyr l s vkjksi h dh  
fjekM vof/k c<kus dk fuonu fd; k g\$ vkj vnkyr fu; fer : lk l s bl s  
Lohdkj dj yrh g\$ cx\$ bl ckr dk vgl kl fd; s gq fd bl dk fdruk  
gkfudkj d iHkko vkjksi h ds ifjokj ij iMrk gA

; g ns[kus dh t+ jr g\$ fd ; g i pyu , d Hk; kud vuq kr ea c<+jgk g\$ vkj  
विचाराधीन कैदी बेकार में संदर्शन अधिकारियों से शिकायत करते रहते हैं कि  
mudh fjekM dh vof/k eghuka l s ml gq l quokbz djus okys eftLVV ds l e{k  
iLrfr fd; s cx\$ c<kbz tk jgh gA ; g u dxy vupkgs rjhds l s ykxka dks  
dñh djuk g\$ cfYd ; g vkjksi h dks og vol j inku djus l s bdkj djuk Hkh  
g\$ ftl ea og Lo; a ; k odhy ds }kjk vnkyr ds l e{k iLrfr gksdj dkbz  
dkuuh fuonu djs ; k tekur ds fy, vkonu djs ; k vijk/kh ifjoh{kk  
vf/kfu; e ds iko/kkuka ds varxlr ykHk mBkus ds fy, vkonu djs ; k vijk/k  
n.M l kñk ¼plea bargaining½ djs ; k fdl h vU; dkuu ds varxlr fjgkbz dh ekax  
djA

n-i z l a dh /kkjk 167 dk dMkbZ l s ikyu fd; k tkuk pkfg, ; gka rd fd vkjksi h के विरुद्ध चालान प्रस्तुत करते समय भी। न्यायाधीश श्री पी- u- Hkxorh us gq lu vkjk [kkruu , d vl; cuke fcgkj jkT; ds ds e voyksdu djrs gq dgk Btc , d fopkjk/khu dñh dks eftLVV ds l e{k iLrqr fd; k tkrk gS vkj tgka vkjksi h dks ds ds vuq kj 60 fnu ; k 90 fnu rd dñh e j [kk tk pðk gS eftLVV dks U; kf; d fgjkl r dh fjekM dh vof/k dks vkxs c<kus ds igys विचाराधीन कैदी को आवश्यक रूप से यह बतलाना चाहिए कि उस tekur ij fjk gkus dk vf/kdkj iklr gAp jkT; ljdkj dks vius [kpñ ij] fopkjk/khu dñh dks , d odhy miyC/k djuk pkfg, rkfd og n-i z l a dh /kkjk 167½ ds ifrc/k ds vrxr iklr tekur ekxus ds vf/kdkj dk mi; kx dj l d vkj मजिस्ट्रेट को यह आवश्यक रूक l s ns[kuk pkfg, fd fopkjk/khu dñh ds odhy dh l gk; rk iklr djus ds vf/kdkj dks jkT; ds [kpñ ij miyC/k dj; k tkuk सुनिश्चित करें और उसे जमानत के आवेदन पर हमारे द्वारा निर्धारित दिशा-निर्देशों ds vuq kj fu.kz; djuk pkfg, ---हम आशा और विश्वास करते हैं कि देश में प्रत्येक मजिस्ट्रेट और प्रत्येक राज्य सरकार अदालत के इस अधिदेश के अनुसार dke djxkA ; g jkT; ljdkj vkj eftLVV dks l dYkkfud ck; rk gS vkj gea bl e dkbZ l ng ugha gS fd vxj bl dk dMkbZ l s ikyu fd; k tk,] fopkjk/khu dñh; k dh fLFkr e egRo i kZ l qkkj vk, xk vkj dkun ds jkT; dk mfpr vuq kyu gkxkA 1980% 1 , l -l h-l h-108-

tsyka dks ohfM; ks l s tkM+us dh l fo/kk

आंध्र प्रदेश में जनवरी 2011 में तथा nll js jkT; ka ea ckn ea vnkyrka dks tsyka l s ohfM; ks ds }kjk tkM+us dh 0; oLFkk dk vkijkf/kd U; k; iz.kkyh us mRI kgiwZd Lokxr fd; kA bl 0; oLFkk dk edl n Fkk ekxj {kd i fyl dh deh ds dkj. k n-i z l a dh /kkjk 167 ds vuq kj vfuok; j fopkjk/khu dñh; k dks fu; fer : lk l s vnkyr ea iLrqr u djus dh l eL; k l s Nq/dkj i kukA ; g l kpk x; k Fkk fd bl 0; oLFkk l s tsyka ea HkhM+ de gks ik, xh D; kf d fopkjk/khu dñh; k dks ohfM; ks }kjk vnkyr ds l e{k ^iLrqr\* fd; k tk, xk vkj ; g dñh; k ds tekur ekxus dh igp] vij/k ekudj vij/k n. M l kñk djus %plea bargaining% ds fy, vf/kd vol j inku djxkA tsy vkj i fyl foHkkx us bl 0; oLFkk dk Lokxr किया क्योंकि इसने उनको बहुत सारा नियमित प्रशासनिक कार्यों से बचा लिया। लेकिन इस व्यवस्था के लागू करने के 5 वर्षों से अधिक समय में इसके लाभ से vf/kd bl ds }kjk gks jgs upl ku dks mtkxj fd; k gA

gj ckj dñh eftLVV ds le{k byDVWud : lk l s iLr fd;k tk, rc मजिस्ट्रेट से आशा की जाती है कि वह केस की बदली हुई परिस्थिति के अनुसार vkj foosdiwz < l s ; g fu.kz; djxs fd tekur eatj djuk gS ; k ugha yfdu bl 0; oLFkk dks iR; d 14 fnukaa , d ckj fu; fer : lk l s fjekM dh vof/k c<kus ds fy, mi ; ksx fd;k tkrk gA अधिकांश केसों में इलेक्ट्रॉनिक कक्ष ea dkbz Hkh dkuuh l ykgdkj fdl h ds ea dñh dk ifrfuf/kRo djrk ugha fn[krk vkj eftLVV dks vfHk; kstu l s dkbz foaj.k ugha iklr gkrk gA

D; kfd]ohfM; ks&tkMus okys d{k ea tsy inkf/kdkjh Hkh mi fLFkr gkrs gA tsy की विपत्ति, विशेषकर लंबे समय से रह रहे कैदियों की, मजिस्ट्रेट तक नहीं पहुंच पा रही है। ऐसा प्रतीत होता है कि विचाराधीन कैदियों का शारीरिक रूप से vnkyr ea iLr u fd;k tkuk cgr gn rd U; k; ky; l s mudh tekur ekxus vkj tekurnkj dk ixa/k djust dh {kerk dks de dj jgk gA

, d k iZhr gkrk gS fd tsy ea vkjksi h vkj vnkyr ds chip ohfM; ks ds ek/; e l s tMko us U; kf; d l qokbz ds okLrfod inkFkz dks cny fn; k gA bl 0; oLFkk l s vki jkf/kd U; k; iz.kkyh dk dxy dN l e; vkj [kpkz cp jgk gA l a w k z i f Ø; k ea vkjksi h dñh ds fy, U; k; dh ijkt; gks jgh gA ohfM; ks dkaYfl x n-izl a dh /kkjk 167 ds edl n vkj eny तत्व को नष्ट करती हुई ekyle iMrh gA

efl dkuuh l gk; rk

देश के आपराधिक न्याय प्रणाली में एd u; k fodkl ] ftl ds ckjs ea tsy ixa/ku ds l Hkh l k>nkjka dks tkuuk pkfg, vkj mi ; ksx djuk pkfg, ] og gS efl dkuuh l gk; rk dh mi yC/krkA

वर्ष 1976 में, संविधान के भाग 4 में 42वें संशोधन द्वारा जोड़ा गया एक मूल संवैधानिक निदेशक, अनुच्छेद 39 क कहता है:

B39 d- , d l eku U; k; vkj efl dkuuh l gk; rk—राज्य निश्चित करेगा कि dkuuh 0; oLFkk dh dk; Z iz.kkyh l eku vol j ds vk/kkj i j U; k; dks c<kok nsxh और विशेष रूप से, उचित कानून या स्कीम या किसी अन्य तरीके efl dkuuh l gk; rk उपलब्ध कराना सुनिश्चित करेगा, ताकि यह सुनिश्चित हो सके fd fdl h Hkh ukxfjd dks vkFFkd ; k fdl h vl; izdkj dh v{kerk ds dkj.k न्याय को निश्चित करने के अवसर स वंचित न रहना पड़े।”

केन्द्रीय विधायिका का इस अनुच्छेद को भारत के संविधान में प्रवेश कराने का  
 edl n Fkk , d , d h ; ækofy dh j puk djuk ftl l s U; k; u dɔy xjhck  
 अशिक्षितों और अनजानों के लिए उपलब्ध हो बल्कि उनके लिए भी हो जो  
 ^vU; v{kerk\* l s xLr gŋ tŋ s fd ty e dŋ djus l A vŋkdkje; tsy cŋ d  
 vkŋ vR; f/kd dBkŋ tsy&fu; e , d dŋh dks ckgjh nfu; k l s dkV nrs gŋ  
 vkŋ ml ds fy, dkuuh enn ekxus dks cgn dfBu cuk nrs gŋ fl foy ; k  
 आपराधिक दोनों ही प्रकार के कानूनी उपाय, प्रायः उनकी शारीरिक और आर्थिक  
 i g p ds ckgj gkrs gŋ D; kŋd mue l s vf/kdrj l ekt ds fupyh Js kh l s  
 आते हैं। इसलिए, अनुच्छेद संविधान के 39 क के निदेशक तत्व के अंरखr]  
 dkuuh l ok, a i kf/kdj. k vf/kfu; e dks 1987 e a i kl fd; k x; k vkŋ 9 uoŋj  
 1995 e a ykxw fd; k x; kA bl dkuu uŋ epnek i nŋ > xMk fulkVkj k dk; Øek  
 और मुकदमे के बाद की कानूनी सहायता और शीघ्र निपटारा, दोनों को रास्ता  
 fn[kk; kA ; g bl h c<h gŋ dkuuh l gk; rk ds {ks= ds dkj. k gŋ fd ; g  
 vf/kfu; e n-i z l a की धारा 303 और 304 के ऊपर आता है जो कुछ निश्चित  
 ds ka e a jkT; ds [kpŋ ij vkjks h dks dkuuh l gk; rk mi yŋ/k djkus dh ckr  
 djrk gŋ

राज्य विधिक सेवाएं प्राधिकरणों को कानून के द्वारा आवश्यक रूप l s jkT; e a  
 fof/kd l ok dk; Øek e a l keatL; LFkkfi r djus vkŋ fuxjkuh djus dks dgk  
 गया है ताकि भारत के संविधान के अनुच्छेद 39 क के अंतर्गत मूल निदेशक के  
 vuŋ kj] dkuuh l gk; rk] dkuuh tkx: drk] dkuuh l k{kjrk vkŋ ykd  
 vnkyrk }kj k l kekftd U; k; ds edl n dks i j k fd; k tk l dA vkŋ jkT;  
 में लोगों की कानूनी समस्याओं को हल करने में सहायता करें, विशेषकर  
 muyksxka dh tks vkfnokl h vkŋ nijorhŋ {ks=ka e a jgrs gkavkŋ xjhch js[kk l s  
 uhps gŋ

पारा लीगल क्लिनिक को न्याय प्रशासन के कई स्तरों पर स्थापित करना dh  
 आवश्यकता है। इन क्लिनिकों का मकसद कानूनी जागरूकता फैलाना और  
 epnes ds igys gh dkuuh l ykg inku djuk gksuk pkfg, A turk e a viuh  
 tMŋ j [kus okyh xŋ l jdkjh vkŋ l jdkjh l æBuka }kj k ; g ykxka dks bl ckr  
 की शिक्षा दे सकते हैं कि जन उपयोगी सेवाओं से सम्बन्धित उनकी शिकायतों  
 dk cgr tYn fulkVkj k i R; d ftys vkŋ i R; d rkypdk e a LFkkfi r LFkkbŋ ykd  
 vnkyrk }kj k gks l drk gŋ ; g Dyhfud ds ka dks LFkk; h ykd vnkyrk e a  
 भेज सकते हैं जहां समस्याओं पर निष्ठापूर्वक पुनःमैत्रीपूर्ण प्रयत्न से निर्णय लिया  
 tk, xkA

D; kfd ^fgjkl r ea 0; fDr\* dks bl vf/kfu; e ea dkuuh l ok iklr djus ds लिए विशेष रूप से अधिकृत किया गया है, जेल अधिकारियों और जेल संदर्शकों dk ; g drD; gS fd og dfn; ka dks bl vf/kfu; e ds iko/kkuka vkj bl ds varxlr cukbl xbl dkuuh ; a=koyh ds usVodl }kjk mi yC/k l okvka ds ckjs ea शिक्षित करें। यदि जेल के कैदी या जेल के बाहर उनके परिवार के सदस्य का कोई ऐसा झगड़ा है जो शमनीय है या जो जन उपयोगी सेवा से सम्बन्धित है, वे शीघ्र निपटारे के लिए लोक अदालत की सेवा का लाभ उठा सकते हैं।

, d u;s dne ds rkj ij l Hkh tsyka ea&dlaeh;] ftyk vkj mi&tsyka ea विचाराधीन कैदियों और सिद्ध दोषियों के लिए 'कानूनी सहायता सेल' को खोला tk l drk gA xjhcka vkj , s l kekftd : lk l s v{ke 0; fDr; ka dks tS s fd tks tsy ea gA efr dkuuh l gk; rk Ldhe ^l cds fy, U; k; \* dh vkj vxyk dne gA bl s u dpy LFkkh; fof/kd l ok, a ikf/kdj.k ea l ok inkd djus okys odhyka }kjk cfYd vkijkf/kd U; k; iz.kkyh dh l Hkh , tfl ; ka vkj l epk; ds dY; k.k ds fy, dk; jr xj l jdkjh l xBuka }kjk Hkh mfpr mRl kg ds l kFk vi ukuk pkfg, A

Tsy l qkkj dk , d y{; gksuk pkfg, fopkj.k dh izrh{kk dj jgs dfn; ka dks dkuuh l gk; rk dk iko/kku D; kfd vkfFkd : lk l s vf/kdkjghu dfn; ka dh odhy rd igp , d 0; ogkfjd okLrfodrk ugha gA Hkkjr ea dkuuh l gk; rk dk; ZdrkZka dks dhfu; k l s ij .kk yuh pkfg, tgka l jdkjh U; kf; d 0; oLFkk vkj xj l jdkjh l xBuka@l epk; ij vk/kkfjr l xBuka }kjk ikjk yhxy , M Dyhfud ds varxlr dfn; ka dkj dkuuh l k{kjrk dk; Øeka Qkse fFk; Sj vkj l oknkRed v/; ; u rduhdka odkuu o ifØ; k dks i<k dj l Qyrkiwd सशक्त कर दिया है और उन्हें अपने केसों में कानून का उपयोग करने में समर्थ cuk fn; k gA bl y{; dks iklr djus ds fy, , d l a Dr iz.kkyh dks vi uk; k tkuk pkfg, vkj tsy ds dkeka ea : fp j[kus okys xj l jdkjh l xBuka ds l kFk l k>nkjh dh tkuh pkfg, और उन्हें जेल में निरंतर पहुंच व प्रवेश देना pkfg, vkj vxj bl ds fy, fdl h izdkj dh vkf/kdkfjd eku; rk nus dh आवश्यकता हो, वह भी देनी चाहिए।

orleku efr dkuuh l gk; rk l okvka dh dk; l iz.kkyh ea dN dfe; ka gA जिसका यहां उल्लेख करना आवश्यक है:

- , s l k yxrk gS fd efr dkuuh l gk; rk Ldhe dks bl dh tfVyrkvka vkj rkRi ; Z ds l kFk Bhd rjg l s i p k f j r ugha fd; k x; k gS bl dk 0; ki d i p k j fd; k tkuk pkfg, u dny vkij kf/kd U; k; iz kkyh dh fofHkUu , tfl ; ka ea cfYd ngkrh {ks=ka ea i p k ; rh jkt ds us/vodZ }kj k] tsyk ea tsy dY; k.k अधिकारियों द्वारा लॉ कॉलेजों में शिक्षकों द्वारा और समुदाय में चयनित गैर l j d k j h l x B u k a } k j k A d k u u h l x o k v k a d s i n k f / k d k f j ; k a d k , d e g R o i w k l d k ; Z d k u u h l k { k j r k v k j t k x : d r k Q s y k u k g A l H k h d k u u h l g k ; r k d k ; Ø e k a v k j L d h e k a d k s l e k t d s l f o / k k g h u o x l d s y k s x k a d s e u e a ; g विश्वास बिठाने की दिशा में काम करना चाहिए कि हमारा न्याय का प्रशासन l H k h d k s l e k u : l k l s U ; k ; f n y k u s d s f y , o p u c ) g A
- ; g , d l k e k U ; v g l k l g S f d e f r d k u u h l g k ; r k i k l r d j u s o k y k 0 ; f D r U ; k ; i k f y d k d s l e { k v l e k u y M k b l y M r k g S D ; k f d n l j k i { k } c g r j आर्थिक संसाधन के उपलब्ध होने का कारण अधिक कुशल कानूनी सहायता i k l r d j l d r k g S v k j b l i z d k j m l g s , d l e k u U ; k ; l s o f p r d j l d r k g A v k e r k j i j ; g n s [ k k x ; k g S f d t k s o d h y b l L d h e d s v r x l r l x o k , a i n k u d j r s g i o g c g r u ; s v k j v u t k o g h u g k r s g A d k u u h l x o k i k f / k d j . k k a का यह कर्तव्य है कि वह यह सुनिश्चित करें कि जिन गरीब और जेल में बंद d f n ; k a d k s o g d k u u h l g k ; r k n s j g s g i o g b l / k k j . k k e a u j g a f d m l g a n g y u k R e d : l k l s f u E u L r j d k d k u u h l g k ; d f n ; k x ; k g A l L F k k f i r v k j वरिष्ठ वकीलों को उनके मूल्यवान समय का एक छोटा भाग गरीबों और योग्य y k s x k a d h l x o k d s f y , ^ n k u d j u s d s f y , i k R l k f g r f d ; k t k l d r k g A
- v u t k o h v k j v P N s o d h y k a d k s d k u u h l g k ; r k d s e d l n d s f y , l p h c ) d j u s d s d k e d k s o d h y f c j k n j h d s l k F k y x k r k j l i d l L F k k f i r d j d s x j h c और अतिसंवेदनशील लोगों के केसों को लेने के लिए प्रोत्साहित करें। बार काउंसिल और स्थानीय बार एसोसिएशन के साथ लगातार मीटिंग इस मकसद d k s i j k d j u s e a l g k ; r k d j l d r h g A t k s o d h y b l d Y ; k . k d k j h L d h e d s अंतर्गत उत्कृष्ट काम करते हैं उन्हें सार्वजनिक रूप से सम्मानित करना चाहिए v k j c / k k b l n s u k p k f g , A
- d k u u h l x o k v k a r d i g p g k s u k v k j d k u u d h v n k y r e a v i u k c p k o d j पाना किसी कैदी का अवशिष्ट अधिकार है। गरीब और सुविधाहीन वर्ग, विशेष d j e f g y k , j t k s , d विशेष वर्ग हैं, उन्हें यह सुविधा राज्य के खर्च पर मिलनी g h p k f g , A y f d u ] d k u u h l g k ; r k d s d k e l s t M s o d h y t s y k a e a t k d j d f n ; k a l s f e y u k u g h a p k g r s v k j m u e s l s d b l , s l s g i f t u e a v i u s e p f D d y को व्यावसायिक योग्यता से संतुष्ट करने की क्षमता नहीं है।



- यक्ष वन्यरक्षा दक यक्ष कर्न; क रद मल वुक् क्र ए उहा इगप जगक ग्स  
 फ्तल ए बल स मु रद इगपुक पकfg, फका बल दक , द दkj.k ; ग ग्स ल द्रक  
 ग्स फद यक्ष वन्यर त्स्य दस मल वगर्स ए उहा यखबल त्क्रह ग्स त्गका  
 फपक्ज/कुह दफन; क दस ज [क त्क्रक ग्स नल जक वक्ष एगरोल कल दkj.k ; ग ग्स  
 फद ओह्य वलस एफददयका दस नल जह इकुवह ल स क्क रदज दस ल ए >कर्स दजुस  
 दस फ्य, वक्ष यक्ष वन्यरक्षा ध ल गक; रक यूस दस फ्य, इ कल क्क र ए उहा  
 दजर्स ग्स ड; क्क र ओग बल क्क र ल स मजर्स ग्स फद वख >xM दस फुल वक्ष दस  
 फ्य, दकुलह इफØ; क ब्रुस तेजलर रजहद ल स ल {लर ग्स त्क, ख र्क  
 मुध वक्ष; दक उल कु ग्सका ; ग मज क्क र ग्स ड; क्क र इग्स गह ब्रुस  
 एपनेस ग्स फद दल क दस फुल वक्ष ल स एपनेका ध ल फलफर ए ल क्क र वक्ष, ख  
 वक्ष ; ग फद ह ह्क रजग ल अ कल व्कनुह इज क्क र इ ह्को उहा म्कसका
- कानून के वरिष्ठ विधार्थियों को जेलों में कानून ल गक; रक वक्ष त्कx: द्रक  
 कार्यक्रमों में सम्मिलित करना चाहिए। यह एक ऐसी शुरुआत है जिसे  
 आवश्यक रूप से आगे बढ़ाना चाहिए क्योंकि विधि विधार्थियों का इससे  
 त्कको उ दय फो/कद ल षक, अ इक/कदज. क्क वक्ष मुदस यक्क क्क; क ध  
 ल गक; रक द्जसक फ्यद लोः फो/क फो/क्क क्क; क ध ह्क ल गक; रक द्जसका म्ग  
 इग्स ल स गह वक्क ल ग्स त्क, ख फद ओकदकज; क ल स दल स Ø; ओगज फद; क त्क,  
 और कैसे कानून का सर्वश्रेष्ठ उपयोग मुक्कल के लाभ के लिए किया  
 त्क, फ्तुदक ल क्क म्ग वलस लुक्रद इज क ग्सुस दस क्क द्जुक ग्सका  
 , य-, य-च] , य-, य-, ए या पेशवर वकील के रूप में रजलस्ट्रेशन के लिए  
 वलधलक सेवा प्राधलकरणों के साथ एक नीयत समय के लिए इंटर्नशलप करने  
 दस , द एगरोल कल व्कु; र्क कुक पकfg, A
- गेक्ज फुप्यह ल; कल क्क ए फ्तल इज्क दस एपनेस इज्क ग्स मल ए यक्ष  
 वन्यर ल कल स इक्क द्कज नल जह >xM फुल वक्ष; अ-कफ्य ग्स फज ह्क] ; ग  
 ; अ-कफ्य दय दल न इज्क दस एपनेका ए फुल वक्ष द्जुस ए ल क्क ग्क ग्स  
 त्स्य फद तेहु व्क/खग.क एक्क ; क एक्ज न्क/वुद दस न्को ए यक्ष  
 अदालतें दूसरे प्रकार के मामलों में प्रभावकारी नलपटारा क्यों नहीं दर्शा रही  
 ग्स बल दक एक्; दkj.k ग्स बल दस फ्य, ओह्यका ध व्कुPNक त्स , द क उहा  
 होने देना चाहते हैं। यह भी शायद उनके द्वारा आय के नुक्सान के भय  
 दस दkj.k ग्स य्दु] ल क्क त्क ल; क दस ल र्क्यु इज त्स्य ए क्क द्जुस  
 दक [कल वक्ष बल दस इज.क्क लोः ल ग्सुस ओयह इ ह्क दक ओतु {क.कद यक्क  
 ल स व्क/कद ग्सुक पकfg, A

युक्त न्यायाधीशों की संख्या में वृद्धि के लिए उच्चतम न्यायालय के न्यायाधीश थे, राज्य विधिक सेवाएं प्राधिकरण  
 के अधीन।

लेकिन जो कष्टप्रद है, जो मैंने इतने सालों तक और यहां तक कि  
 वक्त की कमी के कारण, जो न्यायाधीशों की संख्या में वृद्धि के लिए उच्चतम न्यायालय के न्यायाधीश थे, राज्य विधिक सेवाएं प्राधिकरण  
 के अधीन। इसलिए, अगर सरकार आवश्यक इच्छाशक्ति के साथ, आवश्यक इरादे के  
 साथ, यह आन्दोलन उतनी गति नहीं ले पाएगा जितनी आवश्यकता है-----  
 इसलिए, यह आन्दोलन उतनी गति नहीं ले पाएगा जितनी आवश्यकता है-----

- तब तक कि न्यायाधीशों की संख्या में वृद्धि के लिए उच्चतम न्यायालय के न्यायाधीश थे, राज्य विधिक सेवाएं प्राधिकरण  
 के अधीन। अधिक आकर्षक बनाया जाना चाहिए ताकि समाज के अतिसंवेदनशील वर्ग  
 के लिए कानूनी सेवाओं तक पहुंच और उनकी गुणवत्ता में सुधार आ सके।

यह सुधार और इस मकसद के लिए पेशेवर वकील बिरादरी की सेवाओं को  
 प्राप्त करने के लिए विशेष प्रयत्न किये जाने की आवश्यकता है। जेल सुधार और  
 न्याय प्रणाली के सुधार के लिए विशेष प्रशिक्षण आयोजित करके इन पेशेवर वकीलों को लीगल क्लिनिक और  
 न्याय प्रणाली के सुधार के लिए विशेष प्रशिक्षण आयोजित करके इन पेशेवर वकीलों को लीगल क्लिनिक और  
 न्याय प्रणाली के सुधार के लिए विशेष प्रशिक्षण आयोजित करके इन पेशेवर वकीलों को लीगल क्लिनिक और

न्यायाधीशों की संख्या में वृद्धि के लिए उच्चतम न्यायालय के न्यायाधीश थे, राज्य विधिक सेवाएं प्राधिकरण  
 के अधीन। लघु अपराधियों से निपटने के लिए लोक  
 न्यायाधीशों की संख्या में वृद्धि के लिए उच्चतम न्यायालय के न्यायाधीश थे, राज्य विधिक सेवाएं प्राधिकरण  
 के अधीन। यहां तक कि कार्यकारी मजिस्ट्रेट को भी न्यायाधीशों की संख्या में वृद्धि के लिए उच्चतम न्यायालय के न्यायाधीश थे, राज्य विधिक सेवाएं प्राधिकरण  
 के अधीन।

vijk/kh ifjoh{kk vf/kfu; e dk de iz; kx

ijh nfu; k ea U; kf; d 0; oLFkk bl ckr dks ekl; rk nus yxh gS fd dny tsy ea cn djuk gh c<rs vkij/k nj dh l eL; k dks gy ugha dj l drk gA bl ifjis; ea dN dY; k.kdkjh dkumu cuk, x, gS rkfd tsy ea cn djus dks jkd tk l ds vkj vijkf/k; ka dks l epk; ij vk/kkfjr mipkj fn; k tk, A vijkf/k; ka dh ifjoh{kk vf/kfu; e 1958] ,s k gh , d dkumu gS ftls vxj iHkkodkj rhds l s mi; kx fd; k tk,] orZeku ea tsy ka ea HkhM+ dks de djus में बड़ा निशान छोड़ सकता है।

अधिकांश मुकदमा पूर्व और दोषसिद्ध अपराधी पहली बार अपराधकर्ता की श्रेणी में vkrs gA tsy ds vkj dM दर्शाते हैं कि देश भर के सभी दोषसिद्ध अपराधियों की केवल 5—6 प्रतिशत संख्या दोबारा या अभ्यस्त अपराधियों की होती है।<sup>4</sup> fopkj/khu dfn; ka ea vH; Lr vijkf/k; ka dh l a[; k dk Hkkx vkj de gA eksVs तौर पर आकलन के अनुसार(दोष सिद्ध और विचाराधीन), तकरीबन 90 प्रतिशत vijk/kh igyh ckj ds vijk/kdrkl dh Js kh ea vkrs gA vxj ge ^vijk/kh ifjoh{kk vf/kfu; e\* ds varxlr fofHkUu vioknka vkj n-izl a dh /kkjk 360 ds अंतर्गत आने वालों की संख्या को घटा भी दें, लगभग 50 प्रतिशत जनसंख्या इन विशेष प्रावधानों ds varxlr xj fgjkl rh l q/kjkRed mipkj ds vfuok; l ykHk ds ; kx; gkrs gA

vkijkf/kd U; k; iz.kkyh ij ; g , d nq[kn fVli .kh gS fd bu i ko/kkuka dks ml उत्साह से उपयुक्त नहीं किया गया है जिस मंशा से कानूनों को बनाया गया Fkka dN U; kf; d eftLVV us 0; fDrxr : lk l s l a dZ fd; s tkus ij crk; k fd bu i ko/kkuka dk yxkrkj mruh fu; ferrk l s mi; kx djds ftruk bl l s आशा की जाती है, स्वयं को 'अपराधी समर्थक मजिस्ट्रेट' का उपनाम दिये जाने से डरते थे(उनके वार्षिक मूल्यांकन रिपोर्ट में विपरीत टिप्पणी)। आपराधिक ifjoh{kk vf/kfu; e dh /kkjk 6 vkj n-izl adh /kkjk 361ds varxlr ; g vfuok; l : lk l s dgk x; k gS fd vxj bu l kekftd i ko/kkuka dks mi; Dr ugha fd; k tk,] V; y eft: VV@tt dks ,s k u djus dk dkj .k fjdkMZ djuk gksxA लेकिन, अधिकांश केसों में इस अनिवार्यता का बड़ी संख्या ea n. M Lks Nq/dkjs ds l kFk mYYka?ku fd; k tkrk gA

vxj igyh ckj ds vijk/kdrkZ dks ycs epnes ds fdl h Hkh pj.k ij ; g crk fn; k tk, fd vijk/kh ifjoh{kk vf/kfu; e dh /kkjk 12 ds varxrh p, d 0; fDr ftl s /kkjk 3 %prkouh ds ckn fjgkb½ ; k 4 %vPNs vkpj.k dh ifjoh{kk ij रिहाई) के अंतर्गत दोषी पाया गया है उसे दोषसिद्धि पर इस कानून के अंतर्गत bl vijk/k l s tM+ fdl h izdkj dh v; kx; rk dks ugha Hkpxruk i Mxk]B muea l s dbZ vius vijk/k dks Lohdkj djus dks va/kdii dkj kxkj ds uhj l dke dks vkj vf/kd l e; rd djus l s vf/kd i l n djx A

bu i ko/kkuka dk fHkUu vkj U; k; l Eer mi ; kx fopkj/khu dñn; ka vkj muds dñn dh vof/k ea Hkh deh yk l drk gñ yfdu , d k yxrk gñ u rks U; k; i kfydk vkj u gh odhy bu i ko/kkuka ds l kekftd vkj ekuoh; igymvka का जोशीले ढंग से प्रयोx djrs gñ jkT; }kjk ik; kfr eñr dkuuh l gk; rk i nkf/kdkfj ; ka dks fopkj/khu dñn; ka dks dkuuh l gk; rk Dyhfud }kjk bu प्रावधानों तात्पर्य के बारे में शिक्षा देना होगा ताकि वे अपने और अपने ऊपर vkfJr ykxka ds thou ds fy, bl dk mi ; kx dj l d A

dñN odhyka dh udkj kRed Hkifedk

, d k izhr gkrk gñ fd fupyh vnkyr ds Lrj ij dke djus okys odhy] विचाराधीन कैदियों के केसों के शीघ्र निपटारे में रुचि नहीं रखते हैं। एक अनकहा लेकिन बेबुनियाद विश्वास है कि अपराधी परिवीक्षा अधिनियम या द-i l a dh /kkjk 360 dk उपयोग शायद उनके व्यावसायिक आय पर विपरीत प्रभाव MkysxA ; gka rd fd tsy ea odhy vkj muds epfDdy ds chip l ai dZ Hkh ux.; gñ ifj.kke : o: lk os dñ dh lFkfr l s vutku gks tkrs gñ vkj l qokbZ ds fy, rkjh[k+ vkxs c<kus dh ekx djrs jgrs gñ ftl l s i w kx; k निष्ठुरता के कारण हिरासत में रिमांड का समय भी बढ़ जाता है।

ekeys ftu ea l qokbZ i kj EHk gh ugha gks l dh gk&Ekkuf l d : lk l s chekj vki jkf/kd vkj ksi h

ekuf l d : lk l s chekj बंदियों (विशेष रूप से जिन्हें असुधार्य घोषित कर दिया x; k gñ ; k tks Ldhtkñfud i j kskbM gk½ dk मुकदमा सीधे तौर पर शुरू ही ugha gks i krk gñ vxj %v/k; y½ eftLV% dk ; g er gñ fd Hkst k x; k 0; fDr %ml ds ekuf l d ij h{k.k ds fy, , d l {ke fpfdRI h; vf/kdkjh ds i kl ½ ekuf l d jkxh gñ vkj ifj.kkeLo: lk vi uk cpko djus ea vl eFkZ gñ og bl ds

ckjs e' अपने निष्कर्ष को रिकॉर्ड करेगा और इस केस में आगे की कार्यवाही को  
LFkfr dj nxxA

vxj igyh ckj ds vijk/kdrkZ dks ycs epnes ds fdl h Hkh pj.k ij ; g crk  
fn; k tk, fd vijk/kh ifjoh{kk vf/kfu; e dh /kkjk 12 ds varxrk p, d 0; fDr  
ftl s /kkjk 3 ¼prkouh ds ckn fjgkb½ ; k 4 ¼vPNs vkpj.k dh ifjoh{kk ij  
रिहाई) के अंतर्गत दोषी पाया गया है उसे दोषसिद्धि पर इस कानून के अंतर्गत  
bl vijk/k l s tM; fdl h izdkj dh v; kx; rk dks ugha Hkxruk i MxkjB mue  
l s dbZ vius vijk/k dks Lohdkj djus dks va/kdwi dkjxkj ds uhj l dke dks  
vkj vf/kd l e; rd djus l s vf/kd i l n djx A

bu i ko/kkuk dk fHkUu vkj U; k; l Eer mi ; kx fopkj/khu dñn; k vkj muds  
dñn dh vof/k e Hkh deh yk l drk gñ yfdu , d k yxrk gñ u rks  
U; k; i kfydk vkj u gh odhy bu i ko/kkuk ds l kekftd vkj ekuoh; igymka  
का जोशीले ढंग से प्रयोग करते हैं। राज्य द्वारा प्रायोजित मुफ्त कानूनी सहायता  
i nkf/kdkfj ; k dks fopkj/khu dñn; k dks dkuuh l gk; rk Dyhfud }kjk bu  
प्रावधानों तात्पर्य के बारे में शिक्षा देना होगा ताकि वे अपने और अपने ऊपर  
vkfJr ykxka ds thou ds fy, bl dk mi ; kx dj l d A

dñN odhyka dh udkj kRed Hkifedk

, d k i rhr gkrk gñ fd fupyh vnkyr ds Lrj ij dke djus okys odhy]  
विचाराधीन कैदियों के केसों के शीघ्र निपटारे में रुचि नहीं रखते हैं। एक  
अनकहा लेकिन बेबुनियाद विश्वास है कि अपराधी परिवीक्षा अधिनियम ; k n-i z l a  
की धारा 360 का उपयोग शायद उनके व्यावसायिक आय पर विपरीत प्रभाव  
MkysxA ; gka rd fd tsy e odhy vkj muds epfDdy ds chip l i dZ Hkh  
ux.; gñ ifj.kke : o: lk os dñ dh fLFkr l s vutku gks tkrs gñ vkj  
l qokbZ ds fy, rkjh[k+ vkxs c<kus dh ekx djrs jgrs gñ ftl l s i w kx; k  
निष्ठुरता के कारण हिरासत में fjekM dk l e; Hkh c<+ tkrk gñ

ekeys ftu e l qokbZ i kj EHk gh ugha gks l dh gk&Ekkuf l d : lk l s  
chekj vki jkf/kd vkj ksi h

ekuf l d : lk l s chekj बंदियों (विशेष रूप से जिन्हें असुधार्य घोषित कर दिया  
x; k gñ ; k tks LdhtkYfud i jkukbM gk½ dk मुकदमा सीधे तौर पर शुरू ही  
ugha gks i krk gñ vxj ¼v/k; y½ eftLV½ dk ; g er gñ fd Hkstx x; k 0; fDr  
¼ml ds ekuf l d ij h{k.k ds fy, , d l {ke fpdRI h; vf/kdkjh ds i kl ½  
ekuf l d jkxh gñ vkj ifj.kkeLo: lk vi uk cpko djus e vl eFkZ gñ og bl ds

बारे में अपने निष्कर्ष को रिकॉर्ड करेगा और इस केस में आगे की कार्यवाही को

## जेलों में किशोरबंदी

न्याय तक पहुंच और कानूनी सशक्तीकरण पर कोई कथन पूरी तरह विफल हो जाएगा यदि हम कानून के विरुद्ध जाने वाली महिलाओं की दुर्दशा पर विचार नहीं करेंगे, विशेषकर मु एफ गी क्यू क्यू डी सी जे ई एफ टी एल गी एफ जी क्लि एच । एल एफ क्यू क्यू ई डी जे [ क्लि गया है । जो सिद्ध दोषी हैं उन्हें एक केन्द्रीय दूरस्थ स्थान पर एकत्र कर रखा गया है जहां उनके रिश्तेदारों को उनका पता लगाने और उन तक पहुंचने में कठिनाई गी क्लि एच यी डी टी सी एपी ने क्यू डी । के क्यू डी जे गी मी एल गी एल एफ क्यू क्यू ; टी सी क्यू एफ टी सी क्यू वी एफ को मी टी सी क्यू ई , डी एल एल एफ क्लि एच जे [ क्लि टी क्लि गी एफ टी । ई जे एल क्लि : क्लि । सी / ; क्यू न्यू सी की आवश्यकता है ।

