Arrest and Remand

DRAFT READER

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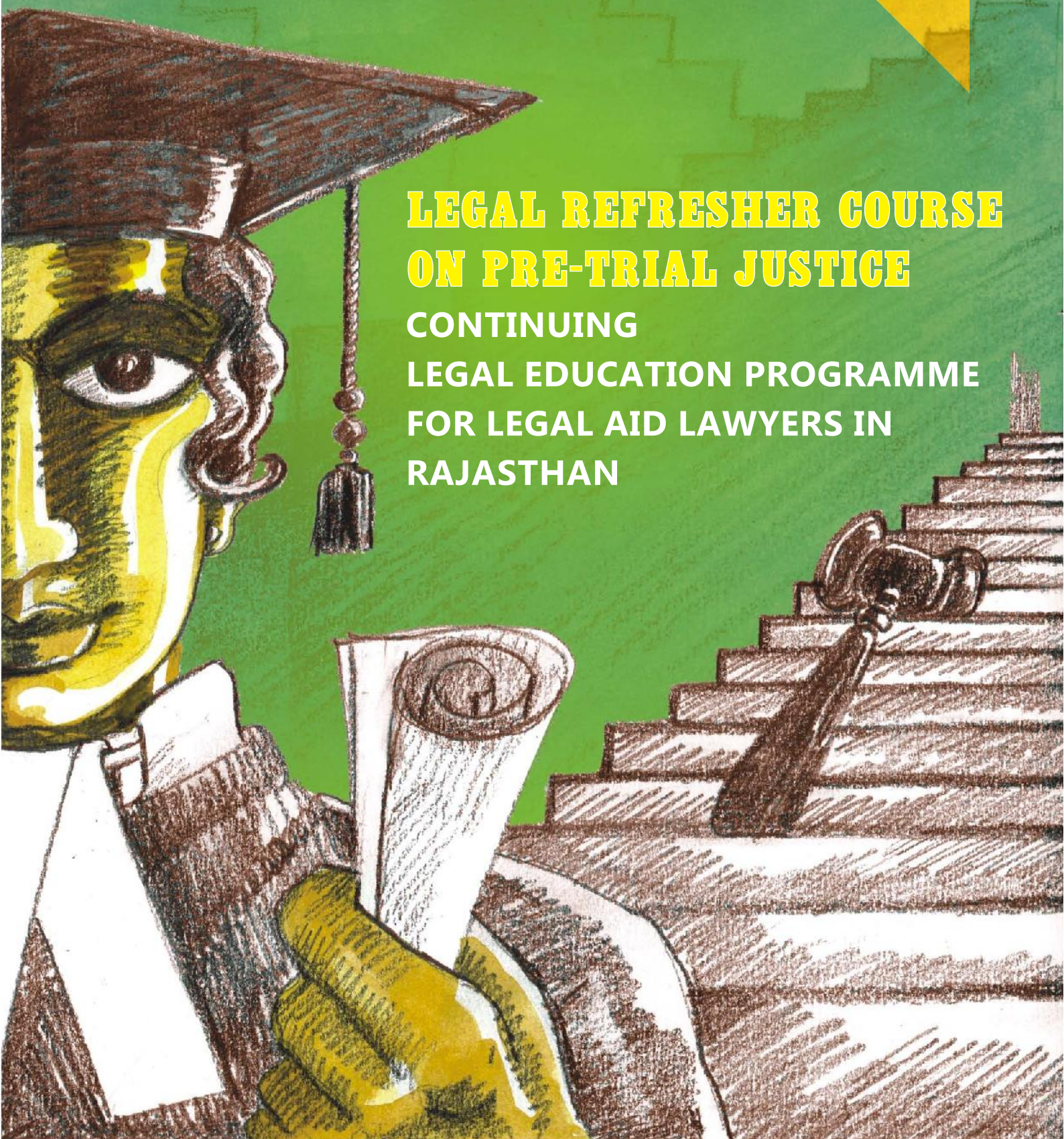

LEGAL REFRESHER COURSE ON PRE-TRIAL JUSTICE

CONTINUING
LEGAL EDUCATION PROGRAMME
FOR LEGAL AID LAWYERS IN
RAJASTHAN

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MESSAGE & ENDORSEMENT

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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)

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न्यायाधीश श्री अजय रस्तोगी का संदेश

कॉमनवेल्थ ह्यूमन राइटस् 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 हूं। उद्धाटन-सत्र में शिरकत करने और "विजन एंड मिशन फॉर एसएलएसए राजस्थान फॉर अर्ली एंड इफेक्टिव एक्सेस टू लीगल ऐड इन पुलिस स्टेशन्स्, जेल्स, कोर्टस् " 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 हूं।

बड़ी खुशी की बात है कि रिमांड एंड बेल लॉयर्स नामक मॉडल योजना तथा एनएएलएसए 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 अनुरुप 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 सुनिश्तित 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 जरुरत 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 रुप 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 जरुरी हैं, जैसे- नवीनतम अदालती फैसलों के बारे में सामयिक जानकारी या फिर कानून और विधिक सुधार सबंधी 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 रुपों 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 जरुरत 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 है। क्या जेल के भीतर ऐसा कोई है जिसे हमारे विधिक परामर्श की जरुरत है- यह जानने के लिए जेलों में नियमित आवाजाही जरुरी 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 रुप 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 गैरजरुरी 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 रुप 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 रुप 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 जरुरी है कि हमें सीखने-जानने का अवसर और मंच मिले, जहां हम अपने मन-मस्तिष्क को समृद्ध बनायें और व्यक्तिगत तथा सामूहिक रुप 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 शुरु 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 जरुरी कानूनी नुक्तों के गहरे जानकार ऐसे कुछ प्रेरणास्पद व्यक्ति प्रशिक्षण के दौरान आपका मार्ग-दर्शन करेंगे।

साररुप 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

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Section I: OVERVIEW

HkkX I: सारांश

ARREST AND REMAND - ISSUES IMPACTING PRE-TRIAL DETENTION

Jaishree Suryanarayanan

THE CONTEXT

A reality check by the Supreme Court

On abuse of power to arrest by the police:

"The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption." ".....We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof."

On the failure of the magistracy to apply the judicial mind while remanding:

"The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner."

Arnesh Kumar v. State of Bihar 2014 (8) SCALE 250

Powers of the police to arrest without a warrant

Under the Code of Criminal Procedure (CrPC), the police can arrest an accused person without a warrant from a competent magistrate in the case of a cognizable offence. This power should be exercised only after a certain amount of investigation has been carried out and there is reasonable satisfaction as to the genuineness and bona fides of a complaint and a reasonable belief in the person's complicity as well as the need to effect an arrest.[1] However, the power of arrest is often abused and is a big source of corruption. The National Police Commission has said that nearly 60% of arrests are either unnecessary or unjustified.

[1] *Joginder Kumar v State of UP*, (1994) 4 SCC 260.

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. This has serious implications for the poor, who are accused of petty offences or falsely implicated on unfounded charges. They are forced to undergo prolonged pre-trial detention, especially when they are unable to furnish bail.

CrPC is amended to check unnecessary arrests

In 2008, significant amendments were made to the 1973 Code in order to curb the abuse of the power to arrest by the police, based on the Supreme Court's directions in Joginder Kumar[2] and D.K. Basu,[3] and the Law Commission's recommendations in its 177th Report.[4]

The police now have the duty to issue a notice of appearance instead of arresting in bailable offences punishable with imprisonment up to 7 years, and reasons for an arrest have to be given ***(Section 41A).***

Bailable cases are those in which the accused can claim bail as a matter of right, both at the police station or before the Magistrate. Non-bailable cases, on the other hand, are those where the grant of bail is at the discretion of the Magistrate.

Discussing the import of the amended provisions, a Division Bench of the Allahabad High Court[5] said that normally where an accused has been named in a First Information Report (FIR), and the offence is punishable with up to seven years of imprisonment, the arrest of the accused may not be necessary at the initial stage and his attendance may be secured by issuing a notice to him to appear before the police officer under Section 41A of the Code. In such cases, it would be advisable to arrest the accused only after sufficient evidence of his involvement in the crime has been collected and the charge sheet needs to be submitted. The police officer has to record the reasons for arresting the accused in a particular case punishable with up to seven years of imprisonment in a bona fide and honest manner.

[2] *Joginder Kumar v State of U.P.*, 1994 SCC (4) 260
[3] *D.K.Basu v State of West Bengal*, AIR 1997 SC 610
[4] 177th report of the Law Commission of India available at http://lawcommissionofindia.nic.in/reports/177rptp1.pdf
[5] *Shaukin v State*, 2012(134) FLR436

"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 41A, 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".
***Shaukin v State* 2012(134) FLR436**

the police to exercise caution before arresting any person and to exercise the power to arrest only if reasons exist for doing so.

The court further reiterated the importance of judicial scrutiny by a magistrate in a remand proceeding to check unnecessary and baseless arrests. The court held:

"Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically."

CONSTITUTIONAL AND STATUTORY SAFEGUARDS

On Arrest

An arrested person has certain fundamental rights under the Constitution, which are also statutorily recognised in the Code. The power to arrest is subject to the constitutional mandate that personal liberty is paramount and cannot be taken away except in accordance with **procedure established by law**[8] and **prescriptions in the Code**.[9] Further, pronouncements by the higher judiciary contributed immensely to reduce the rigors of the power to arrest of the police by prescribing standards and procedures and by evolving limitations on the exercise of this power by the police in an attempt to balance the individual's interest vis-à-vis societal interest of crime prevention. [10]

[6] *Arnesh Kumar v State of Bihar*, 2014 (8) SCALE 250
[7] *ibid*
[8] Article 21, Constitution of India,
[9] Chapter V of the Code, specifically, Sections 41, 41A, 41B, 41C, 41D, 42, 43, 44, 46, 49, 50A, 54, 55A, 56, 57, 58, 60A.
[10] For limitations on arresting powers, see: *Joginder Kumar v State of UP*, AIR 1984 SC 1349; *D.K. Basu v State of West Bengal*, AIR 1997 SC 610; *Nilabati Behera v State of Orissa*, (1993) 2SCC 746; For the duty of police to inform legal aid committee, see: *Sheela Barse v State of Maharashtra*, AIR 1983 SC 378.

***Rights of an accused on arrest*:** The right to be informed of the grounds of arrest,[11] the right to consult a legal practitioner of her/his choice[12] 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.

Production within 24 Hours (Article 22 (1) and Section 56 read with Section 57): 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 both, a fundamental right and a statutory right of an accused.

Arrest Memo (Section 41 B): Every police officer while making an arrest shall bear an accurate, visible and clear identification of his name which will facilitate easy identification. At the time of arrest, such officer has to prepare a **memorandum of arrest** which shall be 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.

Further, the arrest memo has to be countersigned by the person arrested.

Duty to Inform Family Member/Relative (Section 50 A): The police officer carrying out the arrest shall inform the person arrested that he has the right to have a relative or a friend named by him to be informed of his arrest.

Right to Access to Counsel during Police Interrogation (Section 41 D): When a person is arrested and interrogated by the police, he is entitled to meet an advocate of his choice during interrogation, though not throughout the interrogation.

Right to medical examination (Section 54): The accused has the right to be examined by a medical officer/registered medical practitioner soon after arrest (female medical practitioner in the case of a female accused).

On Remand

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. A Magistrate must ensure that there is ground for reasonable doubt that the person has indeed committed an

[11] *ibid*
[12] *ibid*

offence before the police can carry out an arrest. Arrest without application of judicial mind by a Magistrate is undesirable.

***The Police Officer is Required to Send Copies of Case Diaries [Section 167(1)]*:** An arrested person can be detained in police custody for up to 24 hours, during which period the police must investigate the alleged offence. Under Section 167 of the Code, if it appears that the investigation cannot be completed within 24 hours from the time of the arrest and there are grounds to believe that the accusation or information is well founded, the officer in charge of the police station or the investigating officer (provided he is not below the rank of sub-inspector) has to forthwith forward the relevant entries in the diary relating to the case along with the accused to the nearest Judicial Magistrate.

***Calculation of the 24-Hour Period*:** Calculation of the 24-hour period starts the minute an accused person is taken into police custody.[13] This time period is the maximum limit. When it appears to the investigating officer that investigation cannot be reasonably expected to be completed within 24 hours, then the accused should be produced before the Magistrate at the earliest and an order authorising further detention obtained.[14]

***Remanding Powers of the Judicial Magistrate not to Exceed 15 Days [Section 167(2)]*:** The Magistrate who does not have jurisdiction to try a case, can grant remand to custody only in the first instance for a period of 15 days. The power of remand thereafter can only be exercised by the Magistrate who has the jurisdiction, who can authorise the detention of the accused for a term not exceeding 15 days in the whole.

***When Further Detention is Considered Unnecessary [Section 167(2)]*:** If the Magistrate before whom the accused is first produced does not have jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he can order that the accused be forwarded to a Magistrate who has the jurisdiction. By inference, whenever a situation arises wherein further detention of the accused is considered unnecessary, such as in the case of an unnecessary arrest, a Magistrate with the jurisdiction to try the case or commit it for trial can order the release of the accused.

***Duties of the Magistrate to Record Reasons [Section 167 (4)]*:** A Magistrate authorising detention in the custody of the police shall record his reasons for

[13] *Iqbal Kaur Kwatra v The Director General of Police, Rajasthan State, Jaipur and Ors*, 1996 CriLJ 2600.
[14] *R.K. Nabachandra Singh v Manipur Administration* 1964 CriLJ 307; *Chadayam Makki v State of Kerala* 1980 CriLJ 1195 (Ker).

doing so. Any Magistrate other than the Chief Judicial Magistrate making such an order shall forward a copy of his order with his reasons to the Chief Judicial Magistrate.

Subsequent Remand till Charge Sheet is Filed: After the initial period of remand is over, the Magistrate, if satisfied that adequate grounds exist for further detention of the accused, can pass an order remanding the accused to judicial custody for a period not exceeding:

- 90 days in the case of an offence punishable with death, life imprisonment or imprisonment for a period not less than 10 years.
- 60 days in the case of all other offences.

***Physical Production [Section 167 (2) Proviso (b) and (c)]*:** A Magistrate cannot remand an accused to police custody unless the accused is produced in person for the first time and every subsequent time, till the accused remains in police custody. Further, no Magistrate of the second class, unless especially empowered in this regard by the High Court, can authorise detention in police custody.

A Magistrate can extend detention in judicial custody either on production of the accused or through the medium of electronic video linkage.

THE ROLE OF THE MAGISTRATE UNDER SECTION 167, CrPC TO CHECK ILLEGAL AND UNNECESSARY ARRESTS

Significance of First Production

First production, as it is referred to, under Section 167, CrPC is very crucial as this affords the first opportunity for an independent authority, i.e, a magistrate, to exercise judicial powers without delay and apply his mind to the case to see whether the arrest is justified.[15] Under the statutory scheme, the role of the Magistrate during the first production of the accused is very crucial in checking illegal and unnecessary arrests.

Continued detention without the accused being remanded by a Magistrate after the application of a judicial mind is illegal. It has been held that:

> "*…those who feel called upon to deprive other persons of liberty in the discharge of what they conceive to be their duty must, strictly and scrupulously observe the*

[15] *Madhu Limaye, Inre*, (1969) 1 SCC 292: 1969 CriLJ 1440

forms and rules of law. Whenever that is not done the aggrieved person would be entitled to a writ of habeas corpus directing his release."[16]

Emphasizing the importance of remand proceedings, P.N. Bhagawati, J in the Bhagalpur blinding case,[17] 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."

Reiterating the role of a magistrate in Arnesh Kumar, the Supreme Court held that a judicial Magistrate authorising detention without recording reasons shall be liable for departmental action by the appropriate High Court.

What does Judicial Scrutiny by a Magistrate Mean?

Sufficient grounds must exist: A remand by the Magistrate is an act of judicial discretion and is not an automatic one, to be exercised in a routine manner. Sufficient grounds must exist for the Magistrate to exercise the power of remand. Section 167 makes it clear that a Magistrate can consider granting remand to either police or judicial custody only if:
- there are grounds for believing that the accusation is well founded and

- the investigation requires more than 24 hrs for completion

Options before a Magistrate: Where a Magistrate does consider further detention unnecessary, he must, if he has no jurisdiction to try or commit the case, forward the case to the Magistrate having jurisdiction. It follows that a Magistrate having such jurisdiction may opt not to authorize further detention.

Therefore, in law, a Magistrate has four options: (i) remand to police custody (ii) remand to judicial custody (iii) release on bail (iv) refuse to authorise any further detention.

Perusal of case diary: The Magistrate is mandated to peruse the case diaries, hear the accused on remand and only then decide whether there is need for detention and if so of what kind and duration. The significance of the case diary lies in its relevance as a safeguard against unfairness of police investigation. "In as much as such diary would also record and reflect the

[16] *Ram Narayan Singh v State of Delhi*, AIR 1958 All 758.
[17] *Khatri (II) v State of Bihar*, 1981 CriLJ 470: (1981) 1 SCC 627

time, place and circumstances of arrest, it is necessary that the provisions of this Sub-Section should be strictly complied with."[18]

Examine the Reasons for Immediate Arrest in Cases Punishable with Seven Years of imprisonment: The Magistrate is expected to examine the case diary to satisfy himself that the police officer's reasons for immediate arrest in cases punishable with imprisonment up to seven years are held by him in a bona fide manner. "Before a Magistrate authorises detention under Section 167, Cr.PC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused."[19] The Magistrate has to record his own satisfaction, which must be reflected in his order.

Ascertain whether the Preconditions for Arrest Provisioned under the New Amendments to CrPC are met: The Magistrate must ascertain whether the reasons for remand are restricted to the preconditions for arrest mentioned in the newly introduced Sections 41(1)(b) and 41 A in the CrPC.[20] "In fact, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant and secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny."[21]

Power to Refuse Remand and Release the Suspect/Accused: If the Magistrate finds that no genuine reasons which accord with the requirements of Sections 41(1)(b) and 41A exist, the Magistrate may refuse to grant remand to the accused, and allow the accused to be released on a personal bond with a direction to appear before the competent court or before the police when called upon to do so, with or without security.

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[18] 177th Report of the Law Commission on the Law of Arrests http://lawcommissionofindia.nic.in/reports.htm

[19] *Arnesh Kumar v State of Bihar*, 2014 (8) SCALE 250

[20] *Shaukin v State*, judgement dated 11.10.11 in Cr. Misc Writ Petition No. 17410 of 2011

[21] *Arnesh Kumar v State of Bihar*, 2014 (8) SCALE 250

Duties Imposed on the Magistrate by the Code at the First Production of an Accused Person

The Magistrate has to:

- Ensure that all the constitutional and statutory safeguards available to an accused person are complied with, including the right to legal aid, the right to be informed about the grounds of arrest, the right to have a family member/friend informed of the arrest and the right to medical examination.
- Ascertain from the accused person whether s/he has been informed about the grounds of arrest.
- Scrutinise the arrest memo.
- Inform the arrested person about the right to medical examination in case s/he has any complaint of torture or maltreatment in police custody.
- Look into the relevant portions of the case diary and ascertain the validity of the reasons for arresting the accused in case the offence is punishable with imprisonment for less than seven years.

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).[22]

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.

[22] 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[23] - 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.[24]

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.

[23] All India average of expenditure per inmate was Rs.10,474 during the year 2005-6. (Prison Statistics India – 2005 – NCRB, Snapshota)

[24] 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 not 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."*(Nebachandra'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 trail 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 is 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 later 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-trail 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.[25] 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.

[25] 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.[26]

[26] 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 form 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.[27] 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.

[27] *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."[28]

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.

[28] 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.

न्याय तक पहुँचः कानूनी सशक्तिकरण
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vkfpR;

,d iHkkodkjh ^U;k; rd igqp* dk lcls etcir nkok mu ykxks dh fLFkfr ls tUe yrk gS ftUgkus viu Lor=kiokd ?keu&fQju ds vf/kdkj dk fdlh ^mfpr* U;kf;d ifØ;k ds vrxr [kks fn;k gS] ftUgs tsy esa cn dj fy;k गया है, यदि जिसे सामाजिक दुष्टिकोण से देखा जाए तब वह प्रायः ग़रीबों, अशिक्षितों और असंबद्ध देहात के लोगों के लिए 'अनुचित' प्रक्रिया हो जाती है। ftuds ikl tekur yus dh ;kX;rk vkj {kerk gS os] orekU U;kf;d 0;oLFkk ds vrxr blds fy, miyC/k vkj [kys gq, dbZ dkuwuh vkj xSjdkuwuh दरवाज़ों से प्रवेश करके, अपनी स्वतंत्रता को तब भी संभाले रखते हैं जब वे vnkyr esa viu Åij yxs vkijkf/kd vkjkikas ij cpko dj jgs gkrs gSaA

Rkdjhcu 2-5 yk[k ykx tsy dh nhokjks ds ihNs ls epdne dh irh{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 जेलों में बंद कुल 358-37 हज़ार बंदियों (दोषसिद्ध अपराधी vkj fopkjk/khu½ esa ls] 77% अशिक्षित या अर्धशिक्षित थे। 14 हज़ार महिलाएं tsyks esa cn Fkh tks tsy dh dqy tula[;k dk 4% gSA blls ckr dks fl) djus ds fy, dkbZ vkdMk ugh gS fd tks epdne ;k vihy ds nkSjku vnkyr }kjk viuh Lor=rk dks ikus ugha dj ik;s mudh vkfFkd Lrj D;k Fkh] ysfdu ,d वास्तविक सर्वे में यह प्रदर्शित होगा कि इन बंदियों में से तकरीबन 95% os ykx gS tks ;k rks xjhc oxZ ls vkrs gS ;k fupys e/;e oxhZ; gSA

Hkkjr dh tsyks esa c<+rh l[;k ,d xHkhj leL;k gS ftls ij rqjar /;ku fn;s जाने की आवश्यकता है। पिछली शताब्दी के आठवें दशक ¼71&80½ esa विचाराधीन बंदियों के प्रवेश में अचानक उछाल आ गया। यह 1970 में 6 लाख ls c<+dj 1980 esa rdjhcu 10 yk[k rd gks x;k vFkkZr~ 62% of) ntZ dh xbZA fopkjk/khu cafn;ksa dh nSfud vkSlr tula[;k Hkh eyr% 42-5 gtkj ls c<+dj 77-5 gtkj gks xbZA blds dqN Hkkx vijk/kksa esa of) ds dkj.k gS] ysfdu vfHk;kstu ,tsfUl;ksa ds }kjk /kheh tkap] tekur eatwj djrs le;

रूढ़िवादी पद्धति और न्यायपालिका द्वारा केसों का विलम्बित निष्कासन इस स्थिति ds fy, ftEesnkj dqN vU; egRoiw.kZ dkjd FkkA

तब से, देश में दोषियों और विचाराधीन कैदियों का अनुपात 1:2 का रहा है और dqN jkT;ksa esa eqdnesa] bUDok;jh] tk¡p dk lkeuk dj jgs dSfn;ksa dh la[;k दोषियों से तीन गुना (उत्तर प्रदेश: 13284–43078)] pkj xquk (पश्चिम बंगाल: 3848&14017½ vkSj ;gk¡ rd fd lkr xquk ¼fcgkj% 5609&40019½ rd c<+ xbZ FkhA[29]

fopkjk/khu cafn;ksa dh leL;k vkSj blds ifj.kkeLo:i gksus okyh ekuo ihM+k को बहुआयामी कार्यनीति के साथ संबोधित करने की आवश्यकता है:

- vfHk;kstu ra= }kjk rst tk¡p
- सतर्क जेल प्रशासन
- निःशुल्क विधिक सहायता और विधिक सलाह की उपलब्धता
- tekur] cU/ki= vkSj ifjoh{kk lEcU/kh dkuwuksa dk U;k;lEer mi;ksx] vkSj
- fopkjk/khu rFkk vihykFkhZ cafn;ksa ds ckjs esa mPpre U;k;ky; }kjk fn;s x;s fu.kZ;ksa dk dM+kbZ ls ikyuA

gkykafd] U;k;ikfydk U;k; dh laj{kd gS] fu%lUnsg blds vfrfjDr nwljh dbZ ,slh ,tsfl;k¡ gSa ftudh Hkwfedk u doy iwjd gS cfYd U;k; ds lapkyu esa cgqr vge gSA ftlesa lfEefyr gSa iqfyl] tsy] vfHk;kstu] odhy&leqnk;] jkT; fof/kd lsok,¡ ikf/kdj.k] lfnX/k ;k vijk/kh] शिकायतकर्ता और जनता HkhA bueas ls dqN lsok/kkfjd ;k o/kkfud gSa vkSj tcfd nwljs 0;fDr ;k futh vfLrRo gSa tks doy rc gh gjdr esa vkrs gSa tc U;k; dh izfØ;k viuh txg ij gksA ysfdu] egRoiw.kZ ckr ;g gS fd bldh laxfBr Hkwfedk dks vkijkf/kd U;k; 0;oLFkk dgrs gSaA bueas ls dksbZ Hkh vdsys nwljs ds lg;ksx] lgk;rk vkSj leUo; ds cxSj vkijkf/kd U;k; dk izHkkoh.k :i ls न्याय–प्रशासन नहीं कर सकता।

blfy,] eqdneksa iwoZ cUn dh leL;k dks de djus esa ;g ,tsfUl;ksa D;k Hkwfedk fuHkk ldrh gS] bl ij ge laf{kIr ppkZ djrs gSaA

[29]भारत में जेलों के आँकड़े–2005,नेशनल क्राईम रिकॉर्ड ब्यूरो,गृह मंत्रालय,भारत सरकार–पेज 35–36·

ifyl vkj vfHk;kstu

कानून द्वारा पुलिस को संदिग्धों के विरूद्ध कोई दण्डात्मक शक्ति प्राप्त नहीं है। U;k; lqpkyu dh izfØ;k d okgd d rkj ij ifyl dk lafnX/k dk ftruh जल्द हो सके अदालत के समक्ष प्रस्तुत करना की आवश्यकता होती है।जब अदालत d le{k iqfलिस संदिग्ध को प्रस्तुत करती है, तब यह आशा की जाती है कि उसने d;k lp lHkh lcwrksa dk ,df=r dj fy;k gkA vkijkf/kd U;k; izfØ;k d bl igyw pj.k e ifyl ftl <x l lafnX/k d lkFk crko djrh g og egRoiw.kZ gkrk g D;kfd bll vkjksih dk ;g irk yxrk g fd ml fdl izdkj d U;k; dh vi{kk j[kuh pkfg,A yfdu] ifyl vkj vfHk;kstu }kjk xjhcksa] अशिक्षितों और महिलाओं के साथ जांच या इंक्वायरी के दौरान में जो बर्ताव किया tkrk g og lkekU;r% ekuo xfjek d bru v;kZ; gkrk g fd og e|dne d cxj n.M iku leku gkrk gA

पुलिस और अभियोजन को तीव्र जांच की दिशा में अपने रूझान में बदलाव लाना gkxkA vijk/kksa e c<krjh l fuiVus d fy, bu foHkkxksa dk viu vkfFkd vkj ekuo nkuksa lalk/kuksa e of) djuh pkfg,A rhljs] gqluvkjk [kkrqu d d;l e न्यायाधीश श्री भागवती ने अवलोकन किया थाः

“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 है और इसके लिए जो Hkh djuk आवश्यक है वह राज्य द्वारा किया जाना चाहिए। यह इस अदालत का भी संवैधानिक nkf;Ro g fd] turk d ekfyd vf/kdkjksa d vfHkHkkod] -------igjnkj d rkj ij आरोपी के शीघ्र मुकदमा के अधिकार को सुनिश्चित करने के लिए राज्य को आवश्यक निर्देश जारी करके जिle jkT; ldkjkRed dk;kokgh dj ldrk g ftle tkp ;=kofy e c<krjh djuk o et cr djuk] u, vnkyrksa dh LFkkiuk djuk vkj u;s vnkyr ?kj cukuk lfEefyr g----------**

