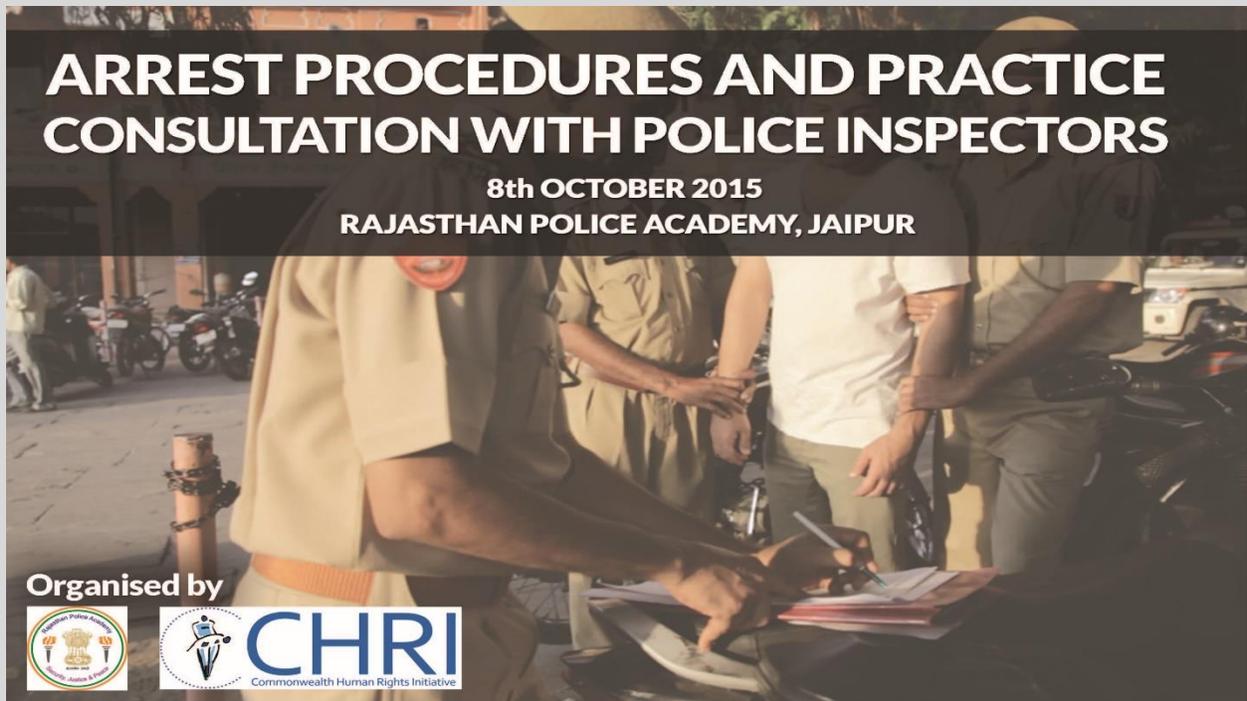


2015

CONSULTATION REPORT

ARREST PROCEDURES AND PRACTICE CONSULTATION WITH POLICE INSPECTORS

8th OCTOBER 2015
RAJASTHAN POLICE ACADEMY, JAIPUR



Organised by



CHRI
Commonwealth Human Rights Initiative

CONSULTATION WITH POLICE INSPECTORS ON ARREST PROCEDURES AND PRACTICE

*Jointly Organized by Rajasthan Police Academy, Jaipur and Commonwealth
Human Rights Initiative (CHRI)*

PURPOSE

The Consultation was aimed at acquainting the newly promoted batch of 270 police inspectors with the amendments to Section 41 Cr.P.C. in relation to arrest laws. Mr. B.L. Soni, Director, Rajasthan Police Academy; Ms. Maja Daruwala, Director, Commonwealth Human Rights Initiative (CHRI) and Ms. Abha Joshi, Visiting Faculty, National Police Academy, Hyderabad were the main speakers for the consultation. Sana Das, Tahmina Laskar and Raja Bagga from CHRI along with the newly promoted 270 inspectors were also a part of the consultation. Dr. Rita Bhargav from the Academy did a remarkable job of moderating the day's interaction and discussion on the vital issues.



