

Arrest Memos: A Study on Requirements and Compliance in Rajasthan and West Bengal



Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth.

The Commonwealth provides member countries a shared set of values and a forum in which to promote human rights. Yet, there is often too little focus on issues of human rights in the Commonwealth.

CHRI's objectives include promoting awareness of and adherence to the 2013 Commonwealth Charter, the Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights.

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

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

International Advisory Commission: Yashpal Ghai - Chairperson. Members: Clare Doube, Alison Duxbury, Wajahat Habibullah, Vivek Maru, Edward Mortimer, Sam Okudzeto and Maja Daruwala.

Executive Committee (India): Wajahat Habibullah – Chairperson. Members: B K Chandrashekar, Nitin Desai, Sanjoy Hazarika, Kamal Kumar, Poonam Muttreja, Ruma Pal, Jacob Punnoose, A P Shah and Maja Daruwala – Director.

Executive Committee (Ghana): Sam Okudzeto – Chairperson. Members: Akoto Ampaw, Clare Doube, Yashpal Ghai, Wajahat Habibullah, Kofi Quashigah, Juliette Tuakli and Maja Daruwala - Director.

Executive Committee (UK): Clare Doube – Chairperson. Members: Richard Bourne, Katherine O'Byrne, Meenakshi Dhar, Joanna Ewart-James, Frances Harrison, Sadakat Kadri, Neville Linton, Sashy Nathan, Rita Payne, Michael Stone.

ISBN: 978-93-81241-33-2

© Commonwealth Human Rights Initiative, 2016. Material from this report may be used, duly acknowledging the source.



Commonwealth Human Rights Initiative

CHRI Headquarters, New Delhi

55A, Third Floor, Siddharth Chambers-1,
Kalu Sarai, New Delhi 110 016
India

Tel: +91 11 4318 0200

Fax: +91 11 2686 4688

E-mail: info@humanrightsinitiative.org

CHRI London

Room No. 219
School of Advanced Study
South Block, Senate House
Malet Street, London WC1E 7HU
United Kingdom

Tel: +44(0) 207 664 4860

Fax: +44(0) 207 862 8820

E-mail: chri.admin@sas.ac.uk

CHRI Africa, Accra

House No.9, Samora Machel
Street Asylum Down, Opposite
Beverly Hills Hotel Near Trust
Towers, Accra,
Ghana

Tel/Fax: +233 302 971170

Email: chriafrica@humanrightsinitiative.org

humanrightsinitiative.org

Arrest Memos: A Study on Requirements and Compliance in Rajasthan and West Bengal

Researched and Written by:

Tahmina Laskar & Devika Prasad

Commonwealth Human Rights Initiative
2016

Contents

 Foreword	5
 Introduction	7
 Methodology	15
 Findings	18
• Findings from Arrest Memos	
• Guidelines for Implementing Section 41B(b)	
 Recommendations	42
 Annexures	45

Foreword

The Commonwealth Human Rights Initiative has worked to advance access to justice and police reform in India and other Commonwealth countries for over twenty years – with a focus on improving police accountability at the core of our work. We have done this in different ways using multiple approaches. This report is yet another effort to work toward increased police accountability.

Set firmly in the context of police compliance with the law, this study examines adherence to Section 41B(b) of the *Code of Criminal Procedure, 1973*. Section 41B(b) establishes a key safeguard against unlawful arrest by the police in the form of a “memorandum of arrest”. It stipulates an arrest memo be prepared by the arresting officer for every arrest made, with no exceptions. The memo must record the time, date and place of arrest, be attested by at least one independent witness, and countersigned by the arrested person. These are the minimum mandatory requirements. Each memo should represent a verifiable record of the details of every arrest and in this way, act as a mechanism to hold police accountable.

While the onus is on the police to diligently and honestly draft an arrest memo at every arrest, it is the duty of the Judicial Magistrate, before whom every arrested person must be produced within 24 hours of arrest, to check the arrest memo, along with all the other documents presented by the police at this “first production”. The importance of judicial scrutiny at this stage is truly critical – both to act as a powerful check on the police and protect the constitutional rights of each and every arrested person.

In the main, this study covers the two states of Rajasthan and West Bengal. It explains the larger legal framework, and, to the extent possible with the data available, it provides an overview of police compliance, judicial scrutiny, and the availability and quality of procedural guidance issued by police departments on how best to comply with Section 41B(b). It identifies trends and gaps in compliance and forwards recommendations on how key challenges in implementation can be addressed.