देश के सभी स्थानों पर हमारी अदालतों में पिछले कार्यों का ढ़ेर लगाने के लिए U;kfयिक अधिकारियों को दोष दिया जाता है। जो केस विचाराधीन हैं वह केवल vnkyrksa d dkj.k gh ugh g cfYd bld dkj.kksa dk lEcU/k tkp] vfHk;kstu vkj cpko i{k d odhyksa l Hkh gA mnkgj.k d rkj ij] fupyh vnkyrksa e gR;k d db d;l cMh vnkyrksa d lqiqn djus d fy, fopkjk/khu g vkj ,slk blfy, ugh gksk ik jgk g D;kfd lqiqnxh ¼committal½ fjdkMZ r;kj ugh gA bl

ckr dh lPpkbZ ;g gS fd ,sls Hkh dbZ mnkgj.k gSa tgka bl izdkj ds cgkuksa ds कारण केस एक वर्ष की अवधि तक भी विचाराधीन रह जाते हैA

bl izdkj fupyh vnkyrksa esa ,sls dbZ dsl fopkjk/khu gSa tks iqjs eqdnesa ds fy, vkxs bl dkj.k ugha c<+ ikrs gSa D;ksafd vfHk;kstu xokg dh deh] iqfyl फाईल की कमी, प्रदर्शित वस्तु ¼exhibit½ dh deh vkSj ;gka rd ljdkjh odhyksa dh i;kZIr la[;k esa deh ds dkj.k Hkh gksrh gSA

dfe;ksa dk ;g mYys[k vkykspuk djus dh vkSj iz;Ru ugha gS cfYd vkijkf/kd U;k; lapkyu O;oLFkk dh dfe;ksa dks igpkuus ds fy, gS rkfd tsyksa esa fopkjk/khu cafn;ksa dh c<+rh la[;k dks ns[krs gq, bl ds mipkj ds mik; fd;s tk ldsA

iqfyl dk ;g lमझने की आवश्यकता है कि जांच की ओर इसका सारा प्रयत्न O;FkZ gS ;fn blesa vfHk;kstu dk Hkh mruk gh lkeatL; vkSj lg;ksx vkSj mlh izdkj vfHk;kstu dks iqfyl dk lg;ksx u izkIr gksA nksuksa dks ,d nwljs ds निकट सहयोग से काम करने की आवश्यकता है। यह भी आवश्यक है fd muyksxksa ds fo:) dBksj dk;Zokgh dh tk, tks O;oLFkk ls tqM+s gq, gSa vkSj tks dkuwu द्वारा आवश्यक और निर्धारित भूमिका के अनुसार काम करने में विफ़ल हुए हों। यह सुनिश्चित किया जाना चाहिए कि बुरी uh;r] ykijokgh ;k vKkurk ds ifj.kke ds :i esa viuh nkf;Roksa ls gVus ;k foyac djus ds fy, rqjar vkSj mfpr n.M fn;k tk,xkA foHkkx dk fu;a=.k vkSj ekfuVfjax dh ,slh ;a=kofy fodflr djuh pkfg, ftlls u dsoy ljdkjh inkf/kdkfj;ksa dh Hkwfedk ds अंतर्गत कार्यनिष्पादन की ज़िम्मेदारी सुनिश्चित हो सके बल्कि न्याय प्रक्रिया को nषित करने वाले अन्य लोग जैसे कि गवाहों और वकीलों की भूमिका की ज़िम्मेदारी भी सुनिश्चित हो सके।

आपराधिक न्याय प्रणाली से जुड़े सभी लोगों को अपने निदर्शन और सोचने के ढ़ंग में बदलाव लाने की आवश्यकता है, वह सभी एक ही मकसद के लिए काम कर रहे gSa&dkuwu dk ikfyu] dkuwu rksM+us okyksa dks n.M] vijkf/k;ksa dk lq/kkj vkSj समाज की सर्वश्रेष्ठ सुरक्षा।

tsy

जेल, न्यायपालिका की संरक्षक है। इसमें न केवल उन दोषियों को रखा जाता है ftUgsa vnkyr us nf.Mr fd;k gS vkSj ftlds n.M dk dk;kZUo;u gksuk gS cfYd blesa j[ks tkus okys yksxksa esa ,sls vkjksfi;ksa dh la[;k Hkh cgqr vf/kd gksrh gS ftUgsa U;kf;d fgjklr esa j[kk x;k gS vkSj ftlesa bZDok;jh] vuql/kku vkSj

सुनवाई अभी जारी है। जेल पदाधिकारी, उन्हें सुरक्षित रखने और जब आवश्यकता gk rc vnkyr e çLrr dju d 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 ग़ैरकानूनी और अनावश्यक तरीके से न रखा जाए, और vxj ,lk dkbl mnkgj.k g] bl rjr lEcfU/kr vnkyr ;k eftLVsV d /;ku e लाना चाहिए। जेल पदाधिकारियों से यह भी आशा की जाती है कि वह रिमांड cfn;k d dkuuh vf/kdkjk dh j{kk dj vkj tgk rd lEHko gk mUg xj fgjklrh mipkj ndj tyk e HkhM de dju e lgk;rk djA

किसी भी देश में जेल, आपराधिक न्याय प्रशासन प्रfØ;k dk vfre ifj.kke g ¼flok; mu vijkf/k;k d tk lenk; ij vk/kkfjr dk;Øek e yxk; x; हैं)। इस प्रकार इन संस्थानों की कार्यप्रणाली का उस देश में न्याय और अधिकारों के अनुभव और अर्थ पर बहुत प्रभाव पड़ता है। वह न्याय प्रशासन की ifØ;k d lii.f संरचना पर अध्ययन और शोध के लिए महत्वपूर्ण आधार भी miyC/k djkr 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 जेy depkfj;k d dke dju dh Nih gbl i)fr rFkk tsy d ckgj dfn;k d ifr lenk; dh cijokgh ,d lkFk feydj] tyk dk ekuokf/kdkjk d n0;ogkj d fy, ,d mitkÅ ituu LFkku miyC/k djkr gA tyk dk icU/ku ijku dkuuk o fu;ek d vrxr fd;k tkrk g ftld vuikyu ;k mYYk?ku dh tkp djuk vkerkj ij turk dh igp l ckgj gkrk gA fgjklr dh fLFkfr dk okLrfod eY;kdu lj{kk ifØ;k d dbl ijrk d miyC/k gku d dkj.k vo:) gk tkrk g tk rF;k dk Nik nrk g ;k tc rd og ckgj vk ikrk g rc rd ml vlc) vkj vipfyr cuk nrk gA

;g vfHkj{k.k lLFkku jgu&lgu o LokLF; voLFkk dh ftu dfe;k l xLr हैं उनका विस्तारपूर्वक वर्णन किये बग़ैर हमारे दृष्टिकोण के लिए यह पर्याप्त gkxk fd ge cnh j[k x; ykxk d ckdh cp vf/kdkjk d lj{kk d Lrj dk देखें। कुछ ऐसे पहलु हैं जिन पर तुरंत ध्यान दिये जाने की आवश्यकता है और orekku ifjfLFkfr e l/kkj yku d fy, dfn;k vkj tsy inkf/kdkfj;k nkuk के ही कानूनी सशक्तिकरण की आवश्यकता है।

vnkyr d le{k fopkjk/khu cfn;k dk iLrr u djuk
tyk में विडियो लिंकेज जुड़ाव पर आलोचनात्मक समीक्षा की आवश्यकता

vijk/kk dk ,d iHkkodkjh tokc nu d fy, ,d ,l U;kf;d ljpuk dh t:jr g tk ykxk dk d n e Mkyu d mi;kx dk lxhu dlk rd lhfer dj n vkj tyk d volj n fd og bruk ldkjkत्मक शासन उपलब्ध करायें जो vijk/kk d nkgjku dk jkdu e lgk;rk dj ld] bl muykxk d fy, mi;kx djuk ftud fy, lkenkf;d mipkj vf/kd mfpr gkxk vijk/k d Lrj dk de करने में मदद नहीं करता है। व्यस्क एंव किशोर दोनों प्रकार के अपराधियों के लिए cgr vf/kd mi;kx mu len;k ij vk/kkfjr mik;k¼tekur] ifjoh{kk] c/ki=] vkj 0;fDrxr epydk½ dk mi;kx fd;k tkuk pkfg, tk vijk/kk d nkgjku dk jkdu e lQy gkA

tgk lEHko gk e dnek io d n l cpuk pkfg,% fjekM d fn;k dh ,d cMh l[;k ckn e fjgk gk tkrh g ;k mUg xj fgjklrh n.M ikIr gkrk gA n-i-l- की धारा 428 के प्रवेश के बाद ऐसे रिमांड क़ैदियों को ज़मानत देने से इंकार djuk mUg vijk/k d cxj cnh gku d n.M nu leku gA bld vykok ftl voLFkk e db fjekM cnh d n करके रखे जाते हैं वह, उनके निर्दोष होने की ifjdYiuk l bdkj gA

ykxk dk d n e j[kuk okLro e egxk[30] gkrk g& ;g] mUg lkenkf;d lok ;k ifjoh{kk d nkjku lijokbt dju l db xuk vf/kd egxk gkrk gA dg cxj ;g ekuk tk ldrk g fd vfrldfyr ty vekuoh; gkr g% db jkT;k e हज़ारों बंदी जिनमें कई ऐसे भी सम्मिलित होते है जो दोषी नहीं हैं उन्हें ऐसे cjdk e j[kk tkrk g ftle ,d le; e mldh fu/kkfjr okLrfod {kerk l nk&rhu xuk vf/kd ykx j[k x;k gkA[31] cfn;k dh vR;f/kd l[;k lHkh cfn;k को ऐसे साकारात्मक प्रशासन उपब्ध कराने से रोकती है जो रिहा होने के बाद उन्हें dkuu dk ikcn gkdj thou ;kiu dju d fy, r;kj dj ldA ty inkf/kdkfj;k dk ijk le; ykxk d flj fxuu] mUg Hkkxu l ljf{kr j[ku vkj nk बार भोजन देने में ही गुज़र जाता है। इसके अलावा आवश्यकता से अधिक [khph bl 0;oLFkk e] db cfn;k dk mud ?kj d {k= l cgr nj LFkkukrfjr dj fn;k tkrk g ftll ifjokj l mudk lid de gk tkrk g rFkk tyk e असंतोष व तनाव बढ़ जाता है। संख;k d ncko e c<krjh d dkj.k n.M LFkkfir dju e xMcMh dh lEHkkouk Hkh ink gkrh gA

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[30]वर्ष 2005–2006 के अनुसार भारत में प्रति क़ैदी औसत खर्चा था 10,474रू. (भारत में जेलों के आंकड़े–2005–एन-lh-vkj-ch-,स्नैपशॉट)

[31]वर्ष 2005 के अंत में, भारत के जेलों में घोषित 246 हज़ार की क्षमता के विरूद्ध 358 हज़ार से अधिक क़ैदी थे।

सिद्धदोषी और विचाराधीन दोनों प्रकार के बंदियों की संख्या को कम करने के fy, ljpukRed lkenkf;d n.M vkj mfpr dlk e tekur d mi;kx }kjk lxfBr i;Ru fd;k tkuk pkfg,A fgjklr d mi;kx e bl idkj dh deh tky lok dk cfn;k ij vf/kd ljpukRed :lk e rFkk vf/kd dkc j[ku योग्य संख्या का ध्यान रखने में सक्षम बनाएगा विशेषरूप से उन बंदियों पर ध्यान j[ku e tk vkrdoknh] fonkgh] vkorh vijk/kh ;k dBkj vijk/kh dh J.kh e आते हैं। तब इसमें काम, प्रशिक्षण और शिक्षा के लिए, आपराधिक व्यवहारों से fuiVu d fy, iHkkodkjh ikxke] cgrj Hkkfrd fLFkfr] fjgkbl d fy, vf/kd mlk;Dr r;kjh vkj ckgjh nfu;k l lid d vf/kd volj miyC/k gk ldxA

ßty l/kkj vkj vk/kfudhdj.kÞ dk ßdn dju d fy, vf/kd LFkku cukuÞ d i;k;okph d :lk e ugh n[kuk pkfg,A vf/kd tyk vkj vf/kd cjdk की आवश्यकता है लेकिन वह सुधार प्रक्रिया और आधुनिकीकरण की प्रक्रिया का vr ugh gA tyk e c< g, fuokl LFkkuk dk ljf{kr dju d fy, fgjklrh मकसदों से, मानव संसाधनों में भी समानरूप से बढ़ोतरी की आवश्यकता हैं। यह xg e=ky; d fy, i.k le; g ;g ekfuVj dju d fy, fd dUæh; ik;kftr ;ktuk d v/khu c< g, ekU;rkikIr LFkku dk fdruk Hkkx fofHkUu jkT;k }kjk mi;kx fd;k x;k gA jkT; ljdkj tyk ij dkbl ilk [kpl ugh djuk pkg jgh gA lj{kk deipkfj;k d [kkyh LFkku dh fLFkfr ¼;gk rd fd orleku tyk e½ cgn [krjukd gA dbl jkT;k e lj{kk xkMk vkj lk;o{kh deipkfj;k ¼lijokbltjh LVkQ½ d 25 % l vf/kd in fjDr iM gA dbl राज्यों में(मध्य प्रदेश, राजस्थान, कर्नाटक, आंध्र प्रदेश, केन्द्र शासित राज्य lfEefyr g½ u; cuk; x; tyk vkj cjdk dk deipkfj;k dh deh d dkj.k mi;kx e ugh yk;k x;k gA blfy,] tyk e HkhM dh fLFkfr yxkrkj tkjh gA

u doy ;g] i;klr deipkfj;k dh l[;k e deh tty e 0;oLFkk dk cuk, j[ku d fy, dfn;k ij fuHkj jgu d fy, ck/; djrh g vkj cny e ogk से हर प्रकार के भ्रष्टाचार और दुराचार की शुरूआत होती है। उस स्थिति में हम cjkbl;k d l/kkj dh ckr ugh lkp ldrA blfy,] jkT; ljdkjk dk ;g विश्वास दिलाने की आवश्यकता है:

- वर्तमान सुरक्षा आवश्यकताओं और जेल में बढ़े हुए स्थानों के परिप्रेक्ष्य में tty dMjk dh leh{kk vkj mUg iu%lxfBr dj]

- vijk/k vkj l/kkj dh ub fopkj/kkjk d ifji{; e u;s vkj orZeku कर्मचारियों के लिए ट्रेनिंग और रिफ्रेशर पाठ्यक्रमों को दोबारा संगठित करें, vkj
- अवकाश–आरक्षित व प्रशिक्षण–आरक्षित कर्मवारियों को उपलब्ध कराना ताकि बेहतर प्रशिक्षित और अधिक सतर्क सुरक्षा कर्मियों का ध्यान रखा जा सके।

,d सतर्क जेल प्रशासन, जेल में रिमांड बंदियों के leg dh leL;k dk gy fudkyus e fuEu :i ls ;kxnku n ldrk g%&

- fopkjk/khu cfn;ksa dk e¶r dkuuh lgk;rk igpkus d fy, ftyk fof/kd lsok,a ikf/kdj.k l lkeatL; cuk, j[kuk]
- ,sls cfn;ksa dk fu;fer :Ik ls अदालत के समक्ष शारीरिक रूप से या ohfM;ks dkWfl×x }kjk izLrqr djuk]
- vkjksih }kjk lfopkfjr vkj cgkuk djds lqunokbZ dh rkjh[k ij vuqifLFkfr dk grkRlkfgr djd]
- मांग के अनुसार समय पर संरक्षक पुलिस गार्डों को सुनिश्चित करा कर,
- mfpr ifjogu lqfo/kk miyC/k djk dj] vkj
- fopkjk/khu cfn;ksa d fy, fu;fer :Ik ls vkof/kd leh{kk ehfVax vk;kftr djk djA

U;k;ikfydk dh Hkwfedk

,d vke vkneh dh U;k; rd igqap cukus e U;k;ikfydk cgqr egRoiw.kZ Hkwfedk fuHkk ldrh gA ,d dY;k.kdkjh jkT; tSls fd gekjs jkT; e U;k;ikfydk को अपने आप से यह प्रश्न पूछना चाहिए कि क्या इसे ऐसे 'कानून dh vnkyr* cus jguk pkfg, ftlesa U;k; ,d dBksj fof/k dh izfDr dkuuu से जुड़ा हुआ है या सोच में बदलाव लाकर, कानून के स्पष्टीकरण vkj dkuuu dk mi;ksx okLrfod न्याय दिलाने के लिए विशेष रूप से कमज़ोरों, गरीबों, अशिक्षितों, महिलाओं एंव अन्य अतिसंवदेनशील वर्ग को इसे 'न्याय की vnkyr* e ifjofrZr gkuk pkfg,A

fopkjk/khu dfn;ksa d lcU/k e U;kikfydk dh Hkwfedk को दो दृष्टिकोण से ns[kk tk ldrk g%&d½ vkjksih dk tyy e Hkstk tkus d igys U;k;ikfydk dh Hkwfedk vkj ¼[k½U;k;ikfydk dh Hkwfedk tc vkjksih dk fopkjk/khu dfnh d :Ik e tyy e cnn dj fn;k tkrk gA

vke vkneh dh U;k; rd igqp cukus esa mlls fopkjk/khu dSnh ds :Ik esa U;kf;d fgjklr esa Hkstus tkus ds igys dh U;k;ikfydk dh Hkkfedk dk] सर्वोच्च अदालत के निर्देशों के सारांश के अनुसार निम्न रूप में çLrqr fd;k tk ldrk g&

- lHkh ;kX; vkjksih ikfV;ksa dks eq¶r dkuwuh lgk;rk ds rkSj ij miyC/k सहायता देना, परामर्श और जांच तथा अभियोजन दोनों मे lgk;rk igqpkukA

- उदार ज़मानत की मंजूरी, विशेषतौर पर अतिसंवेदनशील वर्ग के आरोपियों dksA ¼gLlu vkjk [kkrqu dsl½ *&NksVs&eksVs vijk/kksa esa vkjksih efgykvksa vkSj पुरूषों की एक बड़ी संख्या को अंतहीन रूप से बहुत खराब अवस्था में जेल esa j[kk x;k gS फलतः वह मनुष्य की तरह रह ही नहीं पाते। इसका एक कारण उच्चकोटि की असंतोषजनक ज़मानत व्यवस्था है। यह संपत्ति vfHkfoU;Lr i)fr tks bl ckr ij vkxs c<+rh gS fd vkfFkZd uqdlku dk खतरा न्याय से भागने को रोक सकता है। अदालतें मशीनी ढ़ंग से और आम dk;Z i.kkyh ds rkSj ij vkjksih ij tekurh iLrqr (çLrqr) djus dk ncko Mkyrh gS vkSj mlls ij _.k pqdkus dh {kerk dks LFkkfir djus dk ncko Mkyrh gSA ;g xjhcksa ds fo:) dBksjrkiw.kZ :Ik ls dke djrk gSA ftldk ifj.kke ;g gksrk gS fd og ifjyl vkSj nykyksa }kjk fupksM+s fy;s tkrs gS vkSj tsyksa esa lMus ds fy, Hkst fn;s tkrs gSA*

- न्यायाधीश श्री कृष्णा अय्यर(मोतीराम के केस में, 1979 1 एस-lh-vkj- 335½ esa ukssV fd;k Fkk fd U;k; ds ckt+kj esa xjhcksa dh vktknh dh dksbZ dher ugha gSA mUgksaus [ksn trkrs gq, dgk fd *gtkjksa fu/ku 0;fDr dsoy bl dkj.k tsy esa gS D;ksafd og tekur ysus esa leFkZ ugha gS ;k mUgsa tekur ds fy, vkonu djuk ugha vkrk gSA eftLVsV dk bl ikphu vo/kkj.kk dk cnyuk gksxk fd eqdnek iwoZ dSfn;ksa dh tekur dsoy iSls ds cnys gh eatwj dh tk ldrh gSA*

- 0;fDrxr cU/ki= ij fjgkbZ dh vkKk nsuk¼ *अगर अदालत इस बात से संतुष्ट gS fd vkjksih dh tM+s lekt esa ls tqMh gS vkSj mlds Hkkxus dh lEHkkouk ugha gS rc mls 0;fDrxr cU/ki= ¼eqpydk½ ij fjgk dj nsuk pkfg,A* ¼gLlu vkjk [kkrqu dk dsl½

- Ukckpæ dk dl ¼,-vkb-vkj- 1964 ef.kij 39½ tekur vkj fjekM l lEcfU/kr gA ,lk yxrk g fd ifyl d chp ,d /kkj.kk g fd mudk nkf;Ro g vkjkih dh din dk c<kuk---fdlh Hkh ifjfLFkfr e ifyl dk vkjkih d din d fy, fourh ugh djuh pkfg, flok; ml le; d fy, tc dl dh जांच के लिए इसकी बहुत अधिक आवश्यकता हो। अगर वह viu dr0; d bl igy dk le>r g] tekur dk fojk/k dju d fy, अनावश्यक आवेदन और रिमांड के लिए अनावश्यक आवेदन बंद हो जाएंगे।

vnkyr] ifyl dh lfnX/kk vkj vkjkfi;k dk fxj¶rkj dju vkj fgjklr e रखने की शक्तियों पर हमेशा ही पर्यवेक्षण की दूसरी परत के रूप में काम कर ldrh g vkj ey :lk l fgjklr e n0;ogkjk dk dkuuh iko/kkuk d U;k;lEc) :lk l dk;kUo;u l de dj ldrh g vkj mUgs e|dne vkj vfHk;kstu d fopkjk/khu gkus dh vof/k e okil le|nk; e Hkst ldrs gA

¼[k½ U;k;ikfydk dh Hkfedk tc vkjkih dk fopkjk/khu dinh d :lk e ty e Mky fn;k tkrk g] tks mPp U;k;ky; vkj lokPp U;k;ky; }kjk tkjh dN दिशा–निर्देशों और अधिदेशों के पालन पर निर्भर करती है:

- dkbZ Hkh ज़मानत मशीनी रूप से और अदालत या ट्रायल मजिस्ट्रेट के समक्ष वीडियो कांफ्रेंसिंग के अंतर्गत वास्तविक शारीरिक प्रस्तूती के बग़ैर नहीं दिया tkuk pkfg,¼/kkjk 167 n-i-l- ¼2½¼[k½A *eftLVªV dk Mk;jh dk /;ku l पढ़ना चाहिए और इस बात से संतुष्ट होना चाहिए कि रिमांड आवश्यक है vkj vxj Mk;jh i.Lrqr ugh dh tkrh g rc vkjkih dk fjgk dj nuk pkfg, vkj bld fy, u rks tekur vkj u gh tekuruke dh t:jr gksrh gA*Ab*ifyl e ;g /kkj.kk g fd eftLVªV }kjk ,d fxj¶rkj 0;fDr dk fjekM lkekU; :lk l fd;k tkuk pkfg,A ftruh tYnh ;g /kkj.kk lekIr gks tk, mruk vPNk gAß Ukckpæ dk dsl ¼,-vkb-vkj- 1964 ef.kij 39½

- मुकदमा उचित गति से चलना चाहिए। शीघ्र गति का मुकदमा है,---vuPNn 21 d vrxZr nh xbZ ^fopkjk.k] LoPN vkj U;k; lxr* ifØ;k dh xkjVh का एक आवश्यक तत्व है और यg jkT;k dk dr0; g fd og ,lh ifØ;k 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 e mfpr :lk l voykdu fd;k *ge fnekx l*

vfHk;kx i{k d , tsfl;ks }kjk lqLrh vkj pkyks d dkj.k gkus okys foyac ls vutku ugh gA

ge ,sls eqdnek d ckjs es tkurs g ftues vfHk;kxi{k dh ,tsfl;ks }kjk लापरवाही और निद्रालुता या जान बूझकर काम न करने के कारण आवश्यकता से vf/kd foyac gqvk gAvfHk;ktu ,tsसियों की असंवेदनशीलता के कारण गरीबी d ekjs] xjhc] fojks/k djus es vleFk o ncsy dsnh eghuks vkj lkyks rd tsyks es HkVdrs jgrs g-----शीघ्र मुकदमे से इंकार किसी और प्रमाण के साथ या mld cxsj U;k; ls bdkj d vfuok;l ifj.kke dk iokZxg gA ;g ,d 0;fDr dk eqdnes d cxsj dsn djus dk iokZxg gA ;g ,d 0;fDr dk U;k;lEer मुकदमे से इंकार का पूर्वाग्रह है। एक न्यायसम्मत मुकदमे का तात्पर्य है शीघ्र eqdnekA

- आरोपी को शीघ्रतापूर्वक विचारण का अधिकार इसके सभी चरणों में प्राप्त g&tkp] bDok;jh] मुकदमा, अपील, परिशोधन व दोबारा मुकदमा पर भी। ¼,-vkj-vnkyr dk dsl½

- tsy es Hkts x, vkjksih d ifr U;k;ikfydk d foLrkfjr dk;ks dk mi;kx /;kuiood fd;k tkuk pkfg,Atsy d dk;ks dh fuxjkuh djus d fy, U;kf;d vf/kdkfj;ks dk dbl lfefr;ks vkj fudk;ks d lnL; d :Ik es eukuhr fd;k tkrk gA fopkjk/khu dsfn;ks d lEcU/k es ,slh gh एक समिति है ज़िला स्तरीय 'समीक्षा समिति' जिसकी आवश्यक रूप lehVhx lky es nks ckj¼;fn lEHko gks] vkj vf/kd ls[;k es½ gkuh pkfg,A

fopkjk/khu cfn;ks dh leh{kk lfefr¼;-ih-vkj-lh-½

देश में कुछ राज्यों ने पहले ही ज़िला जेलों में बंद विचाराधीन कैदियों की vkof/kd leh{kk d fy, ;w-ih-vkj-lh- dh fu;qfDr dj yh gA tgk ,slk ugh g] ogk tsy vf/k{kd }kjk lHkh fopkjk/khu dsfn;ks dh lph ftyk o l= U;k;ky; dk ckjhdh ls ;g tkp djus d fy, Hkth tkrh g fd dgh dkbl fopkjk/khu dsnh eqdnes dh fopkjk/khurk es vufpr :Ik ls yca le; rd dsn u gkA fopkjk/khu dsfn;ks dh fLFkfr dk ;g v/;;u tsy ifØ;k dk ,d महत्वपूर्ण पहलू है और इसका निष्ठपूर्वक पालन किया जाना चाहिए।

leh{kk lfefr dk lHkh fopkjk/khu dfn;k d dlk dk eY;kdu djuk pkfg, ताकि वह यह सुनिश्चित कर सके कि निम्नलिखित श्रेणियों में से किसी एक या vf/kd d vrxr vku oky dlk dk lEc) vnkyrk e dkeu dkt cuke Hkkjr x.kjkT;] 1996 d dl e mPpre U;kयालय के निर्देशों (और उसमें mYyf[kr viokn d lkFk d vrxr mfpr dk;okgh d fy, Hkt fn;k tk,] vFkkr%

¼d½ fopkjk/khu dnh tk fdlh ,sls vijk/k d fy, vkjkih g ftldk n.M 3 वर्षों का कारावास है और जो कम से कम 6 महीने या उससे अधिक समय तक tel में रह चुके हों और जिसमें मुकदमा 1 वर्ष से विचाराधीन है, उन्हें ज़मानत ij fjgk fd;k tk,xk]

¼[k½ fopkjk/khu dnh tk fdlh ,sls vijk/k d fy, vkjkih g ftldk n.M 5 वर्षों का कारागार है और जो कम से कम 6 महीने या उससे अधिक अवधि लिए tyy e jg pqका हो और जहां मुकदमा कम से कम 2 वर्षों से विचाराधीन है,उन्हें tekur ij fjgk fd;k tk,xk]