Opening Session

Mr. B.L. Soni's Address:

Mr. Soni introduced the theme and context for consultation to the trainees. He highlighted the need for a "trustworthy police" that public and courts could rely on. Arrest, which is an important step of investigation, is itself something that creates the problem with the public. Making a reference to the D.K. Basu guidelines, Mr. Soni pointed out that following the law would improve the trust. The police would have to be transparent in compliance with the laws on arrest as set out by the Supreme Court and the Criminal Procedure Code. Drawing the attention of the inspectors to the reality that senior police officials had themselves been involved in the amendments, he stated that the way forward for policing was to reflect on the reasons for the trust deficit.

He gave an overview of the amendments in the law relating to arrest under Section 41- Sections 41A, 41B, 41C and 41D of the Cr.P.C. Placing the emphasis on the application of reasonable prudence in determining grounds of arrest and disclosure of arrest, he cautioned the trainees against using “shortcuts” and evading strict procedural compliance. He was categorical that a mere mechanical approach with the filling up of the arrest memos would not be sincere compliance. Here he made a candid reference to common police practice of obtaining signatures from police guards on arrest memos though the law required the signatures of independent witnesses. Courts and public, he said, are easily derisive about the rigor of police investigation when such mistakes are made. On the whole, he encouraged the inspectors to take up better policing measures through evidence based and scientific techniques of investigation and not to see human rights as a hurdle in improving policing.

He lauded CHRI’s Virtual Police Station Project in the context of such concerns and highlighted its work as one of many years of bridging the gap between police and human rights activists, motivated towards positive structural changes in policing in South Asia, and a co-traveller with the Rajasthan Police Academy in seeking common solutions.

Maja Daruwala’s Address:

Ms. Daruwala pointed to fear being the dominant public perception of police. The experience so far, she said, has been of alienation between police and human rights. She pointed to the need to be upfront about identifying with human rights. The work with the Rajasthan Police Academy, she said, has been a demonstration of how police and civil society could work together.

Rather than seeing human rights as a hurdle to policing or seeing ‘new’ policing as a mere slogan the police should shift their perspective from being “enforcers of law” to “upholders of the law”, from being a “force” to being “service”. While police personnel may be working 24x7, are they rendering ‘service’? That is the critical question that police must ask itself, she said.

She appealed to the participants not to make their everyday difficulties and professional hazards an excuse for bad policing or torture. Remarking that they were only two kinds of people in the country – those who obey the law and others who break them, she said “To be on the side of those upholding the law or those violating the law, the choice is yours”.

Pointing to the seven directions in Prakash Singh judgment - (1) formation of Police Complaints Authority; (2) formation of State Security Commission; (3) formation of Police Establishment Board for transfers, promotions, other service related matters; (4) Fair selection and security of tenure of DGPs; (5) Security of tenure of other police officials; (6) Separation of investigation from law and order police; (7) a National Security Commission for selection of chiefs of police organisations.

The police, she said, need not feel helpless or defensive that reform should be from within. Nor should there be resistance to these reforms as these directives are largely intended for improving police management, bringing more transparency, participation and accountability, and actually help the police more than the common people. Institutional governance of rank and file is important, she said. Every Chief Minister and every Police Chief has responsibilities to implement this judgment.

Smart policing is not a mere slogan, she said. It is all about participation, timeline, being gender friendly. Diversity, she added, is the fourth pillar of good governance and is essential for democratic policing and urged the participants to think of ways how it could be accommodated. Involving more women in policing, involving the local organisations in their *ilaka* could be a point to start.

She too mentioned about CHRI's Virtual Police Station Project that was intended as a training tool to help build knowledge base on good policing in a step-by-step and layered way, quite removed from regular speeches and classroom lectures. She ended her address with the hope that the participants would take some lessons home from the consultation and that CHRI was always willing to help in their learning.

Her address was followed by engaging interactions on:

- the 'human rights' of policemen and policewomen
- the efforts on investigation often meeting a dead end in court when repeat offenders are let out on bail

The interaction succeeded in making the necessary distinction between rights pertaining to working conditions and human rights that must be seen within the framework of 'state versus individual'. Moreover, poor working conditions cannot be made a legitimate basis for ill-treatment by the police. Better budgets, fixed work days and work hours as in Kerala, more investigating officers to improve evidence building, sensitivity of both men and women officers towards the needs of women constables, and health insurance, emerged as some of the areas requiring political will, financial investment and should be taken up to the Chief Minister for advocacy through appropriate forum.

Interactive session on Arrest:

Advocate Abha Joshi began her discussion on arrest laws by pointing out that the problem even after 50 years remains the same.

