

ARREST PROCEDURES AND PRACTICE CONSULTATION WITH POLICE INSPECTORS

8th OCTOBER 2015

RAJASTHAN POLICE ACADEMY, JAIPUR

Organised by



CHRI
Commonwealth Human Rights Initiative

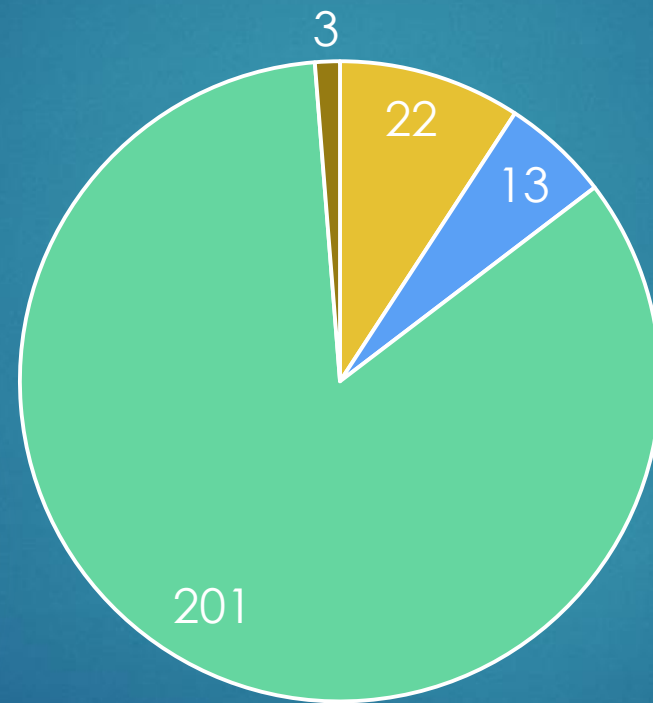
QUESTIONNAIRE BASICS

- ▶ Number of Sections : 3
- ▶ Number of questions asked : 47
- ▶ Questions analysed: 29
- ▶ Number of responses received: 239



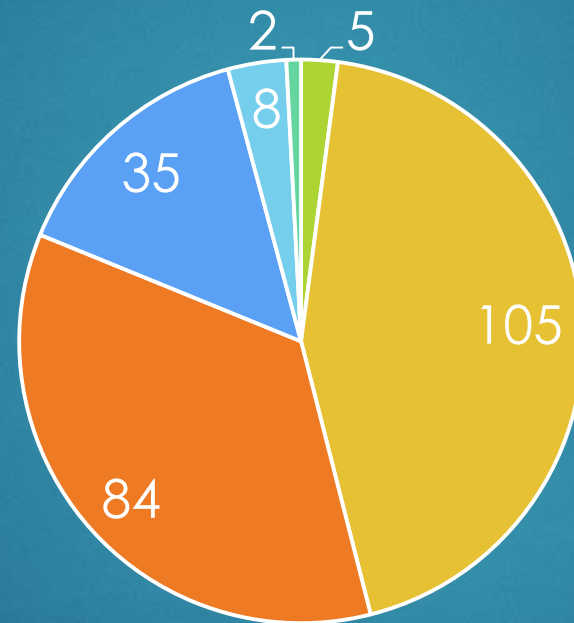
SECTION A
BASIS FOR ARREST

Have you ever conducted an arrest?



■ Never ■ Rarely (less than 10) ■ Often ■ Not clear

Please mention whether you have issued a notice of appearance in cognizable cases where maximum punishment is less than 7 years?



Once
Never

A few times
No response

More than 10 cases
Not clear

What rationale guided you to issue notice of appearance instead of making an arrest?



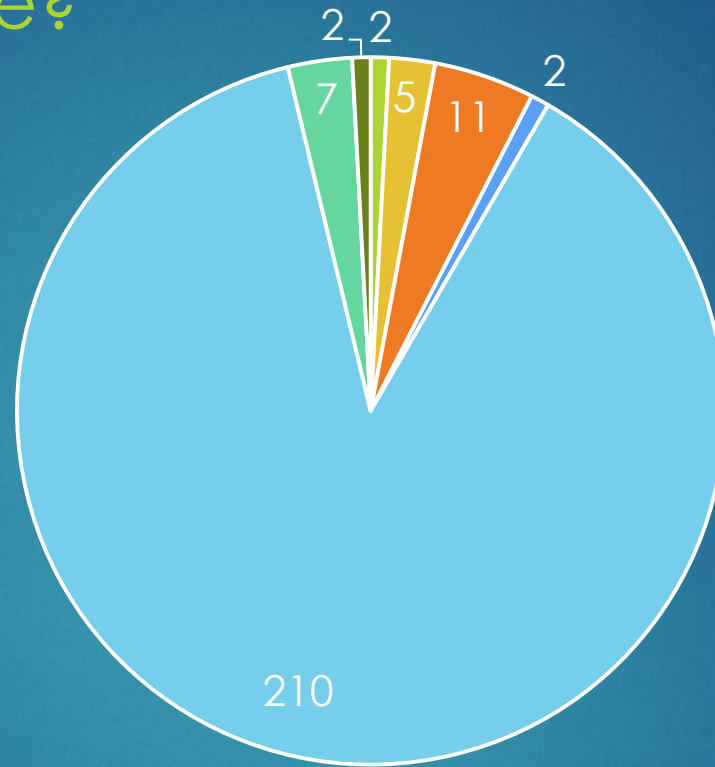
- Amendments to Section 41 CrPC (not arresting in cases of offence with less than 7 years of punishment) and Supreme Court judgment (Arnesh Kumar) – Maximum
- 41 (1) CrPC
- 41 (2) CrPC
- Where suspect co-operates with investigation
- To prevent an offence
- Offence involves less than 7 years of punishment
- Where there are no grounds for arrest
- Where investigation does not require arrest
- In the case of a woman suspect

What procedures do you follow while giving notice of appearance?