विशेष रूप से मानवाधिकारों के उल्लंघन और विभिन्न प्रकार के भेद-भाव का शिकार होती हैं।

bl dk eq[; dkj.k gS fd efgykva ds fy, vyx tsy mi yC/k ugha gS vkj vf/kdrj LFkkuk ij u rks muds l g f{kr fgjkl r ds fy, ; k muds fpfdRI h; व अन्य परीक्षण के लिए महिला कर्मचारी उपलब्ध है। विशेष आवश्यकता रखने okyh efgyk dñh & tks xHkbrh gñ ; k ftuds ikl uotkr cPpk gñ vkerkj ij mi f{kr gkrh gñA ; g उल्लंघन अदृश्य होते हैं और दण्ड के भय से मुक्त होकर किये जाते हैं क्योंकि जेल प्रशासन में जवाबदेही और पारदर्शिता की कमी है।

vf/kdrj tsy fu; ekofy; ka ea efgyk cñ; ka dks tsyka vkj mi & tsyka ea j [kus ds rjhds ds ckjs ea crk; k x; k gñ , d s gh , d fu; e dks fuEu izdkj l s i < k tkrk gñ

efgyk dñ; ka dks efgyk okMZ ea vdsys ugha jguk gS & tc] ; gka rd fd] efgyk okMZ ea dñy , d efgyk dñh gkj vkj dkbZ efgyk okMZ ; k l oñkj ½ vkol hñj ½ u gkj vkj dñh ds ogka l kr fnuka l s vf/kd l e; rd jgus dh l EHkkouk gkj vf/k{kd igys l s gh l cl s utñhdh tsy l s nñ jh efgyk dñh dks bl tsy ea exokus dh ; k bl efgyk dñh dks utñhdh tsy ea Hkstus dh 0; oLFkk djxs rkfd efgyk dñh dks l æfr fey tk, A vl k/kkj . k i fjLFkfr ea vf/k{kd efgyk dñh dh fdl h efgyk fe= dks ml ds l kFk vkdj tsy ea jgus dh vkKk ns l drs gñA vxj efgyk dñh dh dkbZ , d h l gsyh ugha gS tks ml ds l kFk vkdj Bgjñ vf/k{kd fdl h efgyk dks vfrfjDr okMZ ds : lk ea j [kxs rkfd efgyk dñh dks l æfr fey tk, A

efgyk dñ; ka dks Hkyh Hkkr j [kus ds fy, cuk, x, bl fu; e dks dk; kJo; u l s vf/kd mYyañku ds fy, ekuk tkrk gñA vf/kdre ftýk tsyka ; k उप—जेलों में महिला वार्डर के लिए कोई अनुमोदित पद नहीं है। ऐसा शायद दो dkj . kka l s gñ , d] bu l LFkkuk ea efgyk fopkj k/khu dñ; ka dh mi fLFkfr ds ckjs में अनिश्चितता vkj nkj efgyk fopkj k/khu dñ; ka dh l a[; k ea ; fn dkbZ है, लगातार परिवर्तन। यह शायद इसी अनिश्चितता के कारण है कि उपर्युक्त fu; e dks bl < x l s l e > k; k x; k gS fd tsy ; k mi & tsy ea , d vdsyh efgyk dñh dks Hkyh Hkkr j [kus ds fy, dbZ oñfYi d i cñk fd; s x; s gñA yfdu] bl fu; e ea oñfYi d i cñk ds i ko/kku dbZ dkj . kka l s fñkl & fi Vs vkj v0; ogkfj d gks x; s gñ



- सबसे नज़दीक के जेल से महिला कैदी को बुलाना उसके लिए परेशानी  
 dk dkj .k gks l drk gS D; kfd ; g ml ds utnhdh l ECU/kk vkj i fjokj  
 ds l nL; k l s ml s ofpr dj l drk gA vxj ml s nll js tsy ea ml dh  
 bPNk ds fo: ) ] dxy nll jh efgyk dks l æfr nus ds fy, gLrkafjr  
 fd; k tkrk g; ; g ml ds U; ure vojks/k ds l kFk thus ds vf/kdkj dk  
 mYYkku gksxA
- vdsyh efgyk dks l cl s utnhdh tsy ; k mi&tsy/tgka vl; efgyk  
 dñh mi fLFkr gks l drh g; ea Hkstus l j dñh dks l Ec) vnkyr ea  
 l quokbz dh rkjh[k+ ea mi fLFkr djkus ea i fØ; kRed dfBukbz mRi lU  
 gksxA , d h iR; sd rkjh[k+ ij U; kf; d eftLVV ds l e{k ml s , d tsy  
 l s nll js tsy ea LFkkukUrfjr djuk i Mxk] gLrkUrj .k dh l eL; k gksxh  
 efgyk xkMk dh mi yC/krk dh l eL; k gksxh vkj ml ds 0; fDrxr l j {kk  
 ds mYYkku dk [krjk gksxA
- fdl h , d h efgyk fe= dks <kuk tks vdsyh efgyk dñh dks l æfr ns  
 l ds ; k viuh bPNk l s tsy dh Hk; kud fLFkr ea ml ds l kFk jgus ds  
 fy, r\$ kj gk] , d dfBu dke g& tsy ds vi ; klr dezkfj ; k ds fy,  
**प्रबंध करना लगभग असम्भव। इस विकल्प से अवैधानिक कैद के शिकायत**  
**की सम्भवना भी निकलती है क्योंकि जेल नियमावलि स्पष्ट रूप से किसी**  
 0; fDr dks] , d l {ke i kf/kdkjh }kjk ekU; fgjkl rh okjM ds cxj tsy  
 ea cn djus l s euk djrh gA
- fdl h efgyk dks vfrfjDr okMj ds rkj ij j [kuk\* vc l EHko ugha gS  
 D; kfd tsy vf/k{kdk dh fdl h 0; fDr dks vLFkk; h] vkdfLed ; k  
**दिहाड़ी पर नियुक्त करने की शक्तियों को छीन लिया गया है।**

क्योंकि विचाराधीन कैदियों की जनसंख्या हमेशा बदलती रहती है ; g i oklueku  
 लगाना या भविष्यवानी करना कठिन है कि कब और किस जेल में विचाराधीन  
 efgyk dñh; k dh l a[; k ?kV dj dxy ^, d\* gks tk, xhA tsy foHkkx ; g  
 कहने की स्थिति में नहीं है कि कितने जेलों में और कितने अवसरों पर एक वर्ष  
 ea dxy , d vdsyh fopkj/ीन महिला कैदी थी। शायद जेल संदर्शकों के  
 हस्तक्षेप से ऐसे केसों में कुछ आशा जग सकती है। वे अपने प्रभाव का उपयोग  
 dj ds efgyk gke xkMZ dh l okvka dks , d s vLFkkbz pj .kk ds fy, mi yC/k dj k  
 l drs g; tc tsy vkj mi&tsy ea dkbz efgyk okMj ugha gA

महिला कैदियों को उनके पुरुष जोड़ीदारों से अलग रखने का नियम इस बात को आवश्यक बना देता है कि उन्हें न केवल पुरुष कैदियों की पहुंच से दूर रखा जाए बल्कि उनकी दृष्टि से भी दूर रखा जाए। इसलिए, पुरुषों के जेल में महिला ?kj k vkš ?kjs ds vanj okMk dh cukoV bl i xkj gkuh pkfg, fd ml dk njokt ml h i fDr ea bl i xkj u gks fd dkbz Hkh vkus tkus okyk mudh प्राइव्सी पर आघात कर सके। अगर, एक ओर, यह संपूर्ण अलगाव को सुनिश्चित djrk gš bl dk , d rRo ; g Hkh gš fd] bl ds i fj .kke ds : lk ea efgyk dñh dk l a w k z , dkdhi u Hkh gsrk gš voškkfud , dkUr dkj kokl ½ ; fn og vdsyh gš vkš ml dh fuxjkuh ds fy, dkbz efgyk okMž mi yC/k ugh gš ; g fLFkr निश्चित रूप से देश के सभी जिला जेलों और उप-जेलों में है।

Efgyk fopkj k/khu cfn; k dks tsy ea j [kus dh l eL; k] tgka u rks dkbz efgyk xkMž mi yC/k gks vkš u mUga l j f{kr j [kus ds fy, mfpr ?kj ko gkj fprk dk dkj .k gš vkš bl i j jkT; i nkf/kdkfj; k dk mfpr /; ku [khpuk pkfg, A vxj mudh Lorærk dks de djus ds fy, dkuu gš l jdkj mUga tsy ea j [kus ds fy, dkbz LFkk; h i xk dkj ds ckjs ea D; k ugha l kp l drh gš D; k jkT; dks mudh Lorærk dks ckf/kr djus dk vf/kdkj gš vxj bl ds ikl mudh fuxjkuh ds fy, efgyk okMž k dks j [kus ds fy, vkš mUga j [kus ds fy, mfpr i xkj ds tsy cukus ds fy, i š k ugha gš D; k jkT; dks U; k; i kfydk से परामर्श नहीं करना चाहिए और ऐसे तरीके नहीं निकालने चाहिए कि इन्हें tekur ¼; fDrxr epyds ij vxj mudh tM l epk; ea gš ½ ij fjgk dj fn; k tk,] tc rd tsy ea dñ djus dk mfpr i xk u gks D; k jkT; l jdkj dks tsy k i fyl ] U; ki kfydk vkš efgyk l kekftd l xBuka dh efgyk vf/kdkfj; k dh , d l fefr dk xBu ugha djuk pkfg, rkfd og , d ckj tsy k ea cn l Hkh fopkj k/khu efgyk dñ; k ds ckjs ea eh{kk d j tgka dkbz efgyk xkMž ugha gš vkš bl fLFkr dks l qkkjus ds fy, Bkd rjhd k crk, A

Tkc efgyk dñ; k dks tsy k vkš mi & tsy k ea Hkrhž fd; k tkrk gš efgyk okMž k ; k efgyk xkMž dks vLFkk; h : lk l s Hkrhž djus dk dñ i ko/kku gkuk pkfg, A ftu tsy k vkš mi & tsy k ea efgyk okMž k dh vupefñr l a[; k u gkj efgyk gkx xkMž dk , d i जल हमेशा उपलब्ध होना चाहिए ताकि जब कोई vdsyh efgyk tsy ea cn dh tk, rc mue l s , d ; k nks dh l xkv k dks i klr fd; k tk l dš

## जेल संदर्शन प्रणाली

; w, u-Mh-i h- की घोषित भूमिकाओं में से एक है: जेल संदर्शन प्रणाली (पी-oh-, l -½ dks l qkkj kRed dk; k ds fy, ] l kep kf; d l ghkkfxrk ds gffk; kj ds : lk ea i p% i pfyr vkj l n<+ djuk D; kf d i h-oh-, l - tsy dh cn nhokj k ds chip day , d gh , d h f[kMdh gS tks dkunh : lk l s bl cn l dFkk ea l kekftd gLr{ksi dk i Lrko o vkKk nrk gA xj vkf/kdkfjd tsy l दर्शकों को जेल में प्रभावपूर्ण रूप से काम करने के लिए अपने कानूनी सशक्तीकरण के लिए सामुदायिक सहायता dh t+ jr gA

देश के तकरीबन सभी जेल नियमावलियों में, यह प्रावधान जेल अधिनियम 1894 की धारा 59(25) के अंतर्गत 'जेल के संदर्शकों की नियुक्ति और मार्गदर्शन' के लिए j [kk x; k gA

लोगों को आधिकारिक और गैर आधिकारिक जेल संदर्शक के रूप में सेवा करने के लिए नियुक्त करना जेल प्रशासन dh Hkkj rh; 0; oLFkk dk , d cgr cgep; Hkkx है। यह एक स्वतंत्र व निष्पक्ष पर्यवेक्षण निकाय की उपस्थिति को सुनिश्चित करता g जिसका संदर्शन अगर नियमित रूप से किया जाए और राज्य पदाधिकारियों द्वारा bl ea Hkkx fy; k tk, ] l jdkj vkj turk dks xkj h ns l drk gS fd tsy vf/kfu; e vkj tsy e; wy ds i ko/kkuka dk ; Fkkor- ikyu fd; k tk jgk gA ; g जेल व्यवस्था में किसी प्रकार के दोष, दुराचार, असंतुष्टि और दुर्व्यवहार को शीघ्रता से प्रकाश में ला सकता है और सरकार को ऐसा अवसर प्रदान करता है कि वह इन l eL; kvk dks muds xtkhj vk; kea ea cnyus ds i gys l ckf/kr djA

गैर आधिकारिक संदर्शकों के संस्थानों की उपस्थिति और इसका स्थायीकरण foशेषरूप से वहां अधिक महत्वपूर्ण हो जाता है क्योंकि यह ऐसे प्रशिक्षण की नींव Mkyrh gS tgka turk ds l nL; tsy dh l eL; kvk ds ckjs ea i jk Kku i klr dj i k, x vkj tsy vkj dfn; ka ea : fp yuk l h[k yx l qkkj kRed dk; k ds विशेषज्ञों और सरका j kjk l e; l e; i j tsy l qkkj ds fy, fu; Dr fudk; ka us ckj&ckj bl ckr i j ncko Mkyk gS fd turk ds fnekx+ ea bl i xkj dh : fp i shk djuk vkj xj vkf/kdkfjdka dh fu; Dr djuk bl edl n dks c<kok nsuk , d l cl s vPNk rjhdg gA

; g cgr fpark dh ckr gS fd tsy l र्शन प्रणाली, जेल के कैदियों के जीवन को प्रभावित करने वाली एक बेहद सामर्थ्य सामाजिक हथियार, वर्षों से लापरवाही और mnkl hurk ds i fj .kkeLo: lk vuq ; kxh vkj Qyghu dkx t vkj pkfjdrk cu dj jg x; k gA

fgjkl rh l LFkkuk e ekuo vf/kdkjka ds l j {k.k l s l Ec) l kekftd vkj o\$pkfj d fodkl dh xHkhjrki w kZ : lk l s ; g ekx g\$ fd i Hkkoi w kZ i fj .kke vfHkfol; Lr gkus के लिए इस व्यवस्था को पुनर्जीवित करने की आवश्यकता है।

जेल संदर्शकों के मार्गदर्शन और नियुक्ति के लिए वर्तमान नियमों को निकट से ns[kus ij ; g i rk yxrk g\$ fd bl ds dbZ i ko/kku i j kus gks pps g\$ vkj bues संशोधन की आवश्यकता है। जो उपर्युक्त हो सकते हैं, उनका ठीक ढंग से पालन नहीं हो रहा है। जेल प्रशासन और संदर्शकों की आरे से कई प्रकार की प्रक्रियात्मक foQyrk gks jgh g\$ ftl ds i fj .kkeLo: lk toknggh de gks tkrh g\$

वर्तमान जेल संदर्शन प्रणाली की एक बुनियादी कमी यह है कि राज्य गृह व न्याय foHkx] tks jkT; e , u-vksoh- dh fu; fDr ds fy, ftEenkj g\$ fu; fDr dh vkj pkfjdrk ds ckn mul s l i dZ vkj l pkj l ekr dj yrs g\$ mlgkus , s h dkbZ ; ekofy Hkh fodfl r ugha dh g\$ ftl l s ; g Kkr gks fd eukuh , u-vksoh- ds ikl fu; fDr i = i g p x; k g\$ ; k ftl g\$ fu; fDr fd; k x; k g\$ mlgkus LoPNk l s bl s Lohdkj dj fy; k g\$

जेल संदर्शन व्यवस्था को जेल कर्मचारियों द्वारा उनके काम में अनुचित हस्तक्षेप ekuk tkrk g\$ xj l jdkjh l दर्शकों को जेल अधिकारियों द्वारा विश्वसनीय i nkf/kdkjh ugha ekuk tkrk g\$ D; kfd i k ; %kos ds l kFk dgk tkrk g\$ mudh fu; fDr i jh rjg l s muds jktufrd l x k ds vk/kkj ij gkrh g\$ ftl e mudh ; kx; rk ; k vuHko dk dkbZ egRo ugha gkrk g\$ mlg muds bjknka ds dkj .k ugha vi uk; k tkrk g\$ vkj fu; r dk; Z dks i j k djus ds fy, grkRl kfgr fd; k tkrk g\$

गैर आधिकारिक संदर्शक dks cnys e tc mlg tsy de pkjh l s dkbZ l gk; rk नहीं मिलता और न ही नियुक्त करने वाली एजेंसी द्वारा उनके संदर्शन नोट पर dkbZ i kRl kfgr djus okyk tokc feyrk g\$ vi us dke dks ; ll=or-jLe dh rjg निभाने लगते हैं। गैर आधिकारिक संदर्शकों को, जेल संदर्शक के रूप में उनके अधिकार और कर्तव्यों की जानकारी भी नहीं है। उन्हें मार्गदर्शन के लिए बनाए गए fu; eka l s dHkh i fjfpr ugha dj; k tkrk g\$ u gh mlg tsy ; k dFn; ka ds प्रशासनिक या सुधारात्मक कार्यों के बारे में बतलाया जाता है।

गैर आधिकारिक संदर्शकों की एक बड़ी संख्या ऐसी है जो जिस काम के लिए fu; fDr fd; s x; s g\$ ml ds fy, dHkh tsy x; s gh ugha g\$ fQj Hkh mue l s dN dks yxkrkj fu; fDr fd; k जाता है क्योंकि कार्य-निष्पादन न करने के लिए कोई toknggh ugha g\$

कुछ लोग जो समय निकाल कर जेल संदर्शन करते हैं और अपनी संदर्शन रिपोर्ट लिखते हैं उन्हें कोई सम्मान या पारितोषिक नहीं मिलता। शायद एक गैर आधिकारिक संदर्शक के सुझाव पर समय रहते कायbkgh ; k muea l s dñ tks egRi w k l pko nrs gñ mlg /ku; okn i =] mlg muds dke ea vf/kd : fp yus ds fy, i fjr dj l dA

यहां तक कि जेल के पदेन संदर्शकों द्वारा संदर्शन भी उतनी नियमित और vFkñ w k l g\$ fu; ekofy ea ft l dh bl l s vi \$kk FkhA fu; ekofy; k ea fxuk; s x; s विभिन्न पदेन संदर्शकों में से कई ऐसे हैं जिन्होंने अपने राज्य के किसी भी जेल संस्थान का संदर्शन नहीं किया है।

स्पष्टतः राज्य के जेलों में, जेल संदर्शन व्यवस्था की कार्य प्रणाली की वर्तमान rLohj mnkl hu gA , d cgr vPNs bjks l s cukbZ vkñ i Hkkoh 0; oLFkk dks लंबी लापरवाही के कारण बेकार और दुष्क्रियाशील अंग बना दिया गया है। यह बेढंगे और उद्देश्यहीन तरीके से काम करती है, और इसे पुनर्जीवित करने और दोबारा चालू करने की आवश्यकता है। अगर पूरी तरह से प्रबंध किया जाए, यह foHkkx ds fy, vkñ tsy ds dñ; k nks ds fy,] cgr vPNs i fj .kke fudkyus ea l eFkZ gAb l ds vñj l a w k l tsy 0; oLFkk }kj k Hkpxrh tk jgh dñ xHkhj nçyrk dks l Eckf/kr djus vkñ ml dk mi pkj djus dh {kerk gA ; g tsy ea l qkkj kRed dk; k ds fy, l kepñf; d Hkxhnhkj dh , d f[kM-dh Hkh [kksy l drh gA

## दूरदर्शी दृष्टिकोण

ge l c bl ckr l s voxr gñ fd tsy ds l LFkku dks <du\$ okyk v/kdkj g\$ og bl s ekuokf/kdkj mYYk?kuka ds fy, , d i pñ vk/kkj inku djrk gA dñ संस्थानों को छोड़कर, देश में जेलों की स्थिति भयावह है। इनमें से अधिकतम व्यथा जेल कर्मचारियों के दुष्कर्म का परिणाम नहीं बल्कि संपूर्ण व्यवस्था की l xfgR yki jokgh ds dkj .k gA tks l eku nrs gñ mlg nsuk ugha vkrkA ftUga vkrk g\$ muds i kl bu çj kbZ; k ds mi pkj dk l k/ku ugha gA ; gka i Hkkodkj h l ðkn dh cgr deh gA tks l ðkn djrs gñ muea xEHkhjrk dh deh gA dkbZ tMko] dkbZ ekñuVfjæ] dkbZ vfUre rkjh[k] dkbZ eñ; kadu ugha g\$ bl fy, dkbZ i fj .kke Hkh ugha gA

कॉमनवेल्थ ह्यूमन राइट्स इनिशिएटिव(सी- , p-vkj-vkbz), एक अंतरराष्ट्रीय संगठन है  
 ftl dk eq[; ky; ubl fnYYkh ea g] पिछले कुछ वर्षों से जेल संदर्शन प्रणाली को  
 पुनर्जीवित तथा मज़बूत करने के लिए कुछ राज्यों में उत्कृष्ट काम कर रही है। सी-  
 , p-vkj-vkbz का विश्वास है कि व्यवस्था में बदलाव लाने के लिए एक आशा की  
 fdj .k gA 0; oLFkk ds vnj bl dh fuxjkuh vkj l [e i j h {k .k dks c < kus ds fy, ]  
 l h-, p-vkj-vkbz ने जेल संदर्शकों और जेल डॉक्टरों पर मुख्य परिवर्तन एजेंट के  
 तौर पर फोकस किया है। जेल संदर्शन की व्यवस्था में बहुत सामर्थ्य है, और  
 bl fy, bl 0; oLFkk dks oki l ykus vkj i qthfor djus ds fy, l h-, p-vkj-vkbz  
 us dN l k/kkj .k gLr {ksi fd; s g%

- U; k; ikfydk] i fyl ] tsy] ekuo vf/kdkj l xBuka xj l jdkjh , tfl ; k] efgyk l xBuka ds lnL; k] vkj l cl s egRo i w kZ tsy ds xj vkf/kdkfjd संदर्शकों को एक साथ लाने के लिए, विचारों को बांटने के लिए और आम तौर ij l gerh okys mik; k] dks सुधार के लिए संग्रहित करने के उद्देश्य से कार्यशालाओं का आयोजन करना,
- जेल अधिकारियों से बातचीत करके उस अविश्वास को साफ़ करना जो जेल संदर्शकों की नियुक्ति और मार्गदर्शन का संचालन करने वाले नियमों के ग़लत dk; k]Jo; u ds dkj .k i xcy gks x; k g]
- vkf/kdkfjd संदर्शकों व अन्य सरकारी पदाधिकारियों से इस विचार से बात-चीत करना कि उनका सहयोग सुनिश्चित हो तथा जेल की स्थिति में सुधार के fy, l j]pukRed l kekftd gLr {ksi ds fy, l gk; rk i klr gk]
- गैर आधिकारिक संदर्शकों को व्यवस्था के विभिन्न पहलूओं से परिचित करा us के लिए अनुस्थापन तथा प्रशिक्षण कार्यक्रम आयोजित करना, जिसमें अन्य के vykok l fEefyr g]
- muds vf/kdkj vkj drD; ts] s fd tsy fu; ekofy ea fu/kkFjr g]
- tsy foHkx , d l jdkj ds chp i Hkkodkj l keatL;
- देश या राज्य के किसी अन्य स्थान पर अच्छे प्रचलन से अनावरण %exposure%
- tsy dks mu xj l jdkjh , tfl ; k] vkj l xBuka ds fy, mi yC/k djkus dh l EHkkouk tks vijkf/k; k] ds i qul ykkj vkj m) kj ea : fp j [krs gA
- कैदियों के अवशिष्ट अधिकार और सामान्य सुधार यंत्रावलि
- jkT; dh ikFkfed ftEenkjh dh txg fy; s cxj tsyka ea l kenkf; d सहभागिता को प्रारम्भ करने का कौशल, और
- मानवतावादी दृष्टिकोण से तहकीकात संबंधी संदर्शन करना और प्रभावकारी संदर्शन नोट लिखना।

- I h-, p-vkj-vkbZ }kjk fd;s tk jgs bu I jkguh; iz Ruka dks jkT; I jdkjka }kjk I fØ; I gk; rk vkj I g; ksx feyuk pkfg, A

I q'kkj kRed dk; ka ea I kenkf; d I gHkkfxrk

जेल शासन और सरकारी संसाधन (जेल प्रबंधन के लिए आवंटित) कभी भी fgjkl r ea fy; s x; s vijkf/k; ka ds I q'kkj vkj iquokl ds fy, i; klr ugha होता। हमेशा ही यह महसूस किया गया है कि सरकार का बलवर्धक न्यक; iklr djus ds iz; Ru dks I q'kkj kRed dk; ka ea I kenkf; d I gHkkfxrk I s ijk djuk चाहिए। तीन दशकों तक जेल प्रबंधन के लिए जिम्मेदार रहे एक जेल पदाधिकारी ds : lk ea ea bl ckr dk xokg g कि जो भावनात्मक संतुष्टि कैदी, समुदाय dh I q'kkj kRed dk; Øeka ea I gHkkfxrk I s iklr djrk g og I jdkj }kjk pyk, tk jgs fdl h Hkh fØ; k&dyki ds cjkcj ugha gA tcf d] dñh I jdkj ds gLr{ksi dks yki jokgh vkj I ng I s ns[krs g og ha dñ ea Mkyus ds I e; vkj mudh fjk bZ ds ckn Hkh Lo I xh I engka vkj tsy ds vUnj mudh HkykbZ ds bjks I s vkus okys ykxka dk os cgr vknj djs gA

जेल प्रशासन (अपने कर्मचारियों के रैंक से) उन सभी आवश्यक कौशलों और vuHkoka dks ugha mi yC/k dj I drk tks dñ; ka dks muds HkkoukRed I ke tL; ] I q'kkj ; k iquokl ea I gk; rk dj I dA bl fy, ] I enk; vkj tsy ea dk; bk g dM L Fkfr djuk tsy inkf/kdkfj; ka ds fy, vkl ku gkxk] ftudk dke gS dñ; ka dk dY; k.k vkj iquokl djuk rkfd os I enk; vkj स्वयंसेवी संगठनों द्वारा जो पेशेवर रूप से प्रशिक्षित और योग्य स्वयंसेवकों की I xk viZk dj jgs g उनके कौशल और सहायता का संपूर्ण उपयोग करें।

ge] I h-, p-vkj-vkbZ ea bl i xkj ds I kenkf; d I gHkkfxrk dks ns[kuk pkgrs g tks tsy vkj I enk; ij vk/kkfjr I xBuka h-ch-vks½xj I jdkjh I xBuka vkj tsy I q'kkj ds dk; ka ea vl fy; r ea : fp j [kus okys 0; fDr; ka vkj 0; okl kf; d : lk I s muds dk; kJo; u ea I eFkZ ykxka ds chp dM dks etar dj I dA

I q'kkj kRed dk; ka ds dñ {k= ftl ea I kenkf; d I gHkkfxrk }kjk cgeW; vkj mi ; kxh ifj.kke dk I keF; Z g g

- fof/kd सशक्तीकरण और कानूनी सहायता,
- fopkj/khu cfn; ka dh fLFkfr v/; ; u½, d ckj vkj vkof/kd nkuk½

- Lo\$PNd i fj oh{kk l xk, a

## चिकित्सीय सहायता और नशा छुड़ाना

- नियोजनीय कौशलों में व्यवसायिक प्रशिक्षण
- नैतिक उपदेश और आत्मिक हुनर, और
- futh mn; eh }kjk tsy etnjj dk mi ; kxA

सुधारात्मक शासन का एक आवश्यक पहलू है लाभप्रद नौकरी, लेकिन सामुदायिक l a k/kuk dks tsy ds d\$in; k dks uk\$djh nus ds fy, mi ; kx djuk] mllga शोषण और दुर्व्यवहार के लिए खुला छोड़ना है। हांलाकि, ऐसे भी उदाहरण हैं जहां निर्देशित और नियंत्रित हस्तक्षेप ने लाभान्वित किया है। उन्नतिशील और l kgl h tsy vf/kdkfj; k us futh l k>nkj k ds l gdk; Z l j tsy ifj l j ds Hkhrj ¼; k ckgj ½ mRi knu ; fuV yxk; k g\$ ftl l s Hkx yus okys d\$in; k ds लिए पुनरुद्धारात्मक कार्य—अनुभव और कमाई सुनिश्चित होती है। इसका उद्देश्य Fkk fcØh; kx; oLrq vkj l xkvk dk ml h ifj fLFkr ea mRi knu djuk ts k futh {k= ea y?kq l s e/; e Lrj ds fuekZ k l a = ea gkrk g\$ rkfd l LFkxrk dke djus ea [kpZ de gks vkj d\$in; k dks uk\$djh dk vol j vkj dke ds दौरान प्रशिक्षण प्राप्त होता रहे।

निजी कंपनियों के साथ उन्नतिशील संविदाओं की शुरुआत करने से कंप्यूटर डाटा प्रोसेसिंग, पुरुषों की हेयर ड्रेसिंग, गारमेंट बनाना, कार और स्कूटर l foFl x] vkj bl h i xdkj ds vl; dk; k dks l Qyrki wld fd; k tk l drk g\$ gkaykfd] bl ckr ds fy, l ko/kkuh cjruh pkfg, fd tsy Je ds bl i xdkj ds mi ; kx l s jkst xkj vkj oru Hkxrk l Ecl/kh fd l h dkuu dk mYy@ku u gkA

bl uhfr iij ea iz kl dk iz Ru] tkfd l vj Qk] fØeuky th , .M tfLVI ] टाटा इंस्टिट्यूट ऑफ सोशल साइंस, मुंबई की कैदियों को कानूनी सहायता उपलब्ध कराने के लिए एक फील्ड ऐक्शन परियोजना g\$ dk mYys[k djuk आवश्यक है। यह स्वयंसेवी संस्था कैदियों और उनके परिवारजनों को पिछले कई वर्षों से कानूनी सहायता और सलाह उपलब्ध कराने, कैदियों के अधिकारों को i Hkkrfor djus okys dkuu vkj uhfr; k] i fØ; kvk vkj i pyuk ds dk; kJo; u dks l निश्चित करने, जेल में बंद कैदियों के परिवारों और बच्चों को सहयोग देने vkj fjgkbZ ds ckn vijkf/k; k ds i quokZ dks l jy cukus ds dke l s l Ec) gA





3- vkf/kdkfjd ekU; rk nus ds igy jkT; ] mnkgj.k ds rkj ij] dke ds l Ec) {ks= ea l xBu dh fi NYkh mi yfC/k; ka ds fjdKwZ dks ns[k l drh gj bl ds Loq l oDka ; k ofud deDkfj; ka dh ; kx; rk dk ij h{k.k dj l drh gS vkj l g {kk rFkk oftr eky l s l EcfU/kr tsy fu; eka ds ckjs ea muds Kku dks tkp l drh gA

Lkjdkj] jkT; Lrj ij tsy l ykgdkj l febr ds xBu djus ij Hkh fopkj dj l drh gS ftl ea lk; klr l a[; k ea l Ec) ukxfjdka dk ifrfuf/kRo gkA bl l s l qkkjRed vkj tsy iza'ku l s l EcfU/kr uhfr fu/kkZ.k ea l epk; dks viuh ckr dgus dk vk/kkj iklr gksxA ; g tsy foHkx dks tsy vkj d'n; ka l s tM+ gpZ l epkf; d fprk o l ykg vkj eM; oku fopkjka dks voxr dj k, xkA

vkj jkf/kd U; k; , tfl ; ka ds chp l keatL; dks iHkkfor djuk

देश के अधिकतर राज्यों में जेल में प्रचलित वर्तमान स्थिति के बारे में एक l fu; kfr tkp l s nks vyx rLohj fudy dj vk, xh&, d] {kerk l s vf/kd भीड़, जो देश के अधिकांश जेलों की बड़ी समस्याओं में से एक है और मुकदमा ipl (iwl) fgjkl r dk vR; f/kd mi ; kx vkj d'n dh ych vof/k bl HkhM+ dk eq[; dkj.k gA nks&tsy dh l Hkh cjkBz ka dpy tsy dh LFkki uk l s l EcfU/kr gh ugha gS cfYd muea l s db] vkj jkf/kd U; k; iz.kkyh dh nwl jh , tfl ; ka ts s fd&U; k; i kfydk] i fyl ] vfHk; kstu] efr dkuuh l gk; rk vkj ifjoh{kk l okvka ea l keatL; vkj l g; kx dh deh ds dkj.k mRiUu gksrh gA

Hkkjr e] epnek iwl d'n dh l eL; k dk , d vf/kd ekfyd dkj.k gS 0; oLFkk के भीतर आपराधिक न्याय का बंदोबस्त करने में मतभेद और विसंगति। शासन प्रणाली और सामंजस्य दूसरे अन्य विकासशील देशों में सामान्य हैं, लेकिन इस देश में, न्याय के संचालन में जनता का विश्वास कई वर्षों से बहुत कम jgk gA l e; vk x; k gS fd vkj jkf/kd U; k; iz.kkyh dh l Hkh , tfl ; ka , d l kFk मिलकर काम करें और इस विश्वास को वापस लाने के लिए दुगुनी मेहनत करें। ; g , d , d k dke gS ftl dk nkf; Ro dpy , d , tfl h ij ugha gS cfYd vkj jkf/kd U; k; iz.kkyh ds gj , d ij g&U; k; i kfydk] ckj] i fyl ] vfHk; kstu] tsy] turk] jktuhfrK vkj vU; l Hkh l k>nkjA ; g , d , d k dke है जिसके लिए सभी को सच्ची वचनबद्धता दर्शानी होगी और एक दूसरे पर vkjksi ugha Mkyuk gksxA

Hkkjr esa LFkkuk ds chp l keatL; dh deh LFkkfud gA bl okLrfodrk ds cktin fd bu सभी एजेंसियों का सामान्य उद्देश्य एक ही है—अव्यवस्था से l ekt dh l g {kk vkj dkuu dk ifrikyu & os bl edl n dks iklr djus ea eq[; : lk l s l a Dr iz; Ru dh deh ds dkj.k foQy gks tkrs gA iR; sd , t h चाहती है, प्रयत्न करती है, अपना सर्वश्रेष्ठ करने की कोशिश करताh g yfdu 0; oLFkk i w k l : i s k bl y{; dks iklr djus ea vl Qy gks tkrs gA bl fy,] प्रत्येक एजेंसी व्यवस्था की इस असफलता का दोष दूसरी साथी एजेंसी पर डाल nrh gA ; g fdl h [ksy dh Vhe dh rjg gS tks l okRre f[kykfM+ ka l s Hkj h gS vkj l Hkh 0; fDrxr iz; Ru l s [ksy thruk pkgrs g yfdu os bl s Vhe dk y{; cukus ea vl Qy gks tkrs g vkj i w kr% vl Qy gks tkrs gA

यह आज की आवश्यकता है कि इन सभी एजेंसियों के प्रतिनिधियों और चिन्तित व्यक्तियों को जिला, राज्य और राष्ट्रीय स्तर पर एक सामान्य फोरम उपलब्ध djk; k tk, rkfd mu l eL; kvka ij ifjppkl dh tk l ds tks U; k; i nkrkvka से संग्रहित विवेक की मांग करती हैं। नीचे न्याय व्यवस्था से जुड़े कुछ ऐसे प्रश्न fy[ks x; s g tks vke vkneh ds thou dks i Hkkfor djrs g vkj ftl ij व्यापक रूप से चर्चा किये जाने की आवश्यकता है:

D; k cM+ vkj yEc&pkM+ ty gh HkhM+ dh l eL; k dks gy djus dk , dek= mRrj g y ; k D; k ge fopkj/khu dFn; ka dh tul a[; k dks de djus dh dkbz vl; i ) fr ds ckjs ea l kp l drs g tks bl l eL; k dk dkj.k gA

D; k l ekt ea dkuu&0; oLFkk dks cuk, j[kus ds fy, cgr vf/kd fxj f r kjh करने की आवश्यकता है\ D; k vij/k ?kVr gkus@fj i kVZ fd; s tkus ds rjar ckn mfpr l e>nkj h dk mi; ksx djds vukt dks Hk l h l s vyx dj l drs g और हिरासत को न्यूनतम आवश्यकता तक सीमित कर सकते हैं\

D; k vkj kf/kd U; k; dh i f Ø; k dks l Hkkyk tk l drk gS tc ; fn ukckfyx vij kf/k; ka dks tsyka ea l hfer djus ds ctk; mnkjr l s tekur] caki = ; k fujk/kkj 0; fDrxr epydk ij fjk dj fn; k tk, \

D; k mu efgyk vij kf/k; ka dks ftudh tM i f j o k j vkj l ekt ea ekstn gkd dkuu ds mfpr i f Ø; k dks tkf[ke ea Mkys cxj vf/kd l jyrk l s tekur] caki = ; k fujk/kkj 0; fDrxr epydk ij fjk fd; k tk l drk gA

D; k fopkj/khu dFn; ka l s dke djok; k tk l drk gS vkj U; ure oru fn; k tk l drk gS rkfd os ckj vi us i f j o k j dh l gk; rk dj l dA

क्या स्थानीय आपराधिक न्याय प्रशासन के सदस्यों dks l fēefyr djdj ft-yk  
vkj l c&fMfotū Lrj ij fopkjk/khu dñh l eh{kk l fefr dk xBu fd; k  
जाना चाहिए और उन्हें सशक्त करना चाहिए ताकि वे रिहाई कर सकें या mfpr  
vf/kdkfj; k l s mu cfn; k की सिफारिश कर सकें जो समुदाय पर आधारित  
epnek ds ik= gk u fd fgjkl r ij vk/kkfjr epnek ds

D; k , d h l fefr; k dks fopkjk/khu dñn; k ds ds k dh l eh{kk djus ds fy,  
gj eghus ; k gj 15 fnuk e tsy संदर्शन करना चाहिए।

fopkjk/khu cfn; k dks vkxs tsy e dñ j[kus l s jkdus ds fy, fdruh vPNh  
तरह अनावश्यक विलंब, सुनokbz dk LFkxu vkj eftLVV ds l e{k vuq fLFkfr  
l s cpk tk l drk g

D; k U; kf; d fgjkl r e Hksts x; s efgykvk vkj vYi 0; Ld vijkf/k; k ds ds k  
को शीघ्र निष्कासन के लिए अलग पंक्तिबद्ध किया जा सकता है।

D; k dqN U; kf; d eftLVV dh vnkyrk dks eghus e ; k ilæg fnuk e , d  
ckj tsy ifjl j ds Hkhrj yxk; k tk l drk g

क्या जमानत/बंधपत्र की राशी को न्यायसंगत तरीके से आरोपी के सामाजिक  
vkj vkfFkd l s tkMk tk l drk g

tsyk e vR; f/kd HkhM+ dks fdl Lrj ij vLohdk; Z l e>k tk l drk g dN  
tsyk e {kerk l s 4&5 xuk vf/kd dñn; k dh l a[; k g

भाग लेने वाले पदाधिकारियों को अवश्य ही यह महसूस हो जाएगा कि न्याय  
i f0; k ds vUr% t h Hkifedkvk dh l e> e deh gj dqN ijikus dkunuk e  
पुनः विचार करने की आवश्यकता है, चीजे इतनी निंदनीय नहीं हैं कि ठीक न हो  
l d vkj ; g fd blg uhfr ; k LFkkuh; nkuk gh Lrjk ij l Hkkyk tkuk  
pkfg, A

## Section II: ARREST

HkkX II: fXkj Rkkj h

## STATUTORY PROVISIONS

### CONSTITUTION OF INDIA

#### **21. Protection of life and personal liberty**

No person shall be deprived of his life or personal liberty except according to procedure established by law

#### **22. Protection against arrest and detention in certain cases -**

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

The Code of Criminal Procedure, 1973

### CODE OF CRIMINAL PROCEDURE, 1973

#### **41. When police may arrest without warrant.**

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person :-

(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

(b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonable suspected of being a deserter from any of the Armed Forces of the Union; or

- (g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or
- (h) who, being a released convict, commits a breach of any rule made under subsection (5) of section 356; or
- (i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.
- (2) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of person specified in section 109 or section 110.

<sup>42</sup>**[41A. Notice of appearance before police officer.**

- (1) The police officer <sup>43</sup>[shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.
- (2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.
- (3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.
- <sup>44</sup>[(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.]

---

<sup>42</sup> Ins. by Act 5 of 2009, sec. 6 (w.e.f. 1-11-2010)

<sup>43</sup> Subs by Act. 41 of 2010, sec. 3(a), for "The police officer may" (w.e.f. 2-11-2010)

<sup>44</sup> Subs. By Act 41 of 2010, sec. 3(b), for sub-section (4) (w.e.f. 2-11-2010). Sub-section (4), before substitution, stood as under:

" (4) Where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent Court."

<sup>45</sup>**[41B. Procedure of arrest and duties of officer making arrest.**

Every police officer while making an arrest shall,-

- a. bear an accurate, visible and clear identification of his name which will facilitate easy identification;
- b. prepare a memorandum of arrest which shall be,-
  - i. attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;
  - ii. countersigned by the person arrested; and
- c. inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.]