The completion of this study would not have been possible without the support and collaboration of various institutions. I sincerely thank all those who helped in the research. I am very grateful to the Rajasthan Police Academy under the leadership of the Director General, Mr. BL Soni, for facilitating access to select police stations and police officers for the study, as well as for organising a training session on effective and legal arrest and detention practices in which we could present our findings to a batch of trainee Police Inspectors. Mr. Vishnu Kant (then District Commissioner of Police (HQ) Jodhpur) helped

immensely to facilitate the interviews with the heads of police stations. Mr. Mukesh, former Chief Judicial Magistrate Metropolitan (Jodhpur), gave us tremendous insights into realities and challenges faced by the judiciary and kindly facilitated meetings with Judicial Magistrates. I am indebted to the Calcutta High Court for permitting us to conduct interviews of Judicial Magistrates in and around Kolkata and to CHRI's Board Member, Hon'ble Mrs. Justice (retd.) Ruma Pal, for making this possible. I sincerely thank all the police officers and judicial magistrates in Rajasthan and West Bengal who took time from their busy schedules to speak to the CHRI researchers. Without their input, the study would be missing rich insights and the realities of the challenges on the ground.

Several former and present CHRI staff contributed to this study. The original concept was designed by Venkatesh Nayak and Navaz Kotwal. Certainly, the study would not have been completed without the fieldwork and interviews conducted by Raja Bagga, Vipul Dixit, and Ranjana Singh Mertia in Rajasthan, and the RTI inspections done by Deepan Sarkar in Kolkata. Heartfelt thanks to Sana Das and Madhurima Dhanuka for their steadfast support throughout the study. Thanks to Vibha Vasuki for helping with final data checking and edits and to Sajan Kuriakos for the final edit.

This publication was supported by a grant from the Oak Foundation. CHRI deeply appreciates this support.



Maja Daruwala
Director
CHRI

Introduction

Covering the two states of Rajasthan and West Bengal¹, this report examines police compliance with Section 41B(b) of the *Code of Criminal Procedure, 1973* (CrPC). The essential requirement of Section 41B(b) is the preparation of a “memorandum of arrest” (or arrest memo in short) by the arresting officer when making an arrest – attested by at least one witness and countersigned by the arrested person.² This report also looks at Judicial Magistrates’ scrutiny of arrest memos when the arrested person is first produced in court, as well as the availability and quality of procedural guidance issued by police departments on how best to comply with Section 41B(b).

Section 41B is part of a series of amendments to the CrPC that Parliament made in 2009.³ Broadly, the amendments codify guidelines on how to carry out an arrest as laid down by the Supreme Court of India in the cases of *Joginder Kumar*⁴ and *D.K. Basu*⁵. Both the Court’s guidelines and recent amendments are designed to rein in long-standing police abuses of the power to arrest including illegal arrest, unlawful detention, and custodial torture. Taken together, the new sub-sections added to Section 41 provide for a series of safeguards for every arrested person. This includes: the procedure for notifying a suspect to appear before the police only through a summons without having to be arrested to ensure his/her interaction with the police⁶; the requirement that all arresting officers bear identification of their name, prepare an arrest memo, and inform the arrestee’s family or friend of his/her arrest⁷; the requirement to publicly display, at the district level, the names of arrested persons and the names and ranks of their arresting officers and at the state level, a larger database of information on persons arrested⁸ and the right of an arrested person to meet with an advocate of his or her choice at some point during interrogation⁹.

- 1 We selected Rajasthan and West Bengal as CHRI works closely with criminal justice institutions and civil society partners for the promotion of access to justice in both states.
- 2 Further detail on all the various components of an arrest memo is provided in later sections of this report.
- 3 These amendments were enacted on 7 January 2009 and came into force 22 months later, on 1 November 2010. Taken from CHRI (2016), *Implementation of Section 41C of the Code of Criminal Procedure, 1973: A Scoping Study of Compliance across 23 States and the UT of Delhi*, page 11.
- 4 *Joginder Kumar vs State of UP AIR 1994 SC 1349*.
- 5 *D.K. Basu vs. State of West Bengal AIR 1997 SC 610*.
- 6 Section 41A, CrPC.
- 7 Section 41B, CrPC.
- 8 Section 41C, CrPC.
- 9 Section 41D, CrPC.

What does Section 41B of the Criminal Code say?

Section 41B of the CrPC (verbatim below) lays down three mandatory procedural duties for every police officer making an arrest (*emphasis added to subsection (b) is CHRI's*):

41B. Procedure of arrest and duties of officer making arrest.

Every police officer while making an arrest shall:

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be-

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.