¼x½ fopkjk/khu dnh tk fdlh ,sls vijk/k d fy, vkjkih g ftldk n.M 7 वर्ष या उससे कम के क़ैद का है और जो कम से कम 1 वर्ष तक जेल में रह pqdk gk vkj tgk e¡कदमा कम से कम 2 वर्षों से विचाराधीन है,उन्हें ज़मानत ij fjgk fd;k tk,xk]

¼?k½ vkjkih dk c[kkLr dj fn;k tk,xk ;fn mld fo:) VkfQd (VfQd) अपराध सम्बन्धी आपराधिक कार्यवाही में मुकदमा 2 वर्षों से विचाराधीन है,

(ड़) जहां अदालत की आज्ञा द्वारा शमनीय अपराध 2 वर्षों से विचाराधीन हो, अदालत सरकारी वकील की बात सुनने के बाद आरोपी को या तो दोषमुक्त कर nxh ;k dlk dk c[kkLr dj nxhA

¼p½ tgk vlK; और ज़मानती अपराध, मुकदमा प्रारम्भ हुए बगैर 2 वर्षों से vf/kd le; ls fopkjk/khu gk] mle vnkyr vkjkih dk c[kkLr ¼NkM nxh½ dj nxhA

¼N½ tgk vkjkih dk ,sls vijk/k e NkM fn;k tkrk g ftldk n.M dsoy जुर्माना चुकाना हो और वह पुनरावर्ती प्रकृति का न हो और मुकदमा एक वर्ष के भीतर प्रारम्भ न हुआ हो, आरोपी को दोषमुक्त कर दिया जाएगा।

¼t½ tgk 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 fopkjk/khu gk] vkijkf/kd U;k;ky; tlk dl gk mld vuqkj vkjkih dk छोड़ देगी या दोषमुक्त कर देगी और केस को बंदकर देगी।

dkeu dkt dl e fu/kkfjr fl)kr Lor%dk;kfUor gkuokyugh gA mUg निपुण मजिस्ट्रेट को निरन्तर निगरानी, मार्गदर्शन और निर्देशन की ज़रूरत है जो fupyLrj ij vkijkf/kd U;k; d forj.k d iHkkjh g] ftud le{k fopkjk/khu dfn;k d fjekM c<ku d fy, çLrqr fd;k tkrk gA

leh{kk lfefr dk dfn;k d fuEufyf[kr dlk dk Hkh /;ku e j[kuk pkfg, vkj ml lEc) vnkyr@eftLVªV d ikl mfpr dk;okgh d fy, Hkt nuk pkfg,%

¼´½ detkj fnekx d xj&vkijkf/kd ykxk dk jÌ ikxyiu vf/kfu;e ;k ekufld LokLF; vf/kfu;e 1980 d vrxr n[k j[k d fy, ty e ugh भेजा जाएगा। शीला बारसे के केस में सर्वोच्च न्यायालय के निर्देश के बाद ऐसे fdlh Hkh dnh dk ty e ugh j[kk tk,xkA

¼V½ efgyk fopkjk/khu dnh ftldk ifr Hkh ty e g vkj ftld cPpk ckgj fdlh vfHkHkkod ;k lj{k.k d ckgj NV x;k gkA

¼B½ n-i-l- dh /kkj 109 d vrxr cgr ycs le; l dn e jgu oky gokykrhA

¼M½ tk n-i-l- dh /kkj 107@151 d vrxr dnh g vkj ftud dl e ज़मानत और/या बंधपत्र की राशी उच्च न्यायपालिका के निर्देशों के विरूद्ध और निषेधात्मक ढ़ंग से बहुत अधिक है।

¼<½ fopkjk/khu dnh tk n.M.kh; dn dh vk/kh ;k mlls vf/kd vof/k ty e 0;rhr dj pdk gA n-i-l- e /kkjk 436 d d tkM tku d ckn ,sl vkjkih dk 0;fDrxr epydk ij tekurnkj d lkFk ;k mld cxj tekur ij fjgk gkuk dk vf/kdkj gA

¼.k½fopkjk/khu dnh ftUg n-i-l- dh /kkjk 428 d ifj.kkeLo:lk fjgk fd;k tkuk pkfg,A

¼Fk½ ,lk dkbl Hkh 0;fDr tk n-i-l- dh /kkjk 346¼1½ vkj n-i-l-संशोधन vf/kfu;e 2005 d vrxr uhp dh xbl 0;k[;k d lkFk bldh ifjf/k e vkrk gkA

tyk ls ßHkhM+ de djuÞ d nk igy g% ,d] c<s g, dfn;k d fy, vf/kd LFkku miyC/k djuk vkj nk] vijkf/k;k dk lkenkf;d mipkjA nlj k igy vf/kd iHkkodkj o de egxk gA bld 0;ogkfjd dk;kUo;u e bldk eryc g ¼d½ tyk e de l[;k e dfn;k dk Hkstuk vkj ¼[k½ orekeu dkuuk d प्रावधानों और निर्देशों का उपयोग करके उनलोगों को वापस समुदाय में लाना tk igy l ty e gA

vkijkf/kd U;k; i.kkyh d bu nkuk igyvk e fofHkUu ,tfl;k d chp cMk सामंजस्य स्थापित करने की ज़रूरत है। जबकि जेल पदाधिकारियों को सिद्धदोषी o fopkjk/khu dfn;k d lEcU/k e ty dh orekeu tul[;k dh] dkeu dkt dl e lokPp U;k;kyय द्वारा जारी विभिन्न निर्देशों के परिप्रेक्ष्य में समीक्षा करने की आवश्यकता है। इन निर्देशों को मानने में निचली अदालतो को अधिक विचारशील(यदि उदार न भी हों) होने की आवश्यकता है।

tyk e c<rh gbl HkhM+ dh leL;k dk de dju e n-i-l- dh /kkjk 167]360]361]428]436 dk U;k;lxr i;kx vkj vijk/kh ifjoh{kk vf/kfu;e d iko/kuk d cf)ekuh l mi;kx dju l cgr vf/kd lgk;rk fey ldrh gA शायद न्याय मंत्रालय इस सम्बन्ध में राज्यों को उचित निर्देश जारी कर सकता है। जिसकी आवश्यकता है वह है परिवीक्षा अधिकारि;k dh l[;k vkj Hkfedk e c<krjh vkj LoPNk l vku oky ifjoh{kk vf/kdkfj;k dk lkekftd vkj लाभकारी रूप से अधिक आकर्षक बनायें ताकि सुयोग्य व्यक्तियों और संगठनों dk bl dk;l d fy, fy;k tk ldA

fopkjk/khu dfn;k dh fjgkbl l tyk e HkhM+ de gkxh vkj bl l ty ic/ku में सहायता मिलेगा। इस प्रक्रिया में पुलिस, न्यायपालिका और जेल प्रशासन के बीच ऊंची डिग्री के सामंजस्य की आवश्यकता होगी, दुर्भाग्य से जिसकी कमी orekeu e gA ty inkf/kdkfj;k dk ;g nkf;Ro g fd og lEc) U;kf;d ;k dk;ldkfj.kh eftLVªV dk lfpr dj ;fn fdlh dnh dk fgjklr e j[ku l dkuu d fdlh iko/kku dk mYy?ku gkrk gkA

fopkjk/khu cfn;k dk vnkyr d le{k iLrr u djuk

n-i-l-की धारा 167(2)(ख) का अधिदेश है कि "कोई भी मजिस्ट्रेट हिरासत में fdlh din dk rc rd vf/kdr ugh djxk tc rd vkjkih dk mld le{k iLrqr u fd;k tk,Aß

bl iko/kku dk uhp mYyf[kr 0;k[;k II }kjk vkj vf/kd et crh feyrh g tk dgrk g fd Þvxj ;g loky mBrk g fd vkjkih dk eftLVªV d lkeu iLrqr किया गया है या नहीं, इसकी पुष्टि क़ैद अधिकृत करने के आदेशपत्र पर उसके gLrk{kj l dh tk ldrh gß

इस प्रावधान का मुख्या उद्देश्य है न्यायपालिका पर यह सुनिश्चित करने के लिए एक egRoi.k ekuoh; ftEenkjh Mkyuk fd ¼d½ vkjkih thfor g vkj og U;k;kfpr fgjklr l Hkkxk ugh g] ¼[k½ fd mld lkFk tkp] bDok;jh vkj e|dne d virjky e vokfNr प्रताड़ना या शारीरिक शोषण नहीं किया गया है, (ग) कि आरेापी व्यक्ति जो 'निर्दोषता की परिकल्पना' के अधीन है, को हिरासती संस्थान में dkuu }kjk Lohdk;l voLFkk e j[kk x;k g ftle dkuuh lgk;rk Hkh lfEefyr g] ¼?k½ fd mld d l dk mfpr :lk e ekuk tk,xk vxj og viu xukg dcy djrk@djrh g vkj fdlh ykx dkuu d virxr jkgr ekxrk@ekxrh g] ¼M½ fd n-i-l- dh /kkjk 428 d virxr tkp] bDok;jh vkj e|dne d virjky e mldh din dh vof/k vf/kdre n.Muh; vof/k l vf/kd u gk xbl gk] ¼p½ fd अगर वह किसी कानून या समय समय पर उच्च न्यायालयों द्वारा दिये गये आदेशों d virxr bldh ifjf/k e vkrk g rc mld d l ij xj fgjklrh jkgr d fy, fopkj fd;k tk,A

gkykfd] cMh l[;k e U;kf;d fgjklr e tkp] bDok;jh vkj e|dne dk lkeuk dj jg vkjkfi;k dk okLrfod :lk l fjekM dh vof/k c<ku d fy, eftLVªV d le{k iLrqr ugh fd;k tkrk gA ,l lHkh dlk e] fopkjk/khu din dk केवल वारंट ही अदालत जाता है और आरोपी द्वारा अदालत में शारीरिक रूप से çLrqr g, cxj vkj vnkyr d le{k fdlh idkj d fuonu fd;s cxj] fgjklr dh vof/k fu;fer :lk l c<k nh tkrh gA ;g u doy vfuok;l dkuu d iko/kku dk xHkhj mYy?ku g cfYd din d vf/kdkjk dk mYy?ku Hkh g ftl 'निर्दोषता की परिकल्पना' भी प्राप्त होती है और जिसे lqnokbl dju okyh vnkyr d le{k iLrqr gkdj fdlh idkj d dkuuh ekx d volj l Hkh yxkrkj ofpr j[kk tkrk gA

vxj tyy d vkjkih fopkjk/khu dfn;k d iLrqfr okjaV dk pid fd;k tk, rc] इससे स्पष्ट रूप से यह पता चलेगा कि बहुत अधिक संख्या में प्रस्तुती वारंट ij यह टिप्पणी अंकित होगा कि जेल में आवश्यक मार्गसंरक्षक पुलिस उपलब्ध न होने d dkj.k vkjkih dk vnkyr d le{k ugh iLrqr fd;k tk jgk gA ;g bruk

lkekU; i:pyu gk x;k g fd t:y vf/kdkfj;k d ikl vc ,d jcj lhy ek:tn gk:rk g ftlls i:Lr:h okjaV d ihN fu;fer :Ik ls Blik yxk;k tkrk g tk dgrk g&

ekuuh; U;k;ky;]

fuonu g fd vkt fnukd----------dk lk;kIr ifylcy u feyu d dkj.k अभियुक्त का केवल वारंट भेजा जा रहा है। कृपया आगामी पेशी की तारीख़ देने dh dik djA ;gh fou; gA

t:yj

निश्चित रूप ls bl rhu idkj dk mYy?ku gk:rk g% ,d] t:yj tk fjekM e: j[k x;: d:nh dk i:Lr:fr okjaV }kjk uh;r rkjh[k ij vnkyr d le{k i:Lr:r करने के लिए बाध्य था, आसानी से(दण्ड से मुक्ति के साथ) अदालत के निर्देशों dk ikyu dju e: vlQy gk x;kA n:ljk] jkT; tks अपने विशेषाधिकार का mi;kx djd: ykxk dh Lor=rk Nhu ldrk g] og ml 0;fDr d lkFk LFkkfir vkijkf/kd U;k; i:fØ;k d vuqxr 0;ogkj dju e: bl cgku ls vlQy jgk g fd mld ikl n-i-l- dh /kkjk 167½2½¼[k½ d vuqxr j[kh xbZ ekx d vuqlkj vkjksih dk vnkyr rd y tkus d fy, lk;kIr lk/ku ugh g tk vnkyr rd y tkus d fy, mfpr ifyl xkM miyC/k djk ldA vkj rhu] ;g fd t:yj tk d:l e: ikVh ugh g mlus vnkyr ls vkjksih dh fjekM vof/k c<kus dk fuonu fd;k g] vkj vnkyr fu;fer :Ik ls bl Lohdkj dj yrh g cxj bl ckr dk vglkl fd;: g, fd bldk fdruk gkfudkjd i:Hkko vkjksih d ifjokj ij i:rk gA

;g n:[kus dh t::jr g fd ;g i:pyu ,d Hk;kud vuqikr e: c< jgk g vkj विचाराधीन क़ैदी बेकार में संदर्शन अधिकारियों से शिकायत करते रहते हैं कि mudh fjekM dh vof/k eghuk ls mUgs] lqukbZ dju oky eftLVªV d le{k i:Lr:r fd;: cxj c<kbZ tk jgh gA ;g u d:oy vupkg: rjhd: ls ykxk dk d:n djuk g] cfYd ;g vkjksih dk og volj i:nku dju ls b:dkj djuk Hkh g ftle: og Lo;: ;k odhy d }kjk vnkyr d le{k i:Lr:r gkdj dkbZ dkuuh fuonu dj: ;k t:ekur d fy, vkonu dj: ;k vijk/kh ifjoh{kk vf/kfu;e d ikso/kkuk d vuqxr ykHk mBkus d fy, vkonu dj: ;k vijk/k n.M lkn½ **plea bargaining** dj: ;k fdlh vU; dkuu d vuqxr fjgkbZ dh ekx djA

n-i-l- dh /kkjk 167 dk dMkb l ikyu fd;k tkuk pkfg, ;gk rd fd vkjkih के विरूद्ध चालान प्रस्तुत करते समय भी। न्यायाधीश श्री पी-,u- Hkxorh u glu vkjk [kkrku ,o vU; cuke fcgkj jkT; d dl e voykdu djr g, dgk ßtc ,d fopkjk/khu dnh dk eftLVªV d le{k iLrqr fd;k tkrk g vkj tgk vkjkih dk dl d vuqlkj 60 fnu ;k 90 fnu rd dn e j[kk tk pdk g eftLVªV dk U;kf;d fgjklr dh fjekM dh vof/k dk vkx c<ku d igy विचाराधीन क़ैदी को आवश्यक रूप से यह बतलाना चाहिए कि उसे ज़मानत पर fjgk gku dk vf/kdkj ikIr gAÞ jkT; ljdkj dk viu [kpk ij] fopkjk/khu dnh dk ,d odhy miyC/k djkuk pkfg, rkfd og n-i-l- dh /kkjk 167½2½ d ifrc/k d vrxr ikIr tekur ekxu d vf/kdkj dk mi;kx dj ld vkj मजिस्ट्रेट को यह आवश्यक रूप से देखना चाहिए कि विचाराधीन कnh d odhy dh lgk;rk ikIr dju d vf/kdkj dk jkT; d [kpk ij miyC/k djk;k tkuk सुनिश्चित करें और उसे ज़मानत के आवेदन पर हमारे द्वारा निर्धारित दिशा–निर्देशों d vuqlkj fu.k; djuk pkfg,----हम आशा और विश्वास करते हैं कि देश में iR;d eftLVªV vkर प्रत्येक राज्य सरकार अदालत के इस अधिदेश के अनुसार dke djxA ;g jkT; ljdkjk vkj eftLVªV dk lo/kkfud ck/;rk g] vkj ge ble dkbZ lnsg ugh g fd vxj bldk dMkb l ikyu fd;k tk,] fopkjk/khu dfn;k dh fLFkfr e egRoi.k l/kkj vk,xk vkj dkuu d jkT; dk mfpr vuqikyu gkxkAß½1980½ 1 ,l-lh-lh-108-

tyk dk ohfM;k l tkMu dh lfo/kk

आंध्र प्रदेश में जनवरी 2011 में तथा nlj jkT;k e ckn e vnkyrk dk tyk l ohfM;k d }kjk tkMu dh 0;oLFkk dk vkijkf/kd U;k; i.kkyh u mRlkgiod Lokxr fd;kA bl 0;oLFkk dk edln Fkk ekxj{kd ifyl dh deh d dkj.k n-i-l- dh /kkjk 167 d vuqlkj vfuok;] fopkjk/khu dfn;k dk fu;fer :Ik l vnkyr e iLrqr u dju dh leL;k l NVdkjk ikukA ;g lkpk x;k Fkk fd bl 0;oLFkk l tyk e HkhM de gk ik,xh D;kfd fopkjk/khu dfn;k dk ohfM;k }kjk vnkyr d le{k ^iLrqr* fd;k tk,xk vkj ;g dfn;k d tekur ekxu dh igp] vijk/k ekudj vijk/k n.M lkn dju ¼**plea bargaining**½ d fy, vf/kd volj inku djxkA tyy vkj ifyl foHkkx u 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 bld }kjk gk jg u dlku dk mtkxj fd;k gA

gj ckj dnh eftLVªV d le{k byDVªkfud :Ik l iLrr fd;k tk, rc मजिस्ट्रेट से आशा की जाती है कि वह केस की बदली हुई परिस्थिति के अनुसार vkj foodi.k <x l ;g fu.k; djx fd tekur ej tj djuk g ;k ughA yfdu bl 0;oLFkk dk iR;d 14 fnuk e ,d ckj fu;fer :Ik l fjekM dh vof/k c<ku d fy, उपयोग किया जाता है। अधिकांश केसों मेंइलक्ट्रॉनिक कक्ष e dkbl Hkh dkuuh lykgdkj fdlh dl e dnh dk ifrfuf/kRo djrk ugh fn[krk vkj eftLVªV dk vfHk;ktu l dkbl fooj.k ugh iklr gkrk gA

D;kfd]ohfM;k& tkMu oky d{k e ty inkf/kdkjh Hkh mifLFkr gkr g] ty 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 e iLrr u fd;k tkuk cgr gn rd U;k;ky; l mudh tekur ekxu vkj tekurnkj dk ic/k dju dh {kerk dk de dj jgk gA

,lk irhr gkrk g fd ty e vkjkih vkj vnkyr d chp ohfM;k d ek/;e l tMko u U;kf;d luokbl d okLrfod inkFk dk cny fn;k gA bl 0;oLFkk l vkijkf/kd U;k; i.kkyh dk doy dN le; vkj [kpk cp jgk gA lii.k ifØ;k e vkjkih dnh d fy, U;k; dh ijkt; gk jgh gA ohfM;k dkÝfl x n-i-l- की धारा 167 के मकसद और मूल तत्व को नष्ट करती हुई ekye iMrh gA

e¶r dkuuh lgk;rk

देश के आपराधिक न्याय प्रणाली में एक नया विकास, जिसके बारे में जेल प्रc/ku d lHkh lk>nkjk dk tkuuk pkfg, vkj mi;kx djuk pkfg,] og g e¶r dkuuh lgk;rk dh miyC/krkA

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

ß39 d- ,d leku U;k; vkj e¶r dkuनी सहायता—राज्य निश्चित करेगा कि dkuuh 0;oLFkk dh dk;l i.kkyh leku volj d vk/kkj ij U;k; dk c<kok nxh और विशेष रूप से, उचित कानून या स्कीम या किसी अन्य तरीके मुफ़्त कानूनी सहायता उपलब्ध कराना सुनिश्चित करेगा, ताकि यह सुनिश्चित हो सके fd fdlh Hkh ukxfjd dk vkfFkd ;k fdlh vU; idkj dh v{kerk d 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 edIn Fkk ,d ,slh ;=kofy dh jpuk djuk ftlls U;k; u doy xjhcksa] अशिक्षितों औj vutkuks d fy, miyC/k gks cfYd mud fy, Hkh gks tks ^vU; v{kerk* ls xzLr gS tSls fd tsy esa dSnh djus lA v/kdkje; tsy cUnj vkSj vR;f/kd dBksj tsy&fu;e ,d dSnh dks ckgjh nqfu;k ls dkV nsrs gS] vkSj mlds fy, dkuwuh enn ekaxus dks cgqr dfBu cuk nsrs gSA flfoy ;k आपराधिक दोनों ही प्रकार के कानूनी उपाय,प्रायः उनकी शारीरिक और आर्थिक igqp ds ckgj gksrs gS D;ksafd mueas ls vf/kdrj lekt ds fupyh Js.kh ls आते हैं। इसलिए, अनुच्छेद संविधान के 39 क के निदेशक तत्व के अंतर्गत, dkuwuh lsok,a izkf/kdj.k vf/kfu;e dks 1987 esa ikfl fd;k x;k vkSj 9 uoacj 1995 esa ykxw fd;k x;kA bl dkuwu us] ennek iwoZ >xM+k fuiVkjk dk;ZØeksa और मुकदमे के बाद की कानूनी सहायता और शीघ्र निपटारा, दोनों को रास्ता fn[kk;kA ;g blh c<+h gS, dkuwuh lgk;rk ds {ks= ds dkj.k gS fd ;g vf/kfu;e n-i-l- की धारा 303 और 304 के ऊपर आता है जो कुछ निश्चित dsl esa jkT; ds [kpZs ij vkjksih dks dkuwuh lgk;rk miyC/k djkus dh ckr djrk gSA

राज्य विधिक सेवाएं प्राधिकरणों को कानून के द्वारा आवश्यक रूप से राज्य में fof/kd lsok dk;ZØeksa esa lkeatL; LFkkfir djus vkSj fuxjkuh djus dk dgk गया है ताकि भारत के संविधान के अनुच्छेद 39 क के अंतर्गत मूल निदेशक के vuqlkj] dkuwuh lgk;rk] dkuwuh tkx:drk] dkuwuh lk{kjrk vkSj ykd vnkyrksa }kjk lkekftd U;k; ds edIn dks iwjk fd;k tk ldsA vkSj jkT; esa लोगों की कानूनी समस्याओं को हल करने में सहायता करें, विशेषकर muyksxksa dh tks vkfnoklh vkSj nfjnzrk {ks=ksa esa jgrs gSavkSj xjhch js[kk ls uhps gSA

पारा लीगल क्लीनिक को न्याय प्रशासन के कई स्तरों पर स्थापित करने की आवश्यकता है। इन क्लीनिकों का edIn dkuwuh tkx:drk QSykuk vkSj ennesa ds igys gh dkuwuh lykg iznku djuk gksuk pkfg,A turk esa viuh tM+s j[kus okyh xSj ljdkjh vkSj ljdkjh laxBuksa }kjk ;g yksxksa dks bl ckr की शिक्षा दे सकते हैं कि जन उपयोगी सेवाओं से सम्बन्धित उनकी शिकायतों dk cgqr tYn fuiVkjk izR;sd ftys vkSj izR;sd rkyqdk esa LFkkfir LFkk;h ykd vnkyrksa }kjk gks ldrk gSA ;g Dyhfud dsl dks LFkk;h ykd vnkyrksa esa भेज सकते हैं जहां समस्याओं पर निष्ठापूर्वक पुनःमैत्रीपूर्ण प्रयत्न से निर्णय लिया tk,xkA

D;kfd ^fgjkLr e 0;fDr* dk bl vf/kfu;e e dkuuh lok ikIr dju d लिए विशेष रूप से अधिकृत किया गया है, जेल अधिकारियों और जेल संदर्शकों dk ;g dr0; g fd og d fn;k dk bl vf/kfu;e d iko/kkuk vkj bld vrxr cukbZ xbZ dkuuh ;=koyh d uVod }kjk miyC/k lokvk d ckj e शिक्षित करें। यदि जेल के क़ैदी 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;k dne d rkj ij lHkh tyk e&dUæh;] ftyk vkj mi&tyk e विचाराधीन क़ैदियों और सिद्ध दोषियों के लिए 'कानूनी सहायता सेल' को खोला tk ldrk gA xjhck vkj ,l lkekftd :Ik l v{ke 0;fDr;k dk tl fd tk tyk e g] e¶r dkuuh lgk;rk Ldhe ^lcd fy, U;k;* dh vkj vxyk dne gA bl u doy LFkkuh; fof/kd lok,a ikf/kdj.k e lok inku dju oky odhyk }kjk cfYd vkijkf/kd U;k; i.kkyh dh lHkh ,tfl;k vkj le|k; d dY;k.k d fy, dk;jr xj ljdkjh lxBuk }kjk Hkh mfpr mRlkg d lkFk viukuk pkfg,A

Tkyk l/kkj dk ,d y{; gkuk pkfg, fopkj.k dh i=h{kk dj jg d fn;k dk dkuuh lgk;rk dk iko/kku D;kfd vkFkd :Ik l vf/kdkjghu d fn;k dh odhy rd igp ,d 0;ogkfjd okLrfodrk ugh gA Hkkjr e dkuuh lgk;rk dk;drkvk dk dhfu;k l ij.kk yuh pkfg, tgk ljdkjh U;kf;d 0;oLFkk vkj xj ljdkjh lxBuk@le|k; ij vk/kkfjr lxBuk }kjk ikjk yhxy ,M Dyhfud d vrxr d fn;k dk] dkuuh lk{kjrk dk;Øek] Qkje fFk;Vj vkj loknkRed v/;;u rduhdk odkuu o i fØ;k dk i<k dj lQyrkiod सशक्त कर दिया है और उन्ह viu d lk e dkuu dk mi;kx dju e leFk cuk fn;k gA bl y{; dk ikIr dju d fy, ,d l;Dr i.kkyh dk viuk;k tkuk pkfg, vkj ty d dek e :fp j[ku oky xj ljdkjh lxBuk d lkFk lk>nkjh dh tkuh pkfg, vkj mUg ty e fujrj igp o प्रवेश देना pkfg, vkj vxj bld fy, fdlh i dkj dh vkf/kdkfjd ekU;rk nu dh आवश्यकता हो, वह भी देनी चाहिए।

or eku e¶r dkuuh lgk;rk lokvk dh dk;l i.kkyh e dN dfe;k g जिसका यहां उल्लेख करना आवश्यक है:

- ,sls yxrk gS fd e¶r dkuwuh lgk;rk Ldhe dk] blds tfVyrkvksa vkSj rkRi;Z ds lkFk Bhd rjg ls iapkfjr ugha fd;k x;k gS blds O;kid iapkj fd;k tkuk pkfg, u dsoy vkijkf/kd U;k; i.kkyh dh fofHkUu ,tsfl;ksa e cfYd ngkrh {ks=ksa esa iapk;rh jkt ds uVodZ }kjk] tsyksa esa tsy dY;k.k vf/kdkfj;ksa द्वारा लॉ कॉलेजों में शिक्षकों द्वारा और समुदाय में चयनित ग़ैर ljdkjh laxBuksa }kjkA dkuwuh lsokvksa ds inkf/kdkfj;ksa dk ,d egRoiw.kZ dk;Z dkuwuh lk{kjrk vkSj tkx:drk QSykuk gSA lHkh dkuwuh lgk;rk dk;ZØeksa vkSj Ldheksa dks lekt ds lafo/kkghu oxZ ds yksxksa ds eu esa ;g विश्वास बिठाने की दिशा में काम करना चाहिए कि हमारा न्याय का प्रशासन lHkh dks leku :Ik ls U;k; fnykus ds fy, opuc) gSA
- ;g ,d lkekU; vglkl gS fd e¶r dkuwuh lgk;rk iklr djus okyk O;fDr U;k;ikfydk ds le{k vleku yM+kbZ yM+rk gS D;ksafd nwljk i{k] cgqr आर्थिक संसाधन के उपलब्ध होने का कारण अधिक कुशल कानूनी सहायता iklr dj ldrk gS vkSj bl izdkj mUgsa ,d leku U;k; ls oafpr dj ldrk gSA vkerkSj ij ;g nq[kn x;k gS fd tks odhy bl Ldhe ds varxZr lsok,s inku djrs gS og cgqr u;s vkSj vuqHkoghu gksrs gSA dkuwuh lsok iziкf/kdj.kksa का यह कर्तव्य है कि वह यह सुनिश्चित करें कि जिन ग़रीब और जेल में बंद dSfn;ksa dks og dkuwuh lgk;rk ns jgs gS] og bl /kkj.kk esa u jgsa fd mUgsa rqyukRed :Ik ls fuEu Lrj dk dkuwuh lgk;d fn;k x;k gSA lqLFkkfir vkSj ofjष्ठ वकीलों को उनके मुल्यवान समय का एक छोटा भाग ग़रीबों और योग्य yksxksa dh lsok ds fy, ^nku dju* ds fy, iksRlkfgr fd;k tk ldrk gSA
- vuqHkoh vkSj vPNs odhyksa dks dkuwuh lgk;rk ds edln ds fy, lwphc) djus ds dke dks odhy fcjknjh ds lkFk yxkrkj lEidZ LFkkfir djds xzhc और अतिसंवेदनशील लोगों के केसों को लेने के लिए प्रोत्साहित करें। बार काउंसिल और स्थानीय बार एसोसिएशन के साथ लगातार मीटिंग इस मकसद dks iwjk djus esa lgk;rk dj ldrh gSA tks odhy bl dY;k.kdkjh Ldhe ds अंतर्गत उत्कृष्ट काम करते हैं उन्हे lkoZtfud :Ik ls lEekfur djuk pkfg, vkSj c/kkbZ nsuk pkfg,A
- dkuwuh lsokvksa rd igqap gkuk vkSj dkuwu dh vnkyr esa viuk cpko dj पाना किसी क़ैदी का अवशिष्ट अधिकार है। ग़रीब और सुविधाहीन वर्ग, विशेष कर महिलाएं, जो एक विशेष वर्ग हैं, उन्हें यह सुविधा jkT; ds [kpsZ ij feyuh gh pkfg,A ysfdu] dkuwuh lgk;rk ds dke ls tqMs odhy tsyksa esa tkdj dSfn;ksa ls feyuk ugha pkgrs vkSj muesa ls dbZ ,sls gS ftuesa viuu eqofDdy को व्यवसायिक योग्यता से संतुष्ट करने की क्षमता नहीं है।

- ykd vnkyrk dk ykHk cfn;k rd ml vuqikr e ugh igqp jgk g ftle bl mu rd igqpuk pkfg, FkkA bldk ,d dkj.k ;g gk ldrk g fd ykd vnkyr ty d ml vgkr e ugh yxkb tkrh g tgk fopkjk/khu d fn;k dk j[kk tkrk gA nljk vkj egRoi.k dkj.k ;g g fd odhy viu eofDdyk dk nljh ikVh l ckrdj d le>krk dju d fy, vkj ykd vnkyrk dh lgk;rk yu d fy, ikRlkfgr ugh djr g D;kfd og bl ckr l Mjr g fd vxj >xM d fuiVkj d fy, dkuuh izfØ;k bru tcjnLr rjhd l lf{lr gk tk,xh rc mudh vk; dk udlku gkxkA ;g Mj cdkj g D;kfd igy gh bru e[dne g fd dlk d fuiVkj l e[dnek dh fLFkfr e l/kkj vk,xk vkj ;g fdlh Hkh rjg l i.k vkenuh ij cjk iHkko ugh Mkyxk
- कानून के वरिष्ठ विधार्थियों को जेलों में कानूनी सहायता vkj tkx:drk dk;Øe e सम्मिलित करना चाहिए। यह एक ऐसी शुरूआत है जिसे आवश्यक रूप से आगे बढ़ाना चाहिए क्योंकि विधि विधार्थियों का इससे tMko u dcoy fof/kd lok,a ikf/kdj.kk vkj mud ykHkkfFk;k dh lgk;rk djxk cfYd Lo; fof/k fo/kkfFk;k dh Hkh lgk;rk djxkA mUgs igy l gh vkHkkl gk tk,xk fd okndkfj;k l d l 0;ogkj fd;k tk, और कैसे कानून का सर्वश्रेष्ठ उपयोग मुवक्किल के लाभ के लिए किया tk, ftudk lkeuk mUgs viu Lukrd ijk gku d ckn djuk gkxkA ,y-,y-ch] ,y-,y-,e- या पेशेवर वकील के रूप में रजिस्ट्रेशन के fy, विधिक सेवा प्राधिकरणों के साथ एक नीयत समय के लिए इंटर्नशिप करने dk ,d egRoi.k vfuok;rk cukuk pkfg,A
- gekjh fupyh U;kikfydk e ftl izdkj d e[dne icy g] mle ykd vnkyr lcl iHkkodkjh nljh >xMk fuiVkjk ;=kofy gA fQj Hkh] ;g ;=kofy dcoy dN izdkj d e[dnek e fuiVkjk dju e lQy gb g tl fd tehu vf/kxg.k evkotk ;k ekVj n?kVuk d nkok eA ykd अदालतें दूसरे प्रकार के मामलों में प्रभावकारी निपटारा क्यों नहीं दर्शा रही g bldk e[; dkj.k g bld fy, odhyk dh vfuPNk tk ,lk ugh होने देना चाहते हैं। यह भी शायद उनके द्वारा आय के नुकसान के भय d dkj.k gA yfdu] lkekftd U;k; d lr;yu ij ty e cn dju dk [kp vkj bld ifj.kkeLo:lk gku okyh ihMk dk otu {kf.kd ykHk l vf/kd gkuk pkfg,A

ykd vnkyrk }kjk >xMk e le>kr d eÈ ij jkT; ljdkjk d udkjkRed दृष्टिकोण पर टिप्पणी करते हुए, माननीय न्यायाधीश श्री जी-ch-iVuk;dd u tk उस समय उच्चतम न्यायालय के न्यायाधीश थे, राज्य विधिक सेवाएं प्राधिकरण ij eækl mPp U;k;ky; d vgkr e dgk%

> Þ------ लेकिन जो कष्टपn g] tk eu bru lkyk rd vkj ;gk rd fd vkt Hkh egl l djrk g fd dkbZ Hkh ljdkj vkx ugh vk jgh g mu dlk d bl ykd vnkyr 0;oLFkk d ek/;e l fuiVkj d fy, ft le ljdkj lEc) g----vkt ijku okn i;R;d vnkyr e ljdkj g vkj blfy,] vxj ljकार आवश्यक इच्छाशक्ति के साथ, आवश्यक इरादे के lkFk lkeu ugh vkrh g fd mud Hkh dl bl ek/;e l fuiVu चाहिए, यह आन्दोलन उतनी गति नहीं ले पाएगा जितनी आवश्यकता है----- eu ,l mnkgj.k Hkh n[k g tgk vxj jkT; ljdkj dk 10]000 : Hkh nu dk dgk tk,] og le>krk ugh djxh] ckn e og bl ckr dk mPpre U;k;ky; rd y tk,xhAÞ

- tk odhy duuh lgk;rk Ldhe d vrxr vkjkih d fy, iLrr gkr g mudk fn;k tku oky ekun; v;FkkFkokn h <x l de gA bl अधिक आकर्षक बनाया जाना चाहिए ताकि समाज के अतिसंवेदनशील वर्ग के लिए कानूनी सेवाओं तक पहुंच और उनकी गुणवत्ता में सुधार आ सके।

y?k vijkf/k;k l fuiVu d dke dk dkuuh lok,a ikf/kdj.kk d ?kj e लाना चाहिए 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 dkuuh lgk;rk d {k= e dke dju okyh Lo;lsoh lxBuk dh enn l विशेष प्रशिक्षण आयोजित करके इन पेशेवर वकीलों को लीगल क्लीनिक और dkmlyjk d leg e j[kk tk ldrk gA ifyl d fy, y?k dlk dk mfpr lykg d fy, fd vijk/kh dk lkeukf;d mipkj fn;k tk, ;k ml ljfpr U;kf;d ifØ;k d v/khu Hkt fn;k tk,] bl Dyhfud e Hktuk vfuok;l cuk;k tk,A

Hkkjr d lfo/kku d vuPNn 39 d e mYyf[kr dkuuh lgk;rk 0;oLFkk /kjkry ij viu mi;kx e ijh rjg foQy gk x;k gA bl ij nkckjk fopkj करने और बनाने की आवश्यकता है। लघु अपराधियों से निपटने के लिए लोक vnkyrk vkj ty vnkyrk dk vf/kd fu;fer vkj iHkkodkjh gku dh आवश्यकता है। यहां तक कि कार्यकारी मजिस्ट्रेट को भी निवारक प्रावधानों जैसे fd n-i-l- dh /kkjk 107] 109] 151 d vrxr bru vf/kd ykxk dk ty e Mkyu dh mi;Drrk d ckj e nkckjk lkpuk vkj leh{kk djuk pkfg,A

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

ijh nfu;k e U;kf;d 0;oLFkk bl ckr dk ekU;rk nu yxh g fd dsoy ty e cn djuk gh c<r vkij/k nj dh leL;k dk gy ugh dj ldrk gA bl ifji{; e dN dY;k.kdkjh dkuu cuk, x, g rkfd ty e cn dju dk jkdk tk ld vkj vijkf/k;k dk lenk; ij vk/kkfjr mipkj fn;k tk,A vijkf/k;k dh ifjoh{kk vf/kfu;e 1958] ,sl gh ,d dkuu g] ftl vxj iHkkodkjh rjhd l mi;kx fd;k tk,] orieku e tyk e HkhM dk de dju में बड़ा निशान छोड़ सकता है।

अधिकांश मुकदमा पूर्व और दोषसिद्ध अपराधी पहली बार अपराधकर्ता की श्रेणी में आते हैं। जेल के आँकड़े दर्शाते हैं कि देश भर के सभी दोषसिद्ध अपराधियों की केवल 5–6 प्रतिशत संख्या दोबारा या अभ्यस्त अपराधियों की होती है।4 fopkjk/khu dfn;k e vH;Lr vijkf/k;k dh l[;k dk Hkkx vkj de gA ekVs तौर पर आकलन के अनुसार(दोष सिद्ध और विचाराधीन), तकरीबन 90 प्रतिशत vijk/kh igyh ckj d vijk/kdrk dh J.kh e vkr gA vxj ge ^vijk/kh ifjoh{kk vf/kfu;e* d vrxr fofHkUu viokn vkj n-i-l- dh /kkjk 360 d अंतर्गत आने वालों की संख्या को घटा भी दें, लगभग 50 प्रतिशत जनसंख्या इन विशेष प्रावधानों के अंतर्गत ग़ैर हिरासती सुधारात्मक mipkj d vfuok;l ykHk d ;kX; gkr gA

vkijkf/kd U;k; i.kkyh ij ;g ,d n[kn fVli.kh g fd bu iko/kkuk dk ml उत्साह से उपयुक्त नहीं किया गया है जिस मंशा से कानूनों को बनाया गया FkkA dN U;kf;d eftLVsV u 0;fDrxr :Ik l lid fd;s tku ij crk;k fd bu iko/kkuk dk yxkrkj mruh fu;ferrk l mi;kx djd ftruk bll आशा कि जाती है, स्वंय 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-i-l-dh /kkjk 361d vrxr ;g vfuok;l :Ik l dgk x;k g fd vxj bu lkekftd iko/kkuk dk mi;Dr ugh fd;k tk,] Vk;y eft:VsV@t t dk ,sl u dju dk dkj.k fjdkMs djuk gkxkA लेकिन, अधिकांश केसों में इस अनिवार्यता का बड़ी संख्या में दण्ड से छुटकारे के lkFk mYYk?ku fd;k tkrk gA

vxj igyh ckj d vijk/kdrk dk yc e dne d fdl Hkh pj.k ij ;g crk fn;k tk, fd vijk/kh ifjoh{kk vf/kfu;e dh /kkjk 12 d vrxr Þ,d 0;fDr ftl /kkjk 3 ¼prkouh d ckn fjgkb½ ;k 4 ¼vPN vkpj.k dh ifjoh{kk ij रिहाई) के अंतर्गत दोषो पाया गया है उसे दोषसिद्धि पर इस कानून के अंतर्गत bl vijk/k l tM fdl h idkj dh v;kX;rk dk ugh Hkxruk iMxk]ß mue l db viu vijk/k dk Lohdkj dju dk v/kdidkjkxkj d uhjl dke dk vkj vf/kd le; rd dju l vf/kd iln djxA

bu iko/kkuk dk fHkUu vkj U;k;lEer mi;kx fopkjk/khu d fn;k vkj mud d n dh vof/k e Hkh deh yk ldrk g] yfdu ,lk yxrk g] u rk U;k;ikfydk vkj u gh odhy bu iko/kkuk d lkekftd vkj ekuoh; igy vk का जोशीले ढ़ंग से प्रयोग करते हैं। राज्य द्वारा प्रायोजित मु¶r dkuuh lgk;rk inkf/kdkfj;k dk fopkjk/khu d fn;k dk dkuuh lgk;rk Dyhfud }kjk bu प्रावधानों तात्पर्य के बारे में शिक्षा देना होगा ताकि वे अपने और अपने ऊपर vkfJr ykxk d thou d fy, bldk mi;kx dj ldA

d N odhyk dh udkjkRed Hkfedk

,lk irhr gkrk g fd fupyh vnkyr d Lrj ij dke dju oky odhy] विचाराधीन क़ैदियों के केसों के शीघ्र निपटारे में रूचि नहीं रखते हैं।एक अनकहा लेकिन बेबुनियाद विश्वास है कि अपराधी परिवीक्षा अधिनियम या द-i-l- की धारा 360 का उपयोग शायद उनके व्यवासायिक आय पर foijhr iHkko Mkyxk A ;gk rd fd tyy e odhy vkj mud e ofDdy d chp lid Hkh ux.; g] ifj.kke :o:lk o d l dh fLFkfr l vutku gk tkr g vkj luokb d fy, rkjh[k vkx c<ku dh ekx djr jgr g ftll i.kr;k निष्ठुरता के कारण हिरासत में रिमांड dk le; Hkh c< tkrk gA

ekey ftu e luokb ikjEHk gh ugh gk ldh gk&Ekkufld :lk l chekj vkijkf/kd vkjkih

मानसिक रूप से बीमार बंदियों (विशेष रूप से जिन्हें असुधार्य घोषित कर दिया x;k g ;k tk Ldhtk Ýfud ijkukbM gk½ dk e dnek lh/k rkj पर शुरू ही ugh gk ikrk gA vxj ¼V k;y½ eftLV V dk ;g er g fd Hktk x;k 0;fDr ¼mld ekufld ijh{k.k d fy, ,d l{ke fpfdRlh; vf/kdkjh d ikl½ ekufld jkxh g vkj ifj.kkeLo:lk viuk cpko dju e vleFk g] og bld

बारे में अपने निष्कर्ष को रिकॉर्ड करेगा vkj bl d:l e: vkx: dh dk;okgh dk LFkfxr dj nxkA

vxj igyh ckj d: vijk/kdrk dk yc: e|dne: d: fdl Hkh pj.k ij ;g crk fn;k tk, fd vijk/kh ifjoh{kk vf/kfu;e dh /kkjk 12 d: vrxr Þ,d 0;fDr ftl: /kkjk 3 ¼p:rkouh d: ckn fjgkb½ ;k 4 ¼vPN: vkpj.k dh ifjoh{kk ij रिहाई) के अंतर्गत दोषी पाया गया है उसे दोषसिद्धि पर इस कानून के अंतर्गत bl vijk/k l: t|M: fdl h i:dkj dh v;kX;rk dk ugh Hkxruk i|xk]ß mue: l: db: viu: vijk/k dk Lohdkj dju: dk v/kd idkjkxkj d: uhjl dke dk vkj vf/kd le; rd dju: l: vf/kd iln djx:A

bu i:ko/kkuk: dk fHkUu vkj U;k;lEer mi;kx fopkjk/khu d:fn;k: vkj mud: d:n dh vof/k e: Hkh deh yk ldrk g] yfdu ,:lk yxrk g] u rk: U;k;ikfydk vkj u gh odhy bu i:ko/kkuk: d: lekftd vkj ekuoh; igy: vk: का जोशीले ढ़ंग से प्रयोग कर: g:A jkT; }kjk i:k;kftr e¶:r dku:uh lgk;rk inkf/kdkfj;k: dk fopkjk/khu d:fn;k: dk dku:uh lgk;rk Dyhfud }kjk bu प्रावधानों तात्पर्य के बारे में शिक्षा देना होगा ताकि वे अपने और अपने ऊपर vkfJr yk:xk: d: thou d: fy, bldk mi;kx dj ld:A

d:N odhyk: dh udkjkRed Hkfedk

,:lk i:rhr gk:rk g: fd fupyh vnkyr d: Lrj ij dke dju: oky: odhy] विचाराधीन क़ैदियों के केसों के शीघ्र निपटारे में रूचि नहीं रखते हैं।एक अनकहा लेकिन बेबुनियाद विश्वास है कि अपराधी परिवीक्षा अधिनियम या द-i-l- dh /kkjk 360 dk mi;kग शायद उनके व्यवासायिक आय पर विपरीत प्रभाव Mky:xkA ;gk: rd fd t:y e: odhy vkj mud: e|ofDdy d: chp l:id: Hkh ux.; g] ifj.kke :o:lk o: d:l dh fLFkfr l: vutku gk: tkr: g: vkj l|uokb: d: fy, rkjh[k vkx: c<ku dh ek:x djr: jgr: g: ftl: i.kr;k निष्छुjrk d: dkj.k fgjkl r e: fjekM dk le; Hkh c<: tkrk g:A

ekey: ftu e: l|uokb: ikjEHk gh ugh gk: ldh gk:&Ekkufld :lk l: chekj vkijkf/kd vkjkih

मानसिक रूप से बीमार बंदियों (विशेष रूप से जिन्हें असुधार्य घोषित कर दिया x;k g: ;k tk: Ldhtk:Ýfud i|jkuk:इड हों) का मुकदमा सीधे तौर पर शुरू ही ugh gk: ikrk g:A vxj ¼V½k;y½ eftLV½V dk ;g er g: fd Hkt:k x;k 0;fDr ¼ml: ekufld ijh{k.k d: fy, ,d l{ke fpfdRlh; vf/kdkjh d: ikl½ ekufld jk:xh g: vkj ifj.kkeLo:lk viuk cpko dju: e: vleFk g] og bld:

ckj e vi ने निष्कर्ष को रिकॉर्ड करेगा और इस केस में आगे की कार्यवाही को LFkfxr dj nxkA

n-i-l- dh /kkjk 433 d d HkkokFk d vulkj mu dlk e tgk vkjkih ij ,l vijk/k dju dk vkjki g ftldk n.M eR; ;k vkthou dkjkokl g] de l कम 14 वर्षों के क़ैद के ckn] lEc) jkT; ljdkj d ikl dl okil ylu d fy, Hkt fn;k tk,xkA

जेलों में किशोरबंदी

यह गहन चिंता की बात है कि किशोर न्याय अधिनियम के इस घोषित उद्देश्य के lkFk fd ßdkbZ Hkh cPpk fdlh Hkh ifjfLFkfr e ty e ;k ifyl ykd&vi e din ugh fd;k tkएगा" बनाये जाने और लागू किये जाने के बावजूद, देश भर में 16–18 वर्ष के बच्चों का गिरफ़्तार किया जाना, न्यायिक हिरासत में लिया जाना और जेल में क़ैद करना जारी है। भारत सरकार के गृह मंत्रालय की नेशनल क्राईम fjdkMZ C;jks ¼,u-lh-vkj-ch-½ dh fjikV d vulkर जेलों में बंद 16–18 वर्ष के मध्य आने वाले किशोरों की संख्या को बतलाया गया है–चार वर्षों (2002–2005) की यह संख्या 3813, 2138, 1021 और 1338 है। हांलाकि, किशोर न्याय कानून के अनिवार्य प्रावधानों के मद्देनज़र अविश्वसनीय है, इस बात पर तुरंत ध्यान दिये जाने और अध्ययन किये जाने कि आवश्यकता है कि इतनी बड़ी संख्या में किशोर किन परिस्थितियों में जेलों में रखे गये हैं (विशेष कर उत्तर प्रदेश, हरियाणा, कर्नाटक और पश्चिम बंगाल के जेलों में)। न्याय मंत्रालय और महिला एंव बाल विकास foHkkx dk mipkjkRed mik;k d fy, rjr bl ekey e tkp djuk pkfg,A

Ekfgykvk dh fgjklr

न्याय तक पहुंच और कानूनी सशक्तीकरण पर कोई कथन पूरी तरह विफल हो जाएगा यदि हम कानून के विरूद्ध जाने वाली महिलाओं की दुर्दशा पर विचार नहीं करेंगे, विशेषकर उन महिलाओं के बारे में जिन्हें हिjklrh lLFkkuk e din j[kk गया है। जो सिद्धदोषी 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 gkrh g] yfdu tk ednek dk lkeuk dj jgh g mUgs LFkkuh; tyk ¼ftyk vFkok mi tyk e½ ,lh fLFkfr e j[kk tkrk g ftl ij xHkhj :lk l /;ku nus की आवश्यकता है।

महिला वार्डरों की कमी, विशेष कर उप जेलों में, महिला क़ैदियों के लिए अनकहे पीड़ा का कारण हैं जो पुरूषों के लिए बने जेलों की निर्जन बैरकों में अकेली रgrh gA tyk e ekuokf/kdkjk dk mYy?ku gkuk lk/kkj.k ckr g yfdu efgyk,

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

bldk e[; dkj.k g fd efgykvk d fy, vyx ty miyC/k ugh g vkj vf/kdrj LFkkuk ij u rk mud ljf{kr fgjklr d fy, ;k mud fpfdRlh; व अन्य परीक्षण के लिए महिला कर्मचारी उपलब्ध है। विशेष आवश्यकता रखने okyh efgyk d nh &tk xHkorh g ;k ftud ikl uotkr cPpk g] vkerkj ij उपेक्षित होती हैं। यह उल्लंघन अदृश्य होते हैं और दण्ड के Hk; l eDr gkdj किये जाते हैं क्योंकि जेल प्रशासन में जवाबदेही और पारदर्शिता की कमी है।

vf/kdrj ty fu;ekofy;k e efgyk cfn;k dk tyk vkj mi&tyk e j[ku d rjhd d ckj e crk;k x;k gA ,sl gh ,d fu;e dk fuEu idkj l i<k tkrk g%

efgyk d fn;k dk efgyk okM e vdy ugh jguk g & tc] ;gk rd fd] efgyk okM e doy ,d efgyk d nh gk] vkj dkbZ efgyk okMj ;k lo{kj¼vkolhvj½ u gk] vkj d nh d ogk lkr fnuk l vf/kd le; rd jgu dh lEHkkouk gk] vf/k{kd igy l gh lcl ut nhdh ty l nljh efgyk d nh dk bl ty e exoku dh ;k bl efgyk d nh dk ut nhdh ty e Hk tu dh 0;oLFkk djx rkfd efgyk d nh dk lxfr fey tk,A vlk/kkj.k ifjfLFkfr e vf/k{kd efgyk d nh dh fdlh efgyk fe= dk mld lkFk vkdj ty e jgu dh vkKk n ldr gA vxj efgyk d nh dh dkbZ ,sh lgyh ugh g tk mld lkFk vkdj Bgj] vf/k{kd fdlh efgyk dk vfrfjDr okMj d :k e j[kx rkfd efgyk d nh dk lxfr fey tk,A

efgyk d fn;k dk Hkyh Hkkfr j[ku d fy, cuk, x, bl fu;e dk dk;kUo;u l vf/kd mYy?ku d fy, ekuk tkrk gA vf/kdre ft;k tyk ;k उप–जेलों में महिला वार्डर के लिए कोई अनुमोदित पद नहीं है। ऐसा शायद दो dkj.kk l g% ,d] bu lLFkkuk e efgyk fopkjk/khu d fn;k dh mifLFkfr d बारे में अनिश्चितता vkj nk] efgyk fopkjk/khu d fn;k dh l[;k e ;fn dkbZ है, लगातार परिवर्तन। यह शायद इसी अनिश्चितता के कारण है कि उपर्युक्त fu;e dk bl <x l le>k;k x;k g fd ty ;k mi&ty e ,d vdyh efgyk d nh dk Hkyh Hkkfr j[ku d fy, db odfYid ic/k fd;k x;k gA yfdu] bl fu;e e odfYid ic/k d iko/kku db dkj.kk l f?kl&fiV vkj v0;ogkfjd gk x;k g&

- सबसे नज़दीक के जेल से महिला क़ैदी को बुलाना उसके लिए परेशानी dk dkj.k gk ldrk g D;kfd ;g mld utnhdh lEcU/kk vkj ifjokj d lnL;k l ml ofpr dj ldrk gA vxj ml njr ty e mldh bPNk d fo:)] doy nljh efgyk dk lxfr nu d fy, gLrkrfjr fd;k tkrk g] ;g mld U;ure vojk/k d lkFk thu d vf/kdkj dk mYYk?ku gkxkA
- vdyh efgyk dk lcl utnhdh ty ;k mi&ty¼tgk vU; efgyk dnh mifLFkr gk ldrh g½ e Hktu l] dnh dk lEc) vnkyr e luokbh dh rkjh[k e mifLFkr djku e ifØ;kRed dfBukbh mRiUu gkxhA ,sh iR;d rkjh[k ij U;kf;d eftLVªV d le{k ml ,d ty l njr ty e LFkkukUrfjr djuk iMxk] gLrkUrj.k dh leL;k gkxh] efgyk xkMk dh miyC/krk dh leL;k gkxh vkj mld 0;fDrxr lj{kk d mYy?ku dk [krjk gkxkA
- fdlh ,sh efgyk fe= dk <¡<uk tk vdyh efgyk dnh dk lxfr n ld ;k viuh bPNk l ty dh Hk;kud fLFkfr e mld lkFk jgu d fy, r;kj gk] ,d dfBu dke g& ty d vi;kIr depkfj;k d fy, प्रबंध करना लगभग असम्भव। इस विकल्प से अवैधानिक क़ैद के शिकायत की सम्भवना भी निकलती है क्योंकि जेल नियमावलि स्पष्ट रूप से किसी 0;fDr dk] ,d l{ke ikf/kdkjh }kjk ekU; fgjklrh okjaV d cxj ty e cn dju l euk djrh gA
- ^fdlh efgyk dk vfrfjDr okMj d rkj ij j[kuk* vc lEHko ugh g D;kfd ty vf/k{kdk dh fdlh 0;fDr dk vLFkk;h] vkdfLed ;k दिहाड़ी पर नियुक्त करने की शक्तियों को छीन लिया गया है।

क्योंकि विचाराधीन क़ैदियों की जनसंख्या हमेशा बदलती रहती है यह पूर्वानुमान लगाना या भविष्यokuh djuk dfBu g fd dc vkj fdl ty e fopkjk/khu efgyk dfn;k dh l[;k ?kV dj doy ^,d* gk tk,xhA ty foHkkx ;ह कहने की स्थिति में नहीं है कि कितने जेलो में और कितने अवसरों पर एक वर्ष में केवल एक अकेली विचाराधीन महिला क़ैदी थी। शायद जेल संदश dk d हस्तक्षेप से ऐसे केसों में कुछ आशा जग सकती है। वे अपने प्रभाव का उपयोग djd efgyk gke xkM dh lokvk dk ,l vLFkkbh pj.kk d fy, miyC/k djk ldr g tc tyk vkj mi&tyk e dkbh efgyk okMj ugh gA