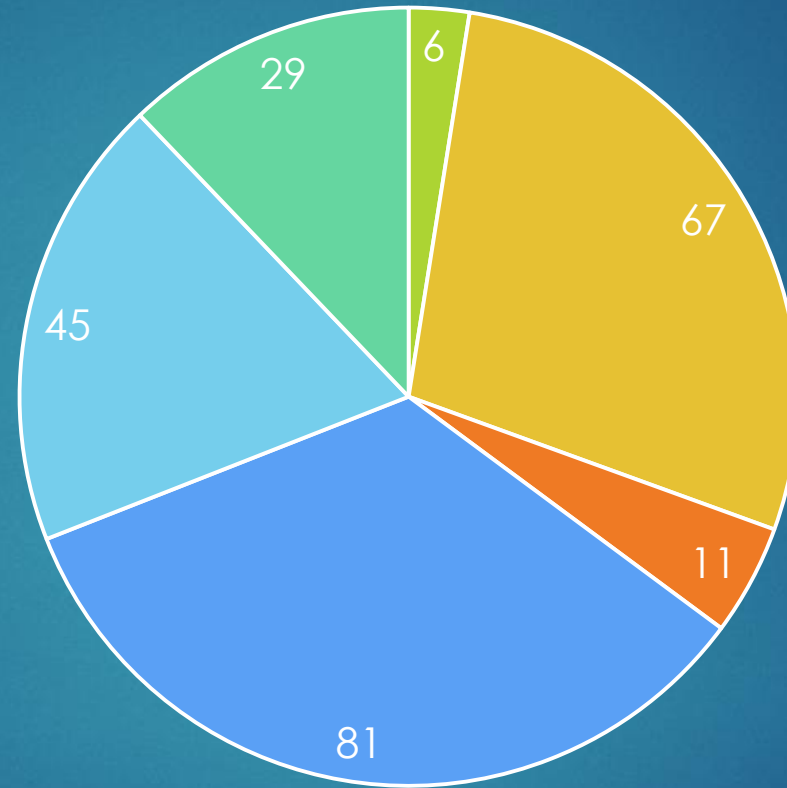
- Serving notice to concerned accused under section 41 CrPC – if the person appears then there is interrogation – 1
- When you are not convinced enough of the need for arrest you give the person notice to appear within 15 days time - 4
- Giving fixed date and time for appearance of the person to be interrogated - 1
- As per CrPC – 1
- Notice is not served to persons below the age of 15 and above 65, nor to women - 1
- Notice is served to concerned person within 15 days from the date of institution of the case – 1
- Using checklist as per procedure – 2
- Implementation of 41 A – 1
- After serving notice, investigation is conducted and depending on results the person is produced in court – 1
- Reasons for serving notice are provided in writing and then the notice is served; procedures are detailed and offences mentioned in the notice – 2

How long can you detain a person who has appeared before you under notice?



- One hour
- 3 hours
- 12 hours
- Overnight
- Indefinitely/ As per the requirements of the investigation
- No response
- Others

Do you inform the court in case a notice of appearance has been issued to a person? If yes, when?