Before being codified in the CrPC, the specific requirement to draft an arrest memo at the time of arrest was first laid down as a guideline by the Supreme Court in 1996 in its landmark judgment in the *D.K. Basu* case.¹⁰ Ten years earlier, in 1986, D.K. Basu, as Chairperson of Legal Aid Services, West Bengal, wrote a letter to the Chief Justice of India to call his attention to deaths in police lock-ups and custody. He implored the Chief Justice to examine this serious issue “in depth” and develop “custody jurisprudence”, including guidelines to grant compensation to victims and their families and to ensure accountability of the police officers involved. Mr. Basu requested that his letter be treated as a writ petition under the “public interest litigation” category that the Court accepted.

In its judgment in *D.K. Basu*, the Court laid down 11 guidelines “to be followed in all cases of arrest and detention”. As one of these guidelines, the requirement to draw up an arrest memo was first articulated as:

36. (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the

¹⁰ It must be noted that requiring an arrest memo at every arrest has been in practice long before the amendments made to the Code of Criminal Procedure.

*locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.*¹¹

Every police officer carrying out arrest must be clear that the preparation of an arrest memo is mandatory in **all** cases. A combined reading of Section 41B(b) and the Supreme Court guideline indicate that every arrest memo to be made out at the time of every arrest must, at the bare minimum¹², contain the following:

- the signature of at least one witness, either a family member of the arrested person or a respectable member of the locality where the arrest is made
- the signature of the arrested person
- the time and date of arrest

The requirement to obtain the signature of an independent witness indicates that an arrest memo must be prepared at the **place** of arrest, not afterwards, for example, when the arrested person is brought back to the police station. Taking all of these mandatory components together, it becomes clear that a principal function of the arrest memo is to represent a true and verifiable record of every arrest made by the police.

The Court emphasised that all of the guidelines laid down in the *D.K. Basu* judgement “flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed”. The Court was clear that the enforcement of these guidelines was mandatory on pain of punishment and directed that failure to comply shall make the concerned officials liable for both departmental action and punishment for contempt of court.¹³

D.K. Basu Guidelines in Full

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

¹¹ *D.K. Basu vs. State of West Bengal AIR 1997 SC 610.*

¹² Arrest memo formats in both Rajasthan and West Bengal vary and contain additional information. The Code of Criminal Procedure does not lay down a mandatory format for arrest memos.

¹³ Please note that the Supreme Court continues to monitor, post-judgment, the status of the implementation of the directives laid down in *D.K. Basu* and has passed numerous orders to enforce implementation; the latest dating July 2015, in which the Court gave several new directions (*Dilip K. Basu vs. State of West Bengal and Ors (2015) 8 SCC 744*).

- (2) *That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.*
- (3) *A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.*
- (4) *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 organization in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.*
- (5) *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.*
- (6) *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.*
- (7) *The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.*
- (8) *The arrestee should be subjected to medical examination by a trained doctor 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. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.*
- (9) *Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.*

(10) *The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.*

(11) *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 notice board.*

Arrest Memo: A key safeguard

In the Court's view, the safeguards mandated through its guidelines, particularly the requirement to prepare an arrest memo, are geared to embed "transparency and accountability" in the police powers to arrest and detain.¹⁴ As stated by the Court, these safeguards flow from the fundamental rights guaranteed in Articles 21 and 22 of the Constitution of India. The life and liberty of a person is secured under Article 21¹⁵ and supplemented by Article 22 that provides key protections against arbitrary arrest or detention to every arrested person. These are: the right to be informed of the grounds of arrest; the right to consult a lawyer of choice¹⁶; and the obligation to produce every person arrested and detained in custody before the nearest (Judicial) Magistrate within 24 hours of arrest (this is commonly called first production).¹⁷

Within the courts system, one rung of criminal courts is the Courts of Magistrates. Every Magistrate's court has one or several police stations in its jurisdiction. The police first produce arrested persons within 24 hours of arrest in their area Magistrate's court. Subsequent trial may be assigned to a higher court depending on the seriousness of

14 The Court stated, "In addition to the statutory and constitutional requirements to which we have made a reference, we are of the view that it would be useful and effective to structure appropriate machinery for contemporaneous recording and notification of all cases of arrest and detention to bring in transparency and accountability. It is desirable that the officer arresting a person should prepare a memo of his arrest at the time of arrest..." Para 35, *D.K. Basu vs. State of West Bengal AIR 1997 SC 610*.

15 Article 21, Constitution of India: **Protection of life and personal liberty**- "*No person shall be deprived of his life or personal liberty except according to procedure established by law*".