महिला क़ैदियों को उनके पुरूष tkMhnkjk l vyx j[ku dk fu;e bl ckr को आवश्यक बना देता है कि उन्हें न केवल पुरूष क़ैदियों की पहुंच से दूर रखा जाए बल्कि उनकी दृष्टि से भी दूर रखा जाए। इसलिए, पुरूषों के जेल में महिला ?kjk vkj ?kj d vanj okMk dh cukoV bl idkj gkuh pkfg, fd mldk njokt k mlh ifDr e bl idkj u gk fd dkbZ Hkh vku tku okyk mudh प्राईवेसी पर आघात कर सके।अगर, एक ओर, यह संपूर्ण अलगाव को सुनिशिचत djrk g] bldk ,d rRo ;g Hkh g fd] bld ifj.kke d :Ik e efgyk d nh dk l i.k ,dkdhiu Hkh gkrk g¼vo/kkfud ,dkUr dkjkokl½] ;fn og vdyh g vkj mldh fuxjkuh d fy, dkbZ efgyk okMj miyC/k ugh gA ;g fLFkfr निश्चित रूप से देश के सभी ज़िला जेलों और उप–जेलों में है।

Ekfgyk fopkjk/khu cfn;k dk ty e j[ku dh leL;k] tgk u rk dkbZ efgyk xkM miyC/k gk vkj u mUg ljf{kr j[ku d fy, mfpr ?kjko gk] fp rk dk dkj.k g vkj bl ij jkT; inkf/kdkfj;k dk mfpr /;ku [kpuk pkfg,A vxj mudh Lor=rk dk de dju d fy, dkuu g] ljdkj mUg ty e j[ku d fy, dkbZ LFkk;h ic/k dju d ckj e D;k ugh lkp ldrh g\ D;k jkT; dk mudh Lor=rk dk ckf/kr dju dk vf/kdkj g vxj bld ikl mudh fuxjkuh d fy, efgyk okMjk dk j[ku d fy, vkj mUg j[ku d fy, mfpr idkj d ty cuku d fy, ilk ugh g\ D;k jkT; dk U;k;ikfydk से परामर्श नहीं करना pkfg, vkj ,l rjhd ugh fudkyu pkfg, fd bUg tekur½0;fDrxr epyd ij vxj mudh tM le|nk; e g ½ ij fjgk dj fn;k tk,] tc rd ty e din dju dk mfpr ic/k u gk\ D;k jkT; ljdkj dk tyk] ifyl] U;kikfydk vkj efgyk lkekftd lxBuk dh efgyk vf/kdkfj;k dh ,d lfefr dk xBu ugh djuk pkfg, rkfd og ,d ckj tyk e cn lHkh fopkjk/khu efgyk d fn;k d ckj e leh{kk dj] tgk dkbZ efgyk xkM ugh g vkj bl fLFkfr dk l/kkju d fy, Bkl rjhdk crk,A

Tkc efgyk d fn;k dk tyk vkj mi&tyk e Hkrh fd;k tkrk g] efgyk okMuk ;k efgyk xkMk dk vLFkk;h :Ik l Hkrh dju dk dN iko/kku gkuk pkfg,A ftu tyk vkj mi&tyk e efgyk okMuk dh vuekfnr l[;k u gk] महिला होम गार्डों का एक पैनल हमेशा उपलब्ध होना चाहिए ताकि जब dkbZ vdyh efgyk ty e cn dh tk, rc mue l ,d ;k nk dh lokvk dk ikIr fd;k tk ldA

जेल संदर्शन प्रणाली

;-,u-Mh-ih- की घोषित भूमिकाओं में से एक है: जेल संदर्शन प्रणाली (पी-oh-,l-½ dk l/kkjkRed dk;ksZ d fy,] lkeqnkf;d lgHkkfxrk d gfFk;kj d :Ik e iquZ% ipfyr vkj lqn< djuk D;kfd ih-oh-,l- tsy dh cn nhokjksa d chp dksoy ,d gh ,sh f[kMdh g tks dkuwuh :Ik ls bl cn lLFkku e lkekftd gLr{ksi dk प्रस्ताव व आज्ञा देता है। गैर आधिकारिक जेल संदर्शकों को जेल में प्रभावपूर्ण :Ik से काम करने के लिए अपने कानूनी सशक्तीकरण के लिए सामुदायिक सहायता dh t:jr gSA

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 gSA

ykxksa dks आधिकारिक और गैर आधिकारिक जेल संदर्शक के रूप में सेवा करने के लिए नियुक्त करना जेल प्रशासन की भारतीय व्यवस्था का एक बहुत बहुमूल्य भाग है। यह एक स्वतंत्र व निष्पक्ष पर्यवेक्षण निकाय की उपस्थिति को सुनिश्चित करता है, जिसका संदर्शन अगर नियमित रूप से किया tk, vkj jkT; inkf/kdkfj;ksa }kjk blesa Hkkx fy;k tk,] ljdkj vkj turk dk xkjVh nh ldrk gS fd tsy vf/kfu;e vkj tsy eSU;qvy d iko/kkuksa dk ;Fkkor ikyu fd;k tk jgk gSA ;g जेल व्यवस्था में किसी प्रकार के दोष, दुराचार, असंतुष्टि और दुर्व्यवहार को शीघ्रrk से प्रकाश में ला सकता है और सरकार को ऐसा अवसर प्रदान करता है कि वह इन leL;kvksa dk mudh xHkhj vk;kesa esa cnyus d igys lqdkf/kr djsA

गैर आधिकारिक संदर्शकों के संस्थानों की उपस्थिति और इसका स्थायीकरण विशेषरूप से वहां अधिक महत्वपूर्ण हो जाता है क्योंकि यह ऐसे प्रशिक्षण की नींव Mkyrh gS tgk turk d lnL; tsy dh leL;kvksa d ckjs e ijk Kku ikIr dj ik,xs vkj tsyksa vkj dfn;ksa e :fp yuk lh[k ysxsA l/kkjkRed dk;ksZ d विशेषज्ञों और सरकार द्वारा समय समय पर जेल सुधार के लिए fu;qDr fudk;ksa us ckj&ckj bl ckr ij ncko Mkyk gS fd turk d fnekx e bl idkj dh :fp iSnk djuk vkj xSj vkf/kdkfjdksa dh fu;qfDr djuk bl edlN dk c<kok nuk ,d lcls vPNk rjhdk gSA

यह बहुत चिंता की बात है कि जेल संदर्शन प्रणाली, जेल के क़ैदियों के जीou dk प्रभावित करने वाली एक बेहद सामर्थ्य सामाजिक हथियार, वर्षों से लापरवाही और mnklhurk d ifj.kkeLo:Ik vuqi;ksxh vkj Qyghu dkxtksa vkipkfjdrk cu dj jg x;k gSA

fgjkl rh lLFkkuk e ekuo vf/kdkjk d lj{k.k l lEc) lkekftd vkj o|pkfjd fodkl dh xHkhjrki.k :Ik l ;g ekx g fd iHkkoi.k ifj.kke vfHkfoU;Lr gku के लिए इस व्यवस्था को पुनर्जीवित करने की आवश्यकता है।

जेल संदर्शकों के मार्गदर्शन और नियुक्ति के लिए वर्तमान नियमों को निकट से n[ku ij ;g irk yxrk g fd bld db iko/kku ijku gk p|d g vkj bue संशोधन की आवश्यकता है। जो उपर्युक्त हो सकते है, उनका ठीक ढ़ंग से पालन नहीं हो रहा है। जेल प्रशासन और संदर्शकों की आरे से कई प्रकार की प्रक्रियात्मक foQyrk gk jgh g ftld ifj.kkeLo:Ik tokcngh de gk tkrh gA

वर्तमान जेल संदर्शन प्रण्kkyh dh ,d cfu;knh deh ;g g fd jkT; xg o U;k; foHkkx] tk jkT; e ,u-vk-oh- dh fu;fDr d fy, ft.Eenkj g] fu;fDr dh vkipkfjdrk d ckn mul lid vkj lpkj lekIr dj y;r gA mUgkus ,lh dkbZ ;=kofy Hkh fodflr ugh dh g ftll ;g Kkr gk fd eukuhr ,u-vk-oh- d ikl fu;fDr i= ig|p x;k g ;k ftUg fu;Dr fd;k x;k g mUgkus LoPNk l bl Lohdkj dj fy;k gA

जेल संदर्शन व्यवस्था को जेल कर्मचारियों द्वारा उनके काम में अनुचित हस्तक्षेप माना जाता है। ग़ैर सरकारी संदर्शकों को जेल अधिकारियों द्वारा विश्वसनीय inkf/kdkjh ugh ekuk tkrk g D;kfd ¼ik;½nko d lkFk dgk tkrk g½mudh fu;fDr ijh rjg l mud jktufrd lac/k d vk/kkj ij gkrh g] ftle mudh ;kX;rk ;k vuHko dk dkbZ egRo ugh gkrk gA mUg mud bjknk d dkj.k ugh viuk;k tkrk g vkj fu;r dk;Z dk ijk dju d fy, grkRlkfgr fd;k tkrk gA

गैर आधिकारिक संदर्शक dk cny e tc mUg tyy de|pkjh l dkbZ lgk;rk नहीं मिलता और न ही नियुक्त करने वाली एजेंसी द्वारा उनके संदर्शन नोट पर dkbZ ikRlkfgr dju okyk tokc feyrk g] viu dke dk ;U=or jLe dh rjg निभाने लगते हैं। ग़ैर आधिकारिक संदर्शकों को, जेल संदर्शक के रूप में उनके अधिकार और कर्तव्यों की जानकारी भी नहीं है। उन्हें मार्गदर्शन के लिए बनाए गए fu;ek l dHkh ifjfpr ugh djk;k tkrk g] u gh mUg tyy ;k dfn;k d प्रशासनिd ;k l/kkjkRed dk;Zk d ckj e cryk;k tkrk gA

गैर आधिकारिक संदर्शकों की एक बड़ी संख्या ऐसी है जो जिस काम के लिए fu;Dr fd;k x;k g mld fy, dHkh tyy x;k gh ugh g] fQj Hkh mue l dN को लगातार नियुक्त किया जाता है क्योंकि कार्य–निष्पादन न करने d fy, dkbZ tokcngh ugh gA

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 ग़ैर आधिकारिक संदर्शक के सुझाव पर समय रहते कार्यवाही या उनमें से कुछ जो egRi.k l>ko nr g] mUg /kU;okn i=] mUg mud dke e vf/kd :fp yu d fy, ifjr dj ldA

यहां तक कि जेल के पदेन संदर्शकों द्वारा संदर्शन भी उतनी नियमित और vFki.k g fu;ekofy e ftldh bll vi{kk FkhA fu;ekofy;k e fxuk; x; विभिन्न पदेन संदर्शको e l dbZ ,l g ftUgku viu jkT; d fdlh Hkh tsy संस्थान का संदर्शन नहीं किया है।

स्पष्टतः राज्य के जेलों में, जेल संदर्शन व्यवस्था की कार्य प्रणाली की वर्तमान rLohj mnklhu gA ,d cgr vPN bjkn l cukb vkj iHkkoh 0;oLFkk dk ych ykijokgh d dkj.k बेकार और दुष्क्रियाशील अंग बना दिया गया है। यह बेढ़ंगे 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 d fy, vkj tsy d dfn;k nkuk d fy,] cgr vPN ifj.kke fudkyu e leFk gAbld vUnj lii.k tsy 0;oLFkk }kjk Hkxrh tk jgh dN xHkhj ncyrk dk lEckf/kr dju vkj mldk mipkj dju dh {kerk gA ;g tsy e l/kkjkRed dk;k d fy, lkenkf;d Hkkxhnkjh dh ,d f[kMdh Hkh [kky ldrh gA

दूरदर्शी दृष्टिकोण

ge lc bl ckr l voxr g fd tsy d lLFkku dk <du okyk vi/kdkj g og bl ekuokf/kdkj mYYk?ku d fy, ,d ipj vk/kkj inku djrk gA dN संस्थानों को छोड़कर, देश में जेलों की स्थिति भयावह है। इनमें से अधिकतर व्यथा जेल कर्मचारियों के दुष्कर्म का ifj.kke ugh cfYd lii.k 0;oLFkk dh lxfgr ykijokgh d dkj.k gA tk leku nr g mUg nuk ugh vkrkA ftUg vkrk g mud ikl bu cjkb;k d mipkj dk lk/ku ugh gA ;gk iHkkodkjh lokn dh cgr deh gA tk lokn djr g mue xEHkhjrk dh deh gA dkb tMko] dkb ekfuVfjx] dkb vfUre rkjh[k] dkb eY;kdu ugh g] blfy, dkb ifj.kke Hkh ugh gA

कॉमनवेल्थ ह्यूमन राइट्स इनिशिएटिव(सी-,p-vkj-vkb-), एक अंतरराष्ट्रीय संगठन है जिसका मुख्यालय नई दिल्ली में है, पिछले कुछ वर्षों से जेल संदर्शन प्रणkyh dk पुनर्जीवित तथा मज़बूत करने के लिए कुछ राज्यों में उत्कृष्ट काम कर रही है। सी-,p-vkj-vkb- का विश्वास है कि व्यवस्था में बदलाव लाने के लिए एक आशा की fdj.k gA 0;oLFkk d vnj bldh fuxjkuh vkj l{e ijh{k.k dk c<kus d fy,] lh-,p-vkj-vkb- us tyy lदर्शकों और जेल डॉक्टरों पर मुख्य परिवर्तन एजेंट के तौर पर फ़ोकस किया है। जेल संदर्शन की व्यवस्था में बहुत सामर्थ्य है, और blfy, bl 0;oLFkk dk okil ykus vkj iuthfor djus d fy, lh-,p-vkj-vkb- us dN lk/kkj.k gLr{ki fd;s gA

- U;k;ikfydk] ifyl] tyy] ekuo vf/kdkj lxBuk] xj ljdkjh ,tfl;k] efgyk lxBuk d lnL;k] vkj lcl egRoi.k tyy d xj vkf/kdkfjd संदर्शकों को एक साथ लाने के लिए, विचारों को बांटने के लिए और आम तौर पर सहमती वाले उपायों को सुधार के लिए संग्रहित करने के उद्देश्य ls 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;kUo;u d dkj.k iSnk gks x;k g]
- आधिकारिक संदर्शकों व अन्य सरकारी पदाधिकारियk ls bl fopkj ls ckr&चीत करना कि उनका सहयोग सुनिश्चित हो तथा जेल की स्थिति में सुधार के fy, lqjpukRed lkekftd gLr{ki d fy, lgk;rk izkIr gks]
- ग़ैर आधिकारिक संदर्शकों को व्यवस्था के विभिन्न पहलूओं से परिचित कराने के लिए अनुस्थापन तथा प्रशिक्षण dk;ZØe vk;kftr djuk] ftlesa vU; d vykok lfEefyr g]
  - mudh vf/kdkj vkj dr0; tks fd tyy fu;ekofy esa fu/kkfjr g]
  - tyy foHkkx ,o ljdkj d chp iHkkodkjh lkeatL;
  - देश या राज्य के किसी अन्य स्थान पर अच्छे प्रचलन से अनावरण ¼**exposure**½
  - tyy dk mu xj ljdkjh ,tfl;k vkj lxBuk d fy, miyC/k djkus dh lEHkkouk tks vijkf/k;k d iquZla/kkj vkj m)kj e :fp j[krs gA
  - क़ैदियों के अवशिष्ट अधिकार और सामान्य सुधार यंत्रावलि
  - jkT; dh izkFkfed ftEesnkjh dh txg fy;s cxj tyk e lkeanf;d lgHkkfxrk dk izkjEHk करने का कौशल, और
  - मानवतावादी दृष्टिकोण से तहकीकात संबंधी संदर्शन करना और प्रभावकारी संदर्शन नोट लिखना।

- lh-,p-vkj-vkbZ- }kjk fd;s tk jgs bu ljkguh; i`;Ruksa dk jkT; ljdkjksa }kjk lfØ; lgk;rk vkSj lg;ksx feyuk pkfg,A

l/kkjkRed dk;ksZa esa lkeqnkf;d lgHkkfxrk

जेल शासन और सरकारी संसाधन (जेल प्रबंधन के लिए आवंटित)कभी भी fgjklr esa fy;s x;s vijkf/k;ksa ds l/kkj vkSj iquokZl ds fy, i;kZIr ugha होता। हमेशा ही यह महसूस किया गया है कि सरकार का बलवर्धक न्याय प्राप्त djus ds i`;Ru dks l/kkjkRed dk;ksZa esa lkeqnkf;d lgHkkfxrk ls iwjk djuk चाहिए। तीन दशकों तक जेंल प्रबंधन के लिए ज़िम्मेदार रहे एक जेल पदाधिकारी ds :Ik esa eSa bl ckr dk xokg gw¡ कि जो भावनात्मक संतुष्टि क़ैदी, समुदाय dh l/kkjkRed dk;ZØeksa esa lgHkkfxrk ls ikIr djrk gS] og ljdkj }kjk pyk, tk jgs fdlh Hkh fØ;k&dyki ds cjkcj ugha gSA tcfd] dSnh ljdkj ds gLr{ksi dks ykijokgh vkSj lUnsg ls ns[krs gSa] ogha dSn esa Mkyus ds le; vkSj mudh fjgkbZ ds ckn Hkh Lo;alsoh laxBu vkSj tsy ds vUnj mudh HkykbZ ds bjkns ls vkus okys yksxksa dk os cgqr vknj djrs gSaA

जेल प्रशासन (अपने कर्मचारियों के रैंक से) उन सभी आवश्यक कौशलों और vuqHkoksa dks ugha miyC/k djk ldrk tks dSfn;ksa dks mudh HkkoukRed leL;kvksa] l/kkj ;k iquokZl esa lgk;rk dj ldsA blfy,] lekt ;k tsy esa dk;Zokgd dM+h LFkkfir djuk] tsy inkf/kdkfj;ksa ds fy, vklku gksxk] ftudk dke gS dSfn;ksa dk dY;k.k vkSj iquokZl djuk rkfd os lekt ;k vkSj स्वंयसेवी संगठनों द्वारा जो पेशेवर रूप से प्रशिक्षित और योग्य स्वंयसेवकों की सेवा अर्पण कर रहे हैं, उनके कौशल और सहायता का संपूर्ण mi;ksx djsaA

ge] lh-,p-vkj-vkbZ- esa bl izdkj ds lkeqnkf;d lgHkkfxrk dks ns[kuk pkgrs gSa tks tsy vkSj lekt ij vk/kkfjr laxBuksa¼lh-ch-vks-½]xSj ljdkjh laxBuksavkSj tsy l/kkj ds dk;ksZa esa vlfy;r esa :fp j[kus okys O;fDr;ksa vkSj O;oklkf;d :Ik ls mudks dk;kZUo;u esa leFkZ yksxksa ds chp dM+h dks etcwr dj ldsA

l/kkjkRed dk;ksZa ds dqN {ks= ftles lkeqnkf;d lgHkkfxrk }kjk cgqewY; vkSj mi;ksxh ifj.kke dks lkeF;Z gS] gSa%

- विधिक सशक्तीकरण और कानूनी सहायता,
- fopkjk/khu cfUn;ksa dh fLFkfr v/;;u¼,d ckj vkSj vkof/kd nkSjk½

- LofPNd ifjoh{kk lok,a

चिकित्सीय सहायता और नशा छुड़ाना

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

सुधारात्मक शासन का एक आवश्यक पहलू है लाभप्रद नौकरी, लेकिन lkekU;d lalk/kuks dk tsy ds dfn;ks dk ukSdjh nus ds fy, mi;ksx djuk] mUgs शोषण और दुर्व्यवहार के लिए खुला छोड़ना है। हांलाकि, ऐसे भी उदाहरण हैं जहां निर्देशित और नियंत्रित हस्तक्षेप ने लाभांश दिया है। उन्नतिशील और lkglh tsy vf/kdkfj;ks us futh lk>snkjks ds lgdk;Z ls] tsy ifjlj ds Hkhrj ¼;k ckgj½ mRiknu ;fuV yxk;k gS ftlls Hkkx ysus okys dfn;ks ds लिए पुनरूद्धारात्मक कार्य–अनुभव और कमाई सुनिश्चित होती है। इसका उद्देश्य Fkk fcØh;ksX; oLrq vkSj lsokvks dk mlh ifjfLFkfr esa mRiknu djuk tSlk futh {ks= esa yxHkx lHkh e/;e Lrj ds fuekZ.k lw;= esa gksrk gS rkfd lqLFkkfir dke djus esa [kpZ de gks vkSj dfn;ks dks ukSdjh dk volj vkSj dke ds दौरान प्रशिक्षण प्राप्त होता रहे।

निजी कंपनियों के साथ उन्नतिशील संविदाओं की शुरूआत करने से कंप्यूटर डाटा प्रोसेसिंग, पुरूषों की हेयर ड्रेसिंग, गारमेंट बनाना, कार और स्कूटर lfoZflax] vkSj blh izdkj ds vU; dk;ksZa dk lQyrkiwoZd fd;k tk ldrk gS] gkykafd] bl ckr ds fy, lko/kkuh cjruh pkfg, fd tsy Je ds bl izdkj ds mi;ksx ls jkstxkj vkSj osru Hkqxrku lEcU/kh fdlh dkuwu dk mYya?ku u gksA

bl uhfr iwjd esa ifj;kstuk dk i<+;Ru] tksfd lsUVj QkWj fØfeukWyksth ,.M tfLVl] टाटा इंस्टटूट ऑफ सोशल साईसंस, मुंबई की कैदियों को कानूनी सहायता उपलब्ध कराने के लिए एक फील्ड ऐक्शन परियोजना है, का उल्लेख करना आवश्यक है। यह स्वा;lsoh laLFkk dfn;ks vkSj mudss ifjokjtuksa dks fiNys dbZ वर्षों से कानूनी सहायता और सलाह उपलब्ध कराने, कैदियों के अधिकारों को iHkkfor djus okys dkuwuksa] uhfr;ksa] izfØ;kvksa vkSj izpyuksa ds dk;kZUo;u dks सुनिश्चित करने, जेल में बंद कैदियों के ifjokjksa vkSj cPpksa dks lg;ksx nsus vkSj fjgkbZ ds ckn iqujkf/kdj.k ds iquokZl dks lqj{kk cukus ds dke ls lEc) gSA

4. रोटरी क्लब और लायन्स क्लब ने, देश के कई जेलों में उचित चिकित्सीय n[k&j[k dk Hkxr jg dfn;k d fy,] fpfdRlh; d i yxku ¼unkfud vkj उपचारात्मक)का उत्कृष्ट उदाहरण प्रस्तुत किया है। सारा ¼SAARA½] t;iqj fLFkr ,d dyk ife;k d ,d ,u-th-vk- u ,d ifl) xkjeV एंव होम फर्निशिंग एक्सपोर्टर ने केन्द्रीय कारागार, जयपुर में महिला l/kkjxg dk fpfUgr fd;k g rkfd efgyk d fn;k dk jpukRed vkj ykHkdkjh dke miyC/k djk ldA ,slh nlj dbi vU; lxBu g tk l/kkjkRed dk;k e Hkkxhnkjh y jg g] yfdu mu lc u dM ifjJe और बंदी समुदाय के कल्याण के प्रति प्रतिबद्धता से उनका विश्वास और [;kfr ikIr fd;k gA

ßtyk e lQy lkeanf;d lqc/k mRiUu dju d fy,] lkeanf;d legk vkj ty vf/kdkfj;k dk ,d lkFk dke djuk gkxk] ,d nlj dk cgrj rjhd l Lohdkj dju d fy, l;Dr fu.k; yuk gkxk----जेल प्रशासन और सामुदायिक legk e ikjLifjd lg;kx vkj lkeatL; d ifØ;k dh t:jr g] tk n[kxk---l/kkjkRed ifØ;k e lkeanf;d lgHkkfxrk d foLrkj dk] vkj bl प्रक्रिया से जुड़े ऐसे समूहों की जवाबदेही भी तय करेगा। यह जेल प्रशासन और lkeanf;d legk d chp ,d cgrj dk;&lEcU/k LFkkfir dju e lgk;rk करेगा और उन्हें एक दूसरे के विरूद्ध शत्रुता dk crko dju l jkdxA c<k gvk lg;kx l nkuk rjQ cgrj ifj.kke dk vuHko gk ldrk g] tgk ty प्रशासन अपनी ईच्छा से संस्थान के कल्याण के पक्ष में नियंत्रित करने कीकुछ Hkfedk dk R;kx dj nAÞ7

l/kkjkRed dk;k e iHkkodkjh lkeanf;d lqc/k d fy, nk pht vfuok;l g%

1- ,fPNd xj ljdkjh lxBuk] leank; ij vk/kkfjr lxBuk] ty foHkkx l Lor= :fp j[ku oky legk vkj 0;fDr;k dk uVod LFkkfir करना। यह नेटवर्क, सूचना और शिक्षा उपलब्ध करायेगा और जेल में lc) gku d fy, leank;k को सशक्त करने और प्रोत्साहित करने का i;Ru djxhA ;g leank; d lnL;k rd igpxk vkj l/kkjkRed प्रक्रियाओं और उसके सामाजिक अर्थ के बारे में उन्हें शिक्षा देगी।

2- ,lh lLFkkvk vkj 0;fDr;k dk ty e l/kkjkRed dk;l dju d fy,] jkT; }kjk vkf/kdkfरिक मान्यता देना। जेल पर राष्ट्रीय नीति को l/kkjkRed dk;k d fy, lkeanf;d Hkkxhnkjh dk ikRlkfgr djuk pkfg, vkj vkf/kdkfjd ekU;rk nu d fy, dlkVh fu/kkfjr djuh pkfg,A

3- vkf/kdkfjd ekU;rk nu d igy] jkT;] mnkgj.k d rkj ij] dke d lEc) {k= e lxBu dh fiNYkh miyfC/k;k d fjdkM dk n[k ldrh g] bld Lo;lodk ;k orfud depkfj;k dh ;kX;rk dk ijh{k.k dj ldrh g vkj lj{kk rFkk oftr eky l lEcfU/kr ty fu;ek d ckj e mud Kku dk tkp ldrh gA

Lkjdkj] jkT; Lrj ij ty lykgdkj lfefr d xBu dju ij Hkh fopkj dj ldrh g ftle lk;kIr l[;k e lEc) ukxfjdk dk ifrfuf/kRo gkA bl l/kkjkRed vkj ty ic/ku l lEcfU/kr uhfr fu/kkj.k e lenk; dk viuh ckr dgu dk vk/kkj ikIr gkxkA ;g ty foHkkx dk ty vkj d fn;k l tM gb lenkf;d fprk o lykg vkj eY;oku fopkjk dk voxr djk,xkA

vkijkf/kd U;k; ,tfl;k d chp lkeatL; dk iHkkfor djuk

देश के अधिकतर राज्यों में जेल में प्रचलित वर्तमान स्थिति के बारे में एक lfu;kftr tkp l nk vyx rLohj fudy dj vk,xh&,d] {kerk l vf/kd भीड़, जो देश के अधिकांश जेलों की बड़ी समस्याओं में से एक है और मुकदमा i;o (i;o) fgjklr dk vR;f/kd mi;kx vkj d n dh ylch vof/k bl HkhM dk e[; dkj.k gA nk&ty dh lHkh cjkb;k doy ty dh LFkkiuk l lEcfU/kr gh ugh g cfYd mue l db] vkijkf/kd U;k; i.kkyh dh nljh ,tfl;k tl fd&U;k;ikfydk] ifyl] vfHk;ktu] e¶r dkuuh lgk;rk vkj ifjoh{kk lokvk e lkeatL; vkj lg;kx dh deh d dkj.k mRiUu gkrh gA