■ Before the notice is issued

■ In a week

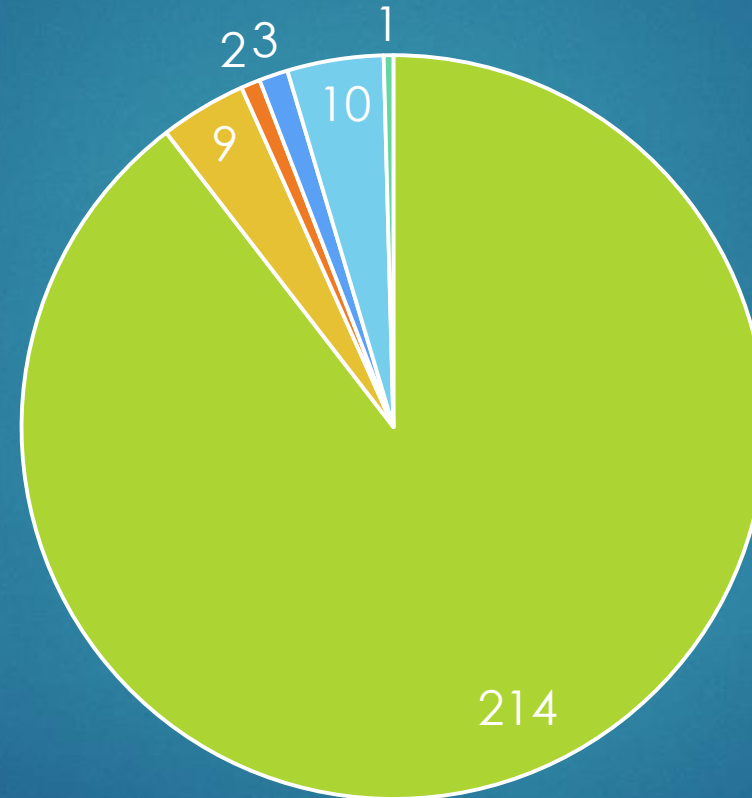
■ Not at all

■ The same day of the notice being issued

■ In 14 days

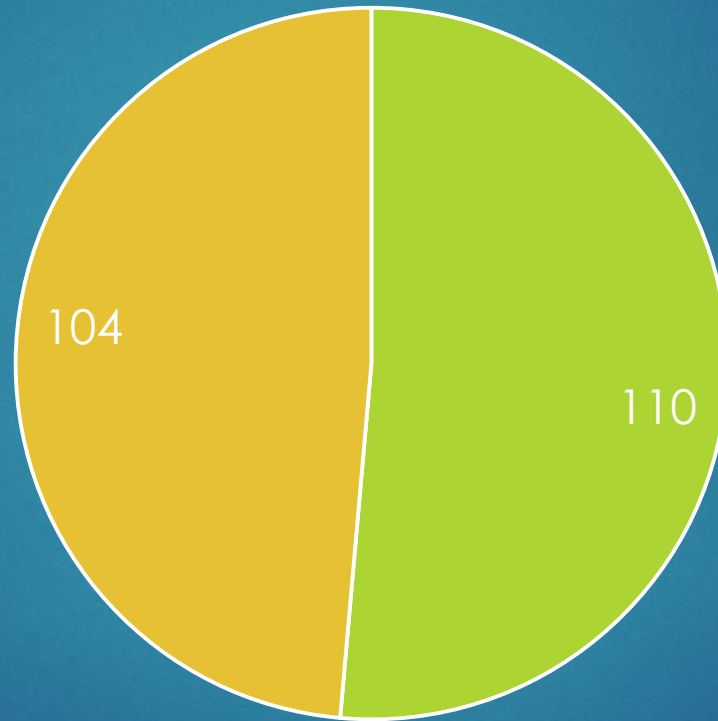
■ No response

How often do you record reasons for arresting/ not-arresting a person?



Always Frequently Rarely Never No response Not clear

Are lawyers usually present during detention of a suspect when called through a notice of appearance issued by the police?

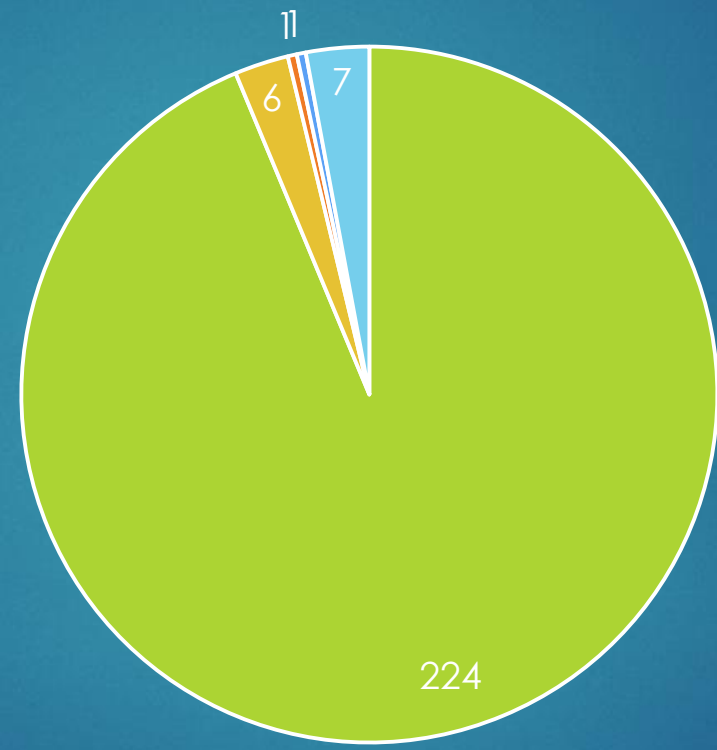


■ Yes ■ No



SECTION B
ARREST MEMO

In your police station, is an arrest memo filed for every arrest made?