<sup>46</sup>**[41C. Control room at districts.**

- (1) The State Government shall establish a police control room –
  - a. in every district; and
  - b. at State level.
- (2) The State Government shall cause to be displayed on the notice board kept outside the control rooms at every district, the names and addresses of the persons arrested and the name and designation of the police officers who made the arrests.
- (3) The control room at the Police Headquarters at the State level shall collect from time to time, details about the persons arrested, nature of the offence with which they are charged and maintain a database for the information of the general public.]

<sup>47</sup>**[41D. Right of arrested person to meet an advocate of his choice during interrogation.**

When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.

**42. Arrest on refusal to give name and residence.**

- (1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

---

<sup>45</sup> Ins. by Act 5 of 2009, sec. 6 (w.e.f. 1-11-2010)

<sup>46</sup> ibid

<sup>47</sup> ibid



(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required: Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

#### **43. Arrest by private person and procedure on such arrest.**

(1) Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

#### **44. Arrests by Magistrate.**

(1) When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

(2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

#### **45. Protection of members of the Armed Forces from arrest.<sup>48</sup>**

---

<sup>48</sup> STATE AMENDMENT

Assam:

For Sub-section (2) of section 45, the following sub-section shall be substituted, namely:-

“(2) The State Government may, by notification, direct that the provisions of subsection (1) shall apply.

(a) to such class or category or category of the members of’ the Forces charged with the maintenance of public order, or

(1) Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.

(2) The State Government may, by notification, direct that the provisions of subsection (1) shall apply to Such class or category of the members of the Force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section shall apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

#### **46. Arrest how made.<sup>49</sup>**

(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

<sup>50</sup>[Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.".]

(2) If such person forcibly resists the endeavor to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

1[(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.]

---

(b) to such class or category of other public servants [not being persons to whom the provisions of sub-section (1), apply] charged with the maintenance of public orders, as may be specified in notification, whenever, they may be serving, and thereupon the provisions of that sub-section shall apply as if for the expression "Central Government" occurring therein, the expression "state Government" were substituted.

[Vide President's Act 3 of 1980, sec. 2 (w.e.f. 5-6-1980)].

<sup>49</sup> CrPc (Amendment) Act, 2005 (Notes on Clauses)

Sub-section (4) has been added to prohibit arrest of a woman after sunset and before sunrise except in exceptional circumstances and where such circumstances exist the prior permission of the Judicial Magistrate of the first class is to be obtained.

1. Ins. by Act 25 of 2005, sec. 6.

<sup>50</sup> Ins. By Act 5 of 2009, sec. 7 (w.e.f. 31-12-2009)

**47. Search of place entered by person sought to be arrested.**

(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him such free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under sub-section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purposes, and demand of admittance duly made, he cannot otherwise obtain admittance.

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

(3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

**48. Pursuit of offenders into other jurisdictions.**

A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India.

**49. No unnecessary restraint.**

The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

**50. Person arrested to be informed of grounds of arrest and of right to bail.**

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested

that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

**50A. Obligation of person making arrest to inform about the arrest, etc. to a nominated person.<sup>51</sup>**

(1) Every police officer or other person making any under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may as may be disclosed or nominated by the arrested person for the purpose of giving such information.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.

(4) It shall be the duty of the magistrate before whom such arrested person is produced to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied within respect of such arrested person.

**51. Search of arrested persons.**

(1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to, furnish bail.

The officer making the arrests or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe Custody all articles, other than necessary wearing-apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person.

(2). Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

**52. Power to seize offensive weapons.**

The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the court or officer before which or

---

<sup>51</sup> Cr PC Amendment Act 2005 (Notes on clauses)

Section 50A requires the police to give information about the arrest of the person as well as the place where he is being, held to any one who may be nominated by him for sending such information.

whom the officer or person making the arrest is required by this Code to produce the person arrested.

**53. Examination of accused by medical practitioner at the request of police officer.<sup>52</sup>**

(1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting, at the request of a police officer not below the rank of sub-inspector, and for- any person acting in good faith in his aid and -under his direction, to make such all examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

*1[Explanation. – In this section and in sections 53A and 54,-*

(a) “examination” shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

(b) “registered medical practitioner” means a medical practitioner who possess any medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 and whose name has been entered in a State Medical Register.]

**<sup>53</sup>53A. Examination of person accused of rape by medical practitioner.<sup>54</sup> – (1)**  
When a person is arrested on a charge of committing an offence of rape or an

---

<sup>52</sup> CrPc (Amendment) Act, 2005 (Notes on Clauses)

Explanation seeks to explain the meaning of the expressions “examination” and “registered medical practitioner” appearing in sections 53A and 54.

Subs. by Act 25 of 2005, sec. 8, for “Explanation.- In this section and in section 54, “registered medical practitioner” means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956), and whose name has been entered in a State Medical Register”.

<sup>53</sup> Ins. by Act 25 of 2005, sec. 9.

<sup>54</sup> CrPc (Amendment) Act, 2005 (Notes on Clauses)

Section 53A seeks to provide for a detailed medical examination of a person accused of an offence of rape or an attempt to commit rape by the registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner by any other registered medical practitioner.

attempt to commit rape and there are reasonable grounds for believing that an examination of this person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:-

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused,

(iv) the description of material taken from the person of the accused for DNA profiling, and”.

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report of the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.]

**[<sup>55</sup>54. Examination of arrested person by medical practitioner at the request of the arrested person.**

(1) When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made:

Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

---

<sup>55</sup> Subs. by Act 5 of 2009, sec. 8, for Section 54 (w.e.f. 31-12-2009).

(2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person.".]

<sup>56</sup>[**54A. Identification of person arrested**<sup>57</sup>:- Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction, may on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit.]

## **55. Procedure when police officer deposes subordinate to arrest without warrant.**

(1) When any officer in charge of a police station or any police officer making an investigation under Chapter XII requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made and the officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

(2) Nothing in sub-section (1) shall affect the power of a police officer to arrest a person under section 41.

<sup>58</sup>[**55A. Health and safety of arrested person.**

---

<sup>56</sup> 1. Ins. by Act 25 of 2005, sec. 11.

<sup>57</sup> CrPc (Amendment) Act, 2005 (Notes on Clauses)

Section 54 A empowers the Court to direct specifically the holding of the identification of the arrested person at the request of the prosecution.

Inserted by Section 12 of 'The Criminal Law (Amendment) Act, 2013' ["Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with:

Provided further that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be video graphed.".]

<sup>58</sup> Ins. by Act 5 of 2009, sec. 9 (w.e.f. 31-12-2009)

It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.

**56. Person arrested to be taken before Magistrate or officer in charge of police station.**

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

**57. Person arrested not to be detained more than twenty-four hours.**

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court.

**58. Police to report apprehensions.**

Officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

**59. Discharge of person apprehended.**

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.

**60. Powers, on escape, to pursue and re-take.**

(1) If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India.

(2) The provisions of section 47 shall apply to arrests under sub-section (1) although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

<sup>59</sup>**[60A. Arrest to be made strictly according to the Code.**

No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.

**76. Person arrested to be brought before court without delay.**

---

<sup>59</sup> Ins. by Act 45 of 2005, sec. 33 (w.e.f. 23-6-2006)



The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay to bring the person arrested before the court before which he is required by law to produce such person:

Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court.

## **CHAPTER VIII**

### **SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR**

#### **106. Security for keeping the peace on conviction.-**

(1) When a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in sub-section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding three years, as it thinks fit.

(2) The offences referred to in sub-section (1) are-  
(a) any offence punishable under Chapter VIII of the Indian Penal Code, (45 of 1860)

other than an offence punishable under section 153A or section 153B or section 154 thereof;

(b) any offence which consists of, or includes, assault or using criminal force or committing mischief;

(c) any offence of criminal intimidation;

(d) any other offence which caused, or was intended or known to be likely to cause, a breach of the peace.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an Appellate Court or by a Court when exercising its powers of revision.

#### **107. Security for keeping the peace in other cases.-**

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground

for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond [with or without sureties,] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

#### **108. Security for good behaviour from persons disseminating seditious matters.-**

(1) When [an Executive Magistrate] of the first class receives information that there is within his local jurisdiction any person who, within or without such jurisdiction, -

(i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of, -

(a) any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 295A of the Indian Penal Code, (45 of 1860) or

(b) any matter concerning a Judge acting or purporting to act in the discharge of his official duties which amounts to criminal intimidation or defamation under the Indian Penal Code, (45 of 1860).

(ii) makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter such as is referred to in section 292 of the Indian Penal Code, (45 of 1860),

and the Magistrate is of opinion that there is sufficient ground for proceeding, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

(2) No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867, (25 of 1867) with reference to any matter contained in such publication except by the order or under the

authority of the State Government or some officer empowered by the State  
Government in this behalf.

**109. Security for good behaviour from suspected persons.-**

When a Judicial Magistrate of the first class receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

**110. Security for good behaviour from habitual offenders.-**

When [an Executive Magistrate] of the first class receives information that there is within his local jurisdiction a person who -

- (a) is by habit a robber, house-breaker, thief, or forger, or
- (b) is by habit a receiver of stolen property knowing the same to have been stolen, or
- (c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or
- (d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code, (45 of 1860) or under section 489A, section 489B, section 489C or section 489D of that Code, or
- (e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or
- (f) habitually commits, or attempts to commit, or abets the commission of -
  - (i) any offence under one or more of the following Acts, namely:-
    - (a) the Drugs and Cosmetics Act, 1940 (23 of 1940);
    - [(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973);
    - (c) the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952);
    - (d) the Prevention of Food Adulteration Act, 1954 (37 of 1954);
    - (e) the Essential Commodities Act, 1955 (10 of 1955);
    - (f) the Untouchability (Offences ) Act, 1955 (22 of 1955);
    - (g) the Customs Act, 1962 (52 of 1962);
    - [(h) the Foreigners Act, 1946 (31 of 1946); or]<sup>60</sup>
    - (ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption,

---

<sup>60</sup> Ins. by Act 25 of 2005, sec. 14

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

**111. Order to be made.-**

When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

**118. Discharge of person informed against.-**

If, on an inquiry under section 116, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

**123. Power to release persons imprisoned for failing to give security.-**

(1) Whenever the Chief Judicial Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter may be released without hazard to the community or to any other person, he may order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the High Court or Court of Session, or, where the order was made by any other Court, the Chief Judicial Magistrate, may make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts:

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.

(4) The State Government may prescribe the conditions upon which a conditional discharge may be made.

(5) If any condition upon which any person has been discharged it, in the opinion of the Chief Judicial Magistrate by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.

(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police officer without warrant, and shall thereupon be produced before the Chief Judicial Magistrate.

(7) Unless such person gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the Chief Judicial Magistrate may remand such person to prison to undergo such unexpired portion.

(8) A person remanded to prison under sub-section (7) shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor.

(9) The High Court or Court of Session may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by any order made by it, and the Chief Judicial Magistrate may make such cancellation where such bond was executed under his order or under the order of any other Court in his direct.

(10) Any surety for the peaceable conduct or good behaviour of another person ordered to execute a bond under this Chapter may at any time apply to the Court making such order to cancel the bond and on such application being made, the Court shall issue a summons or warrant, as it thinks fit, requiring the person for whom such surety is bound to appear or to be brought before it.

**CHAPTER XI**  
**PREVENTIVE ACTION OF THE POLICE**

**149. Police to prevent cognizable offences.-**

Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

**150. Information of design to commit cognizable offences.-**

Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

**151. Arrest to prevent the commission of cognizable offences.-**

(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot                      be                      otherwise                      prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force.

## Section III: TABLE OF JUDGMENTS

HkkX II: U; kf; d Q§ y<sup>®</sup> dh  
rkfydk



### TABLE OF JUDGMENTS- ARREST

S.No.	CASE DETAILS	FACTS	DECISION
	REGISTERING FIR		
	<p><b>Surender Kaushik vs. State of Uttar Pradesh</b></p> <p><i>2013 (5) SCC 148</i></p> <p><b>Issue:</b> Whether after registration of the FIR and commencement of the investigation, a second FIR relating to the same incident on the basis of a direction issued by the learned Magistrate under Section 156(3) of the Code can be registered?</p>	<p>A case of conspiracy was filed against a group of people for forging documents. After an order by the Magistrate under Section 156(3) of the code, one of the co-conspirators filed a new FIR against the rest of the co-conspirators alleging forgery of his signatures in the forged documents. The co-conspirators moved the High Court to quash the FIR. The High court refused to quash the FIR, hence an appeal was filed to the Supreme Court stating that two FIRs cannot be registered on similar and identical cause of action and allegations.</p>	<p>The court found the principle of sameness inapplicable in the present case as the allegations made were distinct and separate and that both the FIR's had different spectrums.</p> <p>Nonetheless, the two judge bench reaffirmed the principle as stated in the case of <b>Babubhai v. State of Gujarat</b>, that the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out - whether both the FIRs relate to the same incident in respect of the same occurrence? If the answer is in the affirmative, the second FIR is liable to be quashed. However, if the two FIRs are in regard to the incidents which are two or more parts of the same transaction, then the FIR cannot be quashed.</p>
	<p><b>Khatri vs. State of Bihar</b></p>	<p>A number of Undertrial prisoners filed a writ in the Supreme Court, complaining that after their arrest,</p>	<p>The Court reiterated its stance as in <b>Hussainara Khatoon's case</b>, wherein it was held that the right to free legal services is an integral part of Article 21. It also observed that the provision inhibiting detention without remand was a</p>

	<p><i>AIR 1981 SC 928</i></p> <p><b>Issue:</b> Whether the state is under an obligation to provide free-legal services to an accused under Article 21?</p> <p>Also known as the <i>Bhagalpur blinding case</i>.</p>	<p>they were blinded by police officials while in police custody. The Supreme Court also found during the proceedings of the case that no legal representation was provided to the blinded prisoners because none of them asked for it. The judicial magistrates also did not enquire from the blinded prisoners produced before them whether they wanted legal representation at state cost.</p>	<p>very healthy provision and it is necessary that the Magistrates try to enforce this requirement.</p> <p>Further it stated, that the state is under a constitutional mandate to provide free legal aid to an accused who is unable to secure legal services on account of poverty, and this also extends to the period when the accused is for the first time produced before the Magistrate and when he is remanded from time to time.</p> <p>Also all Magistrates and Sessions Judges are under a duty to inform every accused who appears before them, and who is not represented by a lawyer on account of his poverty or indigence, that he is entitled to free legal services at the cost of the state.</p>
	<p><b>Sheela Barse v. State of Maharashtra</b></p> <p><i>AIR 1983 SC 378</i></p> <p><b>ISSUE:</b> Regarding – women safety in prisons,</p>	<p>Sheela Barse wrote to the Supreme Court saying that of the 15 women prisoners interviewed by her in Bombay Central Jail, five admitted that they had been assaulted in police lock-up. Given the seriousness of the allegations, the Court admitted a writ petition on the basis of the letter and asked the College of Social Work, Bombay to visit the Central Jail to find out whether the allegations were true. The College submitted a detailed report which, in addition to admitting that</p>	<p>Recognizing that the right to legal aid is also a fundamental right under Articles 21 and keeping in mind the obligations of state under 39A, the court directed that a woman judge should be appointed to carry out surprise visits to police stations to see that all legal safeguards are being enforced. Further, female suspects must be kept in separate lock-ups under the supervision of female constables. Interrogation of females must be carried out in the presence of female police officers. Also -&gt;</p> <ul style="list-style-type: none"> <li>• A person arrested without a warrant must be immediately informed about the grounds of arrest and the right to obtain bail.</li> <li>• As soon as an arrest is made, the police should obtain from the arrested person, the name of a relative or friend whom she would like to be informed about the arrest. The relative or friend must then be informed by</li> </ul>

	rights of an arrestee and free legal services.	excesses against women were taking place, pointed out that the arrangements for providing legal assistance to prisoners were inadequate.	the police. <ul style="list-style-type: none"><li>• The police must inform the nearest Legal Aid Committee as soon as an arrest is made and the person is taken to the lock-up.</li><li>• The Legal Aid Committee should take immediate steps to provide legal assistance to the arrested person at state cost, provided such person is willing to accept legal assistance.</li><li>• The magistrate before whom an arrested person is produced shall inquire from the arrested person whether she has any complaint regarding torture or maltreatment in police custody. The magistrate shall also inform such person of her right to be medically examined.</li></ul>
	<b>Joginder Kumar v. State Of Uttar Pradesh</b>  <i>1994 AIR 1349; 1994 SCC (4) 260</i>  <b>Issue:</b> When can a competent authority/ officer place a person under arrest?	The petitioner, a lawyer, was illegally detained by the police for five days. The police maintained that he was never detained and he was only helping in the proceedings of a case.	The court observed that justification of an arrest is different from the right to make an arrest. Hence in that matter, reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint, and a reasonable belief on the part of the arresting Officer, as to the person's complicity and the need to effect arrest is essential for an arrest. Additional rights of the arrestee are- <ul style="list-style-type: none"><li>• An arrested person being held in custody is entitled, if he so requests, to have one friend, relative or any person who is known to him or likely to take an interest in his welfare, told as far as is practicable that he has been arrested and where he is being detained. The police officer shall inform the arrested person when he is brought to the police station of this right.</li><li>• An entry shall be required to be made in the Diary as to who was</li></ul>

			<p>informed of the arrest. These protections must be held to flow from Articles 21 and 22(1) of the Constitution and enforced strictly. It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.</p>
	<p><b>D. K. Basu v. State of West Bengal</b></p> <p><i>AIR 1997 SC 610</i></p> <p><b>Issue:</b> Regarding – rights of arrestee, duty of policemen carrying out an arrest, procedure to be followed during interrogation and safeguards against torture.</p>	<p>D.K. Basu, Executive Chairman of Legal Aid Services, West Bengal, wrote a letter to the Chief Justice of India, saying that torture and deaths in police custody were widespread and efforts are often made by the authorities to hush up the matter. Because of this, custodial crime goes unpunished and therefore is rampant. Basu urged the Supreme Court to examine the issue in depth and (i) develop custody jurisprudence and lay down principles for awarding compensation to the victims of police atrocities (ii) formulate means to ensure accountability of those responsible for such occurrences.</p> <p>The Supreme Court treated the letter as a writ petition. While the writ was under consideration, the</p>	<ul style="list-style-type: none"> <li>• Use of third degree methods or any form of torture to extract information is not permitted.</li> <li>• Police personnel carrying out arrest and interrogation must bear accurate, visible and clear identification / name tags with their designations.</li> <li>• Particulars of all personnel handling interrogation of an arrested person must be recorded in a register.</li> <li>• A memo of arrest stating the time and place of arrest must be prepared by the police officer carrying out an arrest. It should be attested by at least one witness who is either a family member of the arrested person or a respectable person from the locality where the arrest is made. The memo should also be counter-signed by the arrested person.</li> <li>• The arrested or detained person is entitled to inform a friend, relative or any other person interested in her/his welfare about the arrest and place of detention as soon as practicable. The arrested person must be made aware of this right as soon as s/he is arrested or detained.</li> <li>• The arrested person may be allowed to meet her/his lawyer during interrogation but not throughout the interrogation.</li> <li>• The time, place of arrest and venue of custody of the arrested person must be notified by telegraph to next friend or relative of the arrested person within 8-12 hours of arrest in case such person lives outside the district or</li> </ul>

		<p>Supreme Court received another report about a death in police custody in Uttar Pradesh. This prompted the Court to issue notices to all state governments and the Law Commission of India to submit suggestions on how to combat this pan-India problem.</p>	<p>town. The information should be given through the District Legal Aid Organisation and police station of the area concerned.</p> <ul style="list-style-type: none"> <li>• An entry must be made in the diary at the place of detention in regard to the arrest. The name of the friend/relative of the arrested person who has been informed and the names of the police personnel in whose custody the arrested person is being kept should be entered in the register.</li> <li>• The arrested person should be examined by a medical doctor at the time of arrest if s/he so requests. All bodily injuries on the arrested person should be recorded in the inspection memo which should be signed by both the arrested person and the police officer making the arrest. A copy of the memo should be provided to the arrested person.</li> <li>• The arrested person should be subject to a medical examination every 48 hours by a trained doctor who has been approved by the State Health Department.</li> <li>• Copies of all documents relating to the arrest including the memo of arrest should be sent to the Area Magistrate for her/his record.</li> <li>• Departmental action and contempt of court proceedings should be initiated against those who fail to follow these directives.</li> </ul>
	<b>Nandini Satpathy v. P.L. Dani</b>	<p>Nandini Satpathy, the former Chief Minister of Orissa, against whom a case had been registered under the Prevention of Corruption Act, was</p>	<p>The Court held that forcing suspects to sign statements admitting their guilt violates the constitutional guarantee against self-incrimination and breaches provisions of the Code of Criminal Procedure, 1973. It is also inadmissible as</p>

	<p><i>AIR 1978 SC 1025</i></p> <p>Issue: Whether an accused can be compelled to give answers to every question posed by the interrogating authority?</p> <p>Also, regarding adoption of <i>Miranda Warnings</i> in India.</p>	<p>asked to appear before the Deputy Superintendent of Police [Vigilance] for questioning. The police wanted to interrogate her by giving her a string of questions in writing. She refused to answer the questionnaire, on the grounds that it was a violation of her fundamental right against self-incrimination. The police insisted that she must answer their questions and booked her under Section 179 of the Indian Penal Code, 1860.</p>	<p>evidence in a court of law.</p> <p><b>Directions-</b></p> <ul style="list-style-type: none"> <li>• An accused person must be informed of her/his right to remain silent and also of the right against self-incrimination.</li> <li>• The person being interrogated has the right to have a lawyer by her/his side if s/he so wishes.</li> <li>• An accused person must be informed of the right to consult a lawyer at the time of questioning, irrespective of the fact whether s/he is under arrest or in detention.</li> <li>• Women should not be summoned to the police station for questioning in breach of Section 160 (1) CrPC.</li> </ul>
	<p><b>Citizens for Democracy v. State of Assam And Ors.</b></p> <p><i>1995 (2) ALT Cri 701</i></p> <p><b>Issue:</b> Whether under ordinary circumstances an undertrial can be put in</p>	<p>Mr. Kuldip Nayar wrote a letter to the Court narrating the pitiable condition in which 7 TADA detenus were locked up in a government hospital in Guwahati. They were handcuffed to the bed even when the room in which they were locked had bars. The Court treated the letter as a petition under Article 32 of the Constitution of India and</p>	<p>The Court reiterated its pronouncement in <i>Sunil Batra Etc. v. Delhi Administration and Ors 1980 AIR 1579</i> case that Undertrials shall be deemed to be in custody, but not undergoing punitive imprisonment.</p> <p>The relevant considerations for putting a prisoner in fetters are the character, antecedents and propensities of the prisoner. The peculiar and special characteristics of each individual prisoner have to be taken into consideration. The nature or length of sentence, the number of convictions, and the gruesome character of the crime the prisoner is alleged to have committed are not by themselves relevant considerations. There must first be well-grounded basis for drawing a strong inference that the prisoner is likely to</p>

	handcuffs or fetters?	<p>issued notice to the State of Assam.</p> <p>During the period 1991-94 there have been as many as fifty one cases of escape and/or rescue of terrorists from police and judicial custody including thirteen terrorists who escaped and/or were rescued from different hospitals of the State. Of them seven escaped from Guwahati Medical College Hospital where these seven detenus were lodged.</p>	<p>jump jail or break out of custody or play the vanishing trick. To be consistent with Article 14 and 19, handcuffs must be the last refuge, not the routine regimen.</p> <p><i>In all the cases where a person arrested by police in execution of a warrant or is produced before the Magistrate and remand – judicial or police - is given by the Magistrate, the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.</i></p>
		<b>Compensation</b>	
	<p><b>Nilabati Behera v. State of Orissa &amp; Ors.</b></p> <p><i>1993 AIR 1960</i></p> <p><b>Issue:</b> Whether or not the State is liable for payment of compensation for violation of the fundamental right to life under Article 21?</p>	<p>The mother of the deceased arrestee wrote a letter to the Court explaining the situation in which her son was taken into police custody and the next day his body was found near the railway tracks away from the police station. The court took up the matter as a petition under Article 32 for violation of right to life.</p>	<p>The compensation is in the nature of exemplary damages awarded against the wrong-doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.</p> <p>The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedures established by law. The defence of 'sovereign immunity' in such cases is not available to the State.</p>

<p><b>State of M.P. v. Shyamsunder Trivedi &amp; Ors.</b></p> <p><i>(1995) 4 SCC 262</i></p> <p><b>Issue:</b> Regarding – custodial deaths and punishment for the same</p>	<p>Seven respondents including Sub-Inspector Shyam Sunder Trivedi, gave a beating to Nathu Banjara and tortured him with the intention of extracting a confession of guilt from him. As a result of the extensive injuries caused to Nathu, he died in police custody at the police station. The dead body of the deceased Nathu was removed in a jeep to the hospital for post-mortem examination with the ultimate object of cremating the deceased, as an 'unclaimed body'. The object however failed as the local people stood for the deceased and sent a letter to the Magistrate explaining all the events.</p> <p>The High Court acquitted the accused for the lack of evidence to convict them. The State of Madhya Pradesh appealed to the Supreme Court.</p>	<p>Sentencing four of the respondents to rigorous imprisonment with fine, the court recognized that though Sections 330 and 331 of the Indian Penal Code make causing hurt and extorting confessional punishable, but the convictions have been very few because the atrocities within the precincts of the police station are often left without any ocular or other direct evidence to prove who the offenders are.</p> <p>Disturbed by this situation, the Law Commission in its 113th Report recommended amendments to the Indian Evidence Act to provide that at the time of prosecution of a police officer for causing bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the Court may presume that the injury was caused by the police officer having the custody of that person during that period unless, the police officer proves to the contrary. The onus to prove the contrary must be discharged by the concerned police official. The recommendation, however, has gone un-noticed and the crime of custodial torture flourishes unabated. The court hoped that the courts will change their outlook and attitude, and should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach.</p>
<p><b>State of Maharashtra v. Christian Community Welfare Council of India &amp;</b></p>	<p>The case relates to the custodial death of a person in police custody, and the subsequent molestation of</p>	<p><b>On Custodial death</b></p> <p>The High Court's direction to the State Government to issue instructions to get every arrestee medically examined before being taken to a Magistrate and</p>



	<p><b>Anr.</b></p> <p><i>AIR 2004 SC 7</i></p> <p><b>Issue:</b> Regarding safeguards against custodial death and procedure for arrest of women.</p>	<p>his wife by the police. The petitioner had filed a writ petition demanding compensation for the wife, which the High court allowed. The State of Maharashtra approached the Supreme Court against the said order.</p>	<p>to enter the medical report in the station house diary, was upheld. Also the court found that, to get him medically examined every third day in case of police remand and enter the medical report in station house diary was held to be a matter already covered by the directions of the Supreme Court in <i>D. K. Basu's case</i>.</p> <p><b>On arrest of a lady</b></p> <p>While arresting a female person, all efforts should be made to keep a lady constable present. However, in circumstances where the arresting officer is reasonably satisfied that such presence of a lady constable is not available or possible and/or the delay in arresting caused by securing the presence of a lady constable would impede the course of investigation, such arresting officer for reasons to be recorded, either before the arrest or immediately after the arrest, be permitted to arrest a female person for lawful reasons at any time of the day or night depending on the circumstances of the case even without the presence of a lady constable.</p>
	<p><b>Jawahar Singh v. State Of Rajasthan</b></p> <p><i>1989 WLN UC 396</i></p> <p><i>( at High Court of Rajasthan)</i></p> <p><b>Issue:</b> Whether the date of identification parade can be taken as a date of arrest of the accused in a case even if the accused is under arrest</p>	<p>The accused was arrested for interrogation as a suspect in a dacoity case. He moved an application for bail and contended that he should be deemed to have been arrested when the Identification Parade was arranged in jail and that the challan having been filed after more than 90 days of that date, he was entitled to be released on bail in view of Sub-</p>	<p>The High Court held that from the language of Section 167 of the Code and from the policy behind the said section it can be safely said that the starting point of limitation would be the date on which the accused person is available to the police for investigation, while in detention under the orders of the Court.</p> <p>The court found that the joining of the accused in the identification parade by the IO impliedly amounted to his arrest. It was held that since the challan was filed after more than 90 days of the date of the arrest of the accused he has to be granted bail subject to his furnishing a bond.</p>

	in some other case and has been sent to judicial custody in that case?	section (2) of Section 161. The magistrate rejected his application. In the argumentation it was contended that the date of arrest has to be the date of Identification Parade and not the date when formal arrest memo is prepared.	Thus, if an accused person is already in custody in another case and is available to the police in a subsequent case for investigation the period of limitation would start running from the date when he was available to the police.
	<p><b>Moti Bai v. State of Rajasthan</b></p> <p><i>1954 CriLJ 1591 (at High Court of Rajasthan)</i></p> <p><b>Issue:</b> Whether an accused or his counsel can demand an interview out of the hearing of the police though in their presence?</p>	<p>Moti Bai was arrested by the police on suspicion of being involved in an offence under Section 489A, Indian Penal Code. While she was in police custody, her counsel wanted to interview her, but this interview was not granted. The counsel had earlier submitted an application to the Magistrate seeking permission for such an interview. However Counsel's further interview requests were also rejected and eventually the DSP allowed interview only in the presence and within the hearing of the police. Aggrieved by the state of affairs, an application praying that the police be directed to allow interview with the accused out of the hearing of the police though in</p>	<p>The Court reiterated Article 22(1) of the Constitution and referred to the right of an accused to consult and be defended by a legal practitioner of his choice.</p> <p>The Court summarized the position as follows:</p> <ul style="list-style-type: none"> <li>• that ever since his arrest, the accused has a right to be consulted by a legal adviser of his choice and to be defended by him</li> <li>• in order that such consultation may be effective, interviews must be allowed to his counsel, when asked for, out of the hearing of the police though within their presence, subject to Section 340 CrPC.</li> <li>• that such a right must of course not be abused and must be granted subject to reasonable restrictions as to time and convenience of the police authorities, no less than that of the party seeking the interview.</li> </ul> <p>Thus the Court decided that the Counsel for Motibai was within his rights to consult her ever since she was put under arrest and that the police were not right in not allowing such consultation as seems to have been their attitude throughout.</p>

		their presence was made.	
	<b>Master Salim Ikramuddin Ansari and Maharukh Adenwalla v. Officer-in-charge, The Superintendent and State of Maharashtra through Secretary, Home Department</b>  <i>2005 CriLJ 799 (at High Court of Bombay)</i>	A 15 year old boy was arrested in 2001 by the Bombay police. He was never taken to the juvenile justice board and was produced twice before the Magistrate. However after that he was kept in jail without producing him to any court for about 2 years. He was not even produced to the court when the session's court granted him bail. Later on his request the Duty counsel through medical examinations concluded he was a juvenile and he was moved to juvenile home accordingly. However he was still not produced before the juvenile justice board nor was he taken to the session's judge.	<ul style="list-style-type: none"> <li>With reference to the aspect of non-release of the boy even after bail was granted by the Court of Sessions due to inability to meet the financial condition attached to the bail order, the Court discussed Section 12 of the Juvenile Justice Act which clearly explained the provision relating to bail of a Juvenile and explained how the boy can be released on bail with or without surety. The Court directed the Juvenile Justice Board to release the 1st petitioner on his executing personal bond only. The boy was ordered to receive compensation of Rs. 100000 (Rupees one lakh only).</li> <li>Terming it as a gross case of violation of Article 21, the Court directed that in all cases in which bails are granted, the Sessions Courts and Magistrates Courts must get the compliance report of their orders after a period of six weeks. That would tell them whether their orders have been complied with or not, because of financial difficulties or otherwise, and whether the accused have been released or not.</li> </ul>
	<b>Arnesh Kumar vs. State of Bihar</b>  <i>2014 (8) SCALE 250</i>	The wife of Arnesh Kumar alleged that she was driven out of the home due to non-fulfillment of the demand for dowry that included Rupees 8 lacs, maruti car, an air-conditioner, television set, etc. These demands were made by her	The Court gave out the following directions -  <b>To the Police:</b> <ul style="list-style-type: none"> <li>The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further</li> </ul>

	<p><b>Issue:</b> Whether the proper procedure was followed in determining the necessity of arrest by the police?</p>	<p>mother-in-law and father-in law and Arnesh Kumar supported them by raising threats that he would marry another woman.</p> <p>Arnesh Kumar preferred an anticipatory bail application as he apprehended arrest under Section 498A of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961, which was denied to him by the Sessions Court and the High Court. He, thereafter, moved a Special Leave Petition under Article 136 before the Supreme Court.</p>	<p>detention</p> <ul style="list-style-type: none"> <li>The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing</li> <li>Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing</li> </ul> <p><b>To Magistrates:</b></p> <ul style="list-style-type: none"> <li>The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention</li> </ul> <p>Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.</p> <p>The subject has also been cited and relied upon in the case of Narendar Parihar vs. State of Rajasthan (SB CrI. Misc. Bail Application 5658/2014) which was decided by the Rajasthan High Court</p>
--	--	---	--

### TABLE OF JUDGEMENTS -ARREST

केस विवरण	तथ्य	निर्णय/निर्देश	केस विवरण
	एफआईआर पंजीकरण		
	<p>सुरेन्द्र कौषिक बनाम उत्तर प्रदेश राज्य</p> <p><b>(2013 (5) SCC 148)</b></p> <p><b>मामला—</b> क्या मजिस्ट्रेट के निर्देश से संहिता की धारा 156 (3) के तहत एफआईआर दाखिल हो जाने के बाद और उस पर जांच चालू हो जाने के बाद इसी मामले में दूसरी एफआईआर दाखिल हो सकती है?</p>	<p>लोगों के समूह पर जाली दस्तावेजों से संबंधित एक मामले में षण्यंत्र का मामला दर्ज किया गया। बाद में मजिस्ट्रेट के निर्देश में संहिता की धारा 156 (3) के तहत उस समूह में से एक ने एक नई एफआईआर दर्ज करवाई जिसमें आरोप लगाया गया कि समूह के अन्य लोगों ने दस्तावेज में उसके जाली हस्ताक्षर किए हैं। इसके बाद समूह के अन्य लोगों ने उच्च अदालत में अपील की कि दूसरी एफआईआर को खारिज किया जाए। उच्च अदालत ने ऐसा करने से इंकार कर दिया। जिसके बाद उन लोगों ने सर्वोच्च अदालत में यह कह कर याचिका दर्ज की कि एक ही मामले में और एक से आरोपों के आधार पर दो एफआईआर दर्ज नहीं की जा</p>	<p>अदालत ने पाया कि दोनों मामले अलग अलग हैं इस लिए समानता का सिद्धांत इस मामले में लागू नहीं होता।</p> <p>तो भी दो न्यायाधीशों की पीठ ने <i>बाबूभाई बनाम गुजरात राज्य</i> के मामले में उल्लेख किए गए समानता के सिद्धांत को सही ठहराया कि अदालत को दोनों एफआईआर के लिखे जाने की परिस्थिति और तथ्यों की जांच करनी चाहिए ताकि यह जाना जा सके कि दोनों एफआईआर एक ही मामले और एक की परिस्थिति से तो संबंधी नहीं हैं? यदि परिणाम हां है तो दूसरी एफआईआर खारिज होगी। लेकिन यदि दोनों एफआईआर एक ही मामले के दो या अधिक हिस्से से संबंधित हैं तो दूसरी एफआईआर सही मानी जाएगी।</p>

		सकती।	
	<p><b>खतरी बनाम बिहार राज्य</b></p> <p><b>AIR 1981 SC 92</b></p> <p><b>मामला—</b> क्या धारा 21 के आरोपी को कानूनी सेवा प्रदान करने के लिए राज्य वाध्य है?</p> <p><b>भागलपुर केस</b></p>	<p>बहुत से विचाराधीन कैदियों ने सर्वोच्च अदालत में याचिका दायर की जिसमें यह शिकायत की गई कि उनकी गिरफ्तारी के बाद उन्हें पुलिस हिरासत में पुलिस अधिकारियों ने अंधा कर दिया।</p> <p>इस मामले की सुनवाई के दौरान अदालत ने यह भी पाया कि इन कैदियों को कानूनी प्रतिनिधित्व नहीं दिया गया क्योंकि इनमें से किसी ने इसकी मांग नहीं की थी। न्यायिक मजिस्ट्रेट ने इन अंधे किए गए व्यक्तियों से यह भी नहीं पूछा कि क्या उन्हें राज्य के खर्च पर कानूनी सहायता चाहिए?</p>	<p>सर्वोच्च अदालत ने <b>हुसैनारा खातून</b> केस के हवाले से एक बार फिर दोहराया कि निःशुल्क कानूनी सेवा का अधिकार धारा 21 में समायोजित है। अदालत ने यह भी माना कि बिना रिमाण्ड के हिरासत में रखने को निरुत्साहित करना एक स्वस्थ प्रावधान है और यह जरूरी है कि मजिस्ट्रेट इस प्रावधान को लागू करवाए।</p> <p>साथ ही अदालत ने यह भी कहा कि ऐसे आरोपी जो गरीबी की वजह से कानूनी सहायता नहीं ले सकता उन्हें निःशुल्क कानूनी सहायता देना राज्य का संवैधानिक दायित्व है और यह बात आरोपी को पहली बार मजिस्ट्रेट के सामने पेश करने से लेकर समय समय पर उसे दी जाने वाली हिरासत के दौरान भी लागू होती है।</p> <p>और यह मजिस्ट्रेट का दायित्व है कि वह उसके समाने पेश होने वाले आरोपी को यह बताए कि गरीबी के चलते अथवा उस पर लगे आरोप की प्रकृति के कारण यदि वह कानूनी सेवा नहीं ले पा रहा है तो वह राज्य के खर्च पर निःशुल्क कानूनी सेवा प्राप्त करने का अधिकारी है।</p>

	<p><b>शीला बर्से बनाम महाराष्ट्र राज्य</b></p> <p><b>AIR 1983 SC 378</b></p> <p><b>मामला—</b> जेल में महिला की सुरक्षा से संबंधित एवं निशुल्क कानूनी सेवा और गिरफ्तार का अधिकार</p>	<p>शीला बर्से ने सर्वोच्च अदालत को लिखा कि बोम्बे केन्द्रीय जेल में जिन 15 महिला कैदियों का उसने साक्षत्कार लिया उन में से पांच ने यह स्वीकार किया कि लॉकप में उनके साथ दुर्व्यवहार हुआ है। इन आरोपों की गंभीरता के मद्देनजर कोर्ट ने पत्र के आधार पर याचिका स्वीकार कर ली और मुम्बई के कॉलेज ऑफ सोशल वर्क को जेल का भ्रमण कर सच्चाई का पता लगाने के लिए कहा। कॉलेज ने इस बारे में विस्तृत रिपोर्ट पेश करने के साथ इस ओर भी इशारा किया कि कैदियों के पास कानूनी सहायता के लिए उपलब्ध अवसर पर्याप्त नहीं हैं।</p>	<p>धारा 21 के अंतर्गत कानूनी सहायता के अधिकार को संवैधानिक मानते हुए और धारा 39ए के तहत राज्य के दायित्व को ध्यान में रखते हुए अदालत ने यह फैसला दिया कि एक महिला न्यायाधीश को नियुक्त किया जाए जिसका काम पुलिस स्टेशनों में बिना पूर्व सूचना के भ्रमण करना हो ताकि यह जाना जा सके कि सभी कानूनी सुरक्षा कवच लागू हो रहे हैं। इसके अलावा महिला संदिग्धों को अलग कमरों में महिला कॉन्सटेबुल की निगरानी में रखा जाए। महिलाओं से मुलाकात महिला पुलिस अधिकारी की उपस्थिति में ही होनी चाहिए।</p> <ul style="list-style-type: none"> <li>• बिना वॉरेन्ट के गिरफ्तार किए गए व्यक्ति को गिरफ्तारी का कारण और जमानत के अधिकार के बारे में बताया जाना चाहिए।</li> <li>• गिरफ्तार होने के तुरंत बाद गिरफ्तार व्यक्ति से उसके परिजन या मित्र का नाम हांसिल करना चाहिए जिसे वह अपने पकड़े जाने की जानकारी कराना चाहता हो। इसके बाद परिवार या मित्र को जानकारी देनी चाहिए।</li> <li>• गिरफ्तारी के तुरंत बाद पुलिस को निकट की कानूनी सहायता समिति को सूचित करना चाहिए।</li> <li>• कानूनी समितियों को तुरंत राज्य के खर्च में कानूनी सेवा प्रदान</li> </ul>
--	---	--	---