16 Article 22(1), Constitution of India: "*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*".

17 Article 22(2), Constitution of India: "*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 offence; but first production must always happen in Magistrates' courts (except in cases where a special law requires first production at a designated special court).

An arrest memo acts as a safeguard in a number of ways. Making it mandatory for the arrest memo to record the time and date of arrest, and be signed by an independent witness, brings in checks and balances to the procedure on arrest and guards against individuals being picked up at random by the police, or illegally arrested. It can be used to establish whether the constitutional rule of production within 24 hours of arrest has been adhered to in every case. It also provides what should be a true and verifiable record of arrest that can be cross-checked by the Magistrate.

Ultimately, the efficacy of the arrest memo as a procedural safeguard – and thereby the accountability envisioned by the Court – boils down to strict compliance by the police and vigorous oversight by the Magistrate. The onus is on arresting officers to ensure an arrest memo is prepared diligently and accurately for every arrest at the time and place of arrest. Producing an arrested person before a Magistrate within 24 hours of arrest is a constitutional obligation that must be adhered to without fail by the police.

At first production, the role of the Magistrate is key as a crucial check on the police; and as the ultimate custodian of the rights of the arrested person. This entails several duties of judicial oversight at this stage. The Magistrate must: ensure that the arrest is legal and the correct procedure on arrest, including all rights on arrest, have been upheld¹⁸; inform the arrested person of his/her right to medical examination; confirm the age of the arrested person if needed; ask whether the arrested person has any complaint of torture or ill-treatment in police custody and whether the arrestee has a lawyer, or needs a legal aid lawyer; deliberate whether further custody is justified if it is being sought; and confirm that the arrested person is safe and secure if continuing in custody.

Limiting arrests for offences punishable up to seven years

If an individual is suspected of committing offences punishable up to seven years, the arresting officer must first consider whether an arrest is necessary based on conditions stipulated in law; if the officer makes the arrest or decides not to arrest, reasons in writing must be recorded.¹⁹ In turn, a 2013 Supreme Court judgment, *Arnesh Kumar vs. State of Bihar*²⁰, reinforced the conditions to be satisfied to determine, at first production, whether the detention of arrested persons (accused of offences punishable up to

¹⁸ Section 50A(4), CrPC; also Section 60A states “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”. Also please refer to *Sheela Barse vs. State of Maharashtra 1983 SCC 96*.

¹⁹ Sections 41 and 41A, CrPC .

²⁰ *Arnesh Kumar vs. State of Bihar (2014) 8 SCC 273*.

seven years) can be allowed. Firstly, the police officer must provide “the facts, reasons and conclusions” for making the arrest and also reasons for seeking further custody of the arrested person. The Court gives a guideline in the *Arnesh Kumar* judgment that lays down a new procedural duty - all police officers are to be given a checklist containing specified sub-clauses under Section 41(1)(b)(ii).²¹ At first production, this filled-in checklist, the reasons in writing for the arrest and all supporting documents are to be given to the Magistrate. The Magistrate can authorise detention only when satisfied with the reasons provided by the police. If so, the Magistrate must also record reasons justifying the detention in a written order. If the Magistrate finds that the “*arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorize his further detention and release the accused*”.²² The Court stipulates that any Magistrate who authorises detention without recording reasons “*shall be liable for departmental action by the appropriate High Court*”.

To determine all of these, the Magistrate must play an active role in carefully examining the mandatory documents²³ – one of these being the arrest memo – to be produced by the police as well as interact with the arrested person.

The act of checking the arrest memo should be utilised as an accountability measure in itself. A quick examination of the arrest memo allows the Magistrate to cross-check the date and time of arrest with the arrested person to ensure the accuracy of what is recorded in the memo and that the 24-hour rule has been strictly followed. It also allows the Magistrate to verify the time, place and date of arrest recorded in the memo against other documents produced by the police. This can throw up discrepancies or even deliberate fudging of records that in turn can cast major doubt on the legality of the arrest itself. If no memo of arrest is presented, the Magistrate has a duty to ask why it has not been produced. As per the spirit of the law, the absence of a memo exposes the police officer(s) to a series of strictures from the Magistrate, including reprimanding the police officer(s), noting the non-adherence to procedure as a misdemeanour, indicating disapproval to supervisory police officers and pressing for disciplinary action, especially if

21 Unfortunately, the Court does not stipulate which agency of the criminal justice system is responsible to formulate this checklist. Notably, the Kerala Police and Tamil Nadu Police have issued a format for the checklist (Circular 20/2014, Kerala Police and Circular No. 120055/Cr.4(3)/2014, Tamil Nadu Police).