- Upholding the democratic values is not a farce or hurdle to policing. Even the police are bound by the law of the land and they are supposed to uphold the same. Democracy and reasonableness are basic instincts that should guide your conduct.
- She went on to discuss the literal meaning of arrests and its philosophy. Amendments to Section 41 of the Cr.P.C have codified the already prevailing philosophy behind arrests. The jurisprudence of arrest which always was present has only been further strengthened with the provisions in section 41, 41A, 41B and 41 D of Cr.P.C. She explained the provisions in detail.
- She deliberated on the primary issues around arrest like - (a) the non-preparation of Arrest Memo in bailable offences, (b) discretion in arrests even for offences with punishment beyond 7 years, (c) serving notice of appearance, (d) recording reasons for arresting/non-arresting, (e) the suspect's right to have a lawyer at the time of arrest and productions, (f) the medical examination and treatment, (g) handcuffing, (i) mistreatment in police stations and consequences for the police.
- She emphasised that using shortcuts may help in the immediate situation but in the long run these lead to uncomfortable situations in the court of law and it is the police who bears the brunt with loss of credibility.

- Case studies were used to discuss the necessity of arrest and prejudices that come into play while deciding on arrest. Police have the power to arrest but there is a need to understand that policing is not only about arrests but also applying the mind before arrest and towards investigation. Applying thought while arresting the person is necessary. To oppose the bail application in court police would have to have the correct facts and arguments in place.
- Violating procedures casts a shadow on investigative capabilities and creates negative image before the court. The defence is always on the lookout for grounds and a small procedural mistake on the side of the police gives them that ground before the court of law.
- The alternatives to such shortcuts can only be legal and the compliance of procedure is mandatory. There is no other way. The reprimanding from the courts would never happen if the procedure is followed closely. Knowing the law and keeping the procedural compliance in place is the only way that will help the police in nailing the culprit.



Presentation of Rapid Survey Findings : CHRI and RPA had agreed on a questionnaire based rapid survey with questions related to a) Basis of Arrests, b) Arrest Memo & c) Presence of Lawyer during Interrogation to help reflect on police practices better. Responses were received from 239 out of 270 participating police inspectors. CHRI staff, Raja Bagga, shared the findings of the analysis of 239 questionnaires filled by the participating inspectors. The draft findings can be viewed [here](#). Some of the findings of the analysis presented by him were as follows:

1. Arrest memos were not being prepared in bailable offences
2. Arrest memos were being prepared at the time and place of arrest

3. The police face multiple difficulties in preparing arrest memos at the time and place of arrest
4. Lawyers are usually not present with the accused in police custody and during interrogation

Presentation of Findings from CHRI's Micro Study on Arrest Memo:

Ms. Tahmina Laskar from CHRI presented the major findings from the study on compliance on Section 41 B (b) of Cr.P.C. A total of 76 memos were analysed for this study from West Bengal and Rajasthan. The presentation can be viewed [here](#). She discussed about problems around the format of the memo and statutory compliance around arrest memos. She also emphasised on need for procedural training.

The main findings of the study were;

1. There is no uniform format for arrest memos across the state of Rajasthan.
2. There is scope for procedural training around the compliance of Section 41 B (b) of Cr.P.C.
3. There is scope for improvement in the arrest memo format so that it can be effective in guarding against illegal arrest and detention. For instance, important columns like time of court production, to whom the memo has been forwarded to, and entering the general diary number of the case on the arrest memo.

Remarks on the Presentations and Study Findings

On the Arrest Memo Mr. Soni advised the trainees the following:

- Never fill the arrest memo at the police station. Where the crime scene does not allow them to fill the memo, fill the memo at a safe place a kilometer away but not at the police station as that would destroy its reliability before the court. However he was categorical that this could be done only in 10% of the absolutely difficult cases.
- Write only that which is true for the consequences for wrong information go all the way up to the Supreme Court.
- Police inspectors must also ensure that at least one witness from the locality signs, irrespective of the person turning hostile later.

These steps were important, he pointed out, in light of the police and judiciary's concern over the large number of acquittals and 'media trials' that put undue pressure on the police. Mr. Soni reiterated that scientific methods should be adopted in investigation and evidence collection to transform policing into smart policing. **Mr. B.L. Soni** directed that a working group comprising of 25 trainee police inspectors officers be formed to gather suggestions on the mandatory elements of the format of the arrest memo. Mr. Rajender, Faculty Member at the RPA was entrusted the task to ensure this compilation.