			<p>करने के लिए कदम उठाने चाहिए लेकिन तब जब गिरफ्तार व्यक्ति इसके लिए सहमत हो।</p> <ul style="list-style-type: none"><li>जिस मजिस्ट्रेट के सामने गिरफ्तार व्यक्ति को पेश किया जाए उस मजिस्ट्रेट को यह पूछना चाहिए कि कहीं उसे टॉर्चर या दुर्व्यवहार संबंधी कोई शिकायत तो नहीं है। साथ ही चिकित्सीय जांच के उसके अधिकार के बारे में भी मजिस्ट्रेट को उसे बताना चाहिए।</li></ul>
<p><b>जोगिन्दर कुमार बनाम उत्तर प्रदेश राज्य</b></p> <p><i>1994 AIR 1349; 1994 SCC (4) 260</i></p> <p><b>मामला—</b> अधिकारी कब किसी व्यक्ति को हिरासत में भेज सकते हैं?</p>	<p>एक वकील यचिकाकर्ता ने आरोप लगाया कि उसे गैर कानूनी रूप से हिरासत में रखा गया।</p> <p>पुलिस ने दावा किया कि उसने कभी उसे हिरासत में नहीं रखा बल्कि पुलिस तो केस की कार्रवाही में मदद कर रही थी।</p>	<p>अदालत ने फैसला दिया कि गिरफ्तारी को न्ययोचित बताना भर गिरफ्तार करने का अधिकार नहीं है। इस मामले में कुछ जांच के बाद आरोप की तर्कसंगत सच्चाई और वास्तविक स्थिति तक पहुंचा गया। इसकी महत्वपूर्ण जिम्मेदारी गिरफ्तार करने वाले अधिकारी पर है। गिरफ्तार व्यक्ति की अतिरिक्त अधिकार ये हैं :</p> <ul style="list-style-type: none"><li>हिरासत में व्यक्ति यदि याहे तो उसको यह अधिकार है कि वह अपने रिश्तेदार, मित्र या ऐसे किसी व्यक्ति को जिसको उसके हित में दिलचस्पी हो सूचित कर सके कि वह गिरफ्तार है और उसे कहां रखा गया है।</li><li>किसको सूचित किया गया इसकी ऐन्ट्री डायरी में की जानी होगी। संविधान की धारा 21 और 22 (1) में प्रदत्त सुरक्षा को</li></ul>	



			कड़ाई के साथ लागू किया जाना चाहिए। यह उस मजिस्ट्रेट कर्तव्य है कि वह सुनिश्चित करे कि उसके सामने पेश किए गए व्यक्ति के इन संवैधानिक अधिकारों का पालन हुआ है कि नहीं।
	<p><b>डी. के. बासू बनाम पश्चिम बंगाल राज्य</b></p> <p><i>AIR 1997 SC 610</i></p> <p><b>मामल—</b> गिरफ्तार व्यक्ति के अधिकार, गिरफ्तार करने वाले पुलिस का कर्तव्य, पूछताछ के दौरान अपनाई जाने वाली प्रक्रिया और टॉर्चर से सुरक्षा</p>	<p>कानूनी सहायता सेव के कार्यकारी अध्यक्ष डी. के. बासू ने भारत के मुख्य न्यायाधीश को पत्र लिखा कि पश्चिम बंगाल में टॉर्चर और हिरास्त में मौत की बहुत सी घटनाएं हो रही हैं और अधिकारियों का अक्सर यह प्रयास होता है कि मामले को कैसे छिपाया जाए। जिसके चलते हिरास्त में मौत पर सजा नहीं हो पाती और ये आम हो गया है। बासू ने सर्वोच्च अदालत से यह मांग की कि वह मामले की गंभीरता से जांच कर, 1— हिरासत के मानदण्ड तय करे और पुलिस ज्यादाती के शिकार लोगों के मुआवजे का सिद्धांत निर्धारित करे, 2— ऐसे तरीकों का निर्धारण करे कि ऐसी घटनाओं में जिम्मेदारी तय की जा सके।</p>	<p>सूचना प्राप्त करने के लिए थर्ड डिग्री या टार्चर के अन्य उपाय की अनुमति नहीं है।</p> <ul style="list-style-type: none"> <li>• गिरफ्तार और पूछताछ करने वाले पुलिस अधिकारी का नाम और पहचान सही होना चाहिए। साफ दिखाई पड़नी चाहिए।</li> <li>• पूछताछ करने वाले सभी पुलिस अधिकारियों की जानकारी रजिस्टर में रिकार्ड होनी चाहिए।</li> <li>• पुलिस अधिकारियों को गिरफ्तारी की जगह और समय के विवरण वाला मेमो तैयार करना जरूरी है। कम से कम गिरफ्तार व्यक्ति के परिजन या इलाके के किसी सम्मानित व्यक्ति से मेमो का प्रमाणीकरण करवा जरूरत है। मेमो में गिरफ्तार व्यक्ति के हस्ताक्षर होने चाहिए।</li> <li>• हिरासत में व्यक्ति यदि याहे तो उसको यह अधिकार है कि वह अपने रिश्तेदार, मित्र या ऐसे किसी व्यक्ति को जिसको उसके</li> </ul>

		<p>कोर्ट ने इसे याचिका माना। जिस समय इस याचिका पर सुनवाई जारी थी उत्तर प्रदेश में हिरासत में मौत की एक और घटना हुई। इस घटना ने कोर्ट को बाध्य किया और उसने इस राष्ट्रव्यापी आपदा से लड़ने के लिए सभी राज्य सरकारों और कानून आयोग से सुझाव मांगा।</p>	<p>हित में दिलचस्पी हो कि वह उनको सूचित कर सके कि वह गिरफ्तार है और उसे कहां रखा गया है। गिरफ्तार व्यक्ति को उसके इस अधिकार से जागरूक करवाना चाहिए।</p> <ul style="list-style-type: none"> <li>• पूछताछ के समय उसे उसके वकील से मिलने देना चाहिए लेकिन पूछताछ की पूरी अवधि के दौरान नहीं।</li> <li>• यदि गिरफ्तार व्यक्ति गिरफ्तारी की जगह से बाहर रहता है तो 8–12 घंटे के अंदर टेलीग्राफ के माध्यम से उसके नजदीक मित्र या रिश्तेदार को उसकी गिरफ्तारी की जानकारी दी जानी चाहिए। यह जानकारी जिला कानूनी संगठन और इलाके के पुलिस स्टेशन से दी जानी चाहिए।</li> <li>• रजिस्टर में गिरफ्तारी की जगह को नोट किया जाना चाहिए। जिस मित्र या रिश्तेदार को जानकारी दी गई है उसका नाम भी रजिस्टर में होना चाहिए और जिस पुलिस अधिकारी के मातहत उसे रखा गया है उसका नाम भी दर्ज होना चाहिए।</li> <li>• यदि गिरफ्तार व्यक्ति चाहे तो उसकी चिकित्सीय जांच भी होनी चाहिए। जांच मेमो में उसकी चोटों को रिकार्ड कर गिरफ्तार करने वाले पुलिस और गिरफ्तार व्यक्ति के हस्ताक्षर होने चाहिए। इस मेमो की कॉपी गिरफ्तार व्यक्ति को दी जानी चाहिए।</li> </ul>
--	--	--	--

			<ul style="list-style-type: none"> <li>● राज्य स्वास्थ्य विभाग द्वारा मान्यता प्राप्त डॉक्टर से हर 48 घंटे में गिरफ्तार व्यक्ति की जांच करवाई जानी चाहिए।</li> <li>● गिरफ्तार व्यक्ति से संबंधित सभी दस्तावेजों, मेमो सहित, को मजिस्ट्रेट को रिकार्ड के लिए दिया जाना चाहिए।</li> <li>● जो लोग इन निर्देशों को पूरा नहीं कर सकते उनके खिलाफ विभागीय कार्यवाही और अदालत की अवमानना की कार्यवाही की जानी चाहिए।</li> </ul>
	<p><b>नंदनी सत्यपथी बनाम पी एल दनी</b></p> <p><i>AIR 1978 SC 1025</i></p> <p>मामला— क्या आरोपी को सभी प्रश्नों के जवाब देने के लिए विवश किया जा सकता है? साथ ही <i>मिरान्डा</i> चेतावनी के संबंध में।</p>	<p>नंदनी सत्यपथी जिन पर भ्रष्टाचार निरोधी कानून के तहत मामला दर्ज था उन्हें उप पुलिस अधीक्षक (निगरानी) के सामने उपस्थित होने को कहा गया। पुलिस ने एक प्रश्नावली दे कर उनसे पूछताछ करना चाहा। उन्होंने प्रश्नावली के उत्तर देने से इंकार कर दिया यह बता कर कि ऐसा करना उनके स्वयं को दोषी मानने के बराबर हो सकता है जोकि उनके संवैधानिक अधिकार का उल्लंघन है। पुलिस ने जोर दिया</p>	<p>कार्ट ने स्वीकार किया कि अपने जुर्म की स्वीकृति संबंधी वक्तव्य पर हस्ताक्षर करने का दवाब डालना स्वयं दोषी ठहराए जाने के खिलाफ प्राप्त संवैधानिक अधिकार का उल्लंघन है और यह कानून प्रक्रिया संहिता 1973 के विरुद्ध है। यह कोर्ट में स्वीकार्य साक्ष्य नहीं है।</p> <p><b>निर्देश</b></p> <ul style="list-style-type: none"> <li>● आरोपी को उसके चुप रहने के अधिकार की जानकारी दी जानी चाहिए और खुद को दोषी ठहराने के विरुद्ध के अधिकार से भी परिचित करवाया जाना चाहिए।</li> <li>● पूछताछ वाले व्यक्ति को यह अधिकार है कि वह पूछताछ के दौरान यदि वह चाहे तो अपने वकील को अपने साथ रख</li> </ul>

		<p>कि वे इन सवालों का जवाब दे और उन्हें भारतीय दण्ड संहिता 1860 की धारा 179 के तहत गिरफ्तार कर लिया गया।</p>	<p>सकता है।</p> <ul style="list-style-type: none"><li>• आरोपी को वकील के उसके अधिकार की जानकारी देना आवश्यक है। इस बात से कोई फर्क नहीं पड़ता की वह गिरफ्तार है या कैद है।</li><li>• सीआरपीसी की धारा 160 (1) का उल्लंघन कर महिला को पूछताछ के लिए पुलिस स्टेशन नहीं बुलाया जाना चाहिए।</li></ul>
<p><b>सिटीजन फॉर डेमोक्रेसी बनाम असम राज्य एवं अन्य</b></p> <p><i>1995 (2) ALT Cri 701</i></p> <p><b>मामला—</b> क्या सामान्य स्थिति में एक विचाराधीन कैदी को हथकड़ी या बेड़ियों में रखा जा सकता है?</p>	<p>श्री कुलदीप नैयर ने गुवाहाटी में 7 टाडा कैदियों की स्थिति पर लिखा जो सरकारी अस्पताल में बंद हैं। उन कमरों में जहां वे बंद थे उनमें सलाखे होने के बावजूद उन्हें हथकड़ी लगाई गई थी। कोर्ट ने संविधान की धारा 32 के अंतर्गत इस पत्र को याचिका मानते हुए राज्य सरकार को नोटिस जारी कर दिया।</p> <p>1991-94 के बीच पुलिस और न्यायिक हिरासत से भागने या भगाए</p>	<p>अदालत ने <i>सुनिल बत्रा आदि बनाम दिल्ली प्रशासन एवं अन्य</i> 1980 एआईआर 1579 के फैसले को दोहराते हुए यह कहा कि विचाराधीन कैदियों को हिरास्ती माना जाएगा न कि सजायापता।</p> <p>कैदी के चरित्र, पुराना आचरण एवं प्रवृत्ति को देख कर तय किया जाता है कि बेड़ियों में रखना आवश्यक है अथवा नहीं। प्रत्येक कैदी के आचरण की विशेषता को ध्यान में रखना आवश्यक होता है। सजा की अवधि, अपराध सिद्धि की संख्या और अपराध की वीभत्स होना अपने आप में इसके लिए पर्याप्त नहीं है। ऐसा करने के लिए तथ्य आधारित सबूत होना चाहिए कि कैदी के जेल से भागने या हिरासत से भागने या खो जाने की पूरी संभावना है। धारा 14 एवं 19 के संदर्भ में हथकड़ी अंतिम विकल्प होना चाहिए न की आम।</p>	

		जाने के 51 मामले सामने आए। इन मामलों में 13 आतंकवादी अस्पताल से भागे या भगाए गए। और इन में से 7 गुवाहाटी मेडिकल कॉलेज से भागे जहां उपरोक्त 7 कैदी कैद हैं।	वॉरेन्ट के तहत गिरफ्तार किए गए व्यक्ति अथवा किसी को जब मजिस्ट्रेट के सामने पेश किया जाता है और उसे पुलिस या न्यायिक रिमाण्ड में भेजा जाता है तो भी बिना मजिस्ट्रेट की विशेष अनुमति के किसी को भी हथकड़ी में नहीं रखा जा सकता।
		मुआवजा	
	<p>निलाबाटी बेहेरा बनाम उडीशा राज्य एवं अन्य।</p> <p>1993 AIR 1960</p> <p><b>ममला—</b> संविधान की धारा 21 के तहत हुए संवैधानिक अधिकार के हनन के लिए क्या राज्य मुआवजा देने को बाध्य है।</p>	<p>एक मृतक की मां ने अदालत को पत्र लिख कर बताया कि कैसे उसके पुत्र को पुलिस ने गिरफ्तार किया और दूसरे दिन पुलिस स्टेशन से दूर रेल्वे ट्रैक पर उसके बेटे की लाश मिली। कोर्ट ने धारा 32 के तहत पत्र को जीवन के अधिकार के हनन की याचिका माना।</p>	<p>सार्वजनिक कानूनी दायित्व के उल्लंघन करने के लिए मुआवजा दिया गया है और यह असंतुष्ट पक्ष के मुआवजा प्राप्त करने के अधिकार से इतर है।</p> <p>हिफाजत करना राज्य के दायित्व का हिस्सा है और इस में कोई अपवाद नहीं है। गलत काम करने वाला जिम्मेदार है और हिरासत में हुई मौत के लिए राज्य जिम्मेदार है तब जब यह कानून अनुसार न हो। ऐसे मामलों में 'सम्प्रभू के अधिकार' का प्रयोग कर बचाव नहीं किया जा सकता।</p>

	<p>मध्य प्रदेश राज्य बनाम श्याम सुंदर त्रिवेदी एवं अन्य</p> <p>(1995) 4 SCC 262</p> <p><b>मामला—</b> हिरास्त में मौत और उसकी सजा</p>	<p>सब इन्स्पेक्टर श्याम सुंदर त्रिवेदी सहित 7 प्रतिवादियों ने अपराध कबूल करवाने के लिए नाथू बंजारा को पीटा और टार्चर किया। मारपीट में लगी चोट के चलते नाथू बंजारा की पुलिस हिरास्त में पुलिस स्टेशन के भीतर मौत हो गई। नाथू के शव को पोस्ट मार्टम के लिए जीप में डाल कर अस्पताल ले जाया गया इस मंशा के साथ कि इसे 'लावारिस' बता कर दाहसंस्कार किया जा सके। यह नहीं किया जा सका क्योंकि स्थानीय नागरिकों ने नाथू के लिए संघर्ष किया और पूरे मामले की जानकारी कराते हुए मजिस्ट्रेट को पत्र लिखा।</p> <p>उच्च अदालत ने साक्ष्य की कमी के आधार पर आरोपियों को दोष मुक्त कर दिया लेकिन मध्य प्रदेश सरकार ने सर्वोच्च अदालत में अपील की।</p>	<p>4 प्रतिवादियों को सश्रम सजा देते हुए कोर्ट ने माना कि भारतीय दण्ड संहिता की धारा 330 और 331 तकलीफ देने और कबूलनामा निकलवाने को दंडनीय बनाती है लेकिन पुलिस स्टेशन में होने वाली ज्यादातियों में बहुत कम सजा हो पाती है क्योंकि अपराध साबित करने के लिए प्रत्यक्ष अथवा अप्रत्यक्ष आभाव रहता है जिससे अपराधी की पहचान नहीं हो पाती।</p> <p>हालात से तंग आ कर न्यायिक आयोग ने अपनी 113वीं रिपोर्ट में सिफारिश की कि उस समय जब किसी को शारिरिक क्षति पहुंचाने के लिए पुलिस अधिकारी पर मुकदमा चल रहा हो तब यदि इस बात का साक्ष्य मिले कि चोट उस वक्त आई हैं जब व्यक्ति पुलिस हिरास्त में था तब उस पुलिस अधिकारी को दोषी माना जाना चाहिए जिसके मातहत आरोपी को रखा गया है जब तक पुलिस अधिकारी विपरीत प्रमाण न दे। स्वयं को निर्दोश साबित करने की जिम्मेदारी पुलिस अधिकारी पर है। इस सिफारिश पर कोई संज्ञान नहीं लिया गया और हिरास्त में टार्चर जारी है। अदालत ने आशा की कि अदालतें अपने दृष्टिकोण और व्यवहार में बदलाव लाएंगी संकीर्ण तकनीकी व्यवहार से उपर उठ कर संवेदनशील बनेंगी और यथार्थवादी तरीका अपनाएंगी।</p>

	<p>महाराष्ट्र राज्य बनाम इसाई समुदाय कल्याण परिषद, भारत एवं अन्य</p> <p><i>AIR 2004 SC 7</i></p> <p><b>मामला—</b> हिरास्त में महिला कैदियों मौत और उनकी सुरक्षा तथा महिलाओं को गिरफ्तार करने की प्रक्रिया के संबंध में।</p>	<p>एक व्यक्ति की हिरास्त में मृत्यु और उसकी बीवी के साथ दुर्व्यवहार। याचिकाकर्ता ने मुआवजे के लिए दरकार लगाई जिसे उच्च अदालत ने मान लिया। इस आदेश के खिलाफ महाराष्ट्र सरकार ने सर्वोच्च अदालत में अपील की।</p>	<p><b>हिरास्त में मौत</b></p> <p>उच्च अदालत के इस निर्देश को कि मजिस्ट्रेट को समक्ष प्रस्तुत करने से पहले हर आरोपी की मेडिकल जांच की जाए जिसे स्टेशन हाउस डायरी में दर्ज किया जाए, सर्वोच्च ने भी मान लिया। अदालत ने यह भी स्वीकार किया कि डी के बासू मामले में जो निर्देश अदालत ने दिए थे उसी में उसे प्रत्येक तीसरे दिन चिकित्सीय जांच करवाने का प्रावधान है।</p> <p><b>महिला को कैद करने के लिए</b></p> <p>जहां तक हो सके महिला कांस्टेबुल उपस्थित होनी चाहिए। और यदि गिरफ्तार करने वाला अधिकारी यह साबित कर सके कि ऐसा करना संभव नहीं था और यदि महिला कांस्टेबुल को लाने में होने वाली देरी से जांच में देरी हो सकती है तो ऐसे अधिकारी को इस बात की अनुमति है कि वह दिन के किसी भी वक्त स्थिति के मांग के अनुसार बिना महिला कांस्टेबुल के भी गिरफ्तार किया जा सकता है।</p>
	जवाहर सिंह बनाम राजस्थान	एक डकैती के मामले में पूछताछ के लिए एक आरोपी को गिरफ्तार किया	कोर्ट ने माना कि धारा 167 की भाषा और उसकी नीति के अनुसार आरोपी व्यक्ति जिस दिन से पुलिस को उपलब्ध था उसी दिन को उसकी गिरफ्तारी का

<p>राज्य</p> <p><i>1989 WLN UC 396</i></p> <p>राजस्थान उच्च अदालत</p> <p><b>मामला—</b> क्या पहिचान परेड की तारीख को गिरफ्तारी की तारीख माना जा सकता है जबकि आरोपी किसी और मामले में गिरफ्तार है और उसे न्यायिक हिरास्त में भेज दिया गया है।</p>		<p>गया। उसने जमानत का आवेदन किया इस दावे के साथ कि जिस दिन पहिचान परेड की गई थी उसे उसी दिन से गिरफ्तार माना जाना चाहिए और जबकि चालन उस दिन से 90 दिन बाद जमा किया गया है वह धारा 161 कर उपधारा 2 के तहत जमानत का हकदार है। मजिस्ट्रेट ने उसके आवेदन को खारिज कर दिया। सुनवाई के दौरान यह दावा किया गया कि पहिचान परेड के दिन को ही गिरफ्तारी का दिन माना जाना चाहिए न औपचारिक रूप से गिरफ्तारी मेमो जमा करने वाले दिन को।</p>	<p>दिन माना जाएगा।</p> <p>कोर्ट ने स्वीकार किया कि जांच अधिकारी की पहिचान परेड में शामिल होने वाली जगह को ही उसकी गिरफ्तारी माना जाएगा। यह माना गया कि क्योंकि चालान 90 दिन के बाद जमा किया गया इसलिए व्यक्ति जमानत का अधिकारी है यदि वह बॉड जमा करता है तो।</p> <p>तो यदि व्यक्ति किसी अन्य मामले में कैद में है तो जिस दिन से वह पुलिस के लिए जांच के लिए उपलब्ध उसी समय से उसे हिरास्त में माना जाएगा।</p>
<p>मोटी बाई बनाम राजस्थान राज्य</p> <p>(1954 CriLJ 1591 ) राजस्थान उच्च अदालत</p>		<p>पुलिस ने मोटी बाई को भारतीय दण्ड संहिता की धारा 489ए के अंतर्गत अपराध के शक में गिरफ्तार किया। जब वह हिरास्त में थी तो उसके वकील ने उसके साथ बातचीत की मांग की जिसे अस्वीकार कर दिया गया। इससे पहले वकील ने</p>	<p>कोर्ट ने स्पष्ट किया कि संविधान की धारा 21ए में आरोपी का यह अधिकार निहित है कि वह अपनी पसंद के वकील से सलाह ले और उससे अपना बचाव करवाए।</p> <p>कोर्ट ने स्थिति को इस प्रकार स्पष्ट किया :</p>



	<p><b>मामला—</b> क्या आरोपी या उसका वकील पुलिस की उपस्थिति में किंतु ऐसे जगह जहां वे उन्हें न सुन सके साक्षत्कार की मांग कर सकते हैं?</p>	<p>साक्षत्कार की अनुमति के लिए मजिस्ट्रेट के समक्ष आवेदन किया था। हालांकि वकील के पूर्व के आवेदनों को अस्वीकार कर दिया गया लेकिन डीएसपी ने पुलिस की उपस्थिति में, बातचीत सुनी जा सकने वाली दूरी में साक्षत्कार की अनुमति प्रदान कर दी। परिस्थिति से तंग आ कर प्रार्थना दर्ज की गई कि पुलिस की उपस्थिति में परंतु ऐसी जगह जहां वह सुन न सके साक्षत्कार की अनुमति दी जाए।</p>	<ul style="list-style-type: none"> <li>● जब से आरोपी को गिरफ्तार किया गया है तभी से उसे ये अधिकार है कि वह अपनी पंसद के वकील से सलाह ले या उसे अपने बचाव में लगाए।</li> <li>● यह सुनिश्चित करने के लिए कि यह प्रभावकारी तरीके से हो दोनों को पुलिस की उपस्थिति में लेकिन न सुनाई पड़ने लायक दूरी से बातचीत करने दिया जाना चाहिए, सीआरपीसी की धारा 340 के अनुसार।</li> <li>● इस अधिकार का गैरवाजिब फायदा नहीं उठाया जाना चाहिए और इसका प्रयोग पुलिस की सुविधा को ध्याय में रख कर किया जाना चाहिए। साथ ही साक्षत्कार चाहने वालों की सुविधा का भी ख्याल रखा जाना चाहिए।</li> <li>● इसलिए कोर्ट ने यह माना की मोटी बाई के वकील साक्षत्कार की मांग कर अपने अधिकार का ही प्रयोग कर रहे थे जबकि पुलिस ऐसा करने नहीं दे कर कानून अनुसार गलत कर रही थी।</li> </ul>
	<p>मास्टर सलीम इक्रामउद्दीन अंसारी और माहरुख</p>	<p>बोम्बे पुलिस ने 2011 में एक 15 वर्षीय लड़के को गिरफ्तार किया।</p>	<p>सत्र न्यायालय ने लड़के को जमानत मिलने के बावजूद आर्थिक कारणों के चलते न छोड़े जाने के संदर्भ में बाल न्याय कानून की धारा 12 पर चर्चा की जिसमें</p>

<p>अण्डेवाला बनाम प्रभारी अधिकारी, अधीक्षक एवं गृह सचिव द्वारा महाराष्ट्र राज्य।</p> <p>2005 CriLJ 799 (बोम्बे उच्च अदालत)</p>	<p>उसे कभी बाल न्याय बोर्ड में नहीं ले जाया गया जबकि उसे दो बार मजिस्ट्रेट के सामने पेश किया गया। उसके बाद उसे 2 साल तक बिना किसी कोर्ट में पेश किए जेल में रखा गया। जब सत्र न्यायालय ने उसे जमानत दी तो भी उसे कोर्ट के सामने उपस्थित नहीं किया गया। बाद में मेडिकल जांच के बाद यह पाया गया कि वह नाबालिग है और उसे बाल गृह में भेज दिया गया। तब भी उसे बाल न्याय बोर्ड के सामने प्रस्तुत नहीं किया गया और ना ही उसे सत्र न्यायाधीश के समक्ष लाया गया।</p>	<p>नाबालिग की जमानत के प्रावधानों को समझाया गया है और बताया गया है कि कैसे लड़के को मुचलके के साथ और उसके बिना भी जमानत में रिहा किया जा सकता है। कोर्ट ने बाल न्याय बोर्ड को निजी मुचलके के आधार पर ही लड़के को रिहा करने का हुक्म दिया। साथ ही लड़के को एक लाख के मुआवजे का हकदार माना।</p> <p>इसे धारा 21 का घोर उल्लंघन मानते हुए कोर्ट ने निर्देश दिया कि ऐसे मामलों में जहां जमानत दी जा चुकी हो वहां 6 हफ्ते के अंदर सत्र न्यायालय या मजिस्ट्रेट न्यायालय के समक्ष अनुपालन रिपोर्ट पेश की जानी चाहिए। रिपोर्ट से यह पता चल सकेगा कि आदेश का पालन हुआ है अथवा नहीं, कि आर्थिक समस्या या अन्य कारण से ऐसा नहीं हो सका और यह भी कि आरोपी को जमानत में रिहा किया गया है कि नहीं।</p>
<p>अर्नेश कुमार बनाम बिहार राज्य</p> <p>2014 (8) SCALE 250</p>	<p>अर्नेश कुमार की बीवी ने आरोप लगाया कि दहेज की मांग पूरी न होने के चलते उसे घर से निकाल दिया गया। दहेज में 8 लाख नकद, मारुति कार, एयर कंडिशनर, टेलीविजन आदि की मांग की गई</p>	<p>अदालत ने निम्नलिखित आदेश दिए :</p> <p>पुलिस को</p>

	<p><b>मामला—</b> क्या गिरफ्तारी की आवश्यकता को निर्धारित करते वक्त सही प्रक्रिया को पूरा किया गया था?</p>	<p>थी। यह मांग सास और ससुर ने की थी और अर्नेश ने दूसरा विवाह कर लेने की धमकी देते हुए अपने मां-बाप की मांगों का समर्थन किया था।</p> <p>अर्नेश कुमार ने गिरफ्तारी का अंदेशा होते ही भारतीय दण्ड संहिता 1860 की धारा 498ए और दहेज निषेध कानून 1961 की धारा 4 के अंतर्गत पूर्वाभासी जमानत की अर्जी दी जिसे सत्र और उच्च अदालत ने खारिज कर दिया। बाद में उसने धारा 136 के तहत विशेष अवकाश याचिका सर्वोच्च अदालत में जमा की।</p>	<p>आरोपी को हिरास्त में रखने के लिए मजिस्ट्रेट के सामने प्रस्तुत करते समय पुलिस अधिकारी को सूची भी जमा करानी होगी जिसमें उन बातों का जिक्र किया गया होगा जिसके कारण गिरफ्तारी की आवश्यकता पड़ी।</p> <p>केस फाइल होने के दो सप्ताह के भीतर गिरफ्तार न करने के निर्णय को मजिस्ट्रेट के समक्ष जमा कराना और इस की कॉपी को रिकार्ड के लिए अधीक्षक को भेजना।</p> <p>सीआरपीसी की धारा 41ए के तहत आरोपी को केस फाइल होने के दो सप्ताह के अंदर प्रस्तुत होने का नोटिस दिया जाना जिसकी अवधि जिला पुलिस अधीक्षक द्वारा लिखत कारण दर्ज करवा कर बढ़ाई सकती है।</p> <p><b>मजिस्ट्रेट के लिए</b></p> <p>आरोपी को हिरासत में लेने का आदेश देते वक्त मजिस्ट्रेट को पुलिस द्वारा जमा की गई रिपोर्ट की जांच करनी चाहिए और उससे संतुष्ट होने के बाद ही हिरासत का आदेश जारी करना चाहिए।</p> <p>बिना कारण दर्ज किए यदि गिरफ्तारी का आदेश जारी किया जाता है तो</p>
--	---	---	---

			<p>संबंधित उच्च अदालत मजिस्ट्रेट के खिलाफ विभागीय कार्रवाही कर सकती है।</p> <p>इस मामले में नरेन्द्र परिहार बनाम राजस्थान राज्य केस (SB CrI. Misc. Bail Application 5658/2014) का भी उल्लेख किया गया जिसका निर्णय राजस्थान उच्च अदालत ने किया था।</p>
--	--	--	---

## **Section III: REMAND**

HkkX **III:** fj ekaM

## **STATUTORY PROVISIONS**

### **The Code of Criminal Procedure, 1973**

#### **59. Discharge of person apprehended.**

No person who has been arrested by a police officer shall be discharged except on his own bond, or on bail, or under special order of a Magistrate.

#### **167. Procedure when investigation cannot be completed in twenty-four hours.**

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

[(a) the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding-

(i) Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) Sixty days, where the investigation relates to any other offence,

And, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

[(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;]<sup>61</sup>

(c) no Magistrate of the second class, not specially empowered in this behalf by the high Court, shall authorize detention in the custody of the police.

*Explanation I.* For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in Custody so long as he does not furnish bail.

*[Explanation II. —* If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

[Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.]<sup>62</sup>

(2A). Notwithstanding, anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, lot reasons to be recorded in writing, authoress the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and on the expiry of the period of detention so authorized, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under

---

<sup>61</sup> Subs. by Act 5 of 2009, Sec. 14

<sup>62</sup> Subs. by Act 5 of 2009, Sec. 14

this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

### **209. Commitment of case to Court of Session when offence is triable exclusively by it.**

When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-

<sup>63</sup>(a) commit the case to the Court of Session;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

### **309. Power to postpone or adjourn proceedings.**

---

<sup>63</sup> Subs. by Act 45 of 1978, sec. 19, for clause (a) (w.e.f. 18-12-1978)



(1) In every inquiry or trial, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.]

(2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

<sup>64</sup>[Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.]

<sup>65</sup>["Provided also that –

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.".

*Explanation 1.-* If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

*Explanation 2.-* The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

---

<sup>64</sup> Ins. by Act 45 of 1978, sec. 24 (w.e.f. 18-12-1978)

<sup>65</sup> Ins. by Act 5 of 2009, sec. 21(b) (w.e.f. 1-11-2010)

## Section III: TABLE OF JUDGMENTS

HkkX II: U; kf; d Ql y<sup>®</sup> dh

rkfydk

S.NO.	CASE DETAILS	FACTS	DECISION/DIRECTIONS
-------	--------------	-------	---------------------

**TABLE OF JUDGEMENTS -REMAND**

	<p><b>Shrawan Waman Nade &amp; Ors. v. The State of Maharashtra</b></p> <p><i>1994 (2) BomCR 668 (at High Court of Bombay)</i></p> <p><b>Issue:</b> Does the signature of the constable instead of the investigation officer on the remand application and non-submission of the case diary, make the remand illegal?</p>	<p>The applicant was arrested by the police in a murder case and was remanded twice. The applicant approached the High Court against the said remand alleging that the application for the remand was improperly filed since it was signed by a police constable and not submitted by the Investigation Office. It was also alleged that the case diary was not submitted to the Magistrate, in violation of provisions of CrPC. Hence, the applicant moved for bail.</p>	<p>Section 167(2) gives power to the Magistrate to remand the accused after satisfying himself that there are grounds for detaining the accused, based on the extracts of the case diary produced before him. This cannot depend upon the application which is presented to him, but the material regarding investigation which is produced before him. Thus, it is not material who signs or submits the application as it is just a ministerial act.</p> <p>Further, under Section 172(1), it is obligatory upon every investigating officer to maintain the said diary which contains various details regarding the progress of the investigation.</p>
--	---	---	---

			<p>Without the extracts of the said diary of investigation or case papers, it is not possible for the Magistrate to find out the adequacy of grounds and to get himself satisfied.</p> <p>The Court accepted that as the extracts of the case diary were not submitted, the Magistrate had committed an error in granting remand. However the court dismissed the accused's plea as it had no jurisdiction to grant bail under Section 167 (2) as the charge sheet had already been filed.</p>
	<p><b>State of Gujarat v. Swami Amar Jyoti Shyam</b></p> <p><i>1989CriLJ501 (at High Court of Gujarat)</i></p>	<p>The respondent was arrested as a suspect in an abduction case. The Investigating Officer produced him before the Metropolitan Magistrate and</p>	<p>In order to facilitate proper and complete investigation, the court should grant such remand as under 167(2), but it cannot be</p>

	<p><b>Issue:</b> Whether the facts pertaining to the delay in investigation relevant in deciding whether the accused should be remanded to police custody or not? Whether extending police remand should be the norm and non-extension an exception?</p>	<p>requested for remand. The magistrate evaluated the available evidence and concluded the case was not fit for remand, as the girl was married to the respondent. The state then carried the matter in revision to the City Sessions Court, Ahmedabad and the learned City Sessions Judge rejected that application citing the same reasons as the Magistrate. The state went in appeal.</p>	<p>granted as a matter of course. Section 167(3) makes it clear that the Magistrate has to record reasons for granting remand to police custody. It does not expressly provide for recording of reasons for refusing such custody.</p> <p>This is an indication that though investigating agency has to investigate into cognizable offence without any interference from judiciary, it does not mean that whenever request for police remand is made, it has to be granted. The police has to make out a case that the custody of the accused with the police is necessary for further investigation. If the primary</p>
--	--	---	---

			<p>evidence is utterly and grossly neglected, it cannot be said that the request for custody of the accused is in any manner legitimate, justified or bona fide.</p> <p>Remand is granted ordinarily in all cases where it is necessary for the purpose of effective further investigation. Thus the court dismissed the petition.</p>
	<p><b>Chiguluri Krishna Rao v. Station House Officer and Ors.</b></p> <p><i>1989 CriLJ 501 (at High Court of Andhra Pradesh)</i></p>	<p>The applicant was produced before the Magistrate at his residence for procuring remand. The applicant moved for bail, but the Magistrate declined bail citing that there was no infrastructure available at his residence to dispose of the bail application. He also refused to accept surety by the local Bar</p>	<p>The language of Article 22 (2) prescribes that immediately after arrest, the accused must be produced before the Magistrate, but in cases where there are sufficient reasons, the police may delay the production of the detenu, but never, beyond</p>

	<p><b>Issue:</b> Can the provisions of Section 436 be watered down due to lack of infrastructure? Is the practice of delaying production of an undertrial before the magistrate till the fag end of the 24 hours restriction, acceptable?</p>	<p>Association. It was also submitted that the bail was postponed to the day after, as the next two days were holidays.</p>	<p>twenty-four hours.</p> <p>It needs to be impressed upon the police officers concerned that they must produce the detenues immediately after arrest, before the Magistrates and should not wait in all cases for twenty-three hours and forty-five minutes, as they generally do.</p> <p>With respect to the bailable offences, the Court said that the language of Section 436(1) of Cr.P.C. is so clear that whenever during his custody, the accused offers bail, he has to be let off, whether at that time he is before the court or in the custody of the police.</p> <p>There is a proviso also to this</p>
--	---	---	--



			<p>section that instead of taking sureties, the court may discharge detenu on a personal bond for his appearance, which the Magistrate in this case should have allowed and the personal bond would have not required much infrastructure or paraphernalia.</p> <p>It is none of the business of the Magistrate or this Court to recognize or appreciate the difficulty of the jail authorities, who have shown their inability to receive prisoners after working hours.</p>
	<b>Assistant Collector of Customs R&amp;I (P.), Bombay v. Shankar Govardhan Mohite &amp; Ors.</b>	Two people were arrested for violating provision of the Customs Act and were produced before the Additional Chief	With respect to the claim of illegality of re- arrest, the court opined that Section 59 of the