22 At this stage, please note this will amount to release or discharge on bail.

23 These documents include the copy of the First Information Report (FIR), the copy of the original complaint, the arrest memo, the Inspection memo, seizure list if any, the medical report, the forwarding report by the police (if seeking further custody of the arrested person), and importantly the case diary, among any other relevant documents. In cases of offences punishable up to seven years, the checklist as per the guideline in the *Arnesh Kumar* judgment should also be given to the Magistrate.

there are repeated instances. More importantly, if the mandatory papers are not in order or there are significant discrepancies casting doubt on the reasonableness or legality of the arrest, the Magistrate can halt proceedings, require the Investigating Officer to reappear with the proper papers, and send the arrested person to judicial custody. At this early stage, if Magistrates go through all the papers with a fine tooth comb, and respond as needed to irregularities, the police will be on notice that the court is overseeing their actions. If properly scrutinised or its absence suitably responded to, the arrest memo can act as a critical safeguard to confirm the legality, or not, of every arrest made.

Non-compliance to procedure demonstrating illegal arrest

Compliance—or not—with the *D.K. Basu* guidelines at arrest are key benchmarks referred to by High Courts while hearing writ petitions alleging the violation of fundamental rights guaranteed under Articles 21 and 22. In fact, establishing non-compliance with the *D.K. Basu* guidelines at arrest, or specifically non-compliance with Section 41B(b) of the CrPC, are significant grounds on which arrests are held illegal. As revealed in the probing by High Courts, ***scrutiny of arrest memos can go a long way to demonstrate breach of procedure***. For instance, in a Bombay High Court case, *Shri Subhash Namdev Desai and Ors. vs. The State of Maharashtra and Ors*²⁴, the petitioners alleged they were produced nearly 29 hours after their arrest and the *D.K. Basu* guidelines were not followed. Commenting that some of the guidelines have been codified in the CrPC in Section 41B, the Court observed that the police had not drawn up an arrest memo at the time of arrest (and verified that there was no reference to the arrest memo in the station diary entry on the arrests made). Finding the arrest in breach of the *D.K. Basu* guidelines, the Court declared the arrest of the petitioners illegal. The state government was ordered to pay compensation to the petitioners. The Court also directed the state government to inquire into the conduct of the respondent police officers and if found *prima facie* guilty of dereliction of duty, to initiate a disciplinary inquiry against them. In a case on appeal before the Calcutta High Court, *Laxmi Sardar and Ors. vs. The State of West Bengal*²⁵, the appellants challenged their conviction under the Narcotic Drugs and Psychotropic Substances Act, 1985. One of the grounds was violation of arrest procedures under the CrPC. The Court found that while arrest memos were prepared, the signature of the independent witness was missing, leading the Court to conclude that these arrest memos should not have been accepted as proof “beyond doubt” that the police arrested the appellants from the place of occurrence. Based on this and other grounds, the appellants were acquitted by the High Court.

²⁴ *Shri Subhash Namdev Desai and Ors. vs. The State of Maharashtra and Ors* 2013(4) Bom CR(Cri)207.

²⁵ *Laxmi Sardar and Ors. vs. The State of West Bengal* (2015) 3 CALLT 623 (HC).

Methodology

The specific purpose of our study was to determine whether arrest memos are being drafted by the police at arrest and seen by the Magistrate at first production – essentially to test compliance with the law and the *D.K. Basu* guidelines. This was couched within the larger aim of understanding the extent to which the arrest memo is seen and utilised as a safeguard against illegal arrest by police and Magistrates. We limited ourselves to the two states of Rajasthan and West Bengal where CHRI has established networks and partners.

Arrest memo copies

To measure compliance, we set out to collect and examine copies of arrest memos from actual arrests made. To do this, we first identified four police stations (two in each state) and their corresponding Magistrate courts in Rajasthan and West Bengal. We filed applications under *The Right to Information Act, 2005* in May 2013 pertaining to each police station and separately to its corresponding court. We found that the Public Information Officers (PIO) – the officer designated to respond to RTI applications within public authorities – pertaining to the police station or Magistrate’s court were not situated at these levels, but at higher district levels such as the office of the district police chief and the district court. We addressed our applications to the appropriate offices.²⁶

Our information request to each **police station** was:

- i) The number of persons arrested between 1st January 2013 and 31st January 2013 by the police personnel of x Police Station. Please provide the information on a day-wise basis.*
- ii) Photocopies of **arrest memos** (front and back page) issued in relation to all arrests made between 1st January 2013 and 31st January 2013*

In parallel, our information request to each **court** was:

*Photocopies of **arrest memos** (front and back page) submitted to the court of the x in relation to x police station between 1st January 2013 and 31st January 2013*

We received only a handful of copies of arrest memos, and unfortunately we did not get a full set of information – arrest memos from both the police station and its corresponding court – in either state even after going into appeal through the RTI process.²⁷ This meant

²⁶ A list of all the police stations and their corresponding courts to which we filed RTI requests is in Annexure 1.