Hkkjr e] e dnek i;o d n dh leL;k dk ,d vf/kd ekfyd dkj.k g 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 रहा है। le; vk x;k g fd vkijkf/kd U;k; i.kkyh dh lHkh ,tfl;k ,d lkFk मिलकर काम करें और इस विश्वास को वापस लाने के लिए दुगुनी मेहनत करें। ;g ,d ,lk dke g ftldk nkf;Ro doy ,d ,tlh ij ugh g cfYd vkijkf/kd U;k; i.kkyh d gj ,d ij g&U;k;ikfydk] ckj] ifyl] vfHk;ktu] ty] turk] jktuhfrK vkj vU; lHkh lk>nkjA ;g ,d ,lk dke है जिसके लिए सभी को सच्ची वचनबद्धता दर्शानी होगी और एक दूसरे पर vkjki ugh Mkyuk gkxkA

Hkkjr e lLFkkuk d chp lkeatL; dh deh LFkkfud gA bl okLrfodrk d बावजूद कि इन सभी एजेंसियों का सामान्य उद्देश्य एक gh g&v0;oLFkk l lekt dh lqj{kk vkj dkuu dk ifrikyu & o bl edln dk ikIr dju e e[; :Ik l l;Dr i;Ru dh deh d dkj.k foQy gk tkr gA iR;d , tlh चाहती है, प्रयत्न करती है, अपना सर्वश्रेष्ठ करने की कोशिश करती है, लेकिन 0;oLFkk i.k :i.k bl y{; dk ikIr dju e vlQy gk tkrh gA blfy,] प्रत्येक एजेंसी व्यवस्था की इस असफ़लता का दोष दूसरी साथी एजेंसी पर डाल nrh gA ;g fdlh [ky dh Vhe dh rjg g tk lokRre f[kykfM;k l Hkjh g vkj lHkh 0;fDrxr i;Ru l [ky thruk pkgr g] yfdu o bl Vhe dk y{; cuku e vlQy gk tkr g vkj i.krk vlQy gk tkr gA

यह आज की आवश्यकता है कि इन सभी एजेंसियों के प्रतिनिधियों और चिन्तित व्यक्तियों को ज़िला, राज्य और राष्ट्रीय स्तर पर एक सामान्य फोरम उपलब्ध djk;k tk, rkfd mu leL;kvk ij ifjppk dh tk ld tk U;k; inkrkvk से संग्रहित विवेक की मांग करती हैं। नीचे न्याय व्यवस्था से जुड़े कुछ ऐसे प्रश्न fy[k x;s g tk vke vkneh d thou dk iHkkfor djr g vkj ftl ij व्यापक रूप से चर्चा किये जाने की आवश्यकता है:

D;k cM vkj yEc&pkM tyy gh HkhM dh leL;k dk gy dju dk ,dek= mRrj g] ;k D;k ge fopkjk/khu d/fn;k dh tul[;k dk de dju dh dkbZ vU; i)fr d ckj e lkp ldr g] tk bl leL;k dk dkj.k gA

D;k lekt e dkuu&0;oLFkk dk cuk, j[ku d fy, cgr vf/kd fxj¶rkjh करने की आवश्यकता हैA D;k vijk/k ?kfVr gku@fjikV fd;s tku d rjr ckn mfpr le>nkjh dk mi;kx djd vukt dk Hkh l vyx dj ldr g और हिरासत को न्यूनतम आवश्यकता तक सीमित कर सकते हैं।

D;k vkijkf/kd U;k; dh i/fØ;k dk lHkkyk tk ldrk g tc ;fn ukckfyx vijkf/k;k dk tyk e lhfer dju d ctk; mnkjrk l tekur] c/ki= ;k fujk/kkj 0;fDrxr epydk ij fjgk dj fn;k tk,A

D;k mu efgyk vijkf/k;k dk ftudh tM ifjokj vkj lekt e ekt+n gk]dkuu d mfpr i/fØ;k dk tkf[ke e Mky cxj vf/kd ljyrk l tekur] c/ki= ;k fujk/kkj 0;fDrxr epydk ij fjgk fd;k tk ldrk gA

D;k fopkjk/khu d/fn;k l dke djok;k tk ldrk g vkj U;ure oru fn;k tk ldrk g rkfd o ckgj viu ifjokj dh lgk;rk dj lds।

क्या स्थानीय आपराधिक न्याय प्रशासन के सदस्यों को सम्मिलित करके, ज़िला vkj lc&fMfotu Lrj ij fopkjk/khu dSnh leh{kk lfefr dk xBu fd;k जाना चाहिए और उन्हें सशक्त करना चाहिए ताकि वे रिहाई कर सकें या mfpr अधिकारियों से उन बंदियों की सिफ़ारिश कर सकें जो समुदाय पर आधारित eqdnek dk ik= gksa u fd fgjklr ij vk/kkfjr eqdnek dk।

D;k ,slh lfefr;ksa dk fopkjk/khu dSfn;ksa dk dkyksa dh leh{kk djus ds fy, gj eghus ;k gj 15 fnuksa esa जेल संदर्शन करना चाहिए।

fopkjk/khu cfn;ksa dk vkxs tqy esa dSn j[kus ls jksdus ds fy, fdruh vPNh तरह अनावश्यक विलंब, सुनवाई का स्थगन और मजिस्ट्रेट के समक्ष अuqifLFkfr ls cpk tk ldrk gSA

D;k U;kf;d fgjklr esa Hkstus x;s efgykvksa vkj vYi0;Ld vijkf/k;ksa ds dkyksa को शीघ्र निष्कासन के लिए अलग पंक्तिबद्ध किया जा सकता है।

D;k dqN U;kf;d eftLVsV dh vnkyrksa dk eghus esa ;k iUæg fnuksa esa ,d ckj tqY ifjlj ds Hkhrj yxk;k tk ldrk gSA

क्या ज़मानत/बंधपत्र की राशी को न्यायसंगत तरीक़े से आरोपी के सामाजिक vkj vkfFkd ls tksMk tk ldrk gSA

tqykbZ esa vR;f/kd HkhM dk fdl Lrj ij vLohdk;s le>k tk ldrk gS\¼dN tqykbZ esa {kerk ls 4&5 xquk vf/kd dSfn;ksa dh ls[;k gS½

Hkkx ysus वाले पदाधिकारियों को अवश्य ही यह महसूस हो जाएगा कि न्याय ifØ;k ds vUrxZr, tSls Hkfedkvksa dh le> esa deh gS] dN ijkuh dkuwuksa में पुनः विचार करने की आवश्यकता है, चीज़े इतनी निंदनीय नहीं हैं कि ठीक न हो ldsa vkj ;g fd bUgsa uhfr ;k LFkkuh; nkuksa gh Lrjksa ij lHkkyk tkuk pkfg,A

Section II: ARREST

Hkkx II: fXkj¶Rkkjh

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.

[32]**[41A. Notice of appearance before police officer.**
(1) The police officer [33][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.
[34][(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.]

[35]**[41B. Procedure of arrest and duties of officer making arrest.**
Every police officer while making an arrest shall,-

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[32] Ins. by Act 5 of 2009, sec. 6 (w.e.f. 1-11-2010)
[33] Subs by Act. 41 of 2010, sec. 3(a), for "The police officer may" (w.e.f. 2-11-2010)
[34] 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."
[35] Ins. by Act 5 of 2009, sec. 6 (w.e.f. 1-11-2010)

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.]

[36][**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.]

[37][**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.
(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

[36] ibid
[37] ibid

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.[38]

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[38] 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

(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.

(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.[39]
(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.
[40][Provided that where a woman is to be arrested, unless the circumstances indicate to thecontrary, her submission to custody on an oral intimation of arrest shall be presumed and, unlessthe 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.]

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

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

[39] 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.

[40] Ins. By Act 5 of 2009, sec. 7 (w.e.f. 31-12-2009)

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.[41]

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

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[41] 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.

53. Examination of accused by medical practitioner at the request of police officer.[42]

(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.]

[43]**53A. Examination of person accused of rape by medical practitioner**.[44] – (1) When a person is arrested on a charge of committing an offence of rape or an 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

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[42] 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".

[43] Ins. by Act 25 of 2005, sec. 9.

[44] 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.

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.]

[[45]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.
(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.

[45] Subs. by Act 5 of 2009, sec. 8, for Section 54 (w.e.f. 31-12-2009).

(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.".]

[46][**54A. Identification of person arrested**[47]**:-** 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 deputes 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.

[48][**55A. Health and safety of arrested person.**

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.

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[46] 1. Ins. by Act 25 of 2005, sec. 11.

[47] 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.".]

[48] Ins. by Act 5 of 2009, sec. 9 (w.e.f. 31-12-2009)

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.

[49][**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.
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:

[49] Ins. by Act 45 of 2005, sec. 33 (w.e.f. 23-6-2006)

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 no the 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][50]
(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, or
(g) is so desperate and dangerous as to render his being at large without

[50] **Ins. by Act 25 of 2005, sec. 14**

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

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TABLE OF JUDGMENTS- ARREST

S.No.	CASE DETAILS	FACTS	DECISION
	REGISTERING FIR		
	Surender Kaushik vs. State of Uttar Pradesh *2013 (5) SCC 148* **Issue:** 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?	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.	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. Nonetheless, the two judge bench reaffirmed the principle as stated in the case of ***Babubhai v. State of Gujarat***, 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.
	Khatri vs. State of Bihar *AIR 1981 SC 928*	A number of Undertrial prisoners filed a writ in the Supreme Court, complaining that after their arrest, they were blinded by police officials	The Court reiterated its stance as in ***Hussainara Khatoon's case***, 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 very healthy provision and it is necessary that the Magistrates try to enforce

	Issue: Whether the state is under an obligation to provide free-legal services to an accused under Article 21? Also known as the *Bhagalpur blinding case*.	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.	this requirement. 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. 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.
	Sheela Barse v. State of Maharashtra *AIR 1983 SC 378* **ISSUE:** Regarding – women safety in prisons, rights of an arrestee	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 excesses against women were taking	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 -> • A person arrested without a warrant must be immediately informed about the grounds of arrest and the right to obtain bail. • 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 the police.

	and free legal services.	place, pointed out that the arrangements for providing legal assistance to prisoners were inadequate.	• 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. • 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. • 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.
	Joginder Kumar v. State Of Uttar Pradesh *1994 AIR 1349; 1994 SCC (4) 260* **Issue:** 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- • 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. • An entry shall be required to be made in the Diary as to who was 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.
	D. K. Basu v. State of West Bengal *AIR 1997 SC 610* **Issue:** Regarding – rights of arrestee, duty of policemen carrying out an arrest, procedure to be followed during interrogation and safeguards against torture.	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. The Supreme Court treated the letter as a writ petition. While the writ was under consideration, the Supreme Court received another report about a death in police	• Use of third degree methods or any form of torture to extract information is not permitted. • Police personnel carrying out arrest and interrogation must bear accurate, visible and clear identification / name tags with their designations. • Particulars of all personnel handling interrogation of an arrested person must be recorded in a register. • 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. • 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. • The arrested person may be allowed to meet her/his lawyer during interrogation but not throughout the interrogation. • 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 town. The information should be given through the District Legal Aid Organisation and police station of the area concerned.

		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.	• 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. • 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. • 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. • Copies of all documents relating to the arrest including the memo of arrest should be sent to the Area Magistrate for her/his record. • Departmental action and contempt of court proceedings should be initiated against those who fail to follow these directives.
	Nandini Satpathy v. P.L. Dani *AIR 1978 SC 1025*	Nandini Satpathy, the former Chief Minister of Orissa, against whom a case had been registered under the Prevention of Corruption Act, was asked to appear before the Deputy Superintendent of Police [Vigilance] for questioning. The police wanted	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 evidence in a court of law. **Directions-**

	Issue: Whether an accused can be compelled to give answers to every question posed by the interrogating authority? Also, regarding adoption of *Miranda Warnings* in India.	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.	• An accused person must be informed of her/his right to remain silent and also of the right against self-incrimination. • The person being interrogated has the right to have a lawyer by her/his side if s/he so wishes. • 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. • Women should not be summoned to the police station for questioning in breach of Section 160 (1) CrPC.
	Citizens for Democracy v. State of Assam And Ors. *1995 (2) ALT Cri 701* **Issue:** Whether under ordinary circumstances an undertrial can be put in handcuffs or fetters?	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 issued notice to the State of Assam. During the period 1991-94 there have been as many as fifty one cases of escape and/or rescue of terrorists	The Court reiterated its pronouncement in *Sunil Batra Etc. v. Delhi Administration and Ors 1980 AIR 1579* case that Undertrials shall be deemed to be in custody, but not undergoing punitive imprisonment. 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 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.

		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.	*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.*
		Compensation	
	Nilabati Behera v. State of Orissa & Ors. *1993 AIR 1960* **Issue:** Whether or not the State is liable for payment of compensation for violation of the fundamental right to life under Article 21?	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.	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. 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.
	State of M.P. v. Shyamsunder Trivedi & Ors. *(1995) 4 SCC 262*	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	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.

	Issue: Regarding – custodial deaths and punishment for the same	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. The High Court acquitted the accused for the lack of evidence to convict them. The State of Madhya Pradesh appealed to the Supreme Court.	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.
	State of Maharashtra v. Christian Community Welfare Council of India & Anr. *AIR 2004 SC 7* **Issue:** Regarding safeguards	The case relates to the custodial death of a person in police custody, and the subsequent molestation of 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.	**On Custodial death** 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 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 *D. K. Basu's case.*

	against custodial death and procedure for arrest of women.		**On arrest of a lady** 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.
	Jawahar Singh v. State Of Rajasthan *1989 WLN UC 396* *(at High Court of Rajasthan)* **Issue:** 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 in some other case and has been sent to judicial custody in that case?	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-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	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. 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. 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.

		Parade and not the date when formal arrest memo is prepared.	
	Moti Bai v. State of Rajasthan *1954 CriLJ 1591 (at High Court of Rajasthan)* **Issue:** Whether an accused or his counsel can demand an interview out of the hearing of the police though in their presence?	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 their presence was made.	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. The Court summarized the position as follows: • 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 • 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. • 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. 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.
	Master Salim Ikramuddin Ansari and Maharukh Adenwalla v. Officer-in-charge, The Superintendent	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	• 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

	and State of Maharashtra through Secretary, Home Department *2005 CriLJ 799 (at High Court of Bombay)*	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.	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). • 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.
	Arnesh Kumar vs. State of Bihar *2014 (8) SCALE 250* **Issue:** Whether the proper procedure was followed in determining the necessity of	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 mother-in-law and father-in law and Arnesh Kumar supported them by raising threats that he would marry another woman. Arnesh Kumar preferred an	The Court gave out the following directions - **To the Police:** • 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 detention • 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

	arrest by the police?	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.	• 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 **To Magistrates**: • 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 Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court. The subject has also been cited and relied upon in the case of Narendar Parihar vs. State of Rajasthan (SB Crl. Misc. Bail Application 5658/2014) which was decided by the Rajasthan High Court

TABLE OF JUDGEMENTS –ARREST

केस विवरण	तथ्य	निर्णय / निर्देष	केस विवरण
	एफआईआर पंजीकरण		
	सुरेन्द्र कौषिक बनाम उत्तर प्रदेष राज्य (***2013 (5) SCC 148***) **मामला–** 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?	लोगों के समूह पर जाली दस्तावेजों से संबंधित एक मामले में षणयंत्र 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 लगया 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	अदालत ने पाया कि दोनों मामले अलग अलग है इस लिए समानता का सिद्धांत इस मामले मे लागू नहीं होता। तो भी दो न्यायाधीशों की पीठ ने *बाबूभाई बनाम गुजरात राज्य* 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 संबंधि नहीं हैं? यदि परिणाम हां है तो दूसरी एफआईआर खारिज होगी। लेकिन यदि दोनो एफआईआर एक ही मामले के दो या अधिक हिस्से से संबंधित है तो दूसरी एफआईआर सही मानी जाएगी।

		सकती।	
	खतरी बनाम बिहार राज्य ***AIR 1981 SC 92*** **मामला**– क्या धारा 21 के आरोपी को कानूनी सेवा प्रदान करने के लिए राज्य वाध्य है? ***भागलपुर केस***	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। इस मामले की सुनवाई के दौरन 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?	सर्वोच्च अदालत ने ***हुसैनारा खातून*** 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। 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। 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।

	शीला बर्से बनाम महाराष्ट्र राज्य ***AIR 1983 SC 378*** **मामला**– जेल में महिला की सुरक्षा से संबंधित एवं निशुल्क कानूनी सेवा और गिरफ्तार का अधिकार	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।	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। माहिलाओं से मुलाकात महिला पुलिस अधिकारी की उपस्थिति में ही होनी चाहिए। • बिना वॉरेन्ट के गिरफ्तार किए गए व्यक्ति को गिरफ्तारी का कारण और जमानत के अधिकार के बारे में बताया जाना चाहिए। • 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। • गिरफ्तारी के तुरंत बाद पुलिस को निकट की कानूनी सहायता समिति को सूचित करना चाहिए। • कानूनी समितियों को तुरंत राज्य के खर्च में कानूनी सेवा प्रदान

			करने के लिए कदम उठाने चाहिए लेकिन तब जब गिरफ्तार व्यक्ति इसके लिए सहमत हो। • जिस मजिस्ट्रेट के सामने गिरफ्तार व्यक्ति को पेश किया जाए उस मजिस्ट्रेट को यह पूछना चाहिए कि कहीं उसे टॉर्चर या दुर्व्यवहार संबंधि कोई शिकायत तो नहीं है। साथ ही चिकित्सीय जांच के उसके अधिकार के बारे में भी मजिस्ट्रेट को उसे बताना चाहिए।
	जोगिन्दर कुमार बनाम उत्तर प्रदेष राज्य *1994 AIR 1349; 1994 SCC (4) 260* **मामला–** अधिकारी कब किसी व्यक्ति को हिरासत में भेज सकते हैं?	एक वकील यचिकाकर्ता ने आरोप लगाया कि उसे गैर कानूनी रूप से हिरासत में रखा गया। पुलिस ने दावा किया कि उसने कभी उसे हिरासत में नहीं रखा बल्कि पुलिस तो केस की कार्रवाही में मदद कर रही थी।	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 है : • 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। • किसको सूचित किया गया इसकी ऐन्ट्री डायरी में की जानी होगी। संविधान की धारा 21 और 22 (1) में प्रदत सुरक्षा को 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।
	डी. के. बासू बनाम पष्चिम बंगाल राज्य *AIR 1997 SC 610* **मामल–** गिरफ्तार व्यक्ति के अधिकार, गिरफ्तार करने वाले पुलिस का कर्तव्य, पूछताछ के दौरान अपनाई जाने वाली प्रक्रिया और टॉर्चर से सुरक्षा	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 ज्यादती के शिकार लोगों के मुआवजे का सिद्धांत निर्धारित करे, 2– ऐसे तरीकों का निर्धारण करे कि ऐसी घटनाओं में जिम्मेदारी तय की जा सके। कोर्ट ने इसे याचिका माना। जिस समय इस याचिका पर सुनवाई जारी थी उत्तर प्रदेश में हिरासत में मौत	सूचना प्राप्त करने के लिए थर्ड डिग्री या टार्चर के अन्य उपाय की अनुमति नहीं है। • गिरफ्तार और पूछताछ करने वाले पुलिस अधिकारी का नाम और पहचान सही होना चाहिए। साफ दिखाई पड़नी चाहिए। • पूछताछ करने वाले सभी पुलिस अधिकारियों की जानकारी रजिस्टर में रिकार्ड होनी चाहिए। • 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। • 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 कि वह उनको सूचित कर सके कि वह गिरफ्तार है और उसे कहां रखा गया है। गिरफ्तार व्यक्ति को उसके इस अधिकार से जागरुक करवाना चाहिए। • पूछताछ के समय उसे उसके वकील से मिलने देना चाहिए

		की एक और घटना हुई। इस घटना ने कोर्ट को वाध्य किया और उसने इस राष्ट्रव्यापी आपदा से लड़ने के लिए सभी राज्य सरकारों और कानून आयोग से सुझाव मांगा।	लेकिन पूछताछ की पूरी अवधि के दौरान नहीं। • 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। • 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। • 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। • राज्य स्वास्थ विभाग द्वारा मान्यता प्राप्त डॉक्टर से हर 48 घंटे में गिरफ्तार व्यक्ति की जांच करवाई जानी चाहिए। • गिरफ्तार व्यक्ति से संबंधित सभी दस्तावेजों, मेमो सहित, को मजिस्ट्रेट को रिकार्ड के लिए दिया जाना चाहिए।

			• जो लोग इन निर्देशों को पूरा नहीं कर सकते उनके खिलाफ विभागीय कार्यवाही और अदालत की अवमानना की कार्रवाही की जानी चाहिए।
	नंदनी सत्यपथी बनाम पी एल दनी *AIR 1978 SC 1025* मामला– क्या आरोपी को सभी प्रश्नों के जवाब देने के लिए विवश किया जा सकता है? साथ ही *मिरान्डा* चेतावनी के संबंध में।	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। उन्होने 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 कि वे इन सवालों का जवाब दे और उन्हें भारतीय दण्ड संहिता 1860 की धारा 179 के तहत गिरफ्तार कर लिया गया।	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। **निर्देष** • 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। • पूछताछ वाले व्यक्ति को यह अधिकार है कि वह पूछताछ के दौरान यदि वह चाहे तो अपने वकील को अपने साथ रख सकता है। • 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।

			• सीआरपीसी की धारा 160 (1) का उल्लंघन कर महिला को पूछताछ के लिए पुलिस स्टेशन नहीं बुलाया जाना चाहिए।
	सिटीजन फॉर डेमोक्रेसी बनाम असम राज्य एवं अन्य *1995 (2) ALT Cri 701* **मामला–** क्या सामान्य स्थिति में एक विचाराधीन कैदी को हथकड़ी या बेड़ियों में रखा जा सकता है?	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। 1991–94 के बीच पुलिस और न्यायिक हिरासत से भागने या भगाए 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 उपारोक्त 7 कैदी कैद हैं।	अदालत ने *सुनिल बत्रा आदि बनाम दिल्ली प्रशासन एवं अन्य* 1980 एआईआर 1579 के फैसले को दोहराते हुए यह कहा कि विचाराधीन कैदियों को हिरास्ती माना जाएगा न कि सजायाफ्ता। 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। *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	
	निलाबाटी बेहेरा बनाम उडीशा राज्य एवं अन्य। *1993 AIR 1960* **ममला–** संविधान की धारा 21 के तहत हुए संवैधानिक अधिकार के हनन के लिए क्या राज्य मुआवजा देने को वाध्य है।	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 ट्रेक पर उसके बेटे की लाश मिली। कोर्ट ने धारा 32 के तहत पत्र को जीवन के अधिकार के हनन की याचिका माना।	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। 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।
	मध्य प्रदेश राज्य बनाम श्याम सुंदर त्रिवेदी एवं अन्य	सब इन्सपेक्टर श्याम सुंदर त्रिवेदी सहित 7 प्रतिवादियों ने अपराध कबूल करवाने के लिएनाथू बंजारा को पीटा और टार्चर किया। मारपीट में लगी चोट के चलते नाथू बंजारा की पुलिस	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 ज्यादतियों में बहुत कम सजा हो पाती है क्योंकि अपराध साबित करने के लिए प्रत्यक्ष अथवा अप्रत्यक्ष आभाव

	(1995) 4 SCC 262 **मामला–** हिरास्त में मौत और उसकी सजा	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। 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।	रहता है जिससे अपराधी की पहचान नहीं हो पाती। 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 आईं 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 यर्थाथवादी तरीका अपनाएंगी।
	महाराष्ट्र राज्य बनाम इसाई समुदाय कल्याण परिषद, भारत एवं अन्य *AIR 2004 SC 7*	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	**हिरास्त में मौत** उच्च अदालत के इस निर्देश को कि मजिस्ट्रेट क 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 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।

	मामला– हिरास्त में महिला कैदियों मौत और उनकी सुरक्षा तथा महिलाओं को गिरफ्तार करने की प्रक्रिया के संबंध में।	में अपील की।	**महिला को कैद करने के लिए** 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 कान्सटेबुल 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।
	जवाहर सिंह बनाम राजस्थान राज्य *1989 WLN UC 396* राजस्थान उच्च अदालत **मामला–** क्या पहिचान परेड की तारीख को गिरफ्तारी की तारीख माना जा सकता है जबकि आरोपी किसी और	एक डकैती के मामले में पूछताछ के लिए एक आरोपी को गिरफ्तार किया 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	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 दिन माना जाएगा। कोर्ट ने स्वीकार किया 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। तो यदि व्यक्ति किसी अन्य मामले में कैद में है तो जिस दिन से वह पुलिस के

	मामले में गिरफ्तार है और उसे न्यायिक हिरास्त में भेज दिया गया है।	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।	लिए जांच के लिए उपलब्ध उसी समय से उसे हिरास्त में माना जाएगा।
	मोटी बाई बनाम राजस्थान राज्य (1954 CriLJ 1591) राजस्थान उच्च अदालत **मामला**– क्या आरोपी या उसका वकील पुलिस की उपस्थिति में किंतु ऐसे जगह जहां वे उन्हें न सुन सके साक्षत्कार की मांग कर सकते हैं?	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 साक्षत्कार की अनुमति के लिए मजिस्ट्रेट के समक्ष आवेदन किया था। हालाकि 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।	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। कोर्ट ने स्थिति को इस प्रकार स्पष्ट किया : • 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। • 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। • 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। • 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।
	मास्टर सलीम इक्रामउद्दीन अंसारी और माहरूख अण्डेवाला बनाम प्रभारी अधिकारी, अधीक्षक एवं गृह सचिव द्वारा महाराष्ट्र राज्य। *2005 CriLJ 799* (बोम्बे उच्च अदालत)	बोम्बे पुलिस ने 2011 में एक 15 वर्षीय लड़के को गिरफ्तार किया। 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	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 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। इसे धारा 21 का घोर उल्लंघन मानते हुए कोर्ट ने निर्देश दिया कि ऐसे मामलों में जहां जमानत दी जा चुकी हो वहा 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।

		गया।	
	अर्नेश कुमार बनाम बिहार राज्य *2014 (8) SCALE 250* **मामला–** क्या गिरफ्तारी की आवश्यकता को निर्धारित करते वक्त सही प्रक्रिया को पूरा किया गया था?	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, मारूति कार, एयर कंडिश्नर, टेलीविजन आदि की मांग की गई 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। 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	अदालत ने निम्नलिखित आदेश दिए : **पुलिस को** 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 आवश्यका पड़ी। 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। 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 अधिक्षक द्वारा लिखत कारण दर्ज करवा कर बढ़ाई सकती है।

		सर्वोच्च अदालत में जमा की।	**मजिस्ट्रेट के लिए** 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। बिना कारण दर्ज किए यदि गिरफ्तारी का आदेश जारी किया जाता है तो संबंधित उच्च अदालत मजिस्ट्रेट के खिलाफ विभागीय कार्रवाही कर सकती है। इस मामले में नरेन्द्र परिहार बनाम राजस्थान राज्य केस (SB Crl. Misc. Bail Application 5658/2014) का भी उल्लेख किया गया जिसका निर्णय राजस्थान उच्च अदालत ने किया था।

Section III: REMAND

Hkkx III: fjekM

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 to 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;][51]
(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.][52]

(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

[51] Subs. by Act 5 of 2009, Sec. 14
[52] 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-

[53](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.

[53] Subs. by Act 45 of 1978, sec. 19, for clause (a) (w.e.f. 18-12-1978)

309. Power to postpone or adjourn proceedings.

(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:

[54][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.]

[55]["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.

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[54] Ins. by Act 45 of 1978, sec. 24 (w.e.f. 18-12-1978)

[55] 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 QSlyksa dh rkfydk

TABLE OF JUDGEMENTS- REMAND

S.NO.	Case Details	Facts	Decision/Directions
	Shrawan Waman Nade & Ors. v. The State of Maharashtra *1994 (2) BomCR 668 (at High Court of Bombay)* Issue: 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?	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.	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. 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. 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. 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.