On working conditions of the police Mr. Soni pointed to the following:

- He agreed that indeed the working conditions in police are difficult, but that cannot be an excuse for not upholding the law. They have chosen the profession and therefore it is their duty now to uphold the law. At the same time, he committed that a format for taking in their complaints would

be prepared and shared so that they could write to the Superintendent of Police regarding their grievances.

- He advised the trainees to do the necessary advocacy with the legislators for specific problems they had with the law and its implementation.

The programme ended with a vote of thanks by Dr. Rita Bhargav from the Academy.

Post-Session Sharing

Later the key objectives and outcome of the day's interaction with police inspectors was carried in the form of a capsule presentation by Sana Das from CHRI into the Vertical Training programme held for IPS Officers across the country on the same day where Maja Daruwala, Director, CHRI, talked to them about Gender and Policing in South Asia.



AGENDA FOR RAJASTHAN POLICE ACADEMY

ONE DAY PROGRAMME FOR CONSULTATION WITH POLICE INSPECTORS ON ARREST - PROCEDURES AND PRACTICE

Venue: Rajasthan Police Academy
8TH OCTOBER 2015

9.30 am - 10.00 am	Registration and Tea
10.00 am – 10.15 am	Opening Address: Mr. B.L. Soni (IPS), Director, Rajasthan Police Academy Theme: Powers and Duties of the Police in the Context of New Laws on Arrest
10.15 am – 10.30 am	Keynote Address: Maja Daruwala, Executive Director, CHRI Theme: Introducing CHRI and its work on Police Accountability and Compliance
10.30 am–11.30 pm	Participants Forum: Interactive Session Anchor: Advocate Abha Joshi, Visiting Faculty, National Police Academy, Hyderabad Objective: Identifying individual and departmental ways out of the practical difficulties faced in implementing the amendments to Section 41 Cr.P.C and setting good practice Method: A questionnaire on laws on arrest procedures and practices with a focus on various provisions of the amended Section 41, Cr.P.C would form the basis of discussion with participants in this short workshop. This would be circulated a week in advance of the workshop to the participants and their views gathered so that their views inform the session productively. The session would invite the views of the participants using case studies and an analysis of their perceptions would be presented by CHRI representatives thematically in three segments – (i) basis for arrest; (ii) arrest memo practices; and (iii) presence of lawyer during custody. The findings from CHRI's compliance study on Section 41B (b) would be shared during the discussions by CHRI representatives.
11.30 am – 11.45 am	Tea Break
11.45 am – 12.30 pm	Participants Forum: Interactive Session Continues Anchor: Advocate Abha Joshi, Visiting Faculty, National Police Academy, Hyderabad
12.30 pm –1.00 pm	Concluding Session Voices from the Participants: “What I would like to take back from the Interactive Session to Improve the Implementation of Section 41” Concluding Remarks from the Panel: Mr. B.L. Soni (IPS), Director, Rajasthan Police Academy; Maja Daruwala, Executive Director, CHRI; Anchor: Advocate Abha Joshi, Visiting Faculty, National Police Academy, Hyderabad. Moderator: Sana Das, CHRI

QUESTIONNAIRE

This survey is being conducted for research purposes as part of a report on **arrest provisions** under the Criminal Procedure Code. Thank you for your participation.

Please provide the following information:

Name:

Rank:

Years in service:

Police Station:

Please fill in your responses below:

Section A: Basis for Arrest

1. Have you ever conducted an arrest?
 - a. Never
 - b. Rarely (less than 10)
 - c. Often

2. Does being named in an FIR make someone prima facie :
 - a. a prime suspect
 - b. an accused
 - c. an instant candidate for arrest

3. Police have the legal power to arrest. When is an arrest illegal?

4. When is an arrest not reasonable?

5. What is the difference between "arrest" and "detention"?

6. Do you forward the duly filled up arrest checklist to the magistrate?
 - a. Always
 - b. Frequently
 - c. Rarely
 - d. Never

7. Please mention whether you have issued a notice of appearance in cognizable cases where maximum punishment is less than 7 years?
- a. Once
 - b. A Few Times
 - c. More than 10
 - d. Never

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

9. What procedures do you follow while giving notice of appearance?

10. Can a notice of appearance be issued any time after the FIR is filed?
- a. Yes
 - b. No

Please specify reasons for your answer

11. When you issue a notice of appearance to a person how do you ensure that he will not tamper with the evidence or intimidate the witness?