²⁷ We provide a fuller analysis of the responses to our RTI requests in the Findings section of the report.

we did not have the raw data needed to conduct the study we envisioned, and we had lost a significant amount of time.

Realising it was looking increasingly bleak under the RTI, we decided to approach the police and judiciary directly to seek meetings with police station staff and leadership and Judicial Magistrates to request copies of arrest memos. Due to the challenges in securing access and permission, this took us several months over the course of 2014-2015. We were given formal access to Judicial Magistrates in and around Kolkata (West Bengal) through the permission of the Calcutta High Court in November 2014 and were able to meet and interview six judicial officers – five Chief Judicial Magistrates and one District Judge. Due to CHRI's established connections with the judiciary in Rajasthan, and the judiciary's steadfast support, we were able to interview seven Metropolitan Magistrates in and around Jodhpur city.

The Rajasthan Police Training Academy allowed us access to three select police stations in Jodhpur district (Rajasthan) where we were able to access police records and documents, as well as speak to the Station House Officers (heads of police stations) and to district police chiefs. In West Bengal, while we were able to conduct some interviews with senior police officers in Kolkata, we were not given access to police stations. We filed fresh RTI requests in 2014 to a new set of four police stations and their corresponding courts in and around Kolkata (West Bengal), but again we were unsuccessful in getting sufficient and complete copies of arrest memos from both the police and Magistrates.

Guidelines to implement Section 41B(b)

In mid-2014, we decided to buttress our information-gathering and sent RTI applications to the Office of the Director General of Police of 28 states (we excluded Telangana as it was a newly formed state and the police force was still being organised) to collect any procedural guidelines issued to help investigating officers implement Section 41B(b). The RTI request asked the police to provide: *a certified copy of all standing orders/ office memoranda/ instructions/ guidelines/ circulars etc. issued for the purpose of implementing Section 41B (b) of the CrPC*. We wanted to get a sense of whether any guidelines or guidance at all exist and, if so, what kind of guidance do they provide to ensure proper and consistent compliance. The fate of our RTIs and the information received are also analysed in this report.

While in small numbers, the meetings with police and Magistrates not only helped us to obtain copies of arrest memos, but also provided significant insight into practical challenges as well as knowledge gaps which are clearly affecting compliance. This gave

us a fuller picture we would not have got looking at compliance on paper only. We kept the meetings as informal as possible to keep the conversations candid and free-flowing rather than a formal question-answer. We broadly asked very simple questions mainly related to practice around arrest memos (are arrest memos filed in every case, what do you check in the arrest memo, what documents have to be produced before the Magistrate at first production), to discern the quality of oversight (do you verify/crosscheck with the arrested person what is written in the arrest memo, what action do you take if you find discrepancies), and on recordkeeping (where is the arrest memo as a record kept after first production, does it remain with court or is it sent back to the police station, and, is an arrest memo a public document).

In hindsight, a huge takeaway for us in terms of methodology was the drawback of our over-reliance on the RTI route. Of course, this speaks volumes about the confusion and lack of adequate understanding of both the police and judiciary of their obligations under the RTI Act, as well as the poor record-keeping of documents such as the arrest memo which are especially significant at first production. Taking all of this into account, particularly for future work of this kind, it would have helped tremendously to approach this through a combination of methods from the outset – RTI applications, direct meetings, even questionnaires with contained samples where possible.

Findings

Our findings are presented in two parts: the first analyses the contents of arrest memo copies to gauge the extent of compliance with the statutory requirements; the second examines the availability and quality of guidelines issued by police departments to guide compliance.

Findings from Arrest Memos

Through a combination of various efforts to access copies of arrest memos, we were finally able to collect 76 of these documents across Rajasthan and West Bengal, though not in equal numbers from each state. With the cooperation of police in Rajasthan and direct access to police station records, we gathered 53 arrest memos from Rajasthan and 23 from West Bengal. Unfortunately, we never obtained even one contemporaneous set of arrest memos from both the police station and its corresponding court from either state so we were not able to examine police compliance and judicial oversight in tandem. Nevertheless, combing through the arrest memos we accessed, we were able to identify trends and challenges in implementation and draw some conclusions on compliance.