	State of Gujarat v. Swami Amar Jyoti Shyam *1989CriLJ501 (at High Court of Gujarat)* **Issue:** 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?	The respondent was arrested as a suspect in an abduction case. The Investigating Officer produced him before the Metropolitan Magistrate and 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.	In order to facilitate proper and complete investigation, the court should grant such remand as under 167(2), but it cannot be 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. 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 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. Remand is granted ordinarily in all cases where it is necessary for the purpose of

			effective further investigation. Thus the court dismissed the petition.
	Chiguluri Krishna Rao v. Station House Officer and Ors. *1989 CriLJ 501 (at High Court of Andhra Pradesh)* **Issue:** 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?	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 Association. It was also submitted that the bail was postponed to the day after, as the next two days were holidays.	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 twenty-four hours. 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. 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. There is a proviso also to this 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. 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.
	Assistant Collector of Customs R&I (P.), Bombay v. Shankar Govardhan Mohite & Ors. *1987(3) Bom CR708 (at High Court of Bombay)* **Issue:** Whether it is illegal to re-arrest after issuance of a discharge order?	Two people were arrested for violating provision of the Customs Act and were produced before the Additional Chief 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 7th day they were granted bail. An application was hence filed by the customs officer for cancellation of bail.	With respect to the claim of illegality of re- arrest, the court opined that Section 59 of the 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. 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. Therefore subsequent arrest would not be illegal. In the given case, the time afforded to the investigating agency to investigate into the instant crime is not adequate and it would be in the interest of justice to cancel the impugned order of granting bail.
	Muman Kamal Sabedi Patel v. The State Of Gujarat *(1971) 12 GLR 481 (at High Court of Gujarat)* **Issue:** 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?	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 judged reference the High Court and also stated that he found the Magistrate's conclusions to be incorrect, and the he cannot force the police to file charge-sheets.	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 custody of the Magistrate. 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 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 .
	Elumalai v. State of Tamil Nadu, represented by the Inspector of Police *1983 LW (Crl)121 (at High Court of Madras)*	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	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

	Issue: What is the role of a Magistrate while reman-ding an undertrial? Is shortage of police escort a valid reason for non-production?	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 provisions of law and the principles of natural justice and as such it is illegal.	prisoner that he is entitled to be released on bail. Guidelines: 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). 2. S.167 (2) is not at all applicable 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.
	Chaganti Satyanarayan & Ors v. State Of Andhra Pradesh *AIR 1986 SC 2130* **Issue:** 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?	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 90thday from remand, and hence was dismissed by the Magistrate. In the states 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.	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 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. 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. The judgment of the High Court was upheld and the appeal was dismissed accordingly.

	M.A. Dharman v. State of Andhra Pradesh *1991 (1) ALT 315 (at High Court of Andhra Pradesh)* **Issue:** Whether or not continued detention of the detenues pursuant to orders of remand without physical production to the Magistrate, is lawful?	The petitioners in the *habeas corpus* 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.	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. Production of the accused person before the Magistrate both at the time of seeking his remand and extension of the remand is *compulsory*. Physical production at the time of seeking initial remand is indispensable, however due to impossibility of production on later instances can be relaxed. 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. 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.
	Aslam Babalal Desai v. State of Maharashtra *AIR 1993 SC 1* **Issue:** 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?	The accused was arrested for alleged offence under Sec 149, IPC. He moved for bail which was rejected by the session's judge. 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.	It was held that once an accused person has been released on bail by the thrust of the proviso to Section 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. 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. For the above reasons the appeal was allowed and the impugned order of the High Court was set aside.
	Central Bureau of Investigation v. Anupam J. Kulkarni *AIR 1992 SC 1768* **Issue:** 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?	The accused was remanded in judicial custody for a case of abduction. The police applied for police custody which was granted by the 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.	Dismissing the appeals of the C.B.I., the Court held that there cannot be any detention in police custody after the 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. 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. 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.
	Uday Mohanlal Acharya v. State of Maharashtra *2001 (2) ACR 1213 (SC)* **Issue:** 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?	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.	Dismissing the High Court's decision, the court held - • 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. • 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. • On expiry of the period specified under Sec 167(2)a, if the accused files an application for bail and 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.
	Rajeev Chaudhary v. State (N.C.T.) of Delhi *(2001) 5 SCC 34* **Issue:** Interpretation and construction of the expression 'offence punishable with imprisonment for a term of not less than ten years."	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	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.

		the order of the Sessions Judge. This was further appealed in the Supreme Court.	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 a clear period of 10 years or more. Hence offence under Sec 386 does not fall under this class and bail was granted.
	Khinvdan v. State of Rajasthan *1975 CriLJ 1984 (at High Court of Rajasthan)* **Issue:** 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?	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.	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. Moreover, if immediately before taking 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.
	G.K. Moopanar v. State of Tamil Nadu *1990 CrLJ 2685 (at High Court of Madras)* **Issue:** Regarding – Magistrates satisfaction to order remand, scope of Sec 57 and 167.	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.	The Court discussed the four stages governing the exercise of power under 167(2): **First Stage:** 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.

			Second Stage: 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 Section 57. **Third Stage:** 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 **Fourth Stage:** 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.
	Hira Lal v. State of Rajasthan *RLW 2005 (3) Raj 2014 (at High Court of Rajasthan)* **Issue:** Regarding – offences falling under proviso Sec 167(2), acceptance of challan in the absence of FSL and meaning of 'if already not availed of'.	The applicant was arrested under the Narcotic Drugs & 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). 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. 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. For all these reasons the applicant sought bail from the High Court.	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 "**up to ten years**", 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 "**not less than ten years**", 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. The High Court held that the learned Sessions Judge erred in refusing bail to the petitioner. 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. It would be more in consonance with 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. 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.

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Ø.	dsl dk uke, साइटेशन ,o dksVdkuke	e|nn	Qslyk
1	*Jou oeu ukn बनाम महाराष्ट्र jkT; 1994 ¼2½ckWe lh-vkj- 668 ¼ckWEc mPp U;k;ky; e½* e|Ìk D;k fjekM ds fy, vkonu ij tkp vf/kdkjh ds ctk; dkLVcy dk gLrk{kj vkj dsl Mk;jh dk tek u djuk] fjekM dk	ikFkhZ dk gR;k ds dsl e fxj¶rkj fd;k x;k vkj mls nks ckj fjekM e Hkstk x;kA ikFkhZ us mPp U;k;ky; e bl fjekM ds fo:) bl vk/kkj ij vkonu fd;k fd fjekM mfpr रूप से पेश नहीं fd;k x;k Fkk D;kfd bls tkp vf/kdkjh }kjk tek ugh fd;k	/kkjk167¼2½] eftLVsV dks mlds le{k iLrqr dsl Mk;jh ds अवतरण के आधार पर स्वंय को इस बात पर संतुष्ट करने के ckn fd vkjोपी को कैद में रखना आवश्यक है, आरोपी को रिमांड में देने की शक्ति प्रदान करता है, बल्कि उस जांच पर tks mlds le{k iLrqr fd;k tk,A blfy, dkuu vkonu ij gLrk{kj djrk g ;k tek djrk g ;g egRoiw.kZ ugh g D;kfd ;g dsoy ;=or dk;Z gSA vkxs] /kkjk 172¼1½ ds vuqlkj] lHkh tkp vf/kdkfj;ksa ds fy, ;g ck/;dkjh g fd os mDr Mk;jh cuk,] ftlesa tkp dh izxfr ds ckjs esa fofHkUu fooj.kksa dk mYys[k gksA mlh Mk;jh ds vorj.k ;k dsl isij ds cxsj] eftLVsV ds fy, ;g lEHko ugh g fd og vk/kkj dh mi;qDrrk dk irk yxk;s और स्वंय को संतुष्ट करे। vnkyr us ;g Lohdkj fd;k fd D;kfd dsl Mk;jh ds vorj.k dks tek ugh fd;k x;k Fkk] eftLVsV us fjekM

	xjdkuuh cuk nrk g\	x;k Fkk cfYd ,d dkLVcy }kjk gLrk{kj fd;k x;k FkkA ble ;g Hkh vkjki yxk;k x;k fd n-i-l- d ko/kkuk dk mYy?ku djr g, d l Mk;jh dk Hkh eftLVªV d le{k tek ugh fd;k x;k FkkA blfy,] ikFkh u tekur d fy, vkonu fd;kA	e tj djd xyrh dh gA fQj Hkh] vnkyr u vkjkih d okn dk [kkfjt dj fn;k D;kfd ml 167½2½ d vrxr tekur dh luokbZ dju dk vf/kdkj ikIr ugh Fkk D;kfd vkjkii= nk;j fd;k tk pdk FkkA
	Xkjt jkr jkT; cuke Lokeh vej ज्योति श्याम 1989 fØ-y-t- 501 ¼xjt jkr mPp	ifroknh dk ,d 0;igj.k d dl e lfnX/k d :Ik e fxj¶rkj fd;k x;k FkkA tkp	mfpr vkj i.kh tkp dk lgt cuku d fy,] vnkyr dk ,sk fjekM e tj djuk pkfg, tSls fd 167½2½ e dgk x;k g] yfdu bl vfuok;Z :Ik ls e tj ugh fd;k tk ldrk है। **167(3)** यह स्पष्ट करता है कि मजिस्ट्रेट को पुलिस की fgjklr e fjekM e tj dju d fy, dkj.k nt dju k

	U;k;ky;½ eÌk% D;k tkp e foyEc bl ckr d fy, ikLifxd g fd vkjkih dh ifyl dh fgjklr e Hkstk tkuk pkfg, ;k ugh\ D;k fjekM c<kuk आदर्श नियम होना pkfg, vkj ugh c<kuk ,d viokn\	vf/kdkjh u mlseVªkikfyVu eftLVªV d le{k iLrqr fd;k vkj fjekM d fy, vuqjks/k fd;kA eftLVªV u miyC/k lcwrk dk eY;kadu fd;k और इस निष्कर्ष ij igqp fd dsl fjekM d fy, mi;qDr ugh g] D;kfd yM+dh dh शादी प्रतिवादी से gk pqdh FkhA jkT; u rc dsl dk iqu%fopkj d fy, flVh l= न्यायाधीश, vgenkckn d le{k iLrqr	gkxkA ifyl fjekM dk vLohdkj dju d fy, ,slk dkj.k nt djuk vfuok;Z ugh gSA यह इस बात की ओर ईशारा करता है कि हालांकि, जांच ,tslh dk lkK; vijk/kks dh tkp] cxSj U;kf;d gLr{ki d djuk g] bldk ;g vFkZ ugh g fd tc Hkh ifyl fjekM dh ekx dh tk,xh] bls eatwj fd;k tk,xkA ifyl dk blds fy, ,slk dsl cukuk gkxk fd ifyl dh fgjklr vkxs dh जांच के लिए आवश्यक है। लेकिन अगर प्राथfed lcwrk dk i{k.kr% vkj cjh rjg ls udkj fn;k x;k gk] ,slk ugh dgk tk ldrk g fd vkjkih dh fgjklr dk fuonu fdlh Hkh :Ik e o/k] U;k;laxr ;k okLrfod gSA fjekM lk/kkj.kr% lHkh dslk e Lohdr fd;k tkrk g tgk ;g vkxs fd iHkkoi.k tkp d fy, आवश्यक है। इसलिए, vnkyr u ;kfpdk dk [kkfjt dj fn;kA

		fd;k] vkj fonoku l= U;k;ाधीश ने भी mlh dkj.k ls vkonu dk [kkfjt dj fn;k ftl dkj.k ls eftLVªsV us [kkfjt fd;k FkkA jkT; vihy esa xbZA	
	चिगुलुरी कृष्णा राव बनाम स्टेशन gkÅl vf/kdkjh ,oa vU;A 1989 fØ-y-t- 501 (आन्ध्रा प्रदेश उच्च U;k;ky;½ e|Ik% D;k	izkFkhZ dks fjekaM iz'Lrqr djus ds fy, eftLVªsV ds le{k mudh ?kj ij iz'Lrqr fd;k x;kA izkFkhZ us tekur dk vkonu nk;j fd;k] ysfdu eftLVªsV us	अनुच्छेद 22 (2) की भाषा यह कहती है कि गिरफ़्तारी के तुरंत ckn] vkjksih dks eftLVªsV ds le{k iz'Lrqr fd;k tkuk pkfg,] ysfdu mu dsl ks esa tgka Ik;kZIr dkj.k g] iqfyl MªkbZ;j dks iz'Lrqr djus esa foyac dj ldrh g] ysfdu dHkh Hkh 24 ?kaVksa ls vf/kd ughaA lcaf/kr iqfyl ds Åij bl ckr ds fy, ncko Mkyk tkuk pkfg, fd mUgsa MªkbZ;j dks fxj¶rkjh ds rqjar ckn eftLVªsV ds le{k iz'Lrqr fd;k tkuk pkfg, vkSj lHkh dsl ks esa 23 ?kaVs vkSj 45 feuV dh izrh{kk ugha djuh pkfg, tSlk fd og

	volijpuk dh deh ds dkj.k /kkjk 436 ds iko/kku dk detksj cuk;k tk ldrk g\ D;k eftLVsV ds lkeus fdlh fopkjk/khu cnh dh iLrfr es 24 ?kVs ifrc/k ds vfre Hkkx rd ds foyc ds ipyu Lohdkj ;kX; g\	tekur dk ;g dg dj jÌ dj fn;k fd tekur vkonu dk fuLrkVku ds fy, mud s ikl dkbZ volijpuk miyC/k ugh gA mUgksus LFkkuh; वकील परिषद }kjk tekur Lohdkj djus ls Hkh bdkj dj fn;kA tekur dk vxys fnu ds fy, LFkfxr dj fn;k x;k D;kfd mlds ckn vxys nks fnu Nêh FkhA	vkerkSj ij djrh gSA tekurh vijk/kks ds lc/k es] vnkyr us dgk fd n-i-l- dh धारा 436(1) इस पर इतना स्पष्ट है कि जब कभी भी उनकी हिरासत में आरोपी ज़मानत पेश करता है, उसे जाने दिया tkuk pkfg,] pkgs mls le; og vnkyr ds ikl gks ;k ifyl dh fgjklr esA bl /kkjk dk ,d ifrc/k Hkh gS ftles vnkyr] tekurh ysus ds ctk;] cnh dks mldh mifLFkfr ds fy, mlds 0;fDrxr c/ki= ;k epydk ij fjgk dj ldrk g] bl dsl es ftldh vkKk eftLVsV dks nuh pkfg, Fkh] 0;fDrxr epydk es cgr अधिक अवसंरचना और सामान की आवश्यकता नहीं होxhA ;g bl vnkyr ;k eftLVsV dk dke ugha gS fd og mu tSy vf/kdkfj;ksa dh dfBukbZ;ksa dks ekus ;k ljkgs ftUgksus M;Vh ds le; ds ckn cnh dks ikl djus es vleFkrk दर्शाई हो ।
	vfLVsV dyDVj vkQ dLVe l	nks ykxks dk dLVEk l	gkykfd] ;fn fxj¶rkj dks xj dkuuh ik;k x;k tSlk fd orekus ds l e] vkjksih dks mlh ds epyds ij ;k tekur

	vkj ,.M vkbZ ¼ih-½] ***बॉम्बे बनाम शंकर*** *xko/ku ekfgrs ,oa vU;* 1987¼3½ ckEcs lh-vkj-708 ¼ckEcs mPp U;k;ky; e½] eSlwj D;k fjgkbZ के आदेश जारी gksus ds ckn iquZ% fxj¶rkjh djuk xSj&dkuuh gS\	vf/kfu;e ds ikoo/kkuksa dk mYy?ku djus ds fy, fxj¶rkj fd;k x;k vkj mUgsa ,डिशनल phQ eSVªksikfyVu eftLVªsV ds ikl iLrqr fd;k x;k] ftUgksaus ik;k fd fxj¶rkjh xSjdkuuh Fkh D;ksafd fxj¶rkj fd;s x;s 0;fDr dk fxj¶rkjh ds dkj.k ugha crk;k x;k FkkA mUgsa rc NksM fn;k x;kA yfdu mUgsa mlh fnu nksckjk fxj¶rkj dj fy;k x;k vkj	पर रिहा करने का प्रश्न नहीं उठेगा और उचित आदेश होगा केवल रिहाई का आदेश, धारा 59 के पिछले भाग में विशेष आदेश द्वारा जिसकी रिहाई का आदेश जारी करने की बात dgh xbZ gSA blfy, ckn esa dh xbZ fxj¶rkjh xSj dkuuh ugha gksxhA fn;s x;s dsl esa] tkp ,tsalh dk vijk/k dh tkp ds fy, lk;kZr समय नहीं दिया गया था और ज़मानत मंजूर करने के आदेश dk jÈ djuk U;k; ds fgr esa gksxk

		bl ckj mUg bldk dkj.k Hkh crk;k x;kA mUg rc 7 fnuk dh U;kf;d fgjkl r e Hkt fn;k x;kA 7o fnu mUg t ekur n nh xbA blfy,] dLVEk l vf/kdkjh }kjk t ekur dk jÌ dju d fy, vkonu nk;j fd;k x;kA	
	Ekeu deky lcnh iVy cuke xt jkr jkT; ¼1971½ 12 th-,y-vkj- 481 ¼xt jkr mPp U;k;ky; e½	dN ykxk dk आपराधिक षड्यंत्र d fy, fxj¶rkj fd;k x;k vkj mUg U;kf;d eftLVsV dh fgjkl r e j[kk	/kkjk 169 tkp dju oky ifyl vf/kdkjh dk ;g vf/kdkj nrk g fd og viuh fgjkl r l ml 0;fDr dk ,d c/ki= dk;kUo;u dju ij fjgk dj n] ;fn ml ;g Kkr gkrk g fd eftLVsV d le{k iLr r dju d fy, mld fo:) lk;kl r lcr ;k mfpr vk/kkj ugh gA bl /kkjk e mYYkf[kr fgjkl r] ifyl dh fgjkl r g u fd eftLVsV dhA blfy,] यह स्पष्ट है कि पुलिस अधिकारी, धारा **169** का उपयोग करके

	eÌk% D;k ifyl }kjk vkjksih dk eftLVªV dh fgjklr ls fjgk djkus ds fy,] bl vk/kkj ij /kkjk 169 dk mi;ksx fd;k tk ldrk g fd mudsa fo:) dksbZ lk;kIr lcwr ugha Fkk\	x;kA blds ckn] eSMyh; ifyl bLiSDVj us ;g dgrs gq, fjikVZ Hkst h fd dN ykxksa ds fo:) vkjksii= nk;j djus ds fy, lkexzh ugha Fkh] blfy, mlds fjgkbZ ds fy, fuonu fd;kA ysfdu eftLVªV ने प्रथम दृष्टि में mu lcds fo:) dsl ik;k vkj fjikVZ jÌ dj nhA ifyl vf/kdkjh l= U;k;ky; igqpA न्यायाधीश ने केस dk mPp U;k;ky;	xyrh dj jgs Fks D;ksafd vkjksih igys ls gh eftLVªV dh fgjklr esa FksA tc fxj¶rkj fd;s x;s 0;fDr dks bl vk/kkj ij fjgk djus की आवश्यdrk gksrh gS fd mlds fo:) lk;kIr dkj.k ugha gS] /kkjk 63 ds vrxr vf/kdkj j[kus okys eftLVªV }kjk विशेष आदेश जारी किये जाने की आवश्यकता होती है। इसके fy, eftLVªV dks dsl dk /;kiuoZd tkpuk gksxk] vkj आदेश जारी करने के लिए विचारशीलता का उपयksx djus की आवश्यकता होगी क्योंकि प्रथम दृष्टि में उन्हें यह सोचने dk vf/kdkj gksxk fd mldh fxj¶rkjh mfpr Fkh vkj dN lk;kIr lcrks ;k mfpr dkj.kksa ds vk/kkj ij dh xbZ FkhA fQj Hkh] ;fn vfre fjikVZ esa ntZ rF;ksa ls fdlh vijk/k dk irk yxrk gS vkj dsl esa vkjksih ds fo:) egdnes dh आवश्यकता हो तो, मजिस्ट्रेट द-i-l- dh /kkjk 190¼1½¼x½ ds vrxr vijk/k dk laKku ys ldrk gSA vnkyr us] bl idkj fu.kZ; fy;k fd eftLVªV us /kkjk 190¼1½¼x½ ds vrxr laKku yxk D;ksafd vkjksih ds fo:) tkp fd;s tkus ds fy, स्पष्ट केस मौजूद है।

		Hkst fn;k vkSj ;g Hkh fy[kk fd mUgsa yxrk gS fd eftLVsªV dk **निष्कर्ष ग़लत है,** vkSj ;g fd og iqfyl dks vkjksi i= nk;j djus ds fy, ck/; ugha dj ldrs gSaA	
	,yeykbZ cuke rfeyukMq jkT;] iqfyl bULisDVj द्वारा पेश किया x;k 1983 ,y-MCY;w ¼fØ-½121 eækl mPp U;k;ky; eqÌk% ,d	;kfpdkdrkZ dks n-i-l- dh /kkjk 41¼2½ ds vUrxZr iqfyl }kjk] 2 eghus iwoZ fxj¶rkj fd;k x;k Fkk] vkSj mls dUæh; dkjkxkj] eækl esa j[kk x;k FkkA fxj¶rkjh ds ckn mlds fo:) fopkjk/khu ds l	tc ,d fopkjk/khu canh dks eftLVsªV ds le{k iLrqr fd;k tkrk gS vkSj og 60 ;k 90 fnuksa dh dSn esa jg pqdk gS] **मजिस्ट्रेट को विचाराधीन बंदी को यह अवश्य ही बताना चाहिए** fd mls tekur ij fjgk gksus dk vf/kdkj gSA **दिर्शा–निर्देश:** 1- n-i-l- dh /kkjk 41¼1½ ds vUrxZr dh xbZ fxj¶rkjh **के केसों में धारा 167(2) लागू होगा और विशिष्ट** ifjfLFkfr;ksa esa /kkjk 151¼1½ ds vUrxZr dh xbZ fxj¶rkjh esa HkhA 2- n-i-l- dh /kkjk 41¼2½ ds vUrxZr dh xbZ fxj¶rkjh ds dsl esa /kkjk 167¼2½ fcYdqy ykxw ugha gksxkA vnkyrksa dks] Mk;jh esa bZVh dh tkap fd;s cxSj vkSj

	fopkjk/khu dk fjekM ij NkM+r g, eftLVªV dh D;k Hkfedk g\ D;k ekxj{kh ifyl dh deh iLrfr u dju dk ,d o| dkj.k g\	le; le; ij LFkfxr gkr jg] vkj igyh iLrfr d ckn mldh iLrfr d cxj gh fjekM c<k;k x;kA dUæh; dkjkxkj l vnkyr d le{k mldh iLrfr u dju dk dkj.k ekxj{kh ifyl dh vuiyC/krk crkb xbA ikFkh dk dguk g fd mldh d n dkuu d iko/kkuk vkj ikdfrd U;k; d fl)kr d fo:) gku d dkj.k xjdkuuh gA	Lo; dk fjekM e tj dju ;k c<ku dh okLrfod अवश्यकता के बारे में संतुष्ट किये बग़ैर, यंत्रवत रिमांड आदेश नहीं जारी करना चाहिए। 3- fdlh Hkh ifjfLFkfr e eftLVªV dk lfgrk d iko/kku /kkjk 167 ½2½d ifrc/k ¼[k½ d mYy?ku e] vkjkih dk mld le{k iLrr fd; cxj fgjkl r e j[ku या किसी व्यक्ति की हिरासत को बढ़ाने का आदेश ugh tkjh dj ldrk] vf/kdkfj;k }kjk ,slk u dju dk pkg dkbZ Hkh dkj.k crk;k tk,A ty vf/kdkfj;k dk] lcf/kr eftLVªV }kjk fjekM d आदेश के बगैर, किसी व्यक्ति को पहले मंजूर की गई fjekM vof/k l ,d iy Hkh vf/kd d n e ugh j[kuk pkfg,A
	pxUrh lR;ukjk;u.k ,oa vU; cuke vkU/kk	ikFkh@ vkjkih dk ,d nx d lc/k e fxj¶rkj	सबसे पहले, मजिस्ट्रेट द्वारा क़ैद को केवल रिमांड के आदेश d le; l vf/kdr fd;k tk ldrk gA igy dh vof/k tc vkjkih] /kkjk 57 d vrxr ifyl dk ikl r vf/kdkjk d

	प्रदेश ,-vkbZ-vkj-1986 , l-l h- 2130 e|ìk% D;k /kkjk 167¼2½ ds ifrc/k ds vrxZr 60@90 fnuks dh fxurh fxj¶rkjh dh rkjh[k ls gksuh pkfg, ;k fjekaM dh rkjh[k ls\	fd;k x;k vkSj mls vxys fnu U;kf;d fgjklr esa Hkst fn;k x;kA vkjksi&i= fjekaM ds 90osa fnu nk;j fd;k x;k] vkSj blfy, eftLVªsV }kjk [kkfjt dj fn;k x;kA jkT; ds mPp U;k;ky; dks vihy esa ;g fu.kZ; fn;k x;k fd /kkjk 167¼2½ ds ifrc/k ds vrxZr 90 fnuksa dh vof/k dks doy fjekaM dh rkjh[k ls fxuk tkuk gSA blfy,] tekur dks jnn dj fn;k vkSj eftLVªsV dks निर्देश दिया कि	vuqlkj] fgjklr esa Fkk] og eftLVªsV }kjk tkjh fgjklr ughs gks ldrh gSA ;g] blfy,] rkfdZd gS fd dqy 60 ;k 90 दिनों की अवधि केवल रिमांड के आदेश की तारीख़ से प्रारम्भ gks ldrh gSA दूसरी बात, जैसे कि कहा गया है, उप–धारा (2) के शब्दों में ßvkjksih dh dqN vf/kdr dj-----tks lc feykdj 15 fnuksa ls vf/kd vof/k ds fy, u gksÞ tgka rd fjekaM ds igys आदेश से संबंधित है, इसे अलग प्रकार से पढ़ा जाएगा। ysfdu tc fxj¶rkjh dh vof/k dh ckr gksxh rks blls iqfyl }kjk fxj¶rkj djus dh rkjh[k ls tksMk tk,xkA mPp U;k;ky; के आदेश को सही माना गया और अपील को [kkfjt dj fn;k x;kA

		og ikFkh dh fxj¶rkjh ds fy, okjaV tkjh djA vkjksih us mPpre U;k;ky; es vihy fd;kA	
	,e-,- /keZu cuke *आन्ध्र प्रदेश* 1991 ¼1½,-,y-Vh- 315(आन्ध्र प्रदेश mPp U;k;ky; e½ eqÌk% D;k eftLVsV ds le{k शारीरिक प्रस्तुति ds cxSj] fjek.M ds आदेश के अंतर्गत cnh dks dSn es j[kk jguk dkuwuh gS ;k ugha\	cnh iR;{khdj.k fjV ;kfpdk es ikfFk;ks dk dLVe l ,DV ds iko/kkuks ds mYy?ku es fxj¶rkj fd;k x;k Fkk vkSj mUgs eftLVsV ,o vkfFkd vijk/kks के लिए विशेष न्यायाधीश, दोनों ds }kjk gh fjek.M es Hkst fn;k x;kA cknh dh rkjh[kks ij विशेष न्यायाधीश, उनकी शरीरिक iLrqfr ds cxSj	u;s dkuwu dh /kkjk 167 dh mi/kkjk ¼2½ ds vUrxZr 15 fnuks ls vf/kd fjek.M dh vof/k dks c<kuk dkbZ ikdfrd ;k fu;fer dk;Zokgh ugh gS] ;g dsoy ogk ds fy, gS tgk मजिस्ट्रेट संतुष्ट है कि रिमांड बढ़ाना आवश्यक है और इसके fy, i;kZIr vk/kkj ekStwn gS vU;Fkk ughA eftLVsV ds le{k vkjksih dh iLrqfr] fjek.M ekaxus vkSj fjek.M c<kus] nksuks ds समय अनिवार्य है। पहली रिमांड मांगने के समय शारीरिक iLrqfr vifjgk;Z gS] fQj Hkh ckn ds le; es iLrqfr es vlEHkkouk ds dkj.k] bles ujeh cjrh tk ldrh gSA ;g dkjkxkj vf/kdkfj;ks vkSj vfHk;kstu ,tsalh nksuks ds fy, [kyk gS fd og vkjksih dh iLrqfr es vlEHkkouk ds fy, ,d fyf[kr vuqu; eftLVsV dks Hkstsa] ;fn fonoku eftLVsV bl बात से संतुष्ट है कि, अनुनय का कारण उचित है तो वह, इसका विशेष कारण लिखित रूप में दर्ज करते हुए, आरोपी की शारीरिक प्रस्तुति के बगैर उसके रिमांड की अवधि को बढ़ा nsxkA blfy,, विद्वान विशेष न्यायाधीश द्वारा लगातार जारी रिमांड आदेश के अंतर्गत निरूद्ध व्यक्तियों को न्यायिक हिरासत में