12. How long can you detain a person who has appeared before you under notice?
- a. One hour
 - b. 3 hours
 - c. 12 hours
 - d. Overnight
 - e. Indefinitely/ As per the requirements of the investigation

13. Do you inform the court in case a notice of appearance has been issued to a person? If yes, when?
- a. Before the notice is issued
 - b. The same day of the notice being issued
 - c. In a week
 - d. In 14 days
 - e. Not at all

14. How often do you record reasons for arresting/ not-arresting a person?
- a. Always
 - b. Frequently
 - c. Rarely
 - d. Never

15. How often do you come across cases where people do not comply with the terms of the notice?
- a. Always
 - b. Frequently
 - c. Rarely
 - d. Never

16. What action do you take when people do not comply with the terms of the notice?

Section B: Arrest Memo

1. In your police station, is an arrest memo filed for every arrest made?
 - a. Always
 - b. Frequently
 - c. Rarely
 - d. Never

2. Do you prepare an arrest memo in cases of bailable offences?
 - a. Yes
 - b. No

3. 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
 - a. 1 and 2
 - b. 2 and 3
 - c. 1, 2 and 3
 - d. All

4. In your view, what is the purpose of an arrest memo?
 - a. It is a record of arrest
 - b. It acts as a safeguard against arbitrary arrest
 - c. Other – Please specify

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

6. If you have been an SHO, did you check the arrest memo whenever a suspect was brought to the Police Station immediately after arrest?
- Always
 - Frequently
 - Rarely
 - Never

7. When is the arrest memo prepared?
- During arrest
 - After arrest
 - In the police station

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

9. Where is the arrest memo prepared?
- On the spot/crime scene
 - In transit (from crime scene to Police Station)
 - The place of arrest
 - In the police station

10. If an arrest has to be made at the scene of the offence, is the arrest memo filled in at the scene?
- Always
 - Frequently
 - Rarely
 - Never

11. If your response to question 10 was rarely or never, then in such cases, are arrest memos drafted once the accused is brought back to the police station?
- Yes
 - No

12. In the situations mentioned in question 11, how long does it usually take to draft the arrest memo after arrest?
- 1 hour
 - 4 hours
 - 8 hours
 - 12 hours
 - 24 hours

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

a.

b.

c.

14. Who can sign the arrest memo as an independent witness: 1) Family member of suspect, 2) Friend of suspect, 3) Person from locality where arrest is made, 4) Police Officer, 5) Lawyer

a. 1, 4 and 5

b. 1 and 3

c. 1, 2 and 3

d. All

15. Does the arresting officer usually find the independent witness?

a. Immediately

b. After some time

c. When there is time to find one

d. With difficulty

16. What are the main difficulties in finding an independent witness to sign the arrest memo?

a.

b.

c.

17. What do you do when you cannot find an independent witness?

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

a. Yes

b. No

19. Has the Rajasthan Police devised a standard format for arrest memo?

- a. Yes
- b. No

20. Does the magistrate check the Arrest Memo at first production?

- a. Always
- b. Frequently
- c. Rarely
- d. never

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

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

- a. Yes
- b. No

23. 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?

a.

b.

Section C: Presence of Lawyer during Custody

1. Are lawyers usually present during interrogation?
 - a. Always
 - b. Frequently
 - c. Rarely
 - d. Never

2. Should lawyers be present during the period of interrogation?
 - a. Always
 - b. In some cases
 - c. Never

Please specify reasons for your answer

3. How does lawyer's presence interfere with the interrogation?

4. Is legal aid a fundamental right?
 - a. Yes
 - b. No

5. Are police stations regularly in touch with the District Legal Services Authority?
 - a. Yes
 - b. No

6. Is there a register maintained to record the visits by lawyers at the police station?
 - a. Yes
 - b. No
 - c. It is entered in the general diary

7. How do you ensure that the arrested person is represented by a lawyer at the time of interrogation?
 - a. Help the suspect to call a lawyer of their choice and help them to call a lawyer of their choice
 - b. Call lawyers known to you
 - c. Inform the District Legal Services Authority forthwith
 - d. Inform a legal aid lawyer
 - e. Any other

8. Are lawyers usually present during detention of a suspect when called through a notice of appearance issued by the police?
 - a. Yes
 - b. No