1. Accessing Arrest Memos through RTI

The most significant bottleneck we encountered was obtaining copies of arrest memos. We received a very small number through the Right to Information (RTI).²⁸ In total, we sent RTI applications with reference to two police stations and their corresponding courts in Rajasthan and six police stations and their corresponding courts in West Bengal. Ultimately, we received five arrest memos from one police station in Rajasthan, seven arrest memos from one Magistrate's court in West Bengal and eleven arrest memos from another Magistrate's court in West Bengal (this only after meeting the Additional Chief Judicial Magistrate who advised us to file another RTI application after which we were allowed inspection of records and collected these copies). The remaining police station in Rajasthan, four police stations and three courts in West Bengal failed to send us any response or information.

²⁸ Though in West Bengal, we gathered the majority of arrest memo copies through our Right to Information requests (the remaining few we collected, albeit randomly, during conversations with Magistrates). We received arrest memo copies only from the judiciary, none from the police in West Bengal.

Rejection Order

We received one rejection order from one Magistrate's court in Rajasthan. This refusal is problematic and unjustified for numerous reasons.

Our request for arrest memo copies was rejected on the basis of sub-clauses of Rule 10 of the Rajasthan Right to Information (High Court and Subordinate Courts) Rules, 2006²⁹ which lays out enumerated grounds on which information will not be provided. The grounds for rejection were: 1) our application did not contain a declaration as required under Rule 10(2); and 2) in light of Rules (10)(1)(i) and 10(1)(iii) as the information is "regarded as a document produced in a judicial proceeding and has no relationship with any public activity".³⁰

These restrictions laid down under Rule 10 are not compatible with the letter and spirit of the *Right to Information Act*. It is of serious concern that they are invoked to reject requests for information.³¹ Rule 10(2) requires every applicant to declare that (i) the motive for obtaining such information is proper and legal; (ii) that the request made is in accordance with the provisions of the Act and these Rules; and that (iii) the request is not detrimental to the safety or preservation of the record in question. All of these are in direct contravention to the RTI Act. Section 6(2) states that a requestor "shall not be required to give any reason for requesting the information" so there is no justification to ask an applicant to declare their motive proper and legal. The Act does not call for an applicant to declare that his/her request is in accordance with the Act and Rules; and it is unreasonable to expect that the seeker of information will know if his/her request is detrimental to the safety or preservation of the record in question.

Grounds under Rule 10(1) were invoked to not provide information - information will not be given "in respect of the document of records produced in a judicial proceeding" or in terms of information "which has no relationship with public activity". These are not in consonance with the exceptions contained in Sections 8 and 9 of the RTI Act and in fact go beyond the provisions of the Act.

29 The Rajasthan Right to Information (High Court and Subordinate Courts) Rules, 2006 prescribe the procedures that citizens must follow when seeking information from the Rajasthan High Court and its lower courts: <http://ric.rajasthan.gov.in/includes/rti-rules-2006.pdf>.

30 The order does not provide any reasons as to how disclosure of the information would have no relationship with public activity.

31 CHRI's Access to Information team published a comprehensive analysis of the 2006 Rules and pointed to these and other gaps in compliance between the RTI Act and the 2006 Rajasthan Rules. This analysis can be found at: CHRI (2011), *An Analysis of the RTI Rules Applicable to the Rajasthan High Court and the Subordinate Courts*: <http://www.humanrightsinitiative.org/publications/rti/RajasthanHighCourt.pdf>.

Also, the invoking of these grounds demonstrates a lack of understanding of aspects of criminal law. The CrPC defines a judicial proceeding as one “in the course of which evidence is or may be legally taken on oath”.³² The presentation of the arrest memo on its own to the Magistrate at first production does not involve any taking of evidence – it is simply a check to see that all the correct details of the arrest have been recorded, and an independent witness as well as the arrested person have signed the memo. In fact, there is no question of any “evidence” being taken on oath at first production. Section 41C of the CrPC mandates that names and address of arrested persons and the designations of their arresting officers must be displayed on notice boards outside each district Police Control Room (PCR) as well as on publicly available databases to be maintained by the state level PCR. Taking 41B and 41C of the Code together, it is clear that criminal law has been amended to enable greater public scrutiny of arrest practices and compliance with procedure. This signals a clear link between arrest memos and “public activity”.