	<p><i>1987(3) Bom CR708 (at High Court of Bombay)</i></p> <p><b>Issue:</b> Whether it is illegal to re-arrest after issuance of a discharge order?</p>	<p>Metropolitan Magistrate, who found that the arrest was illegal as the arrestee was not informed of the reasons for arrest. They were released then. But they were arrested again on the same day and produced before the court and reasons for arrest were informed this time. They were then remanded to judicial custody for 7 days. On the 7<sup>th</sup> day they were granted bail. An application was hence filed by the customs officer for cancellation of bail.</p>	<p>Cr.P.C. provides that once the accused is arrested by the police officer, he shall not be discharged except on his own bond, or on bail, or under a special order.</p> <p>However, if the arrest is found to be illegal as in the present case, the question of releasing the accused on his own bond or on bail would not arise and the only proper order would be an order of discharge, i.e. the order of his release by passing of the special order, as contemplated in the latter part of S. 59.</p> <p>Therefore subsequent arrest would not be illegal. In the given case, the time afforded to the investigating agency to investigate into the instant crime</p>
--	--	---	---

			is not adequate and it would be in the interest of justice to cancel the impugned order of granting bail.
	<p><b>Muman Kamal Sabedi Patel v. The State Of Gujarat</b></p> <p><i>(1971) 12 GLR 481 (at High Court of Gujarat)</i></p> <p><b>Issue:</b> Can Section 169 be invoked by the police for having the accused released from the custody of the Magistrate on the ground that there was no sufficient evidence against them?</p>	<p>A group of people were arrested for alleged criminal conspiracy and were put under custody of Judicial Magistrate. Following this, the Divisional Police Inspector sent reports saying that there was not material to file charge sheets against certain people and hence requested their release. But the Magistrate found prima facie case against all of them and rejected the reports. The Police officer approached the Sessions court. The judge referred the High Court and also stated that he found the Magistrate's conclusions to be incorrect, and the he</p>	<p>Section 169 gives the police officer making the investigation a right to release the person from his custody if he finds that there is no sufficient evidence or no reasonable ground of suspicion to forward him to the Magistrate on his executing a bond. The custody referred to in this section is the custody of the police and not of the Magistrate. It is, therefore, clear that the police officer was wrong in invoking the aid of Section 169 since the accused were already in the</p>

		cannot force the police to file charge-sheets.	<p>custody of the Magistrate.</p> <p>When the arrestee is required to be released on the ground that there is no sufficient evidence against him, a special order is required to be passed by the Magistrate having jurisdiction to try it under Section 63. That would require the learned Magistrate to look into the matter carefully, and exercise discretion in passing an order requested for by the police officer as prima facie he would be entitled to think that his arrest was properly made viz. on some sufficient evidence, or having reasonable suspicion against him in the case. However, if the facts set out in the final</p>
--	--	--	---

			report constitute an offence and there is a case for placing the accused on trial, the Magistrate can take cognizance of the offence under Section 190(1) (c) of the CrPC. The Court, thus decided that the Magistrate take cognizance under Section 190(1)(c) since there exists a prime facie case to be inquired into against the accused .
	<p><b>Elumalai v. State of Tamil Nadu, represented by the Inspector of Police</b></p> <p><i>1983 LW (Crl)121 (at High Court of Madras)</i></p> <p><b>Issue:</b> What is the role of a Magistrate while reman-ding an undertrial? Is shortage of police escort a valid reason for non-production?</p>	<p>The writ petitioner was arrested by the Police under S. 41(2) of the CrPC, two months before the filing of this writ petition, and detained in the Central Prison, Madras. The case pending against him consequent upon the arrest was adjourned from time to time and the remand was extended without his being produced before the court except on the date of the initial remand. The reason for his non-production from the Central Prison before the court is stated to be the non-availability of escort. The petitioner contends that his detention is contrary to the</p>	<p>When an undertrial prisoner is produced before a Magistrate and he has been in detention for 60 or 90 days, as the case may be, the Magistrate must point out to the undertrial prisoner that he is entitled to be released on bail.</p> <p>Guidelines:</p> <ol style="list-style-type: none"> <li>1. S. 167 (2) of the Code would apply to arrests made under S.41 (1), and in exceptional circumstances to arrests made under S.151 (1).</li> <li>2. S.167 (2) is not at all applicable</li> </ol>

		provisions of law and the principles of natural justice and as such it is illegal.	to arrests made under S.41 (2) of the Code and as such no court can order remand or extension of remand of persons arrested under S.41 (2).The Courts should not mechanically pass orders of remand without verifying the entries in the diaries and satisfying themselves about the real necessity for granting the remand or extension of remand. 3. Under no circumstance can a Magistrate order the detention of any person in custody or extend such detention without the production of the accused before him in violation of the provisions of the Code, viz., proviso (b) to S.167 (2), whatever may be the reason stated by the authorities. The jail authorities should not keep any person without orders of remand from the concerned Judicial Magistrates even for a moment beyond the period of detention already ordered.
	<b>Chaganti Satyanarayan &amp; Ors v. State Of Andhra Pradesh</b>  <i>AIR 1986 SC 2130</i>	The appellants/accused were arrested in connection with a riot case and were remanded to judicial custody on the next day. The charge sheet was filed on the 90 <sup>th</sup> day from remand, and hence was dismissed by the Magistrate. In the states	In the first place, detention can be authorised by the Magistrate only from the time the order of remand is passed. The earlier period when the accused is in the custody of a police officer in exercise of his powers

	<p><b>Issue:</b> Whether or not the calculation of the period of 60/90 days under proviso to S. 167(2) has to be considered from the date of arrest or from the date of remand?</p>	<p>appeal in the High Court, it was held that the period of 90 days envisaged by the proviso to S. 167(2) has to be computed only from the date of remand and therefore cancelled the bail and directed the magistrate to issue warrants of arrest for the appellants. The accused appealed to the Supreme Court.</p>	<p>under S. 57 cannot constitute detention pursuant to an authorisation issued by the Magistrate. Therefore, it stands to reason that the total period of 90 days or 60 days can begin to run only from the date of the order of remand.</p> <p>Secondly, the operative words in sub-s. (2) viz. "authorize the detention of the accused... for a term not exceeding 15 days in the whole" will have to be read differently in so far as the first order of remand is concerned "for a term not exceeding 15 days in the whole from the date of arrest". This would necessitate the adding of more words to the section than what the legislature has provided.</p> <p><i>The judgment of the High Court was upheld and the appeal was dismissed accordingly.</i></p>
	<p><b>M.A. Dharman v. State of Andhra Pradesh</b></p> <p><i>1991 (1) ALT 315 (at High Court of Andhra Pradesh)</i></p> <p><b>Issue:</b> Whether or not continued detention of the detenues pursuant to orders of remand without physical production to the</p>	<p>The petitioners in the <i>habeas corpus</i> writ petition were arrested for contravening the Customs act and were remanded by both the Magistrate and later by the Special Judge for Economic Offences. However, on later dates the Special kept mechanically extending their remand without them being produced before him. The detenues approached the High Court for relief.</p>	<p>Under Sub-section (2) of Section 167 of the new Code extension of remand of the accused person beyond 15 days is not a matter of course or a routine exercise, and it is only where the Magistrate is satisfied that adequate grounds exist that extension of remand is warranted and not otherwise.</p> <p>Production of the accused person</p>

	Magistrate, is lawful?		<p>before the Magistrate both at the time of seeking his remand and extension of the remand is <i>compulsory</i>. Physical production at the time of seeking initial remand is indispensable, however due to impossibility of production on later instances can be relaxed.</p> <p>It is open to either the prosecuting agency or the jail authority to put forward a plea of impossibility of production of an accused person and if the learned Magistrate is satisfied that the plea is well founded, he may, for special reasons to be recorded in writing, extend the remand of the accused person even without his production.</p> <p>The successive orders passed by the learned Special Judge remanding the detenus to judicial custody are therefore violative of Section 167(2)(b) of the Code of Criminal Procedure and Article 21 of the Constitution of India, and their detention or custody was illegal and unlawful.</p>
	<b>Aslam Babalal Desai v. State of Maharashtra</b> <i>AIR 1993 SC 1</i>	The accused was arrested for alleged offence under Sec 149, IPC. He moved for bail which was rejected by the session's judge.	It was held that once an accused person has been released on bail by the thrust of the proviso to Section



	<p><b>Issue:</b> Whether or not bail granted under the proviso to Section 167(2) of the CrPC, for failure to complete the investigation within the period prescribed thereunder can be cancelled on the mere presentation of the charge-sheet at any time thereafter?</p>	<p>On a later date, he applied for bail again which was granted by the judge as the investigation was not completed within 90 days. After the charge-sheet was filed and the state moved for cancellation of the bail. The High Court was of the view that since the learned Sessions Judge had granted bail on a technical ground, namely, failure to file the charge-sheet within the time allowed and since the investigation revealed the commission of a serious offence of murder, it was open to the High Court to direct cancellation of the bail. Hence, the bail was cancelled.</p>	<p>167(2), the mere fact that subsequent to his release, a charge-sheet has been filed is not sufficient to cancel his bail. In such a situation his bail can be cancelled only if considerations germane to cancellation of bail under Section 437(5) or for that matter Section 439(2) exist. That is because the release of a person under Section 167(2) is equated to his release under Chapter XXXIII of the Code.</p> <p>The purpose and object of providing for the release of the accused under Sub-section (2) of Section 167 on the failure of the investigating agency completing the investigation within the extended time allowed by the proviso was to instil a sense of urgency in the investigating agency to complete the investigation promptly and within the statutory time-frame.</p> <p>For the above reasons the appeal was allowed and the impugned order of the High Court was set aside.</p>
	<p><b>Central Bureau of Investigation v. Anupam J. Kulkarni</b></p>	<p>The accused was remanded in judicial custody for a case of abduction. The police applied for police custody which was granted by the</p>	<p>Dismissing the appeals of the C.B.I., the Court held that there cannot be any detention in police custody after the</p>

	<p><i>AIR 1992 SC 1768</i></p> <p><b>Issue:</b> Whether or not after the expiry of the initial period of 15 days a person could still be remanded to police custody by the Magistrate before whom he was produced?</p>	<p>Magistrate. But on his way to the prison he seemed in need of medical assistance and hence was taken to hospital. After about ten days in the hospital, the magistrate extended his judicial custody for one more week. Since the police couldn't take him into custody, the Investigating Officer reapplied for police custody, 18 days after the initial remand. The Magistrates and the High Court both refused this and granted the accused bail.</p>	<p>expiry of the first fifteen days, even in a case where some more offences, either serious or otherwise, committed by the accused in the same transaction come to light at a later stage. But this bar does not apply if the same accused is involved in a different case arising out of a different transaction.</p> <p>The Magistrate can remand him to either custody under proviso (a) to S. 167 (2) during the first fifteen days. The initial period of fifteen days mentioned in Section 167(2) has to be then computed from the date of such detention and after the expiry of that period the accused can be remanded to only judicial custody.</p> <p>The Judicial Magistrate can in the first instance authorise the detention of the accused in either custody from time to time (and also order change of custody from time to time if necessary), but the total period of detention cannot exceed fifteen days in the whole.</p>
--	--	--	--

	<p><b>Uday Mohanlal Acharya v. State of Maharashtra</b></p> <p><i>2001 (2) ACR 1213 (SC)</i></p> <p><b>Issue:</b> When can an accused be said to have availed of his indefeasible right for being released on bail under the Proviso to Section 167(2) of the Code of Criminal Procedure, if a challan is not filed within the period stipulated thereunder?</p>	<p>The appellant surrendered to the Special judge who ordered for judicial custody for an offence under Sec 420 IPC. After 60days of his remand, the appellant filed for bail, citing that no challan was filed in the 60day period. The Special judge refused to allow the bail, and he appealed to the High Court. Between the time of the appeal and the hearing, the Investigating Officer filed the challan before the Special Judge. The High Court relied on Sanjay Dutt vs. State (1994) 5 SCC 410 and found no need to grant bail.</p>	<p>Dismissing the High Court's decision, the court held -</p> <ul style="list-style-type: none"> <li>• When an application for bail is filed by an accused for enforcement of his indefeasible right, the Magistrate/Court must dispose it on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified, and no charge-sheet has been filed by the Investigating Agency.</li> <li>• If the accused is unable to furnish bail, as directed by the Magistrate, then by a conjoint reading of Explanation I and Sec 167(2), the continued custody of the accused even beyond the specified period in paragraph (a) will not be unauthorised, and therefore, if during that period the investigation is complete and charge-sheet is filed then the indefeasible right of the accused would stand extinguished.</li> <li>• On expiry of the period specified under Sec 167(2)a, if the accused files an application for bail and</li> </ul>
--	--	---	---

			offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.
	<p><b>Rajeev Chaudhary v. State (N.C.T.) of Delhi</b> (2001) 5 SCC 34</p> <p><b>Issue:</b> Interpretation and construction of the expression ‘offence punishable with imprisonment for a term of not less than ten years.’</p>	<p>The accused, charged under Sec 386 IPC, was released on bail by the order of the Metropolitan Magistrate as the charge-sheet was not filed within 60 days. However, the Additional Sessions Judge found that clause (i) of the proviso (a) to Section 167 (2) would be applicable, and set aside the order. But the High Court in its understanding of the clause, found it inapplicable in the case and hence set aside the order of the Sessions Judge. This was further appealed in the Supreme Court.</p>	<p>Under Section 167, it is apparent that pending investigation relating to an offence punishable with imprisonment for a term not less than 10 years, the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days. For rest of the offences, the period prescribed is 60 days.</p> <p>Hence in cases where offence is punishable with imprisonment for 10 years or more, accused could be detained up to a period of 90 days. In this context, the expression ‘not less than’ would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for</p>

			<p>a clear period of 10 years or more.</p> <p>Hence offence under Sec 386 does not fall under this class and bail was granted.</p>
	<p><b>Khinvdan v. State of Rajasthan</b></p> <p><i>1975 CriLJ 1984 ( at High Court of Rajasthan)</i></p> <p><b>Issue:</b> Can the Magistrate take cognizance of offence upon police report after the expiry of 60 days from the date of the arrest of the accused and further remand him to judicial custody?</p>	<p>The petitioner was detained in a case of murder and was remanded by the orders of the Judicial Magistrate. On the expiry of 60 days, the petitioner applied for bail. Refusing the bail, the magistrate took cognizance of the matter under Sec 309 of the CrPC. The petitioner approached the High Court contending that his detention after the first 60 days was unlawful and that bail should be granted to him.</p>	<p>It was held that the learned Magistrate could by a warrant remand the petitioner in custody under Section 309(2) only if the police report under Section 173 was filed before him within 60 days from the date of arrest of the accused, and if after taking cognizance of the offence or commencement of the trial, he considered it necessary to postpone the commencement of, or adjourn, the inquiry or the trial. If the Magistrate is permitted to avail himself of Section 309(2) of CrPC for remanding the accused to custody in spite of the fact that the custody or detention has already become illegal prior to his taking cognizance of an offence, the accused would be deprived of a valuable right to be enlarged on bail beyond a period of 60 days from the date of his arrest.</p> <p>Moreover, if immediately before taking</p>

			cognizance on a police report by a Magistrate, the accused is in continued illegal detention beyond a total period of 60 days on account of incomplete investigation, the accused can move for bail under Section 167(2). The Magistrate is legally bound to admit him to bail.
	<p><b>G.K. Moopanar v. State of Tamil Nadu</b></p> <p><i>1990 CrLJ 2685 (at High Court of Madras)</i></p> <p><b>Issue:</b> Regarding – Magistrates satisfaction to order remand, scope of Sec 57 and 167.</p>	<p>A petition was submitted to the court for the release of the people arrested and remanded from a protest by the Congress. It was also observed that in Tamil Nadu, many Magistrates had passed orders in a routine and mechanical manner remanding the arrested persons for 15 days, whenever the executive sought remand.</p>	<p>The Court discussed the four stages governing the exercise of power under 167(2):</p> <p><b>First Stage:</b> As per Article 22 (2) and Section 57 Cr.P.C, a person cannot be detained for more than 24 hours without a special order of a Magistrate under S. 167.</p> <p><b>Second Stage:</b> As per Section 167(1), Cr.P.C, an investigating officer can ask for remand only when there are grounds for believing that the accusation or information is well founded and it appears that the investigation cannot be completed within the period of 24 hours fixed by</p>

			<p>Section 57.</p> <p><b>Third Stage:</b> The Magistrate on being satisfied, not as a matter of routine but after judicial scrutiny, by the entries in the diary transmitted to him that a further detention is necessary can remand the arrested person in custody for a period of 15 days either at one stretch or for a shorter period, from time to time not exceeding 15 days in whole</p> <p><b>Fourth Stage:</b> The Magistrate, having jurisdiction to authorize detention of the accused person otherwise than in the custody of the police, beyond the period of 15 days and the Magistrate being satisfied that adequate grounds exist for so doing, for maximum period of 90 days/ 60 days depending on the offence. On the expiry of the period of 90 days or 60 days, as the case may be, the accused is entitled to be released on bail subject to the conditions contemplated therein.</p>
--	--	--	--

	<p><b>Hira Lal v. State of Rajasthan</b></p> <p><i>RLW 2005 (3) Raj 2014 (at High Court of Rajasthan)</i></p> <p><b>Issue:</b> Regarding – offences falling under proviso Sec 167(2), acceptance of challan in the absence of FSL and meaning of ‘if already not availed of’.</p>	<p>The applicant was arrested under the Narcotic Drugs &amp; Psychotropic Substances Act for an offence punishable with a sentence of up to ten years. In his case it was submitted that the session’s judge wrongfully rejected his bail under Sec 167(2).</p> <p>It was also contended that the Magistrate is not competent to authorise detention of the petitioner after 60 days from the date he was initially produced before the Magistrate.</p> <p>It also appeared in the case that FSL report had not been received by the police and after preparing the challan, it was sought to be submitted before the Court.</p> <p>For all these reasons the applicant sought bail from the High Court.</p>	<p>The case of the petitioner falls under proviso (ii) to Sub-section (2) of Section 167 of the Code. Wherever the clause provides the sentence "<b>up to ten years</b>", it would be the discretion of the Court trying the offence to sentence the accused for a period up to ten years or any period less than 10 years. In the case where the punishment provided is "<b>not less than ten years</b>", in such cases the Court trying the offence will have no jurisdiction to award lesser sentence than ten years and can award the sentence of 10 years or more.</p> <p>The High Court held that the learned Sessions Judge erred in refusing bail to the petitioner.</p> <p>For some reason if the FSL report is not forthcoming within the stipulated period, then in that situation, the investigating officer should made a request to the court for filing the FSL report subsequent to the filing of the challan, and the Court should normally accept the challan.</p> <p>It would be more in consonance with</p>
--	---	--	---



			<p>the legislative mandate to hold that an accused must be held to have availed of his indefeasible right, the moment he files an application for being released on bail and offers to abide by the terms and conditions of bail.</p> <p>That apart, when an accused files an application for bail indicating his right to be released as no challan had been filed within the specified period, there is no discretion left in the Magistrate and the only thing he is required to find out is whether the specified period under the statute has lapsed or not, and whether a challan has been filed or not.</p>
--	--	--	--



U; kf; d Qs y® dh rkFYkdk

Ø.	ds dk uke, साइटेशन , oa d®Vdkuke	ennc	Qs yk
1	<p><i>Jou oeu ukns</i>  <b>बनाम महाराष्ट्र</b>  <i>jkT; 1994</i>  <i>1/21/ck11e / h-vkj-</i>  <i>668 1/ck11cs mPp</i>  <i>U; k; ky; e1</i></p> <p><i>ed k% D; k fjekM</i>  <i>ds fy, vkonu</i>  <i>ij tkp vf/kdkjh</i>  <i>ds ctk;</i>  <i>dkLVcy dk</i>  <i>gLrk{kj vkj ds</i>  <i>Mk; jh dks tek u</i>  <i>djuk] fjekM dks</i></p>	<p><i>i kFkhZ dks gR; k ds</i>  <i>ds ea fixj 1/rkj</i>  <i>fd; k x; k vkj</i>  <i>ml s nks ckj</i>  <i>fjekM ea Hkstk</i>  <i>x; kA i kFkhZ us</i>  <i>mPp U; k; ky; ea</i>  <i>bl fjekM ds</i>  <i>fo: ) bl vk/kkj</i>  <i>ij vkonu fd; k</i>  <i>fd fjekM mfpr</i></p> <p><b>रूप से पेश नहीं</b>  <i>fd; k x; k Fkk</i>  <i>D; kfd bl s tkp</i>  <i>vf/kdkjh }kj k</i>  <i>tek ugha fd; k</i></p>	<p><i>/kkjk1671/21/ eftLVV dks ml ds l e{k i Lrr ds Mk; jh ds</i>  <b>अवतरण के आधार पर स्वयं को इस बात पर संतुष्ट करने के</b>  <b>बाद कि आरोपी को कैद में रखना आवश्यक है, आरोपी को</b>  <b>रिमांड में देने की शक्ति प्रदान करता है, बल्कि उस जांच पर</b>  <i>tk ml ds l e{k i Lrr fd; k tk, A bl fy, dks vkonu ij</i>  <i>gLrk{kj djrk gS ; k tek djrk gS ; g egRoiw kz ugha gS</i>  <i>D; kfd ; g dny ; a-or dk; l gA</i></p> <p><i>vkxj /kkjk 1721/11/ ds vxr11r] l Hkh tkp vf/kdkfj; k ds fy,</i>  <i>; g ck/; dkjh gS fd os mDr Mk; jh cuk, a ftl ea tkp dh</i>  <i>i xfr ds ckjs ea fofHkUu fooj.kk dk mYys[k gkA ml Mk; jh</i>  <i>ds vorj.k ; k ds isij ds cxj] eftLVV ds fy, ; g</i>  <i>l EHko ugha gS fd og vk/kkj dh mi ; Drrk dk irk yxk; s</i>  <b>और स्वयं को संतुष्ट करे।</b>  <i>vnkyr us ; g Lohdkj fd; k fd D; kfd ds Mk; jh ds</i>  <i>vorj.k dks tek ugha fd; k x; k Fkk] eftLVV us fjekM</i></p>

<p> <i>xg dkuuh</i>      <i>cuk</i>  <i>nrk gS</i> </p>	<p> <i>x; k Fkk cfYd</i>  <i>, d dklVcy</i>  <i>}kj k gLrk{kj</i>  <i>fd; k x; k FkkA</i>  <i>bl ea ; g Hkh</i>  <i>vkjksi yxk; k</i>  <i>x; k fd n-izla</i>  <i>ds iko/kkuka dk</i>  <i>mYya?ku djrs gq</i>  <i>ds Mk; jh dks Hkh</i>  <i>eftLVV ds le{k</i>  <i>tek ugha fd; k</i>  <i>x; k FkkA bl fy,]</i>  <i>ikFkhZ us tekur</i>  <i>ds fy, vkonu</i>  <i>fd; kA</i> </p>	<p> <i>eatij djds xyrh dh gA</i>  <i>fQj Hkh] vnkyr us vkjksi h ds okn dks [kkfjt dj fn; k</i>  <i>D; kfd ml s 167¼2½ ds varxlr tekur dh l qokbz djus dk</i>  <i>vf/kdkj iklr ugha Fkk D; kfd vkjksi i = nk; j fd; k tk pdk</i>  <i>FkkA</i> </p>
<p> <i>Xkqtjkr jkT;</i>  <i>cuke Lokeh vej</i>  <b>ज्योति श्याम 1989</b>  <i>fØ-y-tl 501</i>  <i>¼xqtjkr mPp</i> </p>	<p> <i>ifroknh dks , d</i>  <i>0; igj.k ds ds</i>  <i>ea l fnX/k ds : lk</i>  <i>ea fxj¶rkj fd; k</i>  <i>x; k FkkA tkp</i> </p>	<p> <i>mfpr vkj i w kl tkp dks l gt cukus ds fy,] vnkyr dks</i>  <i>, sl k fjekM eatij djuk pkfg, tS s fd 167¼2½ ea dgk x; k</i>  <i>gS yfdu bl s vfuok; L : lk l s eatij ugha fd; k tk l drk</i>  <i>gA 167¼3½ यह स्पष्ट करता है कि मजिस्ट्रेट को पुलिस की</i>  <i>fgjkl r ea fjekM eatij djus ds fy, dkj.k ntZ djuk</i> </p>

<p>U; k; ky; ½</p> <p>edk% D; k tkap ea foya bl ckr ds fy, ikl fxd gS fd vkjksi h dh ifyl dh fgjkl r ea Hkstk tkuk pkfg, ; k ugha\</p> <p>D; k fjeM c&lt;kuk <b>आदर्श नियम होना</b> pkfg, vkj ugha c&lt;kuk , d viokn\</p>	<p>vf/kdkjh us ml s esvksi kfyVu eftLVV ds l e{k iLrr fd; k vkj fjeM ds fy, vug k/k fd; kA eftLVV us mi yC/k l cirka dk em; kadu fd; k <b>और इस निष्कर्ष</b> ij igps fd ds fjeM ds fy, mi; Dr ugha gS D; kfd yMdh dh shknh ifroknh l s gks pph FkhA jKT; us rc ds dks iμfopkj ds fy, fl Vh l = <b>न्यायाधीश,</b> vgenkcn ds l e{k iLrr</p>	<p>gkxkA ifyl fjeM dks vLohdkj djus ds fy, , s k dkj .k ntl djuk vfuok; l ugha gA</p> <p><b>यह इस बात की ओर ईशारा करता है कि हालांकि, जांच</b> , t h dks l K; vij k/ka dh tkap] cxj U; kf; d gLr{ksi ds djuk gS bl dk ; g vFkZ ugha gS fd tc Hkh ifyl fjeM dh ekx dh tk, xh] bl s eatij fd; k tk, xkA ifyl dks bl ds fy, , s k ds cukuk gkxk fd ifyl dh fgjkl r vkxs dh <b>जांच के लिए आवश्यक है। लेकिन अगर प्राथमिक सबूतों को</b> i w kr% vkj cjh rjg l sudkj fn; k x; k gkj , s k ugha dgk tk l drk gS fd vkjksi h dh fgjkl r dk fuonu fdl h Hkh : lk ea oYk] U; k; l x r ; k okLrfod gA</p> <p>fjeM l k/kkj .kr% l Hkh ds ka ea Lohdr fd; k tkrk gS tgka <b>यह आगे कि प्रभावपूर्ण जांच के लिए आवश्यक है। इसलिए,</b> vnkyr us ; kfpdk dks [kkfj t dj fn; kA</p>
--	--	---

		fd; k] vkj fonøku l = न्यायाधीश ने भी ml h dkj.k l s vkonu dks [kkfj t dj fn; k ftl dkj.k l s eftLVV us [kkfj t fd; k FkkA jkT; vihy ea xbA	
चिगुलुरी कृष्णा राव बनाम स्टेशन गकाई वफा/कांजिह , 10 वल; A 1989 fØ-y-tl 501 (आन्ध्रा प्रदेश उच्च न्यायाधीश न्यायालय) 1/2 एडवोकेट जनरल D; k	i kFkhZ dks fjeM i klr djus ds fy, eftLVV ds l e{k muds ?kj ij iLr fd; k x; kA i kFkhZ us tekur dk vkonu nk; j fd; k] yfdu eftLVV us	अनुच्छेद 22 (2) की भाषा यह कहती है कि गिरफ्तारी के तुरंत ckn] vkjksi h dks eftLVV ds l e{k iLr fd; k tkuk pkfg, ] yfdu mu ds ka ea tgka lk; klr dkj.k g i fyl MSV; w dks iLr djus ea foy dj l drh g yfdu dHkh Hkh 24 ?ka/ka l s vf/kd ughA  l æf/kr i fyl ds Åij bl ckr ds fy, ncko Mkyk tkuk pkfg, fd mlga MSV; w dks fxj rkjh ds rjar ckn eftLVV ds l e{k iLr fd; k tkuk pkfg, vkj l Hkh ds ka ea 23 ?ka/s vkj 45 feuV dh izrh{kk ugha djuh pkfg, t k fd og	

<p>vol g puk dh deh ds dkj.k /kkjk 436 ds iko/kku dks detkj cuk; k tk l drk g\ D; k eftLV\ ds l keus fdl h fopkj k/khu cñh dh iLrfr e 24 ?k\ i frc\k ds vfre Hkkx rd ds foy\ ds i pyu Lohdkj ; k\; g\</p>	<p>tekur dks ; g dg dj j\ dj fn; k fd tekur vkonu dks fulk\kus ds fy, muds ikl dkbz vol g puk mi y\k ugha g\A ml\gk\us LFkkuh; <b>वकील परिषद</b> }kj\ tekur Lohdkj djus l s Hkh b\dkj dj fn; kA tekur dks vxys fnu ds fy, LFkfxr dj fn; k x; k D; k ml ds ckn vxys nks fnu N\h FkhA</p>	<p>vkerkj ij djrh g\A tekurh vijk/k\ ds l \k e\ vnkyr us dgk fd n-i-z-l a dh <b>धारा 436(1) इस पर इतना स्पष्ट है कि जब कभी भी उन</b> <b>हिरासत में आरोपी जमानत पेश करता है, उसे जाने दिया</b> tkuk pkfg,] pkgs ml l e; og vnkyr ds ikl gks ; k i f\l dh fgjkl r e\A bl /kkjk dk , d i frc\k Hkh g\ ftl e\ vnkyr] tekurh yus ds ctk; ] cñh dks ml dh mi fLFkfr ds fy, ml ds 0; fDrxr c\ki = ; k epyds ij fgjk dj l drk g\ bl ds e\ ftl dh vkKk eftLV\ dks nuh pkfg, Fkh] 0; fDrxr epyds e\ cgr <b>अधिक अवसंरचना और सामान की आवश्यकता नहीं होगी।</b> ; g bl vnkyr ; k eftLV\ dk dke ugha g\ fd og mu tsy vf/kdkfj; k\ dh dfBukb\; k\ dks eku\ ; k l jkg\ ft\lgk\us M; \h ds l e; ds ckn cñh dks iklr djus e\ vl eFk\k <b>दर्शाई हो ।</b></p>
<p>vfl LV\ dyDVj vkl\ dLVet</p>	<p>nks yk\k\ dks dLVEk\</p>	<p>gk\y\kd] ; fn fxj\k\ dks x\ dkunh ik; k x; k ts k fd or\eku ds e\ vkj\k\ h dks ml h ds epyds ij ; k tekur</p>

<p>vkj , .M vkbZ  <i>1/1 h-1/2</i></p> <p><b>बॉम्बे बनाम शंकर</b>  <i>xko/ku ekfgrs , 10</i>  <i>vll; 1987 1/3 1/2 ckle</i>  <i>l h-vkj -708 1/4 ckle cs</i>  <i>mPp U; k; ky;</i>  <i>e1/2]</i></p> <p><b>के आदेश जारी</b>  <i>gksus ds ckn i 1/4 %</i>  <i>fxj 1/1 rkjh djuk</i>  <i>xj &amp; dkuuh g\</i></p>	<p>vf/kfu; e ds  i ko/kkuka dk  mYy2ku djus ds  fy, fxj 1/1 rkj  fd; k x; k vkj  <b>उन्हें एडिशनल</b>  phQ+ eVksi kfyVu  eftLVV ds ikl  i Lrr fd; k x; k]  ftUgkus i k; k fd  fxj 1/1 rkjh  xj dkuuh Fkh  D; kfd fxj 1/1 rkj  fd; s x; s 0; fDr  dks fxj 1/1 rkjh ds  dkj .k ugha crk; k  x; k FkkA mUga rc  NkM+ fn; k x; kA  yfdU mUga ml h  fnu nkckj k  fxj 1/1 rkj dj  fy; k x; k vkj</p>	<p>पर रिहा करने का प्रश्न नहीं उठेगा और उचित आदेश होगा  doy रिहाई का आदेश, धारा 59 के पिछले भाग में विशेष  आदेश द्वारा जिसकी रिहाई का आदेश जारी करने की बात  dgh xbl g\</p> <p>bl fy, ckn ea dh xbl fxj 1/1 rkjh xj dkuuh ugha gksxhA fn; s  x; s ds ea tkp , t h dks vijk/k dh tkp ds fy, lk; klr  l e; ugha fn; k x; k Fa और जमानत मंजूर करने के आदेश  dks j l djuk U; k; ds fgr ea gksxk</p>
--	--	---



		<p>bl ckj mlg bl dk dkj .k Hkh crk; k x; kA mlg rc 7 fnuk dh U; kf; d fgjkl r ea Hkst fn; k x; kA 7oa fnu mlg tekur ns nh xbA bl fy, ] dLVEkt vf/kdkjh }kk tekur dks jI djus ds fy, vkonu nk; j fd; k x; kA</p>	
<p><i>Ekpe deky I xnh i Vy cuke xqtjkr jkT;</i></p> <p>¼1971½ 12 th-, y- vkj- 481 ¼xqtjkr mPp U; k; ky; e½</p>	<p>dN ykxka dks <b>आपराधिक षडयंत्र</b> ds fy, fxj r kj fd; k x; k vkj mlg U; kf; d eftLV dh fgjkl r ea j [kk</p>	<p>/kkjk 169 tkp djus okys ifyl vf/kdkjh dks ; g vf/kdkj nrk gS fd og viuh fgjkl r l s ml 0; fDr dks , d cki = dk; kJo; u djus ij fjk dj n; ; fn ml s ; g Kkr gkrk gS fd eftLV ds l ek i Lr djus ds fy, ml ds fo: ) lk; klr l cr ; k mfpr vk/kkj ugha gA bl /kkjk ea mYYkf [kr fgjkl r] ifyl dh fgjkl r gS u fd eftLV dhA bl fy, ] <b>यह स्पष्ट है कि पुलिस अधिकारी, धारा 169 का उपयोग करके</b></p>	

<p>edk% D; k ifyl  }kjk vkjksi h dks  eftLV dh  fgjkl r l s fgjk  djkus ds fy, ]  bl vk/kkj ij  /kkjk 169 dk  mi ; ks fd; k tk  l drk g\$ fd  muds fo: ) dkbZ  lk; klr l cir ugha  Fkk\</p>	<p>x; kA bl ds ckn]  eMyh; ifyl  bLiDVj us ; g  dgrs gq fjikVZ  Hksth fd dN  yxska ds fo: )  vkjksi i = nk; j  djus ds fy,  l kexh ugha Fkh]  bl fy, ml dh  fjgkbZ ds fy,  fuonu fd; kA  yfdu eftLV  ने प्रथम दृष्टि में  mu l cds fo: )  ds i k; k vkj  fjikVZ j`  dj nhA ifyl  vf/kdkjh l =  U; k; ky; i gpA  न्यायाधीश ने केस  dks mPp U; k; ky;</p>	<p>xyrh dj jgs Fks D; kfd vkjksi h igys l s gh eftLV dh  fgjkl r ea FkA</p> <p>tc fxjFkj fd; s x; s 0; fDr dks bl vk/kkj ij fgjk djus  की आवश्यकता होती है कि उसके विरुद्ध पर्याप्त कारण नहीं  g\$ /kkjk 63 ds varxr vf/kdkj j[kus okys eftLV }kjk  विशेष आदेश जारी किये जाने की आवश्यकता होती है। इसके  fy, eftLV dks ds dks /; ki uoZd tkpuk gksk] vkj  आदेश जारी करने के लिए विचारशीलता का उपयोग करने  की आवश्यकता होगी क्योंकि प्रथम दृष्टि में उन्हें यह सोचने  dk vf/kdkj gksk fd ml dh fxjFkj h mfpr Fkh vkj dN  lk; klr l cirka ; k mfpr dkj. kka ds vk/kkj ij dh xbz FkhA  fQj Hkh] ; fn vfre fjikVZ ea ntZ rF; ka l s fdl h vijk/k  dk i rk yxrk g\$ vkj ds ea vkjksi h ds fo: ) epnes dh  आवश्यकता हो तो, मजिस्ट्रेट द-izl a dh /kkjk 190%1%4x% ds  varxr vijk/k dk l kku ys l drk gA vnkyr u\$ bl  idkj fu.kz; fy; k fd eftLV us /kkjk 190%1%4x% ds varxr  l kku yxk D; kfd vkjksi h ds fo: ) tkp fd; s tkus ds fy,  स्पष्ट केस मौजूद है।</p>
---	---	---

		Hkst fn; k vkj ; g Hkh fy[kk fd mlg yxrk gS fd eftLVV dk <b>निष्कर्ष ग़लत है,</b> vkj ; g fd og i fyi dks vkjksi i = nk; j djus ds fy, ck/; ugha dj l drs gA	
<p>, yeykbZ cuke rfeyukMq jkT;] i fyi bLiDVj <b>द्वारा पेश किया</b> x; k</p> <p>1983 , y-MCY; w ½fØ-½121 eækl mPp U; k; ky;</p> <p>ed k% , d</p>	<p>; kfpdkdrkZ dks n-i z l a dh /kkjk 41¼2½ ds varxir i fyi }kj k] 2 eghus i wZ fxj ffrkj fd; k x; k Fkk] vkj ml s d l æh; dkj kxkj] eækl ea j [kk x; k FkkA fxj ffrkj h ds ckn ml ds fo: ) fopkj k/khu dsl</p>	<p>tc , d fopkj k/khu canh dks eftLVV ds l e{k i Lrr fd; k tkrk gS vkj og 60 ; k 90 fnuka dh dñ ea jg pdk gS <b>मजिस्ट्रेट को विचाराधीन बंदी को यह अवश्य ही बताना चाहिए</b> fd ml s tekur ij fjk gkus dk vf/kdkj gA</p> <p><b>दिर्शा—निर्देश:</b></p> <p>1- n-i z l a dh /kkjk 41¼1½ ds varxir dh xbl fxj ffrkj h <b>के केसों में धारा 167(2) लागू होगा और विशिष्ट</b> i fjiLFkfr; ka ea /kkjk 151¼1½ ds varxir dh xbl fxj ffrkj h ea HkhA</p> <p>2- n-i z l a dh /kkjk 41¼2½ ds varxir dh xbl fxj ffrkj h ds dsl ka ea /kkjk 167¼2½ fcYdy ykxw ugha gkxkA vnkyrka dks Mk; jh ea bMh dh tkap fd; s cxj vkj</p>	

	<p>fopkj k/khu dks fjekM ij NksMfs gq eftLVSV</p> <p>dh D; k Hkrfedk gS</p> <p>D; k ekxj {kh i fyl dh deh i Lrf r u djus dk , d osj dkj .k gS</p>	<p>le; le; ij LFkfr gkrs jgS vkj igyh i Lrf r ds ckn ml dh i Lrf r ds cxj gh fjekM c&lt;k; k x; kA dLæh; dkj xkj l s vnkyr ds le{k ml dh i Lrf r u djus dk dkj .k ekxj {kh i fyl dh vuq yC/krk crkbZ xbZA i kFkhZ dk dguk gS fd ml dh dñ dkuu ds i ko/kkuka vkj i kdf rd U; k; ds fl ) kark ds fo: ) gkus ds dkj .k xj dkuuuh gS</p>	<p>Loa dks fjekM eatij djus ; k c&lt;kus dh okLrfod अवश्यकता के बार में संतुष्ट किये बगैर, यंत्रवत रिमांड आदेश नहीं जारी करना चाहिए।</p> <p>3- fdl h Hkh ifjLFkfr ea eftLVSV dks l fgrk ds i ko/kku /kkjk 167 ¼2½ds ifrcak ¼[k½ ds mYya ku ea vkj kñ h dks ml ds le{k i Lrf r fd; s cxj fgjkl r ea j [kus ; k fdl h 0; fDr dh fgjkl r dks cढाने का आदेश ugha tkjh dj l drk] vf/kdkfj; k }kjk , d k u djus dk pkgS dkbZ Hkh dkj .k crk; k tk, A tsy vf/kdkfj; k dkj l æf/kr eftLVSV }kjk fjekM ds आदेश के बगैर, किसी व्यक्ति को पहले मंजूर की गई fjekM vof/k l s , d iy Hkh vf/kd dñ ea ugha j [kuk pkfg, A</p>
	<p>pxllrh l R; ukjk; u. k , d vll; cuke vku/kk</p>	<p>i kFkhZ@ vkj kñ h dks , d nxs ds l æk ea fxj fkrkj</p>	<p>Lkcl s igys eftLVSV }kjk dñ dks doy रिमांड के आदेश ds le; l s vf/kd r fd; k tk l drk gS igys dh vof/k tc vkj kñ h] /kkjk 57 ds vxr i fyl dks iklr vf/kdkj k ds</p>