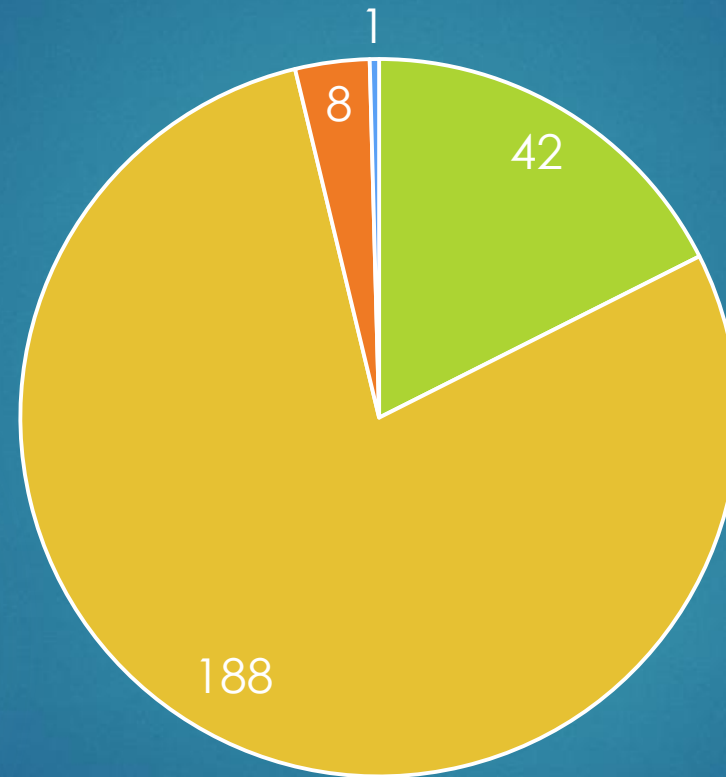


Always
Never

Frequently
No response

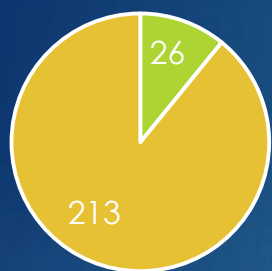
Rarely

Do you prepare an arrest memo in cases of bail-able offences?



Yes No No response Not clear

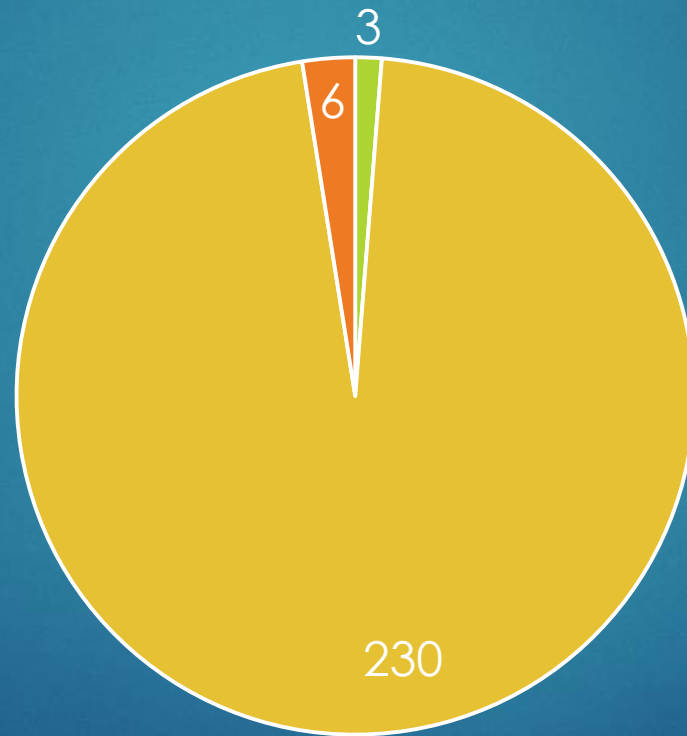
Does it help the police in their work to have arrest memos? How?



■ Not responded ■ Responded

- Helps in complying with legal provisions – 3
- Useful in recording injuries and ensuring medical examination that will help to protect against allegations- 2
- It's a record with the police(eg., records the time and place of arrest) and helps in procedural compliance-5
- It helps the investigation – 3 (eg., it gives time for investigation; helps in collecting evidence -Saboot ekatrit karne mein)
- Provides full description of the accused (biodata of accused and photo) – 2
- Helps the court - 1
- Gives the date and time of presentation in court - 1
- 60 and 90 days mein chargesheet dene mein madad milti hai - 1
- Establishes the identity of the accused – 2
- Prevents further Judicial Problems-1
- Prevents illegal custody-1
- Helps in remand-1
- Compliance with human rights-1
- Helps the accused during trial - 1
- Brings transparency to police work – 1
- Recovery made through the statements made by the accused under Section 27 of the Evidence Act helps in convicting the accused - 1