		;=or mudh fjekM vof/k c<kr jgA fu:) 0;fDr;k u mPp U;k;ky e jkgr d fy, ;kfpdk nk;j dhA	Hktuk n.M izfØ;k lfgrk dh /kkjk 167½2½¼[k½ rFkk Hkkjr d lfo/kku d vuPNn 21 d fo:) g] vkj mudh dn ;k fgjklr vo/kkfud FkhA
	vlye ckckyky n/kb cuke महाराष्ट्र राज्य ,-vkbZ- vkj- 1983 ,l-lh- 1	vkjkih dk dfFkr Hk-n-l- dh /kkjk 149 d vrxr vijk/k d fy, fxj¶rkj fd;k x;kA mlu tekur dh vthZ Mkyh ftl l= न्यायाधीश द्वारा jnn dj fn;k x;kA ckn dh rkjh[k ij] mlu fQj l tekur dh vthZ Mkyh जिसे न्यायाधीश }kjk e tj dj fy;k x;k D;kfd 90 fnuk d Hkhrj	;g fu.k; fn;k x;k fd ,d ckj tc vkjkih 0;fDr dk /kkjk 167½2½ d vrxr tekur ij fjgk dj fn;k tkrk g] mldh fjgkbZ d ckn ,d vkjki&i= nk;j djuk] mld tekur dk jnn dju d fy, i;kIr ugh gA mlh fLFkfr e mldh tekur dsoy ml fLFkfr e jnn dh tk ldrh g tc /kkjk 437½5½ ;k fQj /kkjk 439½2½ d vuplkj mfpr dkj.k gkA ,slk blfy, g D;kfd /kkjk 167½2½ d vrxr fjgkbZ lfgrk d v/;k; xxxiii d vrxr fjgkbZ d cjkcj gA tkp ,tfl;k }kjk] ifrc/k d vrxr vf/kdr c<h gbZ vof/k d Hkhrj tkp i.k dju e foQy gkus ij /kkjk 167 dh mi/kkjk ½2½ d vrxr vkjkih dh fjgkbZ d iko/kku dk उद्देश्य यह था कि जांच एजेंसियों में जांच अतिशीघ्र और o/kkfud iko/kkuk dh le; lhek d v/khu ijh dju dh pruk tkxr gkA

		vkjkiij&i= nk;j ugh fd;k x;k FkkA vkjki&i= nk;j dju d ckn] jkT; u tekur jnn dju d fy, vkonu fd;kA mPp U;k;ky; dk ;g er Fkk fd D;kfd fonoku सत्र न्यायाधीश }kjk tekur bl rduhdh vk/kkj ij fn;k x;k Fkk fd ifyl 90 fnuk d Hkhrj vkjki&i= nk;j dju e foQy jgh FkhA yfdu] tkp d ckn ;g Kkr gvk g fd gR;k tSlk xHkhj gvk Fkk] mPp U;k;ky;] tekur	mijkDr dkj.k d vunkj vihy dk etj dj fy;k x;k vkj mPp न्यायालय के उक्त आदेश को रद्द कर दिया गया।

		jnn dj ldrh FkhA blfy,] tekur dk fujLr dj fn;k x;kA	
	lsVy C;wjks vkQ इंवेस्टिगेशन बनाम vuqie th- dqydf.kZ ,-vkbZ-vkj- 1992 ,l-lh- 1768 eqÌkß D;k 15 fnuks dh iqfyl vfHkj{kk dh vof/k lekIr gksus ds ckn Hkh] ftl eftLVªsV के समक्ष उसे पेश fd;k x;k Fkk mlds }kjk mls 0;fDr dks iqfyl dh fgjklr esa Hkstk tk ldrk gS ;k ughaA	vkjksih dks vigj.k ds fy, 15 fnuksa dh U;kf;d fgjklr esa Hkst fn;k x;kA iqfyl us fgjklr ds fy, vkosnu fd;k ftls eftLVsªV }kjk eatwj dj fy;k x;kA ysfdu tsy tkrs le; jkLrs esa mls fpfdRlh; lgk;rk dh आवश्यdrk ekyqe gqbZ vkSj mls vLirky ys tk;k x;kA vLirky esa yxHkx 10 fnuksa rd jgus ds ckn eftLVsªV us mldh fgjklr ,d lIrkg	Lkh-ch-vkbZ- dh vihy dks [kkfjt djrs gq,] vnkyr us fu.kZ; fn;k fd 15 fnuksa dh izkjfEHkd fgjklr ds lekIr gksus ds ckn iqfyl ds ikl dksbZ fgjklr ugha gks ldrh gS] mu ekeyksa dks NksM+dj ftudh vxj ckn esa ikbZ tkrh gS tks ekeys esa dqN vkSj vijk/k djus] pkgs xHkhj ;k vU; dks irk yxk gksA ysfdu] ;g ifjfLFkfr ogka ykxw ugha gksxk tgka ogh vkjksih fdlh vU; ekeys esa lfEefyr ik;k tk,A eftLVªsV mls /kkjk 167¼2½ ds ifjfLFkfr ¼d½ ds vUrxZr igys 15 fnuksa dh vof/k esa nkSjku esa ls fdlh dh Hkh fgjklr esa Hkst ldrs gSaA rc /kkjk 167¼2½ ds vUrxZr mfYYkf[kr izkjfEHkd 15 fnuksa dk mlh fnu ls fxuk tk,xk tc ,slh dksbZ Fkh vkSj bl vof/k ds lekIr gksus ds ckn] vkjksih dks dsoy U;kf;d fgjklr esa gh Hkstk tk ldrk gSA U;kf;d eftLVªsV igys rhu nkSjku esa ls fdlh dks Hkh le;≤ ij आरोपी की हिरासत 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 fnuksa ls vf/kd ugha gks ldrh gSA

		vkj c<k nhA pfd] ifyl mls fgjklr esa ugha ys ldh Fkh] tkp vf/kdkfj;ksa us nkckjk fgjklr dsa fy, vkosnu fd;k] ikjfEHkd fjekaM ds 18 fnuksa ckn eftLVªV vkj mPp U;k;ky; nksuksa us gh bls ukeatwj dj fn;k vkj vkjksih dks tekur ns fn;kA	
	mn; ekgu yky vpk;/ cuke महाराष्ट्र राज्य 2001 ¼2½ ,-lh-vkj- 1213 ¼,l-lh-½ eqÌk nM ifØ;k lafgrk dh /kkjk	प्रार्थी ने विशेष न्यायाधीश के समक्ष vkRe leiZ.k fd;k ftlus Hkk-n-la- dh /kkjk 420 ds varxZr vijk/k ds fy, U;kf;d fgjklr esa Hkst fn;kA mlds fjekaM ds 60 fnuksa ds ckn] ikFkhZ us ;g dgrs gq, tekur ds fy, vkosnu fd;k	mPp U;k;ky; ds fu.kZ; dks jn djrs gq,] vnkyr us fu.kZ; fn;k fd & • tc vkjksih }kjk mlds vifjgk;Z vf/kdkj ds iz;ksx ds fy, tekur dk vkosnu fd;k tkrk gS]eftLVªV@vnkyr dks bls इस बात से संतुष्ट होकर निपटा देना चाहिए कि वास्तव में, tkap mfYyf[kr gS] vkjksih 60 ;k 90 fnuksa dh vof/k O;rhr dj pqdk gS vkj tkp ,tsalh }kjk dksbZ vkjksi= nk;j ugha fd;k x;kA • ;fn vkjksih tekur nus esa vleFkZ gS] tSlk fd eftLVªV us निर्देश दिया और फिर धारा 167(2) और व्याख्या 1 को एक lkFk i<us ds ckn] vkjksih dh ikjk¼d½ esa mfYyf[kr vof/k ds vkxs Hkh yxkrkj tkjh fgjklr vukf/kd`r ugha gksxh] vkj

	167½2½ d ifrc/k d vuqlkj ;g dc ekuk tk,xk fd vkjkih u tekur ij fjgk gkus d viu vifjgk;l vf/kdkj dk mi;kx dj fy;k g] ;fn bld vrxr pkyku पेश करने की अवधि d Hkhrj pkyku ugh पेश किया गया है\	fd 60 fnuk dh vof/k e dkbZ pkyku ugh nk;j किया गया। विशेष न्यायाधीश ने ज़मानत nus l euk dj fn;k vkj fQj ikFkh u mPp U;k;ky; e vkonu fd;kA vihy vkj l|uokbZ d nkjku tkp अधिकारी ने विशेष U;kयाधीश के पास pkyku nk;j dj fn;kA mPp U;k;ky; *l/t; nRr cuke jkT;* ¼1994½5 ,l-lh-lh- 410 ij fuHkj fd;k vkj ik;k fd tekur देने की आवश्यकता ugh gA	blfy,] ;fn bl vof/k e tkp i.k gk tkrh g vkj vkjkii= nk;j dj fn;k tkrk g rc vkjkih dk vifjgk;l vf/kdkj lekIr gk tk,xkA • /kkjk 167½2½d e mfYYkf[kr vof/k d lekIr gkus d ckn] ;fn आरोपी ज़मानत के लिए आवेदन करता है और निर्देश दिये जाने d ckn tekur nus d fy, Hkh dgrk g] rc ;g ekuuk g fd vkjkih u viu vifjgk;l vf/kdkj dk mi;kx fd;k g gkykfd] vnkyr u ml vkonu dk Lohdkj ugh fd;k g vkj ज़मानत की शर्तों को नहीं बतलाया है, और आरोपी ने भी tekurh iLrqr ugh fd;k gA
	jktho pk/kjh cuke fnYyh ¼,u-lh-Vh-	vkjkih ij] Hk-n-l-dh /kkjk 386 d vrxr vkjki Fkk]	धारा 167 के अंतर्गत, यह स्पष्ट है कि 10 वर्षों से कम की कैद से n.Muh; vijk/kk e tgk tkp fopkjk/khu gk] eftLVªV vkjkih dh dn dk 90 fnuk l vf/kd vof/k d fy, vf/kdr ugh dj ldrs gA

	½jkT; ¼2001½5 , l-l h-l h-34 e|Ìk% vfHk0;fDr ß10 वर्ष से कम अवधि dh dn l s n.Muh; vijk/kÞ dk fuoZpu ,o l ajpuk A	mlus eSftLVªsV मजिस्ट्रेट के आदेश ij tekur ij fjgk dj fn;k x;k D;kfd 60 fnuks ds Hkhrj vkjksi i= nk;j ugha fd;k x;k FkkA fQj Hkh] vfrfjDr l= न्यायाधीश ने पाया fd /kkjk 167¼2½d ifrcU/k ¼d½ ds [kaM ¼i½ ykxw gksxk] vkj आदेश को रद्द कर fn;kA yfdu] mPp U;k;ky; us viuh le> es ik;k fd [kaM ykxw ugha gksxk vkj blfy, l= न्यायाधीश के आदेश dks [kkfjt dj fn;kA blds fo:) vkxs mPpre U;k;ky; es vihy fd;k x;kA	vU; vijk/kks ds fy, ;g vof/k 60 fnuks dh gSA इसलिए, उन केसों में जहां अपराध 10 वर्ष के कारावास या उससेअधिक l s n.Muh; g] vkjksih dks 90 fnuks rd fgjklr es j[kk tk ldrk है। इस संदर्भ में, अभिव्यक्ति 'कम नहीं' का अर्थ होगा कैद 10 वर्ष या mlls vf/kd le; ds fy, gks vkj blds vrxZr dsoy os vijk/k आएंगे जिसके दण्ड स्पष्ट 10 वर्षों या उससे अधिक के लिए हो सकता gSA blfy, /kkjk 386 ds vrxZr vijk/k bl Js.kh es ugha vkrk gS vkj tekur eatj dj fy;k x;kA

	f[konku cuke jkt LFkku jkT; 1975 fØ-y- t 1984¼jkt LFkku mPp U;k;ky; e½ e Ìk% D;k vkjkih dh fxj¶rkjh dh rkjh[k l 60 fnuk dh vof/k lekIr gku d ckn] D;k eftLVªV ifyl fjikVZ d vk/kkj ij dl dk lKku y ldrk g vkj vkjkih dk vkx U;kf;d	ikFkhZ dk gR;k d dl e dn fd;k x;k vkj U;kf;d मजिस्ट्रेट के आदेश l fgjklr e Hkt fn;k x;kA 60 fnuk d lekfIr ij] ikFkhZ u tekur d fy, vkonu fd;kA tekur bdkj djr g, eftLVªV u n-i-l- dh /kkjk 309 d vrxZr dl dk lKku fy;kA ikFkhZ mPp U;k;ky; igpk ;g dgr g, fd 60 fnuk d ckn mldh dn xj dkuuh g vkj mldh tekur e tj dh tkuh pkfg,A	;g ekuk x;k fd fonoku eftLVªV okjaV }kjk ikFkhZ dk /kkjk 309 ¼2½ d vrxZr fgjklr e doy rHkh Hkt ldr g] tc vkjkih dh fxj¶rkjh dh rkjh[k l ifyl fjikVZ mud le{k 60 fnuk d Hkhrj nk;j dh xbZ gk] vkj ;fn vijk/k dk lKku yu d ckn ;k e dnek शुरू होने के बाद, उसे मुकदमे या इंक्वायरी को स्थगित करना, बाद में yuk t:jh yxrk gA ;fn eftLVªV dk /kkjk 309 ¼2½ d vrxZr vkjkih dk fgjklr e Hkt un d vf/kdkj dk mi;kx dju dh vkKk n nh tk, ;g tkurs g, Hkh fd mud lKku yu d igy gh bl /kkjk dk xj dkuuh gk p dk Fkk vkj bl l vkjkih dk mld 60 fnuk dh vof/k fcrku d ckn fjgkbZ d fy, ikIr ,d egRoi.k vf/kdkj l ofpr gkuk iMxkA bld vykok] ;fn eftLVªV }kjk ifyl fjikVZ ij lKku yu d rjar igy vkjkih tkp ijk u gku d dkj.k 60 fnuk l vf/kd le; l xj dkuuh fgjklr e g rk /kkjk 167 ¼2½ d vrxZr og tekur ij fjgkbZ d fy, vkonu dj ldrk gA eftLVªV ml dkuuh :Ik l tekur ij fjgk dju d fy, ck/; gA

	fgjklr e Hkt ldrk g\		
	th-d- eikuj cuke rfeyukM jkT; 1990fØ-y-t- 2685½enkl mPp U;k;ky; ds le{k½ eÌk% fjekaM ds आदेश के fy, eftLVsV की संतुष्टि, /kkjk 57 ,o 167 dk foLrkjA	dkxtl }kjk ikVsLV ls fxj¶rkj fd;s x;s vkj fjekM ij Hkst x;s 0;fDr;ka dh fjgkbZ ds fy, ,d ;kfpdk nk;j dh xbZA ;g Hkh voyksdu fd;k x;k fd tc Hkh dk;Zdkfj.kh us fjekaM ekaxk] rfeyukMq esa dbZ eftLVsVka us fxj¶rkj 0;fDr;ka ds 15 fnuka ds fjekaM ds fy, ;=or vkj fu;fer आदेश जारी किया Fkk	vnkyr us /ारा 167(2) के अंतर्गत शक्तियों के उपयोग के चार voLFkkvksa dk foooj.k fn;k% igyk pj.k% vuPNsn 22¼2½ vkj /kkjk 57 n-iz-la- ds varxZr] ,d व्यक्ति को मजिस्ट्रेट द्वारा धारा 167 के विशेष आदेश के बगैर 24 ?kaVs ls vf/kd le; rd dsn ugha j[kk tk ldrk gSA nwljk pj.k%n-iz-la- dh /kkjk 167¼1½ ds varxZr ,d tkap vf/kdkjh रिमांड के लिए केवल तब मांग सकता है जब यह विश्वास करने के fy, vk/kkj gS fd vkjksi ;k lpuk lgh gS vkj ,sls ifjfLFkfr gksrk gS fd /kkjk 57 }kjk fu/kkZfjr 24 ?kaVs dh vof/k ds Hkhrj tkap iwjh ugha dh tk ldrh gSA rhljk pj.k% eftLVsV fu;fer tkap ds vk/kkj ij ugha cfYd mlds le{k j[kh xbZ Mk;jh ds vk/kkj ij] blds U;kf;d leh{kk djus ij] और संतुष्ट होने पर कि जांच के लिए आगे रिमांड आवश्यक है, तभी fxj¶rkj 0;fDr dks 15 fnuksa rd dh fgjklr esa Hkst ldrh gS] ;k rks ,d gh ckj esa ;k NksVh vof/k;ksa esa] ftlesa blls dqy 15 fnuksa ls vf/kd ugha c<+k;k tk ldrk gSA pkSFkk pj.k% eftLVsV] ftlds ikl vkjksih dks iqfylh fgjklr ds vykok vU; fgjklr esa Hkstus dk vf/kdkj gS] 15 fnuksa ls vf/kd vof/k ds fy, ;fn eftLVट इस बात से संतुष्ट होता है कि इसके

			fy, mfpr vk/kkj ekt+n g] og vf/kdre] vijk/k dh xHkhjrk d+ vu+lkj 60@90 fnu+k d+ fy, fgjklr e+ Hkt+ ldrk gA 90 ;k 60 fnu+k dh vof/k lekIr gku+ d+ ckn] t+lk d+l gk] vkjkih dk निर्धारित शर्तों पर ज़मानत पर रिgk gku+ dk vf/kdkj gA
	ghjkyky cuke jkt+LFkku jkT; vkj-,y-MCY;- 2005 ¼3½ jkt+ 20143 ¼jkt+LFkku mPp U;k;ky; e½ e+Ik% /kkjk 167½2½ d+ ifrc/k d+ vu+rxZr vku+ oky+ vijk/kk l+ lacf/kr] ,Q-,l-,y- d+ vu+ifLFkfr e+ vkjkih i= dh Lohdfr vkj ^;fn igy+ l+ ugh mi;qDr fd;k gk* dk vFkA	ikFkh dk ,u-Mh-ih-,l- dku+u d+ अंतर्गत 10 वर्षों की dn+ l+ n.Muh; vijk/k d+ fy, fxj¶rkj fd;k x;kA mld+ d+l e+ ;g dgk x;k fd l= न्यायाधीश ने ग़लत rjhd+ l+ /kkjk 167½2½ d+ vu+rxZr mldh t+ekur dh ;kfpdk dk [kkfjt dj fn;kA ;g Hkh dgk x;k fd mld+ igyh ckj iLrqr+ dju+ dh rkjh[k l+ 60 fnu+k d+ ckn dn+ dk vf/kdr+ dju+ d+ fy, eftLVªV dk	ikFkh dk d+l lfgrk dh /kkjk 167 dh mi/kkjk 2 d+ ifrc/k ¼ii½ d+ अंतर्गत आता है। जहां खंड में '10 वर्षों तक' की बात कही गई है, यह vnkyr d+ food ij fuHkj dj+xk fd वह आरोपी को 10 वर्षों तक के fy, n.M nx+ ;k fQj mll+ de d+ fy,A mu d+lk e+ tgk n.M '10 वर्षों से कम नहीं' कहता है, ऐसे केसों में अदालत को अधिकार नहीं होगा कि वह 10 वर्ष से कम अवधि के कारावास का दण्ड दे और 10 ;k mll+ vf/kd vof/k d+ fy, n.M n+ ldrk gA mPp U;k;ky; ने माना कि विद्वान सत्र न्यायाधीश ने प्रार्थी को ज़मानत न देकर x+yrh dh gA किसी कारण वश यदि पुलिस को निर्धारित समय के भीतर एफ-,l-,y-fjikVZ+ ikIr ugh gk+rh g+ rk+ ml+ vnkyr l+ fuonu djuk okfg, fd og pkyku nk;j dju+ d+ ckn e+ यह रिपोर्ट इसके समक्ष पेश कर nxh] vkj vnkyr dk Hkh lkekU;r% bl fuonu dk Lohdkj dj y+uk pkfg, vkj pkyku Lohdkj dj y+uk pkfg,A यह कानूनी अधिदेश के असंगति होगी यदि किसी आरोपी को अपने vifjgk;Z vf/kdkj dk mi;kx dju+ d+ fy, ck/; fd;k tk, ftl iy og t+ekur ij fjgk gku+ d+ fy, vkonu djrk g+ vkj bldh शर्तों को पूरा करने के लिए तैयार हो जाता है।

		vf/kdkj ugh gA ;g Hkh i:dV gvk fd ifyl }kjk ,Q-,l-,y- fjikV: ikIr ugh gbi g vkj pkyku r;kj dju d: ckn] bl: vnkyr में पेश करने के fy, dgk x;kA bu lHkh dkj.kk d: vk/kkj ij ikFkh u: mPp U;k;ky; l: t:ekur dh ekx dhA	bld: vykok] tc dkbi vkjkih t:ekur d: fy, vkonu djrk g ;g बतलाते हए कि निर्धारित समय के भीतर चालान पेश नहीं किया गया g] eftLVªV dk viu: foo:d dk उपयोग करने की आवश्यकता नहीं रह tkrh flok; ;g tkuu d: fy, fd dkuu d: v:rx:r mfYyf[kr अवधि समाप्त हो गई है या नहीं, और चालान पेश किसा गया है या ughA

Section IV:
WHAT THE LAW COMMISSION AND OTHER COMMISSIONS SAY

Hkkx IV:
D;k dgrs gSa fof/k vk;ksx vkSj vU; vk;ksx

EXTRACTS OF SELECT REPORTS OF THE LAW COMMISSION OF INDIA

(*Highlights and headers have been inserted for convenience)*

78th Report: Congestion of Undertrial Prisoners in Jail[56]

- **"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. "[57]**

- **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.

[56] http://lawcommissionofindia.nic.in/reports.htm
[57] Page 2, Para 1.8, Chapter 2-Interval and Bail, 78th 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."[58]

- **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 in 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."[59]

- **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 similated to that of a convicted person.

[58] Page 5, Para 1.26, 2-Interval and Bail, 78th Law Commission Report

[59] Para 2.6, Page 8, Chapter 3: Solitude of Law, 78th 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. "[60]

- **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."[61]

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."[62]

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[60] Para 2.22, IX, Questions for Consideration, Chapter 2, Present Law, Comparative Position and Questions For Consideration,, 78th Law Commission Report

[61] Para 3.8, Page 14-15, Chapter 3, Expeditious Disposal of Cases, 78th Law Commission Report
[62] Para 3.10, Page 15, Chapter 3, Expeditious Disposal of Cases, 78th 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 77th 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."[63]

"**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."[64]

152nd Report: Custodial Crimes[65]

- **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."[66]

[63] Para 3.12, Page 15, Chapter 3, Expeditious Disposal of Cases, 78th Law Commission Report
[64] Para 8.1, Chapter 8, Arrangements for Detention, 78th Law Commission Report
[65] http://lawcommissionofindia.nic.in/reports.htm

[66] Para 5.20, Page 27, Chapter 5, Arrest, 152nd 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."[67]

- **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**

[67] Para 5.20, Page 28, Chapter 5, Arrest, 152nd 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."[68]

- **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

[68] 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."[69]

- **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 84th 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.

[69] 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 84th Report and we reiterate the same."[70]

- **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."[71]

"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)."[72]

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[70] Para 8.3, Page 35-36, Chapter 8, First Information Report and Inquiry
[71] Para 8.5 Page 37, Chapter 8, First Information Report and Inquiry
[72] Para 11.7, Page 43, Chapter 11, Law of Evidence

177th Law Commission Report: Law relating to Arrest[73]

- **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."**[74]

- **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

[73] http://lawcommissionofindia.nic.in/reports.htm

[74] 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."[75]

- **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.."[76]

"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

[75] Page 24, Chapter 3, The Relevant Provisions of the CrPC
[76] 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."[77]

- **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

[77] 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."[78]

- **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.)"[79]

- **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**

[78] 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
[79] 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."[80]

[80] 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[81]

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

[81] Source: 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.

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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 he 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 that at present Women police should become an integral part of the police organisation and 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 offices 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[82]

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 [Article22(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.

[82] 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 Adminstration [(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 entilement 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 संबधित 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 जरुरी है ?
18. गिरफ्तारी के वक्त जिन दिशानिर्देशों का पालन पुलिस के लिए जरुरी 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 है? 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. गैरजरुरी 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 जरुरी 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 ck/kk जा सकता है ? यदि हां तो बताइए कि किसी बंदी को जंजीर में जकड़ने या हथकड़ी से ck/ku पर किन जरुरी बातों का ध्यान रखना चाहिए ? सर्वोच्च न्यायालय के किस फैसले में रिमांड पर लिए गए कैदी पर जंजीरों ,0k 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 जरुरी 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 जरुरी 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 (पुनरर्पण आदेश) अवैध हो जाता है?
4. क्या रिमांड के दौरान अभियुक्त को सशरीर मैजिस्ट्रेट के समक्ष प्रस्तत 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 रुल्स 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 शुरु 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?
    a) क्या इसका आशय समाज और पीड़ित के हितों को ध्यान में रखते हुए किसी अभियुक्त को लगातार न्यायिक हिरासत में रखने से है?
    b) 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?
    c) क्या इसका आशय इस बात से है कि मैजिस्ट्रेट केस-डायरी तथा अन्य सामग्रियों के अध्ययन के आधार पर रिमांड का विस्तार मात्र जरुरी अवधि के लिए करे?
    d) 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?
    a) सिर्फ प्रथम पेशी(फर्स्ट प्रॉडक्शन) के समय ?
    b) हर उस दिन जब रिमांड की अवधि बढ़ाने की मांग की गई हो ?
    c) 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:
    a) पुलिस जांच के दौरान बरती गई अनियमितता
    b) 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(सब्सिक्यूएंट) 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-एस्कॉर्टस्) 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 किन्ही अपवादस्वरुप 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 रुप 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 रुप में आपके अनुभव

1. अपने मुवक्कील से आपकी पहली भेंट कहां 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 कहां 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 रुप 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 राइटस् 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 रुप में सीएचआरआई राजस्थान में व्यष्टिगत अध्ययनों की एक ऋंखला चला रहा है जिसमें सूचना का अधिकार अधिनिय़म 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 विचारधीन कैदी न्यायिक प्रतिनिधित्व या विधिक सहायता हासिल नहीं कर पा रहे या फिर उन्हें न्यायिक प्रतिनिधित्व अपने प्रथम कोर्ट-प्रॉडक्शनव 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 जरुरी 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 शुरु 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-पैरालीगल्स् के रुप 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.

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