<p><b>प्रदेश</b></p> <p>, -vkbzvjkj-1986  , l -l h- 2130</p> <p>ed k% D; k /kkjk  167½ ds ifrcak  ds varxr 60@90  fnuka dh fxurh  fxj rkjh dh  rkjh[k+ l s gkuh  pkfg, ; k fjekM  dh rkjh[k+ l s</p>	<p>fd; k x; k vkj  ml s vxys fnu  U; kf; d fgjkl r  ea Hkst fn; k  x; kA vkjks &amp;i =  fjekM ds 90o  fnu nk; j fd; k  x; k] vkj bl fy,  eftLV }kj  [kkfj t dj fn; k  x; kA jkT; ds  mPp U; k; ky; dks  vihy ea ; g  fu. k; fn; k x; k  fd /kkjk 167½  ds ifrcak ds  varxr 90 fnuka  dh vof/k dks  doy fjekM dh  rkjh[k+ l s fxuk  tkuk gA bl fy,  tekur dks jn  dj fn; k vkj  eftLV dks</p> <p><b>निर्देश दिया कि</b></p>	<p>vud kj] fgjkl r ea Fkk] og eftLV }kj tkjh fgjkl r ugha  gks l drh gA ; g] bl fy,] rkfdld gs fd doy 60 ; k 90  fnuka dh vof/k doy रिमांड के आदेश की तारीख से प्रारम्भ  gks l drh gA</p> <p><b>दूसरी बात, जैसे कि कहा गया है, उप-धारा (2) के शब्दों में</b>  Bvkjks h dh dñ vf/kdr dja----tks l c feykdj 15 fnuka l s  vf/kd vof/k ds fy, u gk tgka rd fjekM ds igys  <b>आदेश से संबंधित है, इसे अलग प्रdkj l s i&lt;k tk, xkA</b>  yfdu tc fxj rkjh dh vof/k dh ckr gkxh rks bl s ifyl  }kj fxj rkj djus dh rkjh[k+ l s tkM tk, xkA</p> <p><b>उच्च न्यायालय के आदेश को सही माना गया और अपील को</b>  [kkfj t dj fn; k x; kA</p>
--	---	--

		og i kFkhZ dh fxj ॥rkjh ds fy, okjM tkjh djA vkjksi h us mPpre U; k; ky; e vi hy fd; kA	
, e-, - /kelu cuke <b>आन्ध्र प्रदेश</b> 1991 ¼1½, -, y-Vh- 315¼ <b>आन्ध्र प्रदेश</b> mPp U; k; ky; e½  e½ k% D; k eftLV½ ds l e{k <b>शारीरिक प्रस्तुति</b> ds cx½] fjeM ds <b>आदेश के अंतर्गत</b> cnh dks dñ e j [ks jguk dkuuh gS ; k ugha	cnh i R; {khdj .k fjV ; kfpdk e i kFkZ; ka dks dLve+ , DV ds i ko/kkuka ds mYy½ku e fxj ॥rkj fd; k x; k Fkk vk½ mlg eftLV½ , o vkFkZd vij k/ka <b>के लिए विशेष</b> <b>न्यायाधीश, दोनों</b> ds }kj k gh fjeM e Hkst fn; k x; kA ckn dh rkjh [ kka i j <b>विशेष न्यायाधीश,</b> <b>उनकी शारीरिक</b> iLrfr ds cx½	u; s dkuu dh /kkjk 167 dh mi /kkjk ¼2½ ds varx½r 15 fnuka la vf/kd fjeM dh vof/k dks c<kuk dkbZ ikdfrd ; k fu; fer dk; bkg h ugha g½ ; g dxy ogka ds fy, gS tgka <b>मजिस्ट्रेट संतुष्ट है कि रिमांड बढ़ाना आवश्यक</b> gS vk½ bl ds fy, i ; k½r vk/kkj ekStn gS vU; Fkk ugha eftLV½ ds l e{k vkjksi h dh iLrfr] fjeM ekaxus vk½ fjeM c<ku½ nksuka ds <b>समय अनिवार्य है। पहली रिमांड मांगने के समय शारीरिक</b> iLrfr vijgk; l g½ fQj Hkh ckn ds l e; e iLrfr e vl EHkkouk ds dkj .k] bl e ugeh cjr h tk l drh gA  ; g dkj kxkj vf/kdkfj; ka vk½ vfHk; kstu , t½ h nksuka ds fy, [kyk gS fd og vkjksi h dh iLrfr e vl EHkkouk ds fy, , d fyf[kr vuq; eftLV½ dks Hkst½ ; fn fonøku eftLV½ bl <b>बात से संतुष्ट है कि, अनुनय का कारण उचित हई rks og]</b> <b>इसका विशेष कारण लिखित रूप में दर्ज करते हुए, आरोपी की</b> <b>शारीरिक प्रस्तुति के बगैर उसके रिमांड की अवधि को बढ़ा</b> nxA  <b>इसलिए, विद्वान विशेष न्यायाधीश द्वारा लगातार जारी रिमांड</b> <b>आदेश के अंतर्गत निरुद्ध व्यक्तियों को न्यायिक हिरासत में</b>	

		<p>; æor~ mudh fjekM vof/k c&lt;krs jgA fu: ) 0; fDr; k us mPp U; k; ky; ea jkgr ds fy, ; kfpdk nk; j dhA</p>	<p>Hkstuk n.M i fØ; k l fgrk dh /kkjk 167¼2¼4[k½ rFkk Hkkj r ds l fo/kku ds vuPNn 21 ds fo: ) g§ vk§ mudh dñ ; k fgjkl r vo§kkfud FkhA</p>
<p>vi/ye ckckyky ns/ kb/ cuke महाराष्ट्र राज्य , - vkb/ vkj- 1983 , l-l h- 1</p>	<p>vkjksi h dks dfFkr Hk-n-l a dh /kkjk 149 ds vrxr vijk/k ds fy, fxj¶rkj fd; k x; kA ml us tekur dh vthz Mkyh ftl s l = न्यायाधीश द्वारा jnn dj fn; k x; kA ckn dh rkjh[k+ ij] ml us fQj l s tekur dh vthz Mkyh जिसे न्यायाधीश }kjk eqtj dj fy; k x; k D; kfd 90 fnuka ds Hkhrj</p>	<p>; g fu.k/ fn; k x; k fd , d ckj tc vkjksi h 0; fDr dks /kkjk 167¼2¼ ds vrxr tekur ij fjgk dj fn; k tkrk g§ ml dh fjgkbl ds ckn , d vkjksi &amp;i = nk; j djuk] ml ds tekur dks jnn djus ds fy, i; klr ugha gA msl h fLFkr ea ml dh tekur dxy ml fLFkr ea jnn dh tk l drh gS tc /kkjk 437¼5¼ ; k fQj /kkjk 439¼2¼ ds vuq kj mfpr dkj.k gkA , sl k bl fy, gS D; kfd /kkjk 167¼2¼ ds vrxr fjgkbl l fgrk ds v/; k; xxxiii ds vrxr fjgkbl ds cjkckj gA</p> <p>tkp , tfl ; k }kjk] ifrcrk ds vrxr vf/kdr c&lt;h gpz vof/k ds Hkhrj tkp iwkz djus ea foQy gkus ij /kkjk 167 dh mi /kkjk ¼2¼ ds vrxr vkjksi h dh fjgkbl ds iko/kku dk उद्देश्य यह था कि जांच एजेंसियों में जांच अतिशीघ्र आ o§kkfud iko/kkuka dh l e; l hek ds v/khu ijh djus dh pruk tkxr gkA</p>	

	<p>           vkj ksi j &amp; i = nk; j            ugha fd; k x; k            FkkA vkj ksi &amp; i =            nk; j djus ds            ckn] j kT; us            tekur j n n            djus ds fy,            vkonu fd; kA            mPp U; k; ky; dk            ; g er Fkk fd            D; k fd fonoku  <b>सत्र न्यायाधीश</b>            } k j k tekur bl            rduhdh vk/kkj            i j fn; k x; k Fkk            fd i f y l 90            fnuka ds Hkhrj            vkj ksi &amp; i = nk; j            djus ea foQy            j gh FkhA y fdu]            tkp ds ckn ; g            Kkr gvk gS fd            gR; k tS k xHkhj            gvk Fkk] mPp            U; k; ky; ] tekur         </p>	<p>           mij kDr dkj .k ds vuq kj vihy dks eatij dj fy; k x; k  <b>और उच्च न्यायालय के उक्त आदेश को रद्द कर दिया गया।</b> </p>
--	--	---



		<p>jnn dj l drh FkhA bl fy,] tekur dks fujLr dj fn; k x; kA</p>	
<p>1 My C; jks vkh इंवेस्टिगेशन बनाम vuije ts dyd.kh</p> <p>, -vkbZvkj- 1992 , l -l h- 1768</p> <p>ed k% D; k 15 fnuka dh i kjfHkd vof/k l ekir gkus ds ckn Hkh] ftl eftLVV के समक्ष उसे पेश fd; k x; k Fkk muds }kjk ml 0; fDr dks i fyl dh fgjkl r ea Hkst tk l drk gS ; k ugha</p>	<p>vkjksi h dks vigj .k ds fy, 15 fnuka dh U; kf; d fgjkl r ea Hkst fn; k x; kA i fyl us fgjkl r ds fy, vkonu fd; k ftl s eftLVV }kjk eatij dj fy; k x; kA yfdu tsy tkrs l e; jkLrs ea ml s fpfdRI h; l gk; rk dh</p> <p>आवश्यकता मालूम gpZ vkj ml s vLirky ys tk; k x; kA vLirky ea yxHkx 10 fnuka rd jgus ds ckn eftLVV us ml dh fgjkl r , d l l rkg</p>	<p>Lkh-ch-vkbZ dh vihy dks [kkfj t djrs gp] vnkyr us fu.kZ; fn; k fd 15 fnuka dh i kjfEHkd fgjkl r ds l ekir gkus ds ckn i fyl ds ikl dkbZ fgjkl r ugha gks l drh gS mu ds kA ea Hkh tgka ckn ea vkjksi h }kjk ml h ekeys ea dN vkj vijk/k djuS pkgS xHkhj ; k vU; dk irk yxk gkA yfdu] ; g ifrcA/k ogka ykx ugha gkxk tgka ogh vkjksi h fdl h vU; ekeys ea l fEefyr ik; k tk, A</p> <p>eftLVV ml s /kkjk 167%2% ds ifrcA/k %d% ds varxir igys 15 fnuka dh vof/k ea nkuka ea l s fdl h dh Hkh fgjkl r ea Hkst l drs gA rc /kkjk 167%2% ds varxir mfYYkf[kr i kjfEHkd 15 fnuka dks ml fnu l s fxuk tk, xk tc , d h dSn gpZ Fkh vkj bl vof/k ds l ekir gkus ds ckn] vkjksi h dks dpy U; kf; d fgjkl r ea gh Hkst tk l drk gA</p> <p>U; kf; d eftLVV igys rks nkuka ea l s fdl h dks Hkh l e; l e; ij vkjksi h dh fgjkl r दे सकते हैं( और अगर आवश्यक हो तो हिरासत में परिवर्तन का आदेश भी दे सकते हैं),लेकिन हिरासत की कुल अवधि सब feykdj 15 fnuka l s vf/kd ugha gks l drh gA</p>	

		<p>vkj c&lt;k nhA pfd] i f yl ml s fgjkl r ea ugha ys l dh Fkh] tkp vf/kdkfj; ka us nkckjk fgjkl r ds fy, vkonu fd; k] i kj fEHkd fjekM ds 18 fnuka cknA eftLVV vkj mPp U; k; ky; nksuka us gh bl s ukeatij dj fn; k vkj vkjksi h dks tekur ns fn; kA</p>	
<p>mn; ekgu yky vpk; l cuke महाराष्ट्र राज्य</p> <p>2001 ¼2½ , -l h-vkj - 1213 ¼, l -l h-½</p> <p>ed k% nM i fØ; k l fgrk dh /kkjk</p>	<p>i kFkhZ ने विशेष न्यायाधीश के समक्ष vkRe l eiZk fd; k ftl us Hk-n-l a dh /kkjk 420 ds varxlr vijk/k ds fy, U; kf; d fgjkl r ea Hkst fn; kA ml ds fjekM ds 60 fnuka ds ckn] i kFkhZ us ; g dgrs gq tekur ds fy, vkonu fd; k</p>	<p>mPp U; k; ky; ds fu.kZ dks j l djrs gq ] vnkyr us fu.kZ fn; k fd &amp;</p> <ul style="list-style-type: none"><li>tc vkjksi h }kjk ml ds vi fgk; l vf/kdkj ds i mUku ds fy, tekur dk vkonu fd; k tkrk gseftLVV@vnkyr dks bl s इस बात से संतुष्ट होकर निपटा देना चाहिए कि वास्तव में] tS k mfYyf[kr gS vkjksi h 60 ; k 90 fnuka dh vof/k 0; rhr dj pdk gS vkj tkp , t h }kjk dksbZ vkjksi i = nk; j ugha fd; k x; kA</li><li>; fn vkjksi h tekur nus ea vl eFkZ gS tS k fd eftLVV us निर्देश दिया और फिर धारा 167(2) और व्याख्या 1 को एक l kFk i &lt;us ds ckn] vkjksi h dh i kj k½d½ ea mfYyf[kr vof/k ds vkxs Hkh yxkrkj tkjh fgjkl r vukf/kdr ugha gksxh] vkj</li></ul>	

	<p>167½ ds i frc/k ds vuq kj ; g dc ekuk tk, xk fd vkjksi h us tekur ij fjpgk gkus ds vius vifjpgk; l vf/kdkj dk mi; ksx dj fy; k g\$ ; fn bl ds varxir pkyku पेश करने की अवधि ds Hkhrj pkyku ugha पेश किया गया है\</p>	<p>fd 60 fnuka dh vof/k ea dkbz pkyku ugha nk; j किया गया। विशेष न्यायाधीश us tekur nsus ls euk dj fn; k vk\$ fQj i kFkhZ us mPp U; k; ky; ea vkonu fd; kA vihy vk\$ l quokbz ds nk\$ ku tkp अधिकारी ने विशेष न्यायाधीश के पास pkyku nk; j dj fn; kA mPp U; k; ky; /at; nRr cuke jkT; 1994½, l-l h-l h- 410 ij fuHk\$ fd; k vk\$ ik; k fd tekur देने की आवश्यकता ugha g\$</p>	<p>bl fy,] ; fn bl vof/k ea tkp i wkl gks tkrh g\$ vk\$ vkjksi i = nk; j dj fn; k tkrk g\$ rc vkjksi h dk vifjpgk; l vf/kdkj l ekr gks tk, xkA</p> <ul style="list-style-type: none"> <li>• /kkjk 167½d ea mfYYkf[kr vof/k ds l ekr gkus ds ckn] ; fn आरोपी जमानत के लिए आवेदन करता है और निर्देश दिये जाने ds ckn tekur nsus ds fy, Hkh dgrk g\$ rc ; g ekuuk g\$ fd vkjksi h us vius vifjpgk; l vf/kdkj dk mi; ksx fd; k g\$ gkaykfd] vnkyr us ml vkonu dks Lohdkj ugha fd; k g\$ vk\$ जमानत की शर्तों को नहीं बतलाया है, और आरोपी ने भी tekurh i Lrr ugha fd; k g\$</li> </ul>
	<p>jktho p\$kj h cuke fnYyh ¼, u-l h-Vh-</p>	<p>vkjksi h ij] Hk-n-l a dh /kkjk 386 ds varxir vkjksi Fkk]</p>	<p>/kkjk 167 के अंतर्गत, यह स्पष्ट है कि 10 वर्षों ls de dh dñ ls n.Muh; vijk/kka ea tgka tkp fopkjk/khu gk\$ eftLV½ vkjksi h dh dñ dks 90 fnuka ls vf/kd vof/k ds fy, vf/kdr ugha dj l drs g\$</p>

<p>1/2 kT;</p> <p>1/2001/5 , l -l h-l h-34</p> <p>ed k% vfHk0; fDr B10 वर्ष से कम अवधि dh dñ l s n. Muh; vijk/kp dk fuo<sub>pu</sub> , d l j puk A</p>		<p>ml s esVksi kfykVu मजिस्ट्रेट के आदेश ij tekur ij fjk dj fn; k x; k D; kfd 60 fnuk ds Hkhrj vkjksi i = nk; j ugha fd; k x; k FkKA fQj Hkh] vfrfjDr l = न्यायाधीश ने पाया fd /kkjk 167½d ifrcak ½d ds [kM ½½ ykx<sup>III</sup> gksxk] vkj आदेश को रद्द कर fn; kA yfdu] mPp U; k; ky; us viuh l e&gt; e<sub>1</sub> ik; k fd [kM ykx<sup>III</sup> ugha gksxk vkj bl fy, l = न्यायाधीश के आदेश dks [kkfj t dj fn; kA bl ds fo: ) vkxs mPpre U; k; ky; e<sub>1</sub> vihy fd; k x; kA</p>	<p>vU; vijk/kk ds fy, ; g vof/k 60 fnuk dh g<sub>1</sub> इसलिए, उन केसों में जहां अपराध 10 वर्ष के कारावास या उससेअf/kd l s n. Muh; g<sub>1</sub> vkjksi h dks 90 fnuk rd fgjkl r e<sub>1</sub> j [kk tk l drk है। इस संदर्भ में, अभिव्यक्ति 'कम नहीं' का अर्थ होगा कैद 10 वर्ष या ml l s vf/kd l e; ds fy, gks vkj bl ds varxir dby os vijk/k आएंगे जिसके दण्ड स्पष्ट 10 वर्षों या उससे अधिक के लिए हो सकत g<sub>1</sub> bl fy, /kkjk 386 ds varxir vijk/k bl Js kh e<sub>1</sub> ugha vkrk g<sub>1</sub> vkj tekur eatij dj fy; k x; kA</p>
--	--	---	---

<p>1975f0-y- t71984%jktLF kkumPp U; k; ky; e½</p> <p>eq k% D; k vkjksi h dh fxj¶rkjh dh rkjh[k+ l s 60 fnuka dh vof/k l ekir gkus ds ckn] D; k eftLVV ifyl fjikvZ ds vk/kkj ij ds dk l Kku ys l drk gS vkj vkjksi h dks vkxs U; kf; d</p>	<p>f/¶konku cuke jktLFku jkt;</p>	<p>i kFkhZ dks gR; k ds ds e dñ fd; k x; k vkj U; kf; d <b>मजिस्ट्रेट के आदेश</b> l s fgjkl r e Hkst fn; k x; kA 60 fnuka ds l ekir ij] i kFkhZ us tekur ds fy, vkonu fd; kA tekur badkj djrs gq eftLVV us n-i z l a dh /kkjk 309 ds varxir ds dk l Kku fy; kA i kFkhZ mPp U; k; ky; i gqk ; g dgrs gq fd 60 fnuka ds ckn ml dh dñ xj dkuuh gS vkj ml dh tekur eatij dh tkuh pkfg, A</p>	<p>; g ekuk x; k fd fonoku eftLVV okj¶ }kjk i kFkhZ dks /kkjk 309 ¼2½ ds varxir fgjkl r e dñy rHkh Hkst l drs gq tc vkjksi h dh fxj¶rkjh dh rkjh[k l s ifyl fjikvZ muds l e{k 60 fnuka ds Hkhrj nk; j dh xbl gq vkj ; fn vij/k dk l Kku yus ds ckn ; k epnek <b>शुरू होने के बाद, उस</b> epnes ; k bDok; jh dks LFkfxr djuk] ckn e yuk t+ jh yxrk gA ; fn eftLVV dks /kkjk 309 ¼2½ ds varxir vkjksi h dks fgjkl r e Hkstus ds vf/kdkj dk mi ; ksx djus dh vkKk ns nh tk, ; g tkurs gq Hkh fd muds l Kku yus ds igys gh bl /kkjk dk xj dkuuh gks pppk Fkk vkj bl l s vkjksi h dks ml ds 60 fnuka dh vof/k forkus ds ckn fjgkbl ds fy, iklr , d egRoimkZ vf/kdkj l s ofpr gkuk i MxkA</p> <p>bl ds vykok] ; fn eftLVV }kjk ifyl fjikvZ ij l Kku yus ds rjar igys vkjksi h tkp ijk u gkus ds dkj.k 60 fnuka l s vf/kd l e; l s xj dkuuh fgjkl r e gS rks /kkjk 167 ¼2½ ds varxir og tekur ij fjgkbl ds fy, vkonu dj l drk gA</p> <p>eftLVV ml s dkuuh : lk l s tekur ij fjgk djus ds fy, ck/; gA</p>
---	---	--	---

	fgjkl r ea Hkst l drk gS		
<p>th-ds ejkuj cuke rfeyukMq jKT;</p> <p>1990f0-y-tl 2685/enkl mPp U; k; ky; ds l e{k½</p> <p>ed k% fjekM ds आदेश के fy, eftLVV की संतुष्टि, /kkjk 57 ,o 167 dk foLrkjA</p>	<p>dkaxd }kjk iksVLV l s fxjlrkj fd; s x; s vkS fjekM ij Hksts x; s 0; fDr; ka dh fjkbl ds fy, , d ; kfpdk nk; j dh xba ; g Hkh voyksdu fd; k x; k fd tc Hkh dk; Zdkfj . kh us fjekM ekaxk] rfeyukMq ea dbZ eftLVV/ka us fxjlrkj 0; fDr; ka ds 15 fnuka ds fjekM ds fy, ; aor- vkS fu; fer आदेश जारी किया Fkk</p>	<p>अदालत ने धारा 167(2) के अंतर्गत शक्तियों के उपयोग के चार voLFkkvka dk fooj .k fn; k%</p> <p>igyk pj.k% vuPNn 22½ vkS /kkjk 57 n-izl a ds varxh] , d व्यक्ति को मजिस्ट्रेट द्वारा धारा 167 के विशेष आदेश के बगैर 24 ?ka/ks l s vf/kd l e; rd dñ ugha j [kk tk l drk gA</p> <p>nll jk pj.k%-izl a dh /kkjk 167½ ds varxh , d tkp vf/kdkjh रिमांड के लिए केवल तब मांग सकता है जब यह विश्वास करने के fy, vk/kkj gS fd vkjksi ; k l upuk l gh gS vkS , s k izhr gkrk gS fd /kkjk 57 }kjk fu/kkFjr 24 ?ka/ka dh vof/k ds Hkhrj tkp ij ugha dh tk l drh gA</p> <p>rhl jk pj.k% eftLVV fu; fer tkp ds vk/kkj ij ugha cfYd ml ds l e{k j [kh xbZ Mk; jh ds vk/kkj ij] bl dh U; kf; d l eh{kk djus ij] और संतुष्ट होने पर कि जांच के लिए आगे रिमांड आवश्यक है, तभी fxjlrkj 0; fDr dks 15 fnuka rd dh fgjkl r ea Hkst l drh gS ; k rks , d gh ckj ea ; k NkVh vof/k; ka ed ftl ea bl s dgy 15 fnuka l s vf/kd ugha c&lt;k; k tk l drk gA</p> <p>pkFkk pj.k% eftLVV ftl ds ikl vkjkih dks ifyl dh fgjkl r ds vykok vl; fgjkl r ea Hkstus dk vf/kdkj gS 15 fnuka l s vf/kd अवधि के लिए यदि मजिस्ट्रेट इस बात से संतुष्ट होता है कि इसके</p>	

			fy, mfpr vk/kkj ekstin gš og vf/kdre] vijk/k dh xHkhjrk ds vuq kj 60@90 fnuka ds fy, fgjkl r ea Hkst l drk gA 90 ; k 60 fnuka dh vof/k l ekr gkus ds ckn] tš k dš gkš vkjksi h dks निर्धारित शर्तों पर जमानत पर रिहा होने का अधिकार है।
ghjkyky cuke jktLFkku jkT;  vkj-, y-MCY; 2005 ¼3½ jkt 20143  ¼jktLFkku mPp U; k; ky; eš  ed k% /kkjk 167¼2½ ds i frcak ds varxir vkus okys vijk/kka l s l æf/kr] , Q-, l - , y- ds vuq fLFkr ea vkjksi i = dh Lohdfr vkš ^; fn i gys l s ugha mi ; ksx fd; k gkš dk vFkA	i kFkhZ dks , u-Mh-i h- , l - dkumu ds varxir 10 वर्षों की dš l s n.Muh; vi jk/kds fy, fxj lrkj fd; k x; kA ml ds dš ea ; g dgk x; k fd l = न्यायाधीश ने ग़लत rjhds l s /kkjk 167¼2½ ds varxir ml dh tekur dh ; kfpdk dks [kkfj t dj fn; kA  ; g Hkh dgk x; k fd ml s igyh ckj i Lrr djus dh rkjh[k+ l s 60 fnuka ds ckn dš dks vf/kdr djus ds fy, eftLVV dks	i kFkhZ dk dš l fgrk dh /kkjk 167 dh mi /kkjk 2 ds i frcak ¼ii½ ds अंतर्गत आता है। जहां खंड में '10 वर्षों तक' की बात कही गई है, यह अदालत के विवेक पर निर्भर करेगा कि वह आरोपी को 10 वर्षों तक के fy, n.M nsx ; k fQj ml l s de ds fy, A mu dš k ea tgka n.M '10 वर्षों से कम नहीं' कgrk gš , š s dš k ea vnkyr dks vf/kdkj नहीं होगा कि वह 10 वर्ष से कम अवधि के कारावास का दण्ड दे और 10 ; k ml l s vf/kd vof/k ds fy, n.M ns l drk gA mPp U; k; ky; ने माना कि विद्वान सत्र न्यायाधीश ने प्रार्थी को जमानत न देकर xtyrh dh gA  किसी कारण वश यदि i fyl dks fu/kkFjr l e; ds Hkhrj , Q-, l -, y- fj i kšZ i klr ugha gksh gš rks ml s vnkyr l s fuonu djuk okfg, fd वह चालान दायर करने के बाद में यह रिपोर्ट इसके समक्ष पेश कर nsxh] vkš vnkyr dks Hkh l keku; r% bl fuonu dks Lohdkj dj yuk pkfg, vkš pkyku Lohdkj dj yuk pkfg, A  यह कानूनी अधिदेश के असंगति होगी यदि किसी आरोपी को अपने vi fjgk; l vf/kdkj dk mi ; ksx djus ds fy, ck/; fd; k tk, ftl i y og tekur i j fjgk gkus ds fy, vkonu djrk gš vkš bl dh शर्तों को पूरा करने के लिए तैयार हो जाता है।	

		<p>vf/kdkj ugha gA</p> <p>; g Hkh i dV gvk fd i fyl }kj k , Q- , l -, y- fji kV i klr ugha gpz g\$ vkj pkyku r\$ kj djus ds ckn] bl s vnkyr <b>में पेश करने के लिए</b> dgk x; kA</p> <p>bu l Hkh dkj . kka ds vk/kkj ij i kFkhz us mPp U; k; ky; l s tekur dh ekax dhA</p>	<p>bl ds vykok] tc dkbZ vkj ki h tekur ds fy, vkonu djr k g\$ ; g <b>बतलाते हए कि निर्धारित समय के भीतर चालान पेश नहीं किया गया है, मजिस्ट्रेट को अपने विवेक का उपयोग करने की आवश्यकता नहीं रह</b> tkrh fl ok; ; g tkuus ds fy, fd dkuu ds vxixr mfYyf[kr vof/k l eklr gks xbl g\$ ; k ugha <b>और चालान पेश किया गया है या</b> ughaA</p>
--	--	--	--





**Section IV:  
WHAT THE LAW COMMISSION  
AND OTHER COMMISSIONS SAY**

Hkkx IV:  
D; k dgrs g& f0kf/k vk; ®Xk v©j  
vU; vk; ®Xk

## EXTRACTS OF SELECT REPORTS OF THE LAW COMMISSION OF INDIA

*(Highlights and headers have been inserted for convenience)*

### 78<sup>th</sup> Report: Congestion of Undertrial Prisoners in Jail<sup>66</sup>

✚ **“Two countervailing principles of jurisprudence and one principle from penology seem to underlie the special provisions made for unconvicted persons in custody**

#### **Right to be Presumed Innocent:**

First, unconvicted prisoners must be presumed to be innocent. As such, it is inappropriate that they should be subjected to greater harassment than is warranted by law, or that they should be detained with convicted persons, or that they should be deprived of any rights that pertain to non-accused persons other than those deprivations that are inherent in the very process of detention.

#### **Due Process of Law:**

The presumption of innocence (on which these propositions are based) is, however, tempered by a second principle, namely, that the course of justice must proceed unhindered by the activities of those who would seek to subvert it. These are the two countervailing principles of jurisprudence.

#### **Separation of Prisoners:**

Then, there is the basic principle of penology that

- **those not contaminated should be protected from baneful contact with those who have been adjudged to be guilty of crime.** <sup>“67</sup>

#### ✚ **Categories of Undertrial Prisoners & Reducing the Burden on Jails**

There are three types of undertrial prisoners who are inmates of jails:

- (1) Persons being tried for non-bailable offences in respect of whom the courts have declined to pass an order for their release on bail.
- (2) Persons being tried for non bailable offences, in respect of whom courts have passed order for bail but who, because of the difficulty of finding appropriate surety or because of some other reason, do not furnish bail bond.

---

<sup>66</sup> <http://lawcommissionofindia.nic.in/reports.htm>

<sup>67</sup> Page 2, Para 1.8, Chapter 2-Interval and Bail, 78<sup>th</sup> Law Commission Report

- (3) Persons who are being tried for bailable offences but who, because of difficulty in finding appropriate surety or because of any other reason do not furnish the bail bond.

**It is plain that if we want to reduce the burden of undertrial prisoners on jails we shall have to deal with all the above three categories.”<sup>68</sup>**

#### **Time period specified for Pre-trial Detention**

“Our law of criminal procedure is not totally blind to the problem of time spent before or awaiting trial. Following provisions of the Code of Criminal Procedure, 1973 show its concern to keep that time within certain limits:

- (1) Remand of the accused to custody during investigation is subject to an aggregate limit prescribed by law.
- (2) As regards the time taken in investigation, the Code, in the Chapter dealing with investigation of offences, provides that every investigation ‘under this Chapter’ shall be completed without unnecessary delay.
- (3) Remand of the accused to custody in the course of the trial is also regulated by another provision of the Code.
- (4) If, in the case of an offence triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within 60 days, the Magistrate (unless the Magistrate, for reasons to be recorded, otherwise directs), must release the accused on bail.
- (5) Time spent by the accused in the custody during investigation, inquiry or trial of the case is re-credited if the accused person is convicted and sentenced to imprisonment.”<sup>69</sup>

#### **Who is Eligible for Consideration of Bail**

“On the other hand, in favour of adopting a liberal approach, it could be stated that, in the first place, person accused of crime is entitled to remain free until adjudged guilty, so long this freedom does not threaten to subvert the orderly process of criminal justice, that his freedom could have this adverse effect only if he deliberately fails to appear at the time and place appointed for the purpose.

Secondly, pending formal adjudication of guilt, his status ought not to be simulated to that of a convicted person.

---

<sup>68</sup> Page 5, Para 1.26, 2-Interval and Bail, 78<sup>th</sup> Law Commission Report

<sup>69</sup> Para 2.6, Page 8, Chapter 3: Solitude of Law, 78<sup>th</sup> Law Commission Report

Thirdly, if kept in custody, he is impeded in preparing his defence, since, in custody, unrestricted consultation with counsel is difficult.

Fourthly, if he is kept in custody, his earning capacity is impaired, thereby causing hardship and economic deprivation.

Fifthly, there is a large class of persons for whom any bail is “excessive bail”, they are the people loosely referred to as indigents.

For such persons, provisions of bail prove more or less illusory.

These arguments would show that the question has to be decided on a balance of conflicting considerations. “<sup>70</sup>

### **Factors Contributing to Congestion in Prisons & Constraints in Disposal of Criminal Cases**

“We noted in that Report that one of the main causes for delay in the disposal of criminal cases is that in the majority of them neither the prosecution nor the accused is interested in the early disposal of cases.

The police take unduly long time to produce the presence of witnesses in the court on the dates of hearing.

Complaints had also been made, as noted in that Report, that the police does not produce all prosecution witnesses on the first date of hearing. One reason for that is that the police officials want to know the defence case as revealed by the cross examination of the first witness and thus propose to make up any witnesses. The accused too are quite often interested in prolonging the cases because the longer the cases last, the greater are the chances of prosecution witnesses being won over. It is plain that a certain amount of strictness would have to be enforced if cases are to be disposed of promptly.”<sup>71</sup>

**On occasions as a result of some agitation, hundreds and even thousands of persons defy the law and court arrest. At times like these, there is a sudden spurt in the number of undertrial prisoners. Many of such persons who deliberately defy the law and court arrest do so as a symbolic measure. It is plain that most of them would not offer bail and thus ask to be released pending their trial. Sometimes these persons are, as a result of Government decision, released without being put on trial. In case of trial, the sentence which is ultimately imposed upon them is generally of a nominal nature. It is desirable that they should be put up for trial soon after their arrest, so that the jails do not remain congested with these under trial prisoners.”<sup>72</sup>**

---

<sup>70</sup> Para 2.22, IX, Questions for Consideration, Chapter 2, Present Law, Comparative Position and Questions For Consideration,, 78<sup>th</sup> Law Commission Report

<sup>71</sup> Para 3.8, Page 14-15, Chapter 3, Expeditious Disposal of Cases, 78<sup>th</sup> Law Commission Report

<sup>72</sup> Para 3.10, Page 15, Chapter 3, Expeditious Disposal of Cases, 78<sup>th</sup> Law Commission Report

**“Another reason for the large number of undertrial prisoners is the inordinate delay which sometimes takes place in the investigation of cases, with the result that the arrested persons who are remitted to judicial custody have to be kept in jail as undertrial prisoners. The delay in investigation of cases takes place because quite often the police officials concerned with the investigation have to be deputed on other duties relating to problems of law and order. We have in our 77<sup>th</sup> Report, stressed the need for not diverting the investigating official to other duties. Such diversion, in our opinion, not only results in delay in the investigation but also entails in its turn failure of justice.”<sup>73</sup>**

**“The induction of a large population of undertrial prisoners in a building essentially meant for convicts, is, in the very nature of things, undesirable. Despite all the precautions that may be taken, the contact between, and the intermingling of undertrial prisoners and convicts cannot be avoided if both are inmates of the same building. Such contact has the most deleterious effect on the undertrial prisoners. Even if some of them are ultimately acquitted, their association with the convicts some of whom are hardened criminals, leaves a bad trail on their mind.”<sup>74</sup>**

### **152<sup>nd</sup> Report: Custodial Crimes<sup>75</sup>**

---

#### **Arrest only when reasonably satisfied of the reason for the arrest**

“We recommend that in section 41 of the Code of Criminal Procedure, 1973 after sub-section (1), the following new sub-section (1A) should be inserted:-

41 (1A) A police officer arresting a person under clause (a) of sub-section must be reasonably satisfied and must record such satisfaction, relating to the following matters:-

- (a) The complaint, information or suspicion referred to in that clause, is not only in respect of a cognizable offence having been committed, but also in respect of the complicity of the person to be arrested, in that offence;
- (b) Arrest is necessary in order to bring the movements of the person to be arrested under restraint, so as to inspire a sense of security in the public or to prevent the person to be arrested from evading the process of the law or to prevent him from committing similar offences or from indulging in violent behaviour in general.”<sup>76</sup>

---

<sup>73</sup> Para 3.12, Page 15, Chapter 3, Expeditious Disposal of Cases, 78<sup>th</sup> Law Commission Report

<sup>74</sup> Para 8.1, Chapter 8, Arrangements for Detention, 78<sup>th</sup> Law Commission Report

<sup>75</sup> <http://lawcommissionofindia.nic.in/reports.htm>

<sup>76</sup> Para 5.20, Page 27, Chapter 5, Arrest, 152<sup>nd</sup> Law Commission Report

### **Notice of appearance**

“In Joginder Singh’s case, a very helpful suggestion has been made about the possibility of substituting a notice of appearance in place of arrest by the police...Substitution of this device will automatically eliminate, or at least reduce, the possibility of custodial crimes. We should therefore, recommend that in the Code of Criminal Procedure, 1973, a new Section should be *inserted* on the following lines:-

41A. *Notice of appearance*- Where the case falls under clause (a) of sub-section (1) of section 41, the police may, instead of arresting the person concerned, issue to him a notice of appearance requiring him to appear before the police officer issuing the notice or at such other place as may be specified in the notice and to co-operate with the police officer in the investigation of the offence referred to, in clause (a) of sub-section (1) of section 41.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of that notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent court.”<sup>77</sup>

### **Duty of Magistrate to verify certain facts**

“In order that the various safeguards set out in this Chapter are complied with it is desirable that there ought to be a kind of supervision or (*sic*) overseeing of the police by an independent agency. In the present set up, it may not be possible to provide for a separate agency in this regard, but it should be possible to utilize the existing machinery for the purpose. Both under constitutional requirements as laid down in Article 22 of the Constitution and under section 56 of the Code of Criminal Procedure, 1973, the person to be arrested has to be produced before a Magistrate. By virtue of the combined operation of section 56 and 57 of the Code, production of the accused before a Magistrate must take place within 24 hours of the arrest. But in cases where informal arrests are made, the accused is not produced before the Magistrate within 24 hours, instead he is kept in police custody for interrogation and his arrest is shown only after he is coerced to confession or to state facts leading to discovery of weapon or goods. To

---

<sup>77</sup> Para 5.20, Page 28, Chapter 5, Arrest, 152<sup>nd</sup> Law Commission Report

prevent this malpractice, the Magistrate before whom the accused is presented should enquire from the accused the time and date of his arrest and record the same. Our recommendation is that a new section 57A may be arrested in the Code of Criminal Procedure on the following lines:-

57A. *Duty of Magistrate to verify certain facts* – When a person arrested without warrant is produced before the Magistrate, the Magistrate shall, by inquiries to be made from the arrested person ‘satisfy himself that the provisions of sections, 56(*sic*) and 57, have been complied with (sections relating to safeguards in connection with arrest, rights on arrest, intimation etc. to be entered) and shall also enquire and record the time and date of arrest.”<sup>78</sup>

#### Medical Examination of the accused

“Section 53 of the Code of Criminal Procedure, 1973 relates to compulsory medical examination of the accused at the request of the police, while Section 54 is concerned with the right of the accused to get himself medically examined. **Section 54 is a beneficiary provision which provides an opportunity to an arrested person to get himself medically examined to disprove (*sic*) the commission of any offence by him or to establish the commission of any offence against his body. This provision is directly connected with the custodial crimes.”**

“Under the existing provisions of Section 54, if a person under arrest is tortured or assaulted he may, when produced before the magistrate, make a request to the magistrate for the medical examination of his body to establish that he has been subjected to torture and physical assault during the period of detention. Though this right exists, yet, as pointed out earlier, most of the arrested persons, especially those against whom custodial crimes are committed, are ignorant of their right.”

“Even if the arrested person who is produced before the magistrate is aware of this right, he does not dare make a complaint to the magistrate or make a request for medical examination in the presence of the police. In order to minimize the chances of custodial torture or sexual exploitation, it is necessary and desirable that section 54 should be strengthened in the interest of preventing malpractices.”

**“When the accused is produced before a magistrate, it should be mandatory for the magistrate to enquire from the arrested person whether he has any complaint of torture and maltreatment or sexual exploitation in custody and**

---

<sup>78</sup> Para 5.21, Page 28-29, Chapter 5, Arrest



the Magistrate should further intimate to the arrested person that he has a right under the law to get himself medically examined."

"As observed by Supreme Court in *Sheela Barse vs. State of Maharashtra* it is also desirable that giving of such intimation and making enquiries should be in the absence of the police officer. The magistrate, before making an enquiry from the arrested person, should ensure that no police officer is present along with the accused. We are of opinion that Section 54 needs amendment to make it more effective and meaningful. We are further of opinion that the amended section should set out in detail the matters to be recorded in the medical report. We may incidentally note that in Uttar Pradesh by U.P. Act I of 1984 amendments have been made in Section 54."<sup>79</sup>

#### **Refusal to register information relating to commission of cognizable offence**

"Under the existing law, there is no provision for taking penal action against the police for their refusal to record information as contemplated by section 151 (1) of the Code. Sub-section (3) of section 154 provides that on the refusal by the police to register a case, the aggrieved person may send the substance of the complaint in writing to the Superintendent of Police who may investigate the case himself or direct any officer in-charge of police station to investigate the same. This procedure is, no doubt, useful as is illustrated by a reported case but it is not, in itself adequate, for meeting the problem of non-registration."