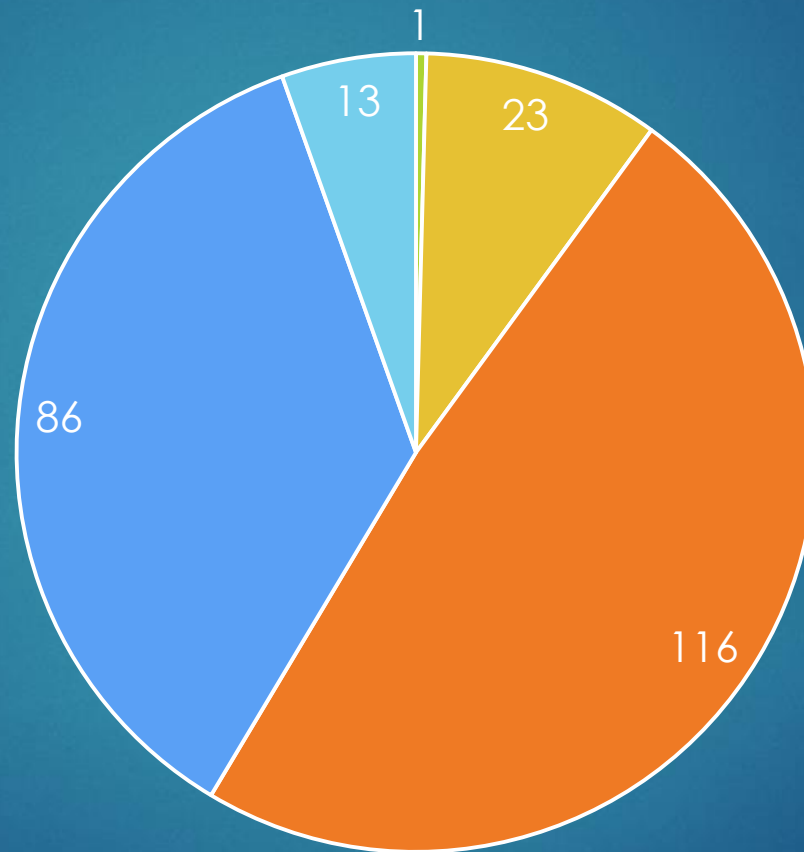
Which of the following are commonly included in an arrest memo:
1. Signature of the accused, 2. Signature of Witness,
3. Time, place and date of arrest, 4. Signature of arresting officer



■ 1, 2 and 3 ■ All ■ No response

Who can sign the arrest memo as a witness:

1) Family member of suspect, 2) Friend of suspect, 3) Person from locality where arrest is made, 4) Police Officer, 5) Lawyer



■ 1, 4 and 5

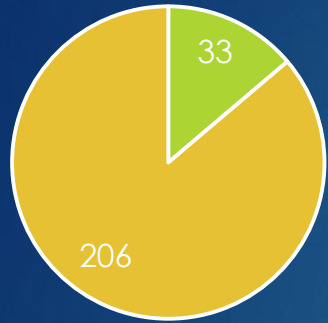
■ 1 and 3

■ 1, 2 and 3

■ All

■ Not clear

What do you do when you don't find independent witnesses?



■ Not responded

■ Responded

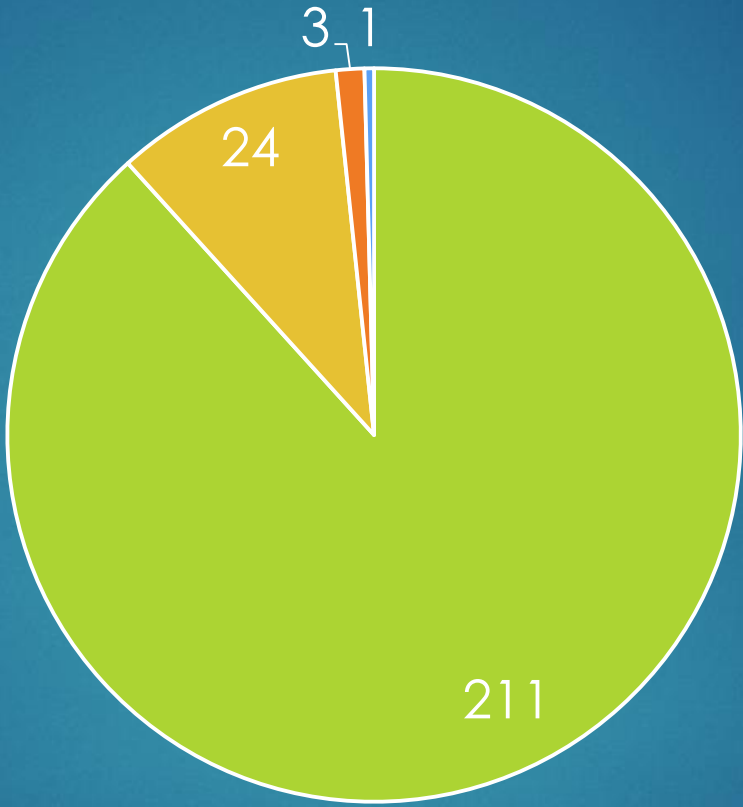
We make police personnel like guards or other staff the witnesses in such cases

We take the help of people who help the police

We try to have at least one independent witness

We make a note in the diary and we ask the police personnel accompanying us to become the witness

When is the arrest memo prepared?



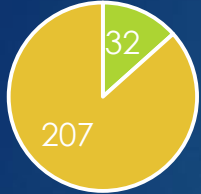
■ During arrest

■ After arrest

■ In the police station

■ No response

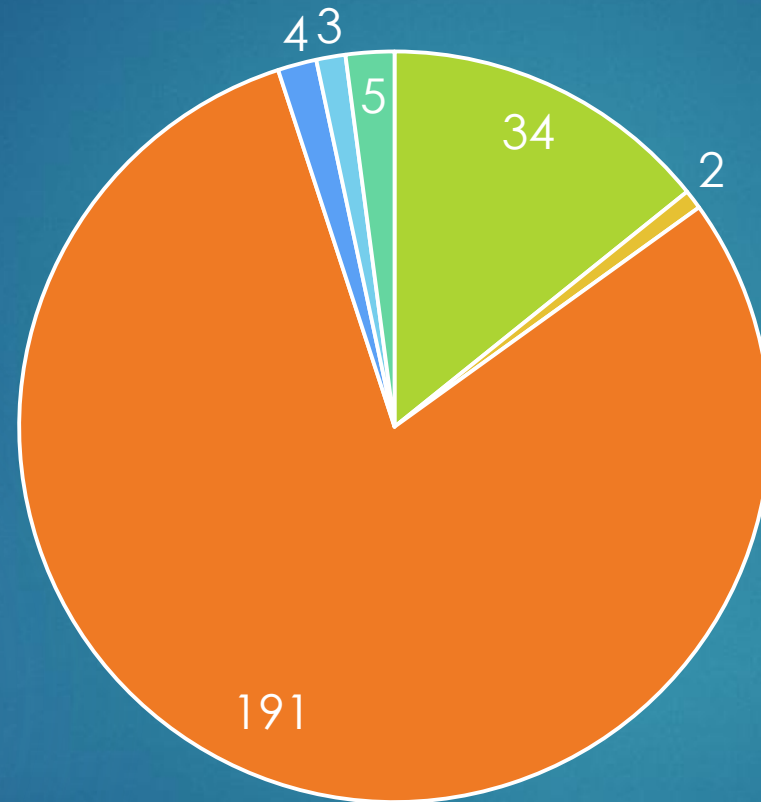
If you find an arrest memo has not been prepared, what action do you take?



- Not responded
- Responded

- Will clarify the reasons why arrest memo could not be prepared and then prepare the memo – 2
- We prepare the arrest memo – 9
- We find out reasons why arrest memo was not made – 1
- Inquire as per procedure – 1
- We advise the IO to prepare it immediately after – 1
- Arrest memo will be prepared later if there is evidence against the person otherwise he will be released after interrogation – 1
- This has never happened – 1
- If an offence is made out then arrest will be done otherwise case will be dropped – 1

Where is the arrest memo prepared?



■ On the spot/crime scene

■ The place of arrest

■ No response

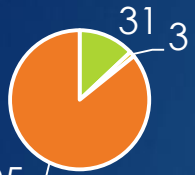
■ In transit (from crime scene to Police Station)

■ In the police station

■ Not clear

Please list the practical difficulties faced by the arresting officer in the drafting of the arrest memo at the scene of the offence.

- Law and order situation – 6
- Shortage of guards- 1
- Crowd management - 1
- Obstructions from relatives of the accused – 3
- Friends of the accused may attack to prevent the arrest or help the accused to escape – 2
- Difficulty in finding independent witness – 10 (eg. Common man hesitates to become a witness)
- Witnesses refuse to sign – 1
- Difficulty in informing the relatives of the arrested person – 1
- Difficulty in informing about the arrest from the place of offence - 2
- Problem in examining the medical condition of the person being arrested – 2
- Risk of harm to the accused in the place of offence – 1
- No time for investigation- 1
- Risk of arresting wrong person as the witnesses could not be examined at the place of incident-1
- There are a lot of investigative work to be done at the place of incident that is why suspect is only detained and not arrested- 1
- Lack of sitting arrangement at the place of incident-1
- Lack of lighting arrangement in villages-1
- Paper work is problematic on the spot-1
- Takes a lot of time to establish the correct facts-1
- Difficult to do justice to the wanted person – 1