"The Law Commission of India in its 84<sup>th</sup> Report on "Rape and Allied Offences" took note of this position. The Commission found that administrative action or providing alternative method of lodging the information do not prove more effective and there was a need for suitable penal provision providing for the punishment of the erring police officers for their failure to record information relating to the commission of a cognizable offence. The Commission recommended the enactment of Section 167A in the Indian Penal Code. The draft of the recommended section was as under:-

**167A-whoever, being an officer in-charge of a police station and required by law to record any information relating to the commission of cognizable offence reported to him refuses or without reasonable cause fails to record such information, shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both.**

---

<sup>79</sup> Para 7.4, Page 33, Chapter 7, Medical Examination

The above penal provision, if implemented will certainly have a deterrent effect on the police and it may discourage or prevent the malpractice of refusing to register information relating to commission of cognizable offences. We are in full agreement with the recommendation made by the Commission in its 84<sup>th</sup> Report and we reiterate the same.”<sup>80</sup>

### **Custodial death**

“What we envisage is proposal whereunder, on refusal by the police to register a case of custodial (cognizable) offence, it should be possible to approach an appropriate judicial authority who should be empowered to conduct a preliminary inquiry and then (if satisfied that such action is called for) to direct the filing of a complaint before the competent Magistrate. The appropriate judicial authority would be the Court of Session in a case of (alleged) custodial death and the Chief Judicial Magistrate in a case of (alleged) custodial offence resulting in death. We recommend that a new section 154A be inserted in the Code of Criminal Procedure, 1973 on the above lines. It may also be provided that the Court of Sessions or the Chief Judicial Magistrate (as the case may be) may, if satisfied that such action is called for, direct the Ministerial officer to make a complaint as set out above.”<sup>81</sup>

“We are further of the view that the exclusionary provisions contained in sections 25 and 26 of the Evidence Act which are, at present, confined to police officers, should be extended to all public servants having power to arrest and detain persons in custody. If this recommendation is accepted, it follows that section 27 of the Act (unless it is repealed as per our first alternative) should also be extended to such public servants (after it is amended on other points according to our second alternative recommendation in the preceding paragraph).”<sup>82</sup>

---

<sup>80</sup> Para 8.3, Page 35-36, Chapter 8, First Information Report and Inquiry

<sup>81</sup> Para 8.5 Page 37, Chapter 8, First Information Report and Inquiry

<sup>82</sup> Para 11.7, Page 43, Chapter 11, Law of Evidence

### What is Procedure Established by Law

“In Maneka Gandhi v. UOI, a Constitution Bench of the Supreme Court went into the meaning of the expression “procedure established by law” in Article 21. The Court held that the procedure established by law does not mean any procedure but a procedure which is reasonable, just and fair. In fact Article 19 and Article 14 were both read into Article 21 for this purpose. The following dicta from the said decision bear reproduction:

“the law must therefore now be taken to be well-settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of ‘personal liberty’ and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that Article.... Now, if a law depriving a person of ‘personal liberty’ and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex-hypothesi it must also be liable to be tested with reference to Article 14....The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be “right and just and fair” and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.”<sup>84</sup>

### Cognizability and Arrestability

“Cognizability in the Code is not premised upon the quantum of punishment prescribed or the gravity of the crime but upon the need to arrest the person immediately for one or the other relevant purposes viz., to prevent the person from committing further offences, the need to reassure the public that they can feel reassured about the effectiveness of the law and order machinery, the need of investigation and may be, in some instances, the need to protect the offender from the wrath of public and so

---

<sup>83</sup> <http://lawcommissionofindia.nic.in/reports.htm>

<sup>84</sup> Page 13, Chapter 2, The relevant procedure of the Constitution of India, International Declarations/Covenants on Human Rights and their interpretation by the Supreme Court of India

on. It is for this reason that a close nexus is maintained between cognizability and arrestability.

So far as the other categorization viz., between bailable and non-bailable offences, is concerned, it appears by and large to be based upon the gravity of the offence (which necessarily means the quantum of punishment prescribed therefore) and the need to keep the offender incarcerated pending investigation and trial.

This aspect has to be kept in mind in view of the oft-repeated criticism that the distinction between cognizable and non-cognizable offences as also the categorization between bailable and non-bailable offences is illogical and is not based upon any consistent or acceptable logic.”<sup>85</sup>

### Accountability of Police for Wrongful Confinement

“Leaving aside this legal controversy, the fact of the matter is that the government very rarely grants the previous sanction for prosecution of a police officer for the offence of wrongful confinement. **In any event, the arrest is effected in a large majority of the cases by the police officers of lower ranks, who are removable from their office without the sanction of the government. In the case of such lower level officers, the protection of section 197 is not available and they can be prosecuted for wrongful confinement in case of an illegal or unwarranted arrest, as stated above, but such a prosecution is an impracticable proposition. If a police officer is so prosecuted, whether he is a police constable or sub-inspector or inspector, the whole police force, barring rare exceptions, would not only try to protect the officer but would also harass the complainant in several ways so as to compel him to withdraw it. It is this fear and apprehension, which cannot be said to be unfounded, which constitutes the reason for almost a total absence of such prosecutions of police officers. Notwithstanding the fact that a good number of arrests made are not lawful, no person ordinarily dares to challenge the might of the police department.**”<sup>86</sup>

**“The everyday situation is that wherever the arrest is found to be illegal, unwarranted or unjustified, the man is set free, may be sometimes unconditionally. But that is all that happens. Nothing happens to the police officer who has unlawfully or unjustifiably interfered with the liberty of a citizen and/or has wrongfully confined the person, whether in police custody or elsewhere. This position has indeed emboldened some police**

---

<sup>85</sup> Page 24, Chapter 3, The Relevant Provisions of the CrPC

<sup>86</sup> Page 28, Chapter 3, Relevant Provisions of CrPC

**officers to abuse their position and harass citizens for various oblique reasons.** They feel secure in their knowledge that any wrongful or illegal act on their behalf would not affect them, their careers or their prospects in service; all that would happen is, the person arrested would be let off by the courts. It is this situation which has also got to be remedied. (Some sanction, some liability, some punishment has to be provided for a police officer who deprives a person of his liberty mala fide or for oblique reasons. Of course, merely because a person arrested is not prosecuted or is not convicted, it does not necessarily mean that the arrest was illegal or mala fide. **But where the court finds the arrest to be wholly unjustified or an instance of abuse of power, the court must have the power to make appropriate orders against such police officer, either suo motu or on the application of the person so arrested unlawfully. Indeed, an obligation should be placed upon the court to make such orders wherever the arrest is found to be illegal, wholly unjustified or an instance of abuse of power.)"**

#### **Responsibilities of the Arresting and Detaining Authority**

**"It should also be provided by law expressly that once a person is arrested, it is the responsibility of the arresting and detaining authority to ensure the safety and well being of the detainee.**

**The recommendation of National Police Commission regarding mandatory medical examination of the arrested person deserves implementation.** In this connection, the decision of A.P. High Court in Challa Ramkrishna Reddy v. State of A.P.(AIR 1989 AP 235) – which has recently been affirmed by the Supreme Court in State of A.P. v.Challa Ramkrishna Reddy AIR 2000 SC 2083 - and the examples given therein, wherein the State would be liable for damages for the negligent or indifferent conduct of police/jail authorities should be kept in mind.

To put briefly, take a case where a person is arrested for simple theft or simple rioting; he is a heart patient; he is not allowed to take his medicines with him at the time of his arrest and no medicines are provided to him in spite of his asking and he dies. Or a case, where such a person (though carrying his medicines) suffers a heart attack and no reasonably prompt steps are taken for providing medical aid to him by the concerned authorities and he dies. It is obvious that had he not been arrested, his family and friends would have taken care of him. Should he die for want of medical help, only because he has

been arrested and detained for a minor offence. It would be too big a punishment. In such cases, State would be liable for damages.”<sup>87</sup>

### Entries in the Case Diary

“Besides calling for strict compliance with section 172, the Consultation Paper also suggested an amendment to section 172... **“Sub-section (1) of section 172 of the Code of Criminal Procedure requires that (1) “every police officer making an investigation under this chapter shall day-by-day enter his proceedings in the investigation in a diary setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained through his investigation”.**

“Inasmuch as such diary would also record and reflect the time, place and circumstances of arrest, it is necessary that the provisions of this sub-section should be strictly complied with. **In this behalf, however, it would be relevant to notice the following observations of the Supreme Court in Shamshul Kanwar v. State (AIR 1995 SC 1748) where the court pointed out the vagueness prevailing in the country in the matter of maintaining the diary under section 172. The court referred, in the first instance, to the fact that in every State there are Police Regulations/Police Standing Orders prescribing the manner in which such diaries are to be maintained and that there is no uniformity among them.”**

“The court pointed out that in some States like Uttar Pradesh, the diary under section 172 is known as ‘special diary’ or ‘case diary’ and in some other States like Andhra Pradesh and Tamil Nadu, it is known as ‘case diary’. The basis for distinction between ‘special diary’ and ‘case diary’, the court pointed out, may owe its origin to the words “police diary or otherwise” occurring in section 162 CrPC. The court also pointed out that the use of expression “case diary” in A.P. Regulations and in the Regulations of some other States like J&K and Kerala may indicate that it is something different than a “general diary”.”

“In some other States there appear to be Police Standing Orders directing that the diary under section 172 be maintained in two parts, first part relating to steps taken during the course of investigation by the police officer with particular reference to time at which police received the information and the further steps taken during the investigation and the second part containing

---

<sup>87</sup> Page 123, Chapter 11, Certain recommendations for safety and well-being of detainee, amending section 172, separate investigating and prosecuting agency and the Code of Criminal Procedure (Amendment) Bill, 2001



statement of circumstances ascertained during the investigation which obviously relate to statements recorded by the officer in terms of section 161 and other relevant material gathered during the investigation.”

“In view of this state of affairs, the Supreme Court suggested a legislative change to rectify this confusion and vagueness in the matter of maintenance of diary under section 172. It is therefore appropriate that section 172 be amended appropriately indicating the manner in which the diary under section 172 is to be maintained, its contents and the manner in which its contents are communicated to the court and the superior officers, if any. The significance of the case diary lies in its relevance as a safeguard against unfairness of police investigation. (The Amendment should also clarify whether case diary is different from General Diary and, if so, how should it be maintained.) (See the decision of the Delhi High Court in Ashok Kumar v. State (1979 Cr.L.J. 1477)). Such an amendment would also go to ensure that the time, place and circumstances of the arrest of an accused are also properly recorded and reflected by such record, which is indeed a statutory record.”

#### **Separation of Investigating and Prosecuting agency from Law and Order agency**

“Lastly, we may refer to the idea, repeatedly put forward by several participants in the Seminar, to separate the investigating and prosecuting agency from the law and order agency. It has been suggested that investigation of crime is a specialized process requiring a good amount of patience, expertise, training and a good understanding of the legal position concerning the subject-matter of investigation. It is also pointed out that in the matter of economic offences and more so on account of technological advances, the investigation has become a skill by itself requiring knowledge of accountancy, computer operations, stock-market and so on, and that the said job ought not to be entrusted to the police engaged in maintenance of law and order... It refers to the earlier recommendations of the Law Commission in its 14th Report, the recommendations of the National Police Commission, and records its own reasons, as many as seven in number, for accepting and implementing this idea. Their recommendation is contained in para nine of the said chapter:

“9. We recommend that the police officials entrusted with the investigation of grave offences should be separate and distinct from those entrusted with the enforcement of law and order and other miscellaneous duties. Separate investigating agency directly under the supervision of a designated Superintendent of Police be constituted. The hierarchy of the officers in the investigating police force should have adequate training and incentives for

**furthering effective investigations.** We suggest that the respective Law and Home Departments of various State Governments may work out details for betterment of their conditions of service.

**The officials of the investigating police force be made responsible for helping the courts in the conduct of cases and speedy trial by ensuring timely attendance of witnesses, production of accused and proper coordination with prosecuting agency.** Other necessary steps should also be taken for promoting efficiency in investigation. Accordingly, we recommend that necessary changes in the Police Acts, both Central and State, Police Regulations, Police Standing Orders, Police Manuals, be made by the Home Department in consultation with the Law Departments of State Governments.”<sup>88</sup>

### **Unnecessary Arrest**

**“The National Police Commission in its Third Report referring to the quality of arrests by the Police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails. The said Commission in its Third Report at page 31 observed thus:**

It is obvious that a major portion of the arrests were connected with very minor prosecutions and cannot, therefore, be regarded as quite necessary from the point of view of crime prevention. Continued detention in jail of the persons so arrested has also meant avoidable expenditure on their maintenance. In the above period it was estimated that 43.2 per cent of the expenditure in the connected jails was over such prisoners only who in the ultimate analysis need not have been arrested at all.”.... (The figures given in the Report of the National Police Commission are more than two decades old. Today, if anything, the position is worse.)”<sup>89</sup>

### **Rights of the Arrestee**

**“24. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the**

---

<sup>88</sup> Page 127, Chapter 11, Certain recommendations for safety and well-being of detainee, amending section 172, separate investigating and prosecuting agency And the Code of Criminal Procedure (Amendment) Bill. 2001

<sup>89</sup> Para 8, Annexure 1, Law Commission of India, Consultation Paper on Law Relating to Arrest, Part I, Law of Arrest



District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.”

“35. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.”

“46. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.”

“110. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.”

“211. A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board.”

“Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

**The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed.** These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.

These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the Courts from time to time.”<sup>90</sup>

---

<sup>90</sup> Para 14, , Annexure 1, Law Commission of India, Consultation Paper on Law Relating to Arrest, Part I, Law of Arrest

## Selected Recommendations of the National Police Commission<sup>91</sup>

The National Police Commission (NPC) was appointed by the Government of India in 1977 with wide terms of reference covering the police organisation, its role, functions, accountability, relations with the public, political interference in its work, misuse of powers, evaluation of its performance etc. This was the first Commission appointed at the national level after Independence. The Commission produced eight reports between 1979 and 1981, suggesting wide ranging reforms in the existing police set-up. The following recommendations have been selected from different reports of the NPC:

### **First Report:**

#### ***Complaints against the police:***

According to the NPC, any arrangement for inquiry into complaints against police should be acceptable both to police and public as fair and just. The Commission therefore suggested arrangements, which would include inquiries conducted by departmental authorities and those conducted by an independent authority outside the police. The Commission felt that a large number of complaints against police should be looked into and disposed off by the supervisory ranks in the police hierarchy. The Commission however recommended that a judicial inquiry should be made mandatory in the following categories of complaints against the police:

- alleged rape of a woman in police custody;
- death or grievous hurt caused while in police custody; and
- death of two or more persons resulting from police firing in the dispersal of unlawful assemblies.

The judicial inquiry should be held by an Additional Session's Judge nominated for this purpose in every district by State Government in consultation with the High Court. He will be designated as the District Inquiry Authority (DIA) and be assisted by an assessor. The DIA shall send the report of the inquiry to the State Government. It will be mandatory on the part of the government to publish the report and decisions taken thereon within two months of receipt of the report.

The DIA shall also serve as an independent authority to oversee the ultimate disposal of complaints dealt with departmentally. To oversee the satisfactory

---

<sup>91</sup> Source: [http://www.humanrightsinitiative.org/publications/police/npc\\_recommendations.pdf](http://www.humanrightsinitiative.org/publications/police/npc_recommendations.pdf)

implementation of the entire scheme, a Police Complaint Board should be set up the state level.

### **Second Report:**

#### ***Appointment of the Criminal Justice Commission:***

According to the NPC, the police cannot achieve complete success in their work unless all wings of the criminal justice system operate with simultaneous efficiency. It is therefore necessary to set up a body, which would comprehensively monitor the performance of all agencies and apply corrective measures from time to time. The existing Law Commission may be enlarged to function as a Criminal Justice Commission on a statutory basis. Such arrangements at the centre should be supported by similar arrangements at the state level.

#### ***Role of Police:***

The basic role of the police is to function as a law enforcement agency and render impartial service to law, without any heed to wishes, indications or desires expressed by the government which either come in conflict with or do not conform to the provisions contained in the constitution or laws. This should be spelt out in the Police Act. The police should have duly recognised service-oriented role in providing relief to people in distress situations. They should be trained and equipped to perform the service oriented functions.

#### ***Political Interference in Police Work:***

In the existing set-up, the police function under the executive control of the state government. According to the Commission, the manner in which political control has been exercised over the police in this country has led to gross abuses, resulting in erosion of rule of law and loss of police credibility as a professional organisation. The threat of transfer / suspension is the most potent weapon in the hands of the politician to bend the police down to his will. The Commission recommended that the superintendence of the state government over the police should be limited to ensure that police performance is in strict accordance with law. In the performance of its tasks, the police should be subject to overall guidance from the government which should lay down broad policies for adoption in different situations. There should however be no instructions in regard to actual operations in the field. In regard to investigation work, in any case, the police are beyond any intervention by the executive or politicians.

To help the state government discharge their superintending responsibility in an open manner under the framework of law, a State Secretary Commission

should be setup through law in each state. The State Security Commission should:

- lay down broad policy guidelines and directions for the performance of preventive tasks and service-oriented functions by the police;
- evaluate the performance of the State Police every year and present a report to the State Legislature;
- function as a forum of appeal to dispose of representations from officers regarding their being subjected to illegal orders and regarding their promotions; and
- generally keeping in review the functioning of the police in the state.

***Statutory Tenure of Service:***

The chief of police should be assured of a fixed tenure of office. The tenure may be for four years or for a period extending up to retirement, whichever is earlier. The removal of the chief of police from his post before the expiry of the tenure should require approval of the State Security Commission.

***Selection of Chief of Police:***

The head of the police force should be selected from a panel of three IPS officers of that state cadre. The panel should be prepared by a committee headed by the Chairman of the Union Public Service Commission.

***Transfer/Suspension Orders:***

Police officers should be effectively protected against whimsical and mala fide transfer/suspension orders. There should be a provision in the Police Act, specifying the authorities competent to issue such orders regarding different ranks. Any such orders passed by any authority other than those specified in the Act will be rendered null and void.

**Third Report**

***Police and the Weaker Sections:***

Some important recommendations made by the NPC about police response towards weaker sections of society are summarised below:

The NPC has recommended the establishment of special investigation cell in the police department at State level to monitor the progress of investigation of cases under the Protection of Civil Rights Act or other atrocities against Scheduled Castes and Tribes. A composite cell may be constituted at the district level under the Sub-Divisional Officer to inquire into complaints

emanating from scheduled Castes/Tribes, particularly those relating to lapses in administrative measures meant for their relief.

An important cause for dissatisfaction of weaker sections of society is that the police sometimes do not take cognizance of their complaints of ill treatment at the hands of upper castes on the ground that complaints are non cognizable and therefore cannot be investigated by them without orders from a magistrate. The NPC has recommended that section 155 of the Code of Criminal Procedure should be suitably amended to facilitate appropriate and effective police response to non-cognisable complaints in two categories of cases: (i) to protect a member of the weaker sections from exploitation and injustice, or (ii) to prevent a possible breach of public peace that might result from absence of effective action on complaint of a non-cognisable offence.

A comprehensive legislation should be enacted setting out the procedure for the allotment of land to landless poor. Police officers from the local police station should be associated with act of handing over possession of land to the landless and a brief record of this should be kept in the police station records.

#### ***Postings of Officers:***

The postings of officers in charge of police stations should be the exclusive responsibility of the district Superintendent of Police. The Chief of Police should be exclusively responsible for selecting and posting Superintendents of Police in charge of districts.

#### ***Guidelines for Avoidance of Vexatious Arrests:***

Presently the powers of the arrest available to the police give ample scope for harassment and humiliation of persons, prompted by mala fide considerations. In actual practice, several persons who ought to be arrested are let free on account of political influence or other considerations, while harmless persons who need not be arrested at all are often arrested and even remanded to police custody on inadequate grounds. Some mala fide arrests get exposed on habeas corpus petitions filed in High Courts but such exposures are rare compared to the large number of unjustified arrests that take place all the time. NPC has recommended very strict guidelines for making arrests by the police, which should be strictly observed in day-to-day administration by the senior supervisory ranks. However, the State governments are yet to make firm arrangements down the line for observing these guidelines in day-to-day police work.

**The NPC also recommended that sections 2(c) and 2(1) of the Code of Criminal Procedure should be amended to remove the emphasis on arrest in**

**the definition of cognisable and non-cognisable offences and section 170 of the Code of Criminal Procedure should be amended to remove the impression that it is mandatory to make an arrest in non-bailable cases.**

***Guidelines regarding use of Handcuffs:***

The threat of putting handcuffs on persons under arrest is another source of corruption and harassment. The following guidelines must be observed:

- No person shall be handcuffed who, by reason of age, sex or infirmity can be kept in custody without handcuffs.
- No person arrested on a bailable offence shall be handcuffed, unless for some special reasons, it is believed that he is likely to escape.
- In cases under judicial custody, court's instructions should be obtained before handcuffing the accused.
- Under trial prisoners and other accused persons should not be handcuffed and chained unless there is reasonable expectation that such persons will use violence or attempt to escape. The police escort must be sufficiently strong to prevent escape.
- Whenever any accused is handcuffed, the fact and reasons should be stated in the Sentry Relief Book.
- In no case should prisoners or accused persons, who are aged and bed-ridden in hospitals, or women or juvenile or civil prisoners, be handcuffed or fettered.

**Fourth Report**

***Registration of FIR:***

Victims of crimes are sometimes turned away from a police station on the mere ground that the reported crime has occurred in the jurisdiction of some other police station and it is for the victim to go there and make his complaint. This works to the disadvantage of ignorant people and weaker sections in society. The NPC has recommended an important amendment to Section 154 Cr.P.C. which would make it incumbent on a police station to register an FIR whether or not the crime has taken place in its jurisdiction and then transfer the FIR to the concerned police station, if necessary.

***Examination of Witnesses:***

The examination of witnesses should be conducted as far as practicable near the scene of offence or at the residence of witnesses concerned at some convenient place nearby.

***Statement of Witnesses:***

According to existing law, a police officer is precluded from obtaining the signature of the person whose statement has been recorded by him. The

Commission has recommended that the existing practice of recording in detail the statement by a witness during investigation should be done away with. In its place, the Commission has suggested an arrangement in which the investigating officer can record the facts as ascertained by him on examination of a witness. This statement of facts can be in third person in the language of the investigating officer himself and a copy of the statement should be handed over to the witness under acknowledgement. This arrangement would also act as a safeguard against the malpractice of padding of statements which the investigating officers are often accused of doing.

***Restoration of Stolen Property to Victims of Crimes:***

Presently, properties recovered by the police during investigation or otherwise are first transferred to court custody. Their return to the rightful owner is ordered at a much later stage of the criminal proceedings. During the intervening period, there is considerable risk of damage to the property because of indifferent handling at different stages of police and court custody. Sophisticated electronic goods run a serious risk of irreparable damage. Successful detection of case does not provide any psychological satisfaction to the victims of crime when the lost property is kept away from them for a long period without proper attention and care. NPC has recommended a change in the existing provisions in law to facilitate early return of the recovered property to the victims concerned even at the stage of investigation, protected by appropriate bonds for their safe retention and later production in court.

***Compounding Offences:***

The NPC has recommended that the police may be empowered in law to compound offences in simple cases even at the stage of police investigation, when both parties to a dispute may themselves like to settle the matter amicably. Due safeguards must of course be provided against a forced or contrived compromise. Presently this facility is available only at the stage of trial. This amendment in law would also reduce the workload in courts.

***Intimation about Arrest:***

The NPC has recommended a new section 50-A in Chapter V of Cr.P.C. requiring the police to give intimation about the arrest of a person to anyone who may reasonably be named by him to avoid agonising suspense to the members of his family about his whereabouts.

***Use of Third Degree Methods:***

To reduce the use of third degree methods, the NPC has recommended:

- Surprise visits by senior officers to police stations to detect persons held in illegal custody and subjected to ill treatment

- The magistrate should be required by rules to question the arrested person if he has any complaint of ill treatment by the police and in case of complaint should get him medically examined.
- There should be a mandatory judicial inquiry in cases of death or grievous hurt caused while in police custody
- Police performance should not be evaluated on the basis of crime statistics or number of cases solved.
- Training institutions should develop scientific interrogation techniques and impart effective instructions to trainees in this regard.

#### ***Inspections of courts:***

There is need to evolve a scheme of inspections at the level of High Court as well as Sessions Courts to ensure proper functioning of the subordinate courts. A whole time functionary of the rank of a senior District Sessions Judge who is qualified for appointment as High Court Judge may be attached to each High Court to inspect the district courts periodically. A similar functionary of the rank of Additional Sessions Judge may be entrusted with inspections at the district level. The inspecting arrangement proposed above should also ensure the availability of adequate facilities for the witnesses and others who participate in court proceedings.

#### ***Attendance of Witnesses:***

The allowances payable to witnesses for their attendance in court should be fixed on a realistic basis and their payment should be effected through a simple procedure, which should avoid delay and inconvenience.

#### ***Fifth Report:***

##### ***Recruitment to the Police:***

Recruitment to the Police must be at two levels only- Constables and Indian Police Service. The recruitment at other levels should be eliminated in a phased manner.

##### ***Psychological Tests:***

Properly developed psychological tests should form an important part of the selection procedure. The Central Government should develop the psychological tests with the help of the Ministry of Defence.

##### ***Evaluation during Training:***

The Commission recommended that there should be constant evaluation of the performance, attitudes and behaviour of all recruits during training and those who are not shaping as good policemen should be weeded out.



### ***Control of the District Magistrate:***

Presently, under section 4 of the Police Act of 1861, the District Police is subject to the "general control and direction" of the District Magistrate. The NPC felt that this can not be construed as warranting any interference in the internal management of the police force. The police should perform with full accountability to the law of the land. Any rule or regulation which unnecessarily or without purpose subordinates the police to the DM should be removed. However, there are a number of areas, which would require active cooperation of different departments and in such matters coordination by the District Magistrate will be necessary. The role of the District Magistrate as a chief coordinating authority should be recognised and respected by the police. The NPC has prescribed the areas where the District Magistrate can play his role as the coordinating authority.

### ***Causes of Poor Police Public Relations:***

Police public relations are in a very unsatisfactory state. Police partiality, corruption, brutality and failure to register cognizable offences are the most important reasons. Police do in fact harass even those people who try to help them.

### ***Vertical Communication in Police:***

Every policeman must develop an attitude of utmost courtesy and consideration towards members of the public who come to him for help. However, the manner in which police personnel at lower levels behave towards public is largely conditioned by the manner in which they are themselves treated by their own higher officers within the force. There is a simultaneous need for reform in behaviour and conduct of police officers towards one another.

### ***Victims of Crime:***

The criminal justice system shows no concern for the victim of crime at any stage. The legislation of a Criminal Injuries Compensation Act is recommended.

### ***Need for Transparency:***

All police activities, to the extent possible, should be open, except in four specific areas, which are (i) operations, (ii) intelligence on the basis of which operations are planned and conducted (iii) privacy of the individual citizen and (iv) judicial requirements.

***Women Police:***

The NPC has recommended that women police should be strengthened and assigned investigation work in much greater measure than at present. Women police should become an integral part of the police organisation and be used to deal with crimes against women and children and in tackling the problem of juvenile delinquency. They should in due course share all the duties now performed by their male counterparts. They should be recruited in much larger numbers than at present, particularly in the ranks of Assistant Sub-inspectors and Sub-inspectors of Police.

***Sixth Report:******Examinations for Promotion of Officers:***

Before promotion to the ranks of Superintendent of Police, DIG and IG, all IPS officers should be required to undergo specifically designed pre-promotion courses followed by an examination and an objective selection process. Those who are unable to qualify for the post of DIG and IG even after being given two more chances, should be retired from service.

***Creation of Central IPS Cadres:***

Two Central IPS Cadres should be constituted - one for the paramilitary organisations and the other for such organisations as IB, CBI, RAW etc.

***Police Commissionerate System for Major Cities:***

In large urban areas, crime and law and order situations develop rapidly, requiring a speedy and effective operational response from the police. This can be possible only when the police are organised to perform twin basic functions of decision making and implementation. The Commission has therefore recommended that in cities with a population of 5 lakhs and above and even in places where there may be special reasons like speedy urbanisation, industrialisation etc., the system of police commissionerate would provide more effective policing and should be introduced.

***Communal Riots:***

The National Police Commission felt that during communal riots, adequate interest is not taken in investigation of heinous and serious crimes. For investigation of such cases, special investigating squads under the State CID should be set up comprising officers of proven integrity and impartiality. Vigorous investigation should be followed by prosecution to ensure deterrent punishment to the offenders. Hence withdrawal from trial of cases occurring during communal riots by the State Governments with a view to promoting communal harmony often proves illusory and has to be discouraged.

### ***Reservation in the Force:***

The Commission has expressed its view against reservation of vacancies in the police for minorities and other weaker sections on the basis of their share in population. The Commission felt that it would fragment the force along caste and communal lines and it goes against the fundamental police philosophy that it must rise above caste and creed and act impartially as the agent of law and order. The composition of the force should reflect the general mix of communities as it exists in the society and thereby command the confidence of different sections of the society.

### ***Separation of investigating staff from law and order staff:***

The NPC has made conflicting recommendations on this subject. While in the Sixth Report, it has suggested the separation of staff at the police station level (Para 48.15), in the Seventh Report, the Commission has expressed an opinion against the bifurcation of staff on the ground that the police work cannot be put in water-tight compartments. (Para 50.22)

### ***Seventh Report:***

#### ***Norms for Police Stations:***

A police station in a rural area should not have jurisdiction of more than 150 kms. In urban areas, population density should be one of the main considerations. A police station should not be required to police more than 60,000 population. If it registers more than 700 crimes annually, another police station may be created.

Police stations in cities with more than 900 cognizable IPC offences should have a Dy. SP/ ASP as SHO. Police Stations investigating over 300 IPCs per year should be headed by an Inspector of Police. The third category will consist of smaller police stations headed by Sub Inspectors. An investigating officer should not be required to investigate more than 50 - 60 IPC cases in India.

### ***Restructuring of Civil Police Hierarchy:***

There should be an increase in the strength at middle levels of ASI/SI/Inspector. Increase in the strength of these ranks should be offset by reducing numbers at the lower levels of constabulary. This will provide large number of investigating officers and improve promotional opportunities for the lower ranks.

### ***Management of the Police Force:***

The internal management of the police force in the state should be entirely under the purview of the chief of police. The powers of the heads of the state

police forces in respect of personnel and financial management and to provide infra-structural facilities for the growth of the police should be enhanced.

***Central Law for Armed Police Forces:***

There should be a central enactment to ensure uniformity in composition, officering pattern, training, discipline and efficiency of the state armed police battalions.

***Establishment of a Central Police Committee:***

A Central Police Committee to look after the functions of consultancy and monitoring be created because an expert agency is required by the Central Government and the State Security Commissions to advise them on matters relating to:

- (i) police organisation and police reforms of a general nature;
- (ii) central grants and loans to the State Police Forces for their modernisation and development; and
- (iii) budgetary allotments to State Police Forces.

The Committee could also make a general evaluation of policing in the country and provide expertise to the State Security Commissions for their own evaluation of they so require.

***Establishment of an All India Police Institute:***

An All India Police Institute on the lines of similar professional institutions existing for Engineers, Chartered Accountants and other professionals be created. This Institute, when established, should be kept under the proposed Central Police Committee.

***Eighth Report:***

***Police Accountability:***

There should be continuous monitoring of the performance of the police forces in the country. The State Security Commission should have an independent cell to evaluate police performance. The annual administration report of the head of the police force and assessment report of the Central Police Committee will provide additional material to the State Security Commission to prepare a final report on the performance of the state police to be placed before the State Legislature. The police functionaries individually as well as in groups should be sensitised to the idea of accountability to the people.

***Withdrawal of Protection:***

Sections 132 and 197 of the Cr. P.C. 1973 provide protection to various categories of public servants against any prosecution brought against them

relating to performance of official duties. The protection available to the police officers under these sections should be withdrawn so that the private complainant is free to press his complaint against police official for a judicial pronouncement without there being a provision to obtain prior permission of the competent authority for such prosecution

***Enactment of a Model Police Act:***

The Police Act of 1861 should be replaced by a new Police Act, which not only changes the system of superintendence and control over the police but also enlarges the role of the police to make it function as an agency which promotes the rule of law in the country and renders impartial service to the community.

## NHRC GUIDELINES REGARDING ARREST<sup>92</sup>

### Need for Guidelines

Arrest involves restriction of liberty of a person arrested and therefore, infringes the basic human rights of liberty. Nevertheless the Constitution of India as well as international human rights law recognise the power of the State to arrest any person as a part of its primary role of maintaining law and order. The Constitution requires a just, fair and reasonable procedure established by law under which alone such deprivation of liberty is permissible.

Although Article 22(1) of the Constitution provides that every person placed under arrest shall be informed as soon as may be the ground of arrest and shall not be denied the right to consult and be defended by a lawyer of his choice and S.50 of the Code of Criminal Procedure, 1973 (Cr. PC) requires a police officer arresting any person to “forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest”, in actual practice these requirements are observed more in the breach.

Likewise, the requirement of production of the arrested person before the court promptly which is mandated both under the Constitution [Article 22(2)] and the Cr. PC (Section 57) is also not adhered to strictly.

A large number of complaints pertaining to Human Rights violations are in the area of abuse of police powers, particularly those of arrest and detention. It has, therefore, become necessary, with a view to narrowing the gap between law and practice, to prescribe guidelines regarding arrest even while at the same time not unduly curtailing the power of the police to effectively maintain and enforce law and order and proper investigation.

### PRE-ARREST

- The power to arrest without a warrant should be exercised only after a reasonable satisfaction is reached, after some investigation, as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person's complicity as well as the need to effect arrest. [Joginder Kumar's case- (1994) 4 SCC 260].
- Arrest cannot be justified merely on the existence of power, as a matter of law, to arrest without a warrant in a cognizable case.

---

<sup>92</sup> Source: <http://nhrc.nic.in/Documents/sec-3.pdf>

- After Joginder Kumar's pronouncement of the Supreme Court the question whether the power of arrest has been exercised reasonably or not is clearly a justiciable one.
- Arrest in cognizable cases may be considered justified in one or other of the following circumstances:
  - (i) The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the suspect to prevent him from escaping or evading the process of law.
  - (ii) The suspect is given to violent behaviour and is likely to commit further offences.
  - (iii) The suspect requires to be prevented from destroying evidence or interfering with witnesses or warning other suspects who have not yet been arrested.
  - (iv) The suspect is a habitual offender who, unless arrested, is likely to commit similar or further offences. [3rd Report of National Police Commission]
- Except in heinous offences, as mentioned above, an arrest must be avoided if a police officer issues notice to the person to attend the police station and not leave the station without permission. (see Joginder Kumar's case (1994) SCC 260)
- The power to arrest must be avoided where the offences are bailable unless there is a strong apprehension of the suspect absconding .
- Police officers carrying out an arrest or interrogation should bear clear identification and name tags with designations. The particulars of police personnel carrying out the arrest or interrogation should be recorded contemporaneously, in a register kept at the police station.

## **ARREST**

- As a rule use of force should be avoided while effecting arrest. However, in case of forcible resistance to arrest, minimum force to overcome such resistance may be used. However, care must be taken to ensure that injuries to the person being arrested, visible or otherwise, is avoided.
- The dignity of the person being arrested should be protected. Public display or parading of the person arrested should not be permitted at any cost.
- Searches of the person arrested must be done with due respect to the dignity of the person, without force or aggression and with care for the person's right to privacy. Searches of women should only be made by other women with strict regard to decency. (S.51(2) Cr.PC.)
- The use of handcuffs or leg chains should be avoided and if at all, it should be resorted to strictly in accordance with the law repeatedly

explained and mandated in judgement of the Supreme Court in Prem Shanker Shukla v. Delhi Administration [(1980) 3 SCC 526] and Citizen for Democracy v. State of Assam [(1995) 3 SCC 743].

- As far as is practicable women police officers should be associated where the person or persons being arrested are women. The arrest of women between sunset and sunrise should be avoided.
- Where children or juveniles are sought to be arrested, no force or beatings should be administered under any circumstances. Police Officers, may for this purpose, associate respectable citizens so that the children or juveniles are not terrorised and minimal coercion is used.
- Where the arrest is without a warrant, the person arrested has to be immediately informed of the grounds of arrest in a language which he or she understands. Again, for this purpose, the police, if necessary may take the help of respectable citizens. These grounds must have already been recorded in writing in police records. The person arrested should be shown the written reasons as well and also given a copy on demand. (S.50(1) Cr.PC.)
- The arrested person can, on a request made by him or her, demand that a friend, relative or other person known to him be informed of the fact of his arrest and the place of his detention. The police should record in a register the name of the person so informed. [Joginder Kumar's case (supra)].
- If a person is arrested for a bailable offence, the police officer should inform him of his entitlement to be released on bail so that he may arrange for sureties. (S.50(2) Cr.PC.)
- Apart from informing the person arrested of the above rights, the police should also inform him of his right to consult and be defended by a lawyer of his choice. He should also be informed that he is entitled to free legal aid at state expense [D.K. Basu's case (1997) 1 SCC].
- When the person arrested is brought to the police station, he should, if he makes a request in this regard, be given prompt medical assistance. He must be informed of this right. Where the police officer finds that the arrested person is in a condition where he is unable to make such request but is in need of medical help, he should promptly arrange for the same. This must also be recorded contemporaneously in a register. The female requesting for medical help should be examined only by a female registered medical practitioner. (S.53 Cr.PC.)
- Information regarding the arrest and the place of detention should be communicated by the police officer effecting the arrest without any delay to the police Control Room and District / State Headquarters. There must be a monitoring mechanism working round the clock.



- As soon as the person is arrested, police officer effecting the arrest shall make a mention of the existence or non-existence of any injury(s) on the person of the arrestee in the register of arrest. If any injuries are found on the person of the arrestee, full description and other particulars as to the manner in which the injuries were caused should be mentioned in the register, which entry shall also be signed by the police officer and the arrestee. At the time of release of the arrestee, a certificate to the above effect under the signature of the police officer shall be issued to the arrestee.
- If the arrestee has been remanded to police custody under the orders of the court, the arrestee should be subjected to medical examination by a trained Medical Officer every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. At the time of his release from the police custody, the arrestee shall be got medically examined and a certificate shall be issued to him stating therein the factual position of the existence or nonexistence of any injuries on his person.

## **POST ARREST**

- The person under arrest must be produced before the appropriate court within 24 hours of the arrest (Ss 56 and 57 Cr.PC).
- The person arrested should be permitted to meet his lawyer at any time during the interrogation.
- The interrogation should be conducted in a clearly identifiable place, which has been notified for this purpose by the Government. The place must be accessible and the relatives or friend of the person arrested must be informed of the place of interrogation taking place.
- The methods of interrogation must be consistent with the recognised rights to life, dignity and liberty and right against torture and degrading treatment.