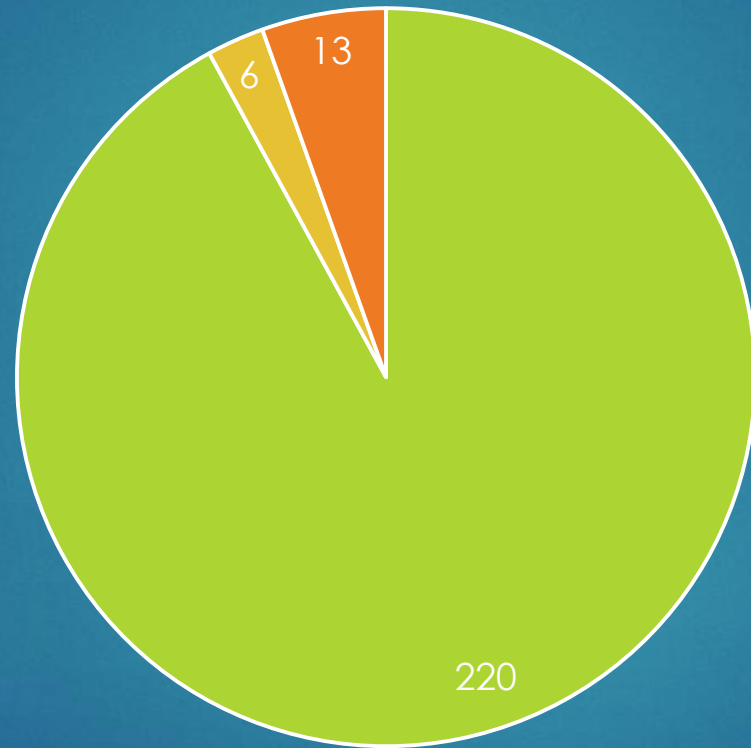
205

Not responded

NA

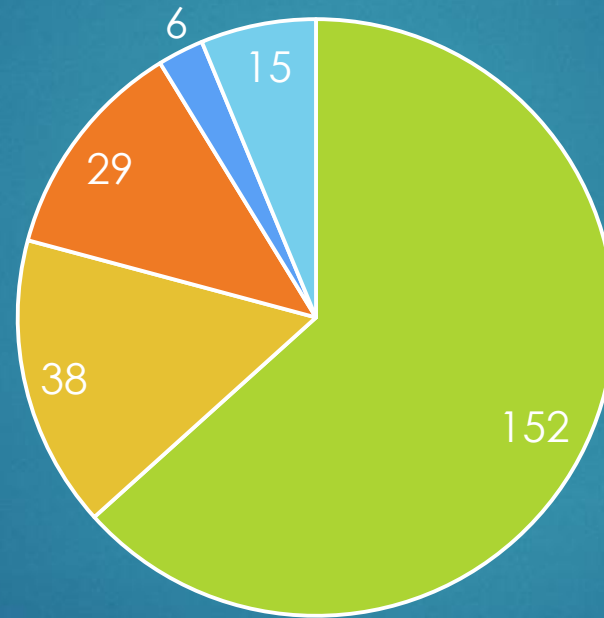
Responded

Does the Investigating Officer (IO) keep a copy of the arrest memo in the case diary of every case?



■ Yes ■ No ■ No response

Does the magistrate check the *Arrest Memo* at first production?

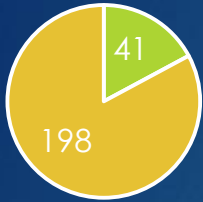


Always
Never

Frequently
No response

Rarely

What are the usual queries raised by magistrates on the review of the arrest memo?

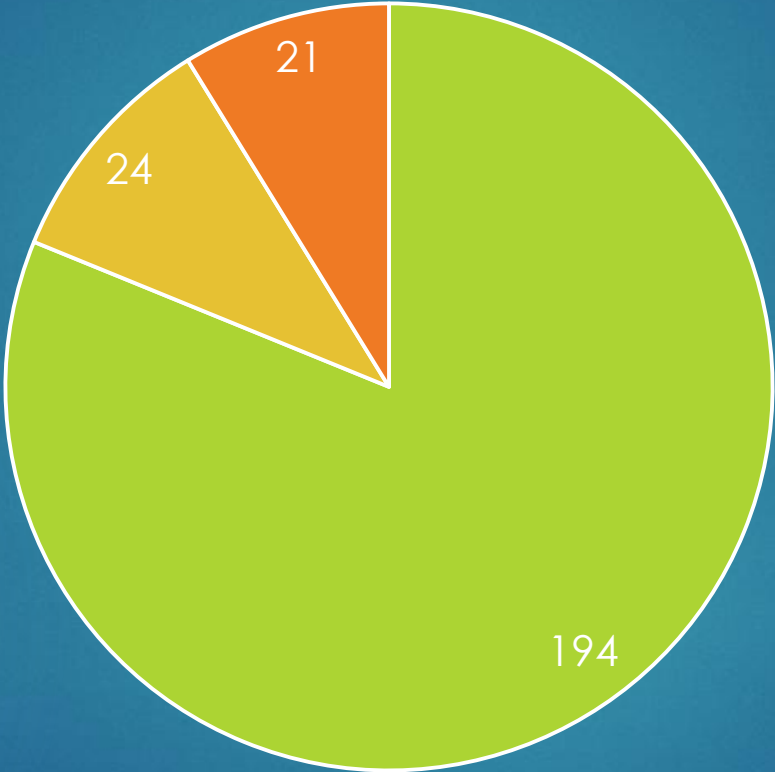


■ Not responded

■ Responded

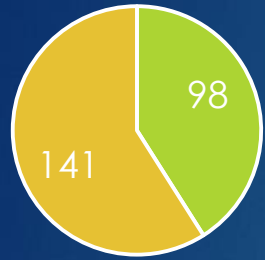
- When did you arrest – 5
- Did you report the arrest – who to - 3
- Did you inform the arrest to relatives of the arrested person-4
- Whether the signatures of the accused and witness are present - 1
- Whether the person produced is the same as the person who was arrested – 1
- What offence was committed – 3
- Name, address, age, medical examination of the suspect, injuries - 6
- Where did you arrest-6
- Why did you arrest (reasons)-2
- Why do you need remand – 1
- Magistrate asks for checklist-1

Are police station staff given any training or information about memos of arrest?



Yes No No response

Do you have any suggestions that will make it easier for Investigating Officers to use the arrest memo properly and which will help the magistrate and the accused?



■ Not responded
■ Responded

The form can be simplified – 1

Copy of arrest memo to be provided to family member - 1

Photograph of arrested person to be made mandatory on the arrest memo – 1+1+1

Mobile number of arrested person to be made mandatory mention on the arrest memo – 1+

Injuries should be clearly described – 1+

Medical condition of the arrested person should be noted in the arrest memo-1+1

Details of the person informed about the arrest should be noted down mandatorily- 1+

The requirement of independent witness is unnecessary as independent witnesses only look to their own interests and there is nothing to be gained in particular by them - 1

Clear description of the appearance of the accused-1+

Signature of the arrested person to be mandatorily taken-1

Signature of the relative or witness to be taken – 1+

Mobile number of person informed of the arrest- 1+

Should be filled up properly-1+

Should be filled up immediately after arrest-1

Relatives of the arrested person should be informed-1+1

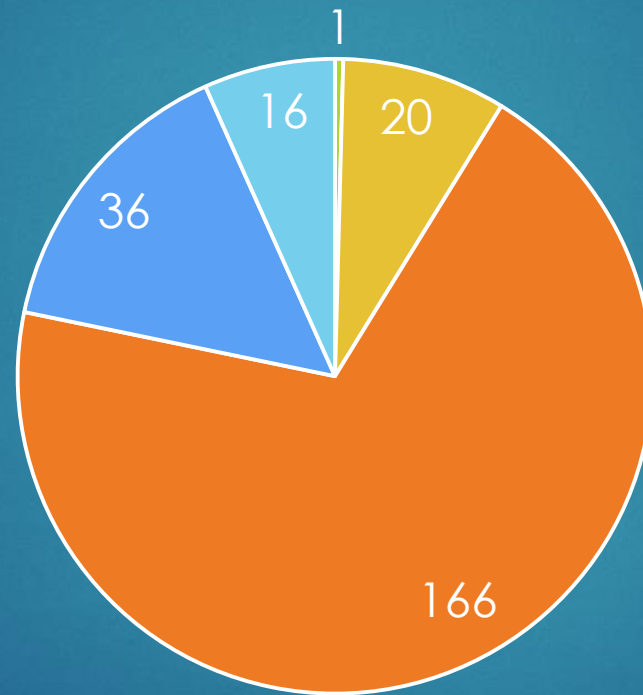
Complying with provisions of Section 41 CrpC, D.k. Basu and and Arnesh Kumar Judgment-1-



SECTION C

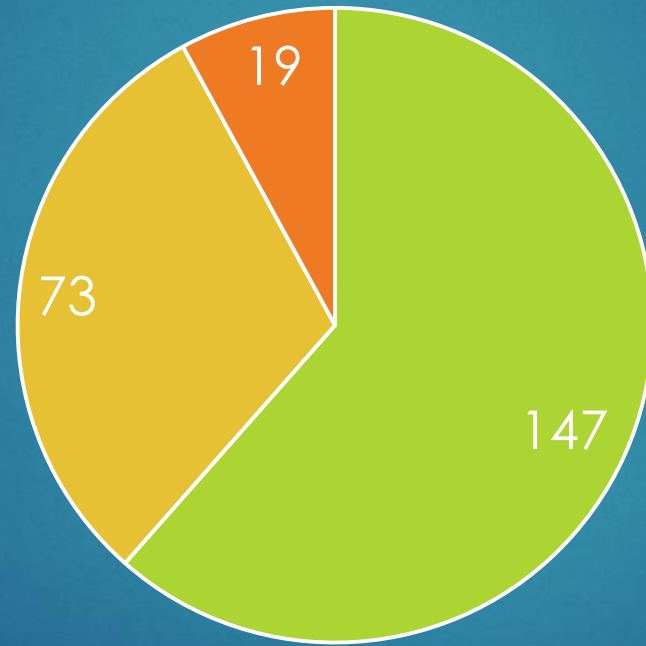
PRESENCE OF LAWYER DURING CUSTODY

Are lawyers usually present during interrogation?



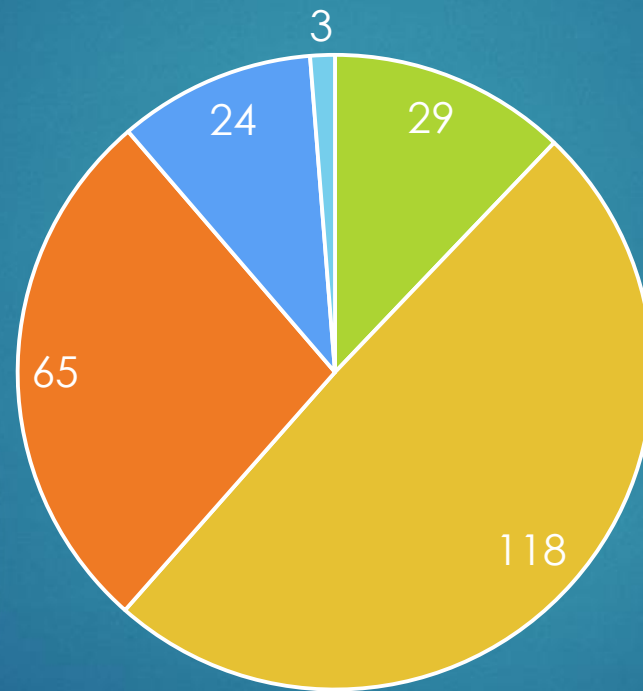
Always Frequently Rarely Never No response

Are police stations regularly in touch with the District Legal Services Authority?



■ Yes ■ No ■ No response

Is there a register maintained to record the visits by lawyers at the police station?



■ Yes ■ No ■ It is entered in the general diary ■ No response ■ Not clear