## **ENFORCEMENT OF GUIDELINES**

1. The guidelines must be translated in as many languages as possible and distributed to every police station. It must also be incorporated in a handbook which should be given to every policeman.
2. Guidelines must receive maximum publicity in the print or other electronic media. It should also be prominently displayed on notice board, in more than one language, in every police station.
3. The police must set up a complaint redressal mechanism, which will promptly investigate complaints of violation of guidelines and take corrective action.

4. The notice board which displays guidelines must also indicate the location of the complaints redressal mechanism and how that body can be approached.
5. NGOs and public institutions including courts, hospitals, universities etc., must be involved in the dissemination of these guidelines to ensure the widest possible reach.
6. The functioning of the complaint redressal mechanism must be transparent and its reports accessible.
7. Prompt action must be taken against errant police officers for violation of the guidelines. This should not be limited to departmental enquiries but also set in motion the criminal justice mechanism.
8. Sensitisation and training of police officers is essential for effective implementation of the guidelines.



**Section V:  
SELF ASSESSMENT QUESTIONS**

HkkX V:  
LOk-मूल्यांकन के लिए प्रश्न

## PART I – Law and Procedure

### ARREST

#### ❖ Powers & Obligations vis-a-vis Arrest

1. What is Arrest?
2. When is an arrest wrongful?
3. Who is authorized to make an arrest?
4. When can the police arrest the accused without a warrant from a competent magistrate? What are the safeguards against arrest without warrant?
5. In case of arrest conducted with warrant, is it acceptable that the person may not be physically produced as judicial mind has already been applied?
6. Can the police authorize detention without order of Magistrate in non-cognizable offences?
7. Where an accused has been named in the FIR, and the offence is punishable with up to 7 years imprisonment, what are the options before the police officer?
8. The arrest provisions and powers of the police laid down in the Cr.P.C. have undergone legislative amendments in recent years? What are these?
9. What are the duties of police officer/investigating officer at the time of arrest?
10. What information is to be noted in the Case Diary by the investigating officer?
11. What consequences follow if Sections 41(1)(b) and 41 A are not strictly adhered to by the police officer carrying out the arrest?
12. Which legal provisions provide for mandatory production of the arrestee within 24 hours of arrest? Does this time include the travel time?
13. Why should the accused be produced before the nearest magistrate within 24 hours of arrest?
14. What is an arrest memo?

## खंड I - विधि और दंड-प्रक्रिया

### गिरफ्तारी

❖ गिरफ्तारी से संबंधित शक्तियां और दायित्व

1. गिरफ्तारी(अरेस्ट) क्या है?
2. किन स्थितियों में गिरफ्तारी गलत कहलाती है ?
3. गिरफ्तार करने के लिए किस व्यक्ति को अधिकार प्राप्त है?
4. किसी सक्षम मैजिस्ट्रेट के वारंट के बगैर पुलिस किसी अभियुक्त को किन स्थितियों में गिरफ्तार कर सकती है ? बगैर वारंट की गिरफ्तारी के विरुद्ध सुरक्षा के कौन से उपाय हैं ?
5. यदि गिरफ्तारी वारंट के साथ होती है और यह दलील दी जाती है कि गिरफ्तारी के मामले में न्याय-बुद्धि का परिचय दिया गया है तो क्या ऐसी स्थिति में गिरफ्तार व्यक्ति को सशरीर प्रस्तुत ना करना स्वीकार करने योग्य है ?
6. क्या पुलिस असंज्ञेय अपराध के मामले में मैजिस्ट्रेट के आदेश के बगैर किसी व्यक्ति को हिरासत में लेने की अधिकारिणी है ?
7. जब किसी अभियुक्त का नाम प्राथमिकी(एफआईआर) में दर्ज हो और अपराध दंडनीय श्रेणी का हो जिसमें अधिकतम 7 साल की कैद हो सकती हो तो ऐसे मामले में पुलिस अधिकारी के पास कौन-से विकल्प हैं?
8. दंड प्रक्रिया संहिता में वर्णित गिरफ्तारी से संबंधित पुलिस अधिकारी की शक्तियों और प्रावधानों में हाल के बरसों में विधायी संशोधन हुए हैं? ये संशोधन क्या हैं?
9. गिरफ्तारी के वक्त किसी पुलिस अधिकारी /जांच अधिकारी के कर्तव्य क्या हैं?
10. जांच अधिकारी को केस डायरी में कौन-सी सूचनायें दर्ज करनी होती हैं?
11. किसी व्यक्ति को गिरफ्तार करने पहुंचा पुलिस अधिकारी अगर सेक्शन 41(1)(बी) और 41 ए का अक्षरशः पालन नहीं करता तो इसके कौन से परिणाम हो सकते हैं?
12. गिरफ्तारी के 24 घंटे के भीतर गिरफ्तार किए गए व्यक्ति को सशरीर उपस्थित करना किस प्रावधान के तहत अनिवार्य है? क्या उपर्युक्त अवधि में वह समय भी जोड़ा जाता है जो यात्रा में लगा ?
13. किसी अभियुक्त को गिरफ्तारी के 24 घंटे के भीतर नजदीकी मैजिस्ट्रेट के समक्ष क्यों प्रस्तुत करना चाहिए?
14. अरेस्ट मेमो क्या है ?

15. What is the quantum of punishment prescribed for causing hurt to extort confession?
16. Which are the key judgments that limit the arrest powers of the police?
17. Which Supreme Court judgment enlists the guidelines which the police must follow at the time of arrest?
18. What has the Law Commission said with regard to guidelines that the police must follow at the time of arrest?
19. What are the important guidelines given by the National Police Commission regarding arrest?

❖ **Rights of the Arrestee**

20. What are the rights of the arrestee? What are the statutory provisions and judgments that support these rights?
21. Who all can an arrestee inform about his arrest or the place where he is being detained?
22. What are the safeguards against unreasonable/unnecessary arrest?
23. Do you think the police have duties to intimate legal aid authorities at the time of arrest? Are there judgments to support this position?
24. Can the police coerce an arrestee to answer questions during interrogation?
25. Can a suspect in police custody meet with his lawyer?
26. Is it mandatory for an arrestee to undergo medical examination at the time of arrest?
27. Does the counsel have the right to interview his client in police custody?
28. Can an arrestee be kept under fetters or put on handcuffs? If yes, what are the relevant considerations for putting the inmate under fetters and on handcuffs? Which Supreme Court judgments have laid down the standards for putting the inmates under such conditions?
29. Can a woman be arrested before sunrise or after sunset?

15. जुर्म का इकबाल अगर चोट पहुंचाकर कराया जाता है तो इस स्थिति में चोट पहुंचाने वाले के लिए किस मात्रा में दंड का विधान है?
16. उन मुख्य फैसलों के बारे में बताएं जिससे गिरफ्तारी से संबंधित शक्तियां सीमित होती हैं?
17. सर्वोच्च न्यायालय के किस फैसले में उन दिशानिर्देशों को सूचीबद्ध किया गया है जिनका पालन करना गिरफ्तारी के वक्त पुलिस के लिए जरूरी है ?
18. गिरफ्तारी के वक्त जिन दिशानिर्देशों का पालन पुलिस के लिए जरूरी है, उनके बारे में पुलिस आयोग ने क्या कहा है?
19. राष्ट्रीय पुलिस आयोग ने गिरफ्तारी के संदर्भ में कौन-से महत्वपूर्ण दिशा-निर्देश दिए हैं?

#### ❖ गिरफ्तार किए गए व्यक्ति के अधिकार

20. गिरफ्तार व्यक्ति के कौन-से अधिकार हैं? उन वैधानिक प्रावधानों और फैसलों के बारे में बतायें जो इन अधिकारों की पुष्टी करते हैं?
21. गिरफ्तार व्यक्ति अपनी गिरफ्तारी के बारे में अथवा उस जगह के बारे में जहां उसे हिरासत में रखा गया है, किसे सूचना दे सकता है?
22. गैरजरूरी या फिर गैरवाजिब गिरफ्तारी के विरुद्ध सुरक्षा के कौन-से उपाय हैं?
23. क्या आप मानते हैं कि गिरफ्तारी के वक्त पुलिस का दायित्व बनता है कि वह कानूनी सहायता प्रदान करने वाले अधिकारियों को सूचित करें? क्या कुछ अदालती फैसले इस स्थिति की पुष्टी करते हैं?
24. क्या पुलिस, अपने जांच के क्रम में पूछ-ताछ करते हुए, गिरफ्तार किए गए व्यक्ति के साथ जोर-जबर्दस्ती का व्यवहार कर सकती है?
25. क्या संदिग्ध करार दिया गया कोई व्यक्ति पुलिस हिरासत के दौरान अपने वकील से मिल सकता है?
26. क्या गिरफ्तार किए गए व्यक्ति की गिरफ्तारी के वक्त चिकित्सीय-जांच जरूरी है?
27. क्या विधिक परामर्शदाता(वकील) को इस बात का अधिकार है कि वह पुलिस हिरासत में लिए गए अपने ग्राहक(मुवक्कील) का साक्षात्कार ले सके?
28. क्या गिरफ्तार व्यक्ति को जंजीरों में जकड़ा या हथकड़ी से cka/kka जा सकता है ? यदि हां तो बताइए कि किसी बंदी को जंजीर में जकड़ने या हथकड़ी से cka/kus पर किन जरूरी बातों का ध्यान रखना चाहिए ? सर्वोच्च न्यायालय के किस फैसले में रिमांड पर लिए गए कैदी पर जंजीरों , Oka हथकड़ी के उपयोग के संदर्भ में पालन किए जाने वाले मानकों के बारे में बताया गया है?
29. क्या किसी महिला को सूर्योदय से पहले या सूर्यास्त के बाद गिरफ्तार किया जा सकता है?



## REMAND

### ❖ On Definition and Scope of Powers & Duties

1. What is remand?
  - a) Is it an order passed by the police to continue the detention of the accused in police custody for further investigation?
  - b) Is it mandatory for a Magistrate to pass an order remanding an accused to either police custody or judicial custody?
  - c) Is it a discretionary power of a Magistrate to be exercised based on the case diary and other material before him?
  - d) Is it an executive function of the Magistrate?
  - e) Is it a judicial function of the Magistrate requiring application of judicial mind?
2. At what stage of investigation does Section 167 become applicable in criminal proceedings?
3. When is a remand order illegal?
4. During remand, is the physical production of the accused before the magistrate mandatory? Why?
5. Is it legal for the authorities to send only the production warrant for further extension of remand without producing the accused due to lack of police escorts?
6. What is the importance of Section 167?
7. What are the powers & duties of Magistrates under Section 167 in Criminal Rules of Practice in Rajasthan?
8. Can a person be remanded by Magistrate in cases where police has initiated investigation under non-cognizable offence?
9. What are the remanding powers of the magistrate when arrest has been carried out under Sections 107, 108, 109, 110 and 151 of Cr. P.C.?
10. Does the signature of the constable on the remand application, instead of the investigating officer, and non-submission of the case diary, make the remand illegal?

## रिमांड

❖ परिभाषा संबंधी तथा शक्ति-क्षेत्र और कर्तव्यों से संबंधित प्रश्न

1. रिमांड क्या है?
  - a) क्या यह पुलिस के द्वारा जारी किया गया कोई आदेश है जिसमें किसी अभियुक्त के बारे में कहा गया हो कि उसे आगे की जांच के लिए बंदी बनाये रखना जरूरी है ?
  - b) क्या किसी मैजिस्ट्रेट के लिए अभियुक्त को रिमांड पर देते हुए उसे पुलिस हिरासत या फिर न्यायिक हिरासत में रखने संबंधी आदेश जारी करना अनिवार्य है?
  - c) क्या यह किसी मैजिस्ट्रेट का विवेकाधिकार है जिसका उपयोग वह अपने समक्ष प्रस्तुत केस डायरी तथा अन्य सामग्रियों के आधार पर करता है?
  - d) क्या यह मैजिस्ट्रेट के अधिशासी कार्य के अंतर्गत आता है?
  - e) क्या यह मैजिस्ट्रेट के न्यायप्रदायी कार्य(judicial function) के अंतर्गत आता है जिसमें न्याय-बुद्धि का प्रयोग जरूरी है?
2. दंड-प्रक्रिया के अंतर्गत जांच के किस चरण में धारा-167 लागू की जा सकती है?
3. किन स्थितियों में कोई रिमांड ऑर्डर (पुनर्रपण आदेश) अवैध हो जाता है?
4. क्या रिमांड के दौरान अभियुक्त को सशरीर मैजिस्ट्रेट के समक्ष प्रस्तुत करना अनिवार्य है? बताइए कि क्यों ?
5. एस्कोर्ट पुलिस(अनुरक्षण पुलिस) के अभाव की दलील देते हुए अधिकारी रिमांड को और आगे बढ़ाने के लिए अगर सिर्फ प्रॉडक्शन वारंट भेजे और अभियुक्त को उपस्थित ना करे तो क्या इसे कानूनी तौर पर ठीक कहा जाएगा ?
6. धारा-167 का क्या महत्व है ?
7. राजस्थान के क्रिमिनल रूल्स ऑव प्रैक्टिस में धारा-167 के अंतर्गत मैजिस्ट्रेट की शक्तियां और कर्तव्य क्या-क्या हैं ?
8. अगर पुलिस ने किसी व्यक्ति के विरुद्ध असंज्ञेय अपराध के मामले के अंतर्गत जांच-कार्य शुरू किया है तो क्या ऐसी स्थिति में उक्त व्यक्ति को मैजिस्ट्रेट रिमांड पर मांग सकता है?
9. अगर गिरफ्तारी भारतीय दंड संहिता की धारा 107, 108, 109, 110. और 151 के तहत हुई हो तो ऐसे में मैजिस्ट्रेट की रिमांड संबंधी शक्तियां कौन- सी हैं?
10. रिमांड-अर्जी पर जांच अधिकारी की जगह कांस्टेबल के हस्ताक्षर हों और केस-डायरी सुपुर्द नहीं की गई हो तो क्या ऐसी स्थिति में रिमांड अवैध हो जाता है?

11. What is application of judicial mind?
- a) Does it mean ensuring continued detention in judicial custody of the accused in the interest of the society and the victim?
  - b) Does it mean extension of remand every 15 days by the magistrate without going into the progress of the investigation?
  - c) Does it mean extension of remand only for the required period after studying the case diary and other material?
  - d) Does it mean extension of remand every 15 days by the magistrate after studying the case diary and other material?
12. What are the Magistrate's powers to discharge the suspect/accused? What does S. 59 of the Code say regarding this?

❖ **First Production**

13. What are the duties imposed by the Code on the magistrate at the time of first production of an accused person?
14. Should the Magistrate look into the reasonableness of arrest at the time of first production? What has the Law Commission articulated in this regard?
15. What is the significance of the contents of the remand application in making up the judicial mind regarding remand?
16. What are the preparations of a defense lawyer with regard to the FIR, remand application, case diary and possible arguments for police remand by prosecution and police at the time of first production?
17. Should Magistrates record reasons for authorizing detention? Why?
18. Is the physical production of the accused mandatory:
- a) Only at the time of first production?
  - b) On every date when extension of remand is sought?
  - c) Only when remand to police custody is given?
19. What are the punitive measures established for illegalities committed by:
- a) Police during interrogation
  - b) Magistracy during first production

11. न्याय-बुद्धि (Judicial mind) के व्यवहार का क्या अर्थ है?
- क्या इसका आशय समाज और पीड़ित के हितों को ध्यान में रखते हुए किसी अभियुक्त को लगातार न्यायिक हिरासत में रखने से है?
  - क्या इसका आशय यह है कि मैजिस्ट्रेट जांच-कार्य की प्रगति पर गौर किए बगैर हर 15 दिन पर रिमांड को और आगे के लिए विस्तार दे?
  - क्या इसका आशय इस बात से है कि मैजिस्ट्रेट केस-डायरी तथा अन्य सामग्रियों के अध्ययन के आधार पर रिमांड का विस्तार मात्र जरूरी अवधि के लिए करे?
  - क्या इसका आशय इस बात से है कि मैजिस्ट्रेट केस-डायरी तथा अन्य सामग्रियों के अवलोकन के आधार पर हर 15 दिन पर रिमांड का विस्तार करे?
12. संदिग्ध अथवा अभियुक्त करार दिए गए व्यक्ति की रिहाई के संबंध में मैजिस्ट्रेट को कौन-सी शक्तियां प्राप्त हैं? संहिता की धारा 59 इस संदर्भ में क्या बताती है?

#### ❖ फर्स्ट प्रॉडक्शन (प्रथम पेशी)

13. संहिता में, किसी अभियुक्त की प्रथम पेशी(फर्स्ट प्रॉडक्शन) के अवसर पर मैजिस्ट्रेट के लिए कौन-से दायित्वों के निर्वहन का विधान है?
14. क्या मैजिस्ट्रेट को फर्स्ट प्रॉडक्शन के समय यह देखना चाहिए कि गिरफ्तारी कहां तक युक्तिसंगत है? इस संदर्भ में विधि आयोग(लॉ कमीशन) ने क्या कहा है?
15. रिमांड के संदर्भ में रिमांड-अर्जी में लिखी गई बातों का न्याय-बुद्धि के व्यवहार के लिहाज से क्या महत्व है?
16. फर्स्ट प्रॉडक्शन के समय बचाव पक्ष के वकील को प्राथमिकी(एफआईआर), रिमांड, केस-डायरी और पुलिस रिमांड के लिए अभियोजन पक्ष तथा पुलिस के संभावित तर्कों को ध्यान में रखते हुए क्या-क्या तैयारी करनी होती है?
17. क्या हिरासत में रखने के आदेश देते हुए मैजिस्ट्रेट को इसकी वजह दर्ज करनी चाहिए? बताइए कि क्यों?
18. क्या अभियुक्त की सशरीर उपस्थिति अनिवार्य है?
- सिर्फ प्रथम पेशी(फर्स्ट प्रॉडक्शन) के समय ?
  - हर उस दिन जब रिमांड की अवधि बढ़ाने की मांग की गई हो ?
  - केवल उस समय जब पुलिस हिरासत में रखने का रिमांड दिया गया हो?
19. निम्नलिखित स्थितियों में बरती गई अनियमितताओं के लिए कौन से दंडात्मक समाधान बताये गए हैं:
- पुलिस जांच के दौरान बरती गई अनियमितता
  - फर्स्ट प्रॉडक्शन(प्रथम पेशी) के दौरान मैजिस्ट्रेट द्वारा बरती गई अनियमितता

### ❖ Subsequent Remand

20. When can remanding from judicial custody to police custody be done?
21. Can an accused be remanded to police custody beyond the first 15 days of the remand period?
22. Should an accused be remanded to police custody:
  - a) Whenever the police ask for police custody on the ground that investigation has not been completed?
  - b) When the police give reasons supported by extracts of the case diary for seeking custodial interrogation?
  - c) When the accused is not represented by his lawyer?
23. What does Section 309 of the Code provide for with regard to remanding powers and duties?
24. What can the Magistrate do, if only production warrants are sent without producing the accused due to lack of police escorts?
25. Which Tamil Nadu High Court judgment dismissed the reason of non-production of accused in court due to shortage of police escort, as invalid?

### ❖ Compulsory/Default Bail

26. When does the right to compulsory/default bail accrue?
27. In order to calculate the period of 60/90 days under proviso to S. 167(2), the relevant date to be considered should be the date of arrest or the date of remand? Which Supreme Court judgment clarified the position on the same?
28. Will bail under S. 167 stand cancelled automatically on the charge-sheet being filed?
29. Would S. 167(2) apply to arrests made under S. 41(1) and to arrests made under S. 151(1)?
30. Which Supreme Court judgment clarified the interpretation of the expression “offence punishable with imprisonment for a term of not less than ten years” occurring in proviso (a) to Section 167(2) of the Cr.P.C?

❖ अनुगामी(सब्सक्राइब) रिमांड

20. किन स्थितियों में रिमांड को न्यायिक हिरासत से पुलिस हिरासत में बदला हुआ माना जाता है ?
21. क्या कोई अभियुक्त रिमांड के प्रथम 15 दिन के बाद भी पुलिस हिरासत के लिए रिमांड पर मांगा जा सकता है?
22. निम्नलिखित किस स्थिति में किसी अभियुक्त को पुलिस हिरासत के लिए रिमांड पर दिया जाना चाहिए :
  - a) पुलिस जब भी यह दलील देते हुए कि जांच-कार्य पूरा नहीं हुआ है, अभियुक्त को पुलिस हिरासत में लेने की मांग करे?
  - b) जब पुलिस हिरासती जांच के लिए केस-डायरी में उल्लेखित सूचनाओं को बतौर प्रमाण प्रस्तुत करते हुए वजह बताये ?
  - c) जब अभियुक्त की पैरवी के लिए वकील ना हो ?
23. रिमांड संबंधी शक्तियों और कर्तव्यों के बारे में संहिता की धारा 309 में क्या कहा गया है?
24. अगर अनुरक्षण पुलिसदल ( पुलिस-एस्कॉर्ट्स) के अभाव की बात कहते हुए, अभियुक्त को पेश ना करके सिर्फ प्रॉडक्शन वारंट भेजा गया हो तो ऐसी स्थिति में मैजिस्ट्रेट क्या कर सकता है ?
25. अनुरक्षण-पुलिस(एस्कॉर्ट पुलिस) के अभाव के कारण अभियुक्त को पेश ना किया जा सका- इस दलील को तमिलनाडु उच्च न्यायालय के किस आदेश में अवैध करार दिया गया है ?

❖ कंपलसरी/डिफॉल्ट बेल

26. कंपलसरी/डिफॉल्ट बेल का अधिकार कब हासिल होता है ?
27. धारा 167(2) के अंतर्गत 60/90 की अवधि की गणना के लिए किस तारीख को प्रासंगिक माना जाय- जिस तारीख को गिरफ्तारी हुई उस तारीख को या फिर जिस तारीख को रिमांड पर लिया गया उस तारीख को? इस प्रश्न के संदर्भ में सर्वोच्च न्यायालय के किस आदेश में स्थिति स्पष्ट की गई है?
28. क्या धारा 167 के तहत हासिल जमानत, आरोप-पत्र(चार्जशीट) दाखिल होने पर स्वतः निरस्त हो जाती है?
29. जब गिरफ्तारी धारा 41(1) के अंतर्गत की गई हो तो क्या उस पर धारा 167(2) को लागू माना जाएगा और क्या धारा 167(2) को किन्हीं अपवादस्वरूप स्थितियों में धारा 151(1) के अंतर्गत की गई गिरफ्तारी पर भी लागू किया जा सकता है?
30. सर्वोच्च न्यायालय के किस फैसले में भारतीय दंड संहिता की धारा 167(2) की कंडिका (a) में आये " दंड के रूप में दस साल तक की कैद के लायक अपराध " पदबंध की व्याख्या को स्पष्ट किया गया है ?

## **PART II - Your Experience and Practice as a Legal Aid Lawyer**

1. Where do you first meet your client?
  - a) At the time of arrest at police station
  - b) At the time of physical production in Court
  - c) When the accused is in judicial custody
  - d) It is not feasible to meet the client in police station, court or prison
2. Where do you meet your client generally?
  - a) In the Court
  - b) In the prison
  - c) Only family/friend comes to meet
3. How often do you meet your client at the police station/court/prison?
  - a) Before and after every hearing
  - b) Before and after some hearing
  - c) Never meets the client but only family
4. What is the role of a legal aid lawyer at the police station?
5. What are your preparations before appearing for a remand hearing?  
(Mark)
  - a) Reading/Study:
    - i. Case details Regular / Occasional / Never
    - ii. Case Laws Regular / Occasional / Never
    - iii. Study of FIR, evidence  
& evidence laws Regular / Occasional / Never
    - iv. Seizure list Regular / Occasional / Never
    - v. Remand application filed  
by the police Regular / Occasional / Never
  - b) Visits/Meetings:
    - i. Client in Custody Regular / Occasional / Never
    - ii. Client's Family  
and Friends Regular / Occasional / Never
    - iii. Spot of Crime Regular / Occasional / Never

खंड II - कानून की मदद प्रदान करने वाले वकील के रूप में आपके अनुभव

1. अपने मुवक्कील से आपकी पहली भेंट कहाँ हुई ?
  - a) गिरफ्तारी के वक्त पुलिस-थाने में
  - b) अदालत में सशरीर पेशी के समय
  - c) जब अभियुक्त न्यायिक हिरासत में था
  - d) मुवक्कील से पुलिस-थाना, अदालत या जेल में भेंट करना संभव नहीं
2. अपने मुवक्कील से सामान्य तौर पर आप कहाँ मुलाकात करते हैं ?
  - a) अदालत में
  - b) जेल में
  - c) सिर्फ परिवार के सदस्य / दोस्त मिलने को आते हैं
3. पुलिस-थाना/अदालत/जेल में आप अपने मुवक्कील से कब-कब मिल पाते हैं?
  - a) हर सुनवाई के पहले और बाद में
  - b) कुछ सुनवाई के पहले और बाद में
  - c) मुवक्कील से कभी मुलाकात नहीं होती बस उसके परिवारजन भेंट करते हैं।
4. कानून की मदद प्रदान करने वाले वकील(लीगल ऐड लॉयर) की पुलिस-थाने में क्या भूमिका होती है ?
5. रिमांड संबंधी सुनवाई से पहले आप तैयारी के तौर पर क्या कुछ करते हैं? (चिह्नित करें)
  - (i) पठन-पाठन/अध्ययन :
    - a) मुकदमे का ब्यौरा नियमित / कभी-कभार / कभी नहीं
    - b) मुकदमा संबंधी कानून नियमित/कभी-कभार/ कभी नहीं
    - c) एफआईआर,साक्ष्य और साक्ष्य संबंधी कानून नियमित / कभी-कभार / कभी नहीं
    - d) सिज्योर लिस्ट नियमित / कभी-कभार / कभी नहीं
    - e) पुलिस द्वारा पेश रिमांड-अर्जी नियमित / कभी-कभार / कभी नहीं
  - (ii) मुलाकात/दौरा:
    - a) हिरासत में लिए गए मुवक्कील से नियमित / कभी-कभार / कभी नहीं
    - b) मुवक्कील के परिवार और दोस्त से नियमित / कभी-कभार / कभी नहीं
    - c) घटना स्थल का दौरा नियमित / कभी-कभार / कभी नहीं



- c) Writing:
- |                                  |                              |
|----------------------------------|------------------------------|
| i. Case brief                    | Regular / Occasional / Never |
| ii. Bail application             | Regular / Occasional / Never |
| iii. Reply to remand application | Regular / Occasional / Never |
| iv. Application of discharge     | Regular / Occasional / Never |
6. Are you allowed to be present during custodial interrogation at the police station?
- a) Yes
- b) No
7. When your client is arrested, what are the procedures you would insist be followed by the police at the police station?
8. How do you oppose remand at first production?
- a) Reiterating presumption of innocence
- b) Use of Evidence
- c) Validity of Arrest
- d) Procedural irregularities
- e) Any Other (FIR, Content of Remand Application, etc.)
9. Mention the difficulties you face in opposing remand.
10. What are your options if your client cannot furnish the bail amount?
11. In cases of unnecessary detention of your client, have you sought any legal remedies for your client

(iii) लेखन:

- |                          |                              |
|--------------------------|------------------------------|
| a) मुकदमे का सार-संक्षेप | नियमित / कभी-कभार / कभी नहीं |
| b) जमानत अर्जी           | नियमित / कभी-कभार / कभी नहीं |
| c) रिमांड अर्जी का जवाब  | नियमित / कभी-कभार / कभी नहीं |
| d) रिहाई की अर्जी        | नियमित / कभी-कभार / कभी नहीं |

6. क्या आपको हिरासती जांच-पूछ के समय पुलिस-थाने में रहने की अनुमति मिलती है?

- a) हां
- b) नहीं

7. जब आपके मुवक्कील को गिरफ्तार किया जाय तो वे कौन-सी प्रक्रियाएं हैं जिनके पुलिस-थाने में पुलिस द्वारा पालन किए जाने पर आप जोर देंगे ?

8. प्रथम पेशी पर आप रिमांड का विरोध कैसे करते हैं?

- a) पूर्व-मान्यता के रूप में निर्दोषिता की दलील देकर
- b) साक्ष्य के प्रयोग से
- c) गिरफ्तारी की वैधता के आधार पर
- d) प्रक्रियागत अनियमितता की बात बताकर
- e) कोई अन्य (एफआईआर, रिमांड अर्जी में उल्लेखित बात, इत्यादि.)

9. रिमांड के विरोध के क्रम में आपको किन कठिनाइयों का सामना करना पड़ता है, बतायें।

10. यदि आपका मुवक्कील जमानत-राशि जमा नहीं कर पाता तो आपके पास क्या विकल्प शेष रहता है?

11. गैरवाजिब बंदीकरण की स्थिति में क्या आपने अपने मुवक्कील के लिए किसी विधिक समाधान की मांग की है?

## **Commonwealth Human Rights Initiative's (CHRI) Work on Pre-trial Detention in Rajasthan**

As part of its mandate to ensure that the working of the criminal justice system promotes fair trial and prevents unnecessary detention, Commonwealth Human Rights Initiative (CHRI) has been conducting a series of micro studies in Rajasthan, using the Right to Information Act, interviews with undertrial prisoners in judicial custody and court observation exercises to understand and record court practices related to pre-trial detention such as court production, remand and bail.

Pursuant to a study on access to counsel in the district jail of Alwar that was completed in November 2010, CHRI conducted four workshops between February 2011 and September 2011 with a focus on effective representation and rights of the accused in the three towns of Jaipur, Jodhpur and Alwar. One of the major findings of the study was that a large percentage of undertrials had no access to legal representation or legal aid, or representation was obtained after the first production, sometimes at the time of filing of the chargesheet. The study also indicated poor lawyer-client relationship, as even those undertrials who had legal representation could only meet their respective lawyer in the courts.

With an aim to improving early access to counsel and effective representation, CHRI has also been conducting workshops in collaboration with the District Legal Services Authority in Jodhpur district of the state of Rajasthan on remand and bail for legal aid lawyers appointed under the State's Model Scheme of 'remand and bail lawyers'. Alongside, CHRI has engaged with the Jodhpur Bar Association with a plan to jointly hold regular discussions and debates on topical legal issues for lawyers.

## सुनवाई-पूर्व कैद से संबंधित सीएचआरआई का राजस्थान में कार्य-कलाप

कॉमनवेल्थ ह्यूमन राइट्स इनिशिएटिव (सीएचआरआई) का एक संकल्प दंडपरक न्याय-व्यवस्था के भीतर निष्पक्ष सुनवाई को सुनिश्चित करना और अनावश्यक कैद को रोकना है। अपने इस संकल्प के एक हिस्से के रूप में सीएचआरआई राजस्थान में व्यक्तिगत अध्ययनों की एक श्रृंखला चला रहा है जिसमें सूचना का अधिकार अधिनियम का इस्तेमाल करना, न्यायिक हिरासत में लिए गए विचाराधीन कैदियों का साक्षात्कार लेना तथा अदालती कार्रवाइयों के नजदीकी अवलोकन के जरिए विचाराधीन कैदी से संबंधित कोर्ट प्रोडक्शन, रिमांड और बेल सरीखे अदालती कार्य-व्यवहारों को दर्ज करना शामिल है।

साल 2010 के नवंबर महीने में सीएचआरआई ने अलवर जिला-जेल में प्राप्त न्यायिक परामर्श की स्थिति के अवलोकन पर केंद्रित एक अध्ययन पूरा किया था। इस अध्ययन के बाद इसी क्रम में साल 2011 के फरवरी से सितंबर महीने के बीच तीन शहरों जयपुर, जोधपुर और अलवर में चार कार्यशालाओं का आयोजन किया गया। इन कार्यशालाओं का जोर अभियुक्त के कारगर प्रतिनिधित्व और उसके अधिकारों पर था। अध्ययन का एक मुख्य निष्कर्ष यह था कि ज्यादातर विचाराधीन कैदी न्यायिक प्रतिनिधित्व या विधिक सहायता हासिल नहीं कर पा रहे या फिर उन्हें न्यायिक प्रतिनिधित्व अपने प्रथम कोर्ट-प्रॉडक्शन के बाद हासिल हुआ, कभी-कभी तो आरोप-पत्र दाखिल किए जाने के बाद उन्हें वकील की सहायता मिल पायी। इस अध्ययन से यह भी स्पष्ट हुआ कि वकील और मुवक्कील के बीच संबंधों की स्थिति अच्छी नहीं है क्योंकि जिन विचाराधीन कैदियों को अपनी पैरवी के लिए वकील की सहायता हासिल हो पायी थी, उनकी अपने-अपने वकील से मुलाकात अदालत पहुंचकर ही हो पायी।

विचाराधीन कैदियों को शुरुआती चरण में ही न्यायिक परामर्श मिले जाये और अदालती कार्रवाई में ऐसे कैदियों की पैरवी कारगर तरीके से हो सके, इस लक्ष्य को ध्यान में रखते हुए सीएचआरआई राजस्थान के जोधपुर जिले में जिला विधिक सेवा प्राधिकरण के साथ मिलकर रिमांड और बेल के मामले में सहायता प्रदान करने के मुद्दे पर वकीलों को लेकर कार्यशाला का आयोजन करता रहा है। इन वकीलों की नियुक्ति राज्य सरकार की एक मॉडल योजना रिमांड एंड बेल लॉयर्स के तहत की गई है। इसके साथ-साथ सीएचआरआई की एक योजना जोधपुर बार एसोसिएशन के साथ मिलकर प्रासंगिक कानूनी मसलों पर नियमित चर्चा और बहस-मुबाहिसा चलाने की है।

In 2013, CHRI conducted three impact assessment workshops to evaluate the impacts of the workshops in Jaipur, Jodhpur and Alwar. The broad impact assessment areas were interventions, preparedness and results vis-à-vis arrest and first production, bail, remand, chargesheet, pro-bono lawyering, lawyer-client relationship, and defense preparedness. The assessment also highlighted future learning needs of the lawyers.

With the objective to strengthen the legal aid structure inside prison and to demonstrate a legal aid environment where no suspect/accused goes unrepresented, CHRI, in 2012, began *Swadhikaar*, a legal aid services initiative in Jodhpur Central Prison. The legal aid clinic's area of work ranges from identifying illegal and unnecessary detentions, providing legal representation through referrals to DLSA and to the CJM, the Convenor of the Periodic Review Committee for Undertrials, drafting petitions and applications on behalf of the inmates, providing legal counselling and guidance whenever sought by the inmates, conducting legal aid awareness activities inside the prison and training convicts as jail paralegals to support the work of the DLSA and *Swadhikaar* legal aid clinic.

Many of these activities have been undertaken in close co-operation with the Rajasthan Prisons Department, the District Legal Services Authority, Jodhpur, the International Bridges to Justice and the National Law University (NLU), Jodhpur.

जयपुर, जोधपुर और अलवर में आयोजित कार्यशालाओं के प्रभाव के आकलन के लिए साल 2013 में सीएचआरआई ने तीन इम्पैक्ट असेसमेंट कार्यशालाएं आयोजित कीं। प्रभाव के आकलन के अंतर्गत मुख्य तौर पर यह जानने की कोशिश की गई कि गिरफ्तारी और प्रथम कोर्ट-प्रॉडक्शन, बेल, रिमांड, चार्जशीट, जन-कल्याण के निमित्त की गई वकालत, वकील और मुवक्कील के आपसी संबंध तथा बचाव-पक्ष की तरफ से की जाने वाली तैयारी के मामले में हस्तक्षेप, बंदोबस्त और परिणाम क्या रहे। प्रभाव के आकलन से यह बात भी उभरकर सामने आई कि आगे आने वाले दिनों में वकीलों के लिए किन बातों को जानना-सीखना जरूरी होगा।

कारागृह के भीतर और उसके बाहर हासिल होने वाली विधिक सहायता का ढांचा मजबूत हो और विधिक वातावरण कुछ इस तरह का बने कि संदिग्ध या अभियुक्त करार दिया गया कोई भी व्यक्ति कानूनी पैरवी से वंचित ना रहे- इस उद्देश्य को ध्यान में रखते हुए सीएचआरआई ने साल 2012 में पहल करते हुए जोधपुर केंद्रीय कारा में एक विधिक सहायता सेवा 'स्वाधिकार' नाम से शुरू की। विधिक सेवा केंद्र के कामकाज के दायरे में अनेक चीजें शामिल हैं, जैसे- गैरकानूनी और अनावश्यक नजरबंदी की पहचान करना, डीएलएसए और सीजेएम के पास रेफरल के माध्यम से कानूनी प्रतिनिधित्व प्रदान करना, विचाराधीन कैदियों के लिए आवधिक पुनर्वीक्षा समिति का संयोजन, बंदियों के लिए अर्जी और आवेदन लिखना, बंदी के कहने पर उसे कानूनी परामर्श और मार्गदर्शन प्रदान करना, कारागृह के भीतर विधिक सहायता विषयक जागृति की गतिविधियां संचालित करना तथा डीएलएसए और 'स्वाधिकार' विधिक सेवा केंद्र की मदद के लिए अभियुक्तों को जेल-पैरालीगल्स के रूप में प्रशिक्षित करना।

इनमें से कई गतिविधियां राजस्थान कारा विभाग, जिला विधिक सहायता प्राधिकरण(जोधपुर) तथा इंटरनेशनल ब्रिजेज टू जस्टिस एंड द नेशनल लॉ यूनिवर्सिटी(जोधपुर) के निकट सहयोग से संचालित की जा रही हैं।



## About the Organisers

**This Legal Refresher Course on Pre-trial Justice** will be conducted primarily for legal aid advocates by the Prison Reforms Programme of the Commonwealth Human Rights Initiative (CHRI), in collaboration with State Legal Services Authority (SLSA), Rajasthan, the District Legal Services Authority (DLSA), Jodhpur, in co-operation with Jodhpur Bar Association, Rajasthan High Court Lawyers Association, and the International Bridges to Justice.

The course will help legal aid advocates to find solutions to unnecessary and long detentions in police and judicial custody. Through a revisiting of constitutional values and legal safeguards of writs and bail; re-familiarising with skills of opposing unnecessary custody, argumentation, cross-examination, evidence-building; reiterating the core principles of legal aid, ethics of the advocate's profession and lawyer-client relationship, the course attempts to refine courtroom practices towards reaching the high goal of rule of law.

By focusing on the short term and long term impacts of incarceration on the prisoner, the Course will approach their constructive diagnosis with a focus on due process treatment, strengthening legal aid services, and effective legal interventions by advocates that are grounded in the organic link between police reform, jail reform, legal aid reform and judicial reforms.

The Course will include Refresher Workshops on Cr.P.C, Workshops on Case Analysis, Legal Strategies, Legal Aid & Pro-Bono Lawyering, New Developments in Evidence, a Module on Law, Justice & Everything in Between; Rule of Law and Reform of the Criminal Justice System and will use lectures and talks, exercises and case studies, exposures to places of custody, synthesis workshops and mentoring sessions to advance the knowledge and skills of the participants towards furthering the goals of early access to counsel, effective representation and access to justice for all.



### COMMONWEALTH HUMAN RIGHTS INITIATIVE

B-117, IInd Floor, Sarvodaya Enclave  
New Delhi-110017

Tel.: +91 - (0)11 4318 0200

Fax: +91 - (0)11 2686 4688

[info@humanrightsinitiatives.org](mailto:info@humanrightsinitiatives.org)

[www.humanrightsinitiatives.org](http://www.humanrightsinitiatives.org)



**RAJASTHAN STATE  
LEGAL SERVICES AUTHORITY AND  
DISTRICT LEGAL SERVICES AUTHORITY,  
JODHPUR**