We appealed the order on all of these grounds but have received no response to date.

Other responses

We received a variety of other responses to our RTI applications. Two police stations in West Bengal said the arrest memos were not available at the police station as the investigation had been completed and all final papers were submitted to the concerned court.

Criminal lawyers and Magistrates confirm that, in practice, arrest memos are a part of papers which are forwarded to the concerned court with the final charge-sheet—the full report of an investigation with all supporting documents and charges—filed by the police. Even so, under the RTI Act, knowing where the requested information could be found, the police were obliged to transfer our application to the concerned court within five days³³ rather than terminate our information request.

The second court in Rajasthan—a Chief Metropolitan Magistrate’s court—responded by saying that our application must disclose the object for obtaining the information sought³⁴ and also that the concerned police station does not submit arrest memos “separately to this office”. In fact, we were advised to seek the information from the office of the Deputy Commissioner of Police of the jurisdiction. However, the Public Information Officer (PIO)

³² Section 2(i), CrPC.

³³ Section 6(3), Right to Information Act, 2005.

³⁴ As per the 2006 Rules.

did not forward the application himself as mandated under the RTI Act. We remain unclear as to what the rationale for this response was and whether it came down to a fundamental misunderstanding by the court. A Chief Judicial Magistrate's court in West Bengal said the information sought was "incomprehensive" and "incomplete" as there was no specific case reference, hence no information could be provided.

These responses showed us that post-first production, the location of arrest memos as records, and public authorities themselves knowing which public authority maintained them as records, could not be easily determined, pointing to the need to streamline and strengthen record-keeping.

Magistrates gave us slightly mixed accounts of when arrest memos become part of the judicial record – pointing to different methods of record-keeping in Rajasthan and West Bengal. In Rajasthan, all the Magistrates we interacted with told us they do not keep the arrest memo at first production, it is returned to the police and kept in the Investigating Officer's case diary. It becomes part of the judicial record once the police file the charge-sheet in court. In West Bengal, Magistrates said the original copy of the arrest memo will likely be kept in the General Register³⁵ (a register in court) which is used to maintain all the records and documents generated during investigation of cases, with a copy kept in the case diary of Investigating Officers. Presumably, for the cases whose files are not maintained in the General Register, the arrest memo remains with the Investigating Officer until the investigation is complete and thereafter becomes part of the judicial record.

2. Lack of a uniform arrest memo format

The arrest memos we analysed from Rajasthan and West Bengal revealed there was no uniform arrest memo format within, much less across, the two states. As stated, the CrPC does not prescribe a format for arrest memos, putting the onus on police departments to set a format that complies with all of the mandatory requirements and allows vigilant scrutiny over arrests. Our analysis of arrest memos from these two states showed us there is significant variance among formats. These threw up some significant gaps which need to be addressed.

³⁵ The Regulation that establishes the General Register states that this register is kept and maintained in court itself by a senior court officer. Through observation in some Magistrates' courts in and around Kolkata, we found that in practice, police officers are deputed to man this register in court. The General Register contains the case files of all cognizable cases registered by the police. Cases in which complaints came directly to the Magistrate or in which the Magistrate took cognizance of a case on his/her own initiative are not included in this register. See Section 536, Chapter 7, Police Regulations Bengal, 1943.

Arrest memos in Rajasthan and West Bengal differ from each other.³⁶ In Rajasthan, based on what we accessed, we did not receive a single document called a memorandum of arrest or arrest memo. We received “Arrest/Court Surrender” forms.³⁷ These include a huge amount of detail on the arrested person beyond the arrest memo requirements, including personal details such as religion, nationality, caste/tribe, occupation, physical features, identifying physical marks, socio-economic profile, and educational qualifications. In addition, these contain information on the arrest (date, time, police station, district), the Acts and sections under which the person was arrested, the First Information Report (FIR) number, the General Diary entry number, physical condition or any injuries on the arrested person, the name of the court where the person was produced and details on whether the arrested person was released on bail, remanded to police custody or sent to judicial custody. In terms of the mandatory arrest memo requirements, the forms in Rajasthan include: date, time, and place of arrest; the signature of an independent witness; the signature of the arrested person and the signature of the Investigating Officer.

In West Bengal, we accessed two slightly different formats of arrest memos – one titled Memo. Of Arrest and the other Arrest-Cum-Inspection Memo. Both are brief, precise, and focus around the mandatory arrest memo requirements with just a few additions. They contain all the needed components of an arrest memo.

The term “Inspection Memo” refers to one of the D.K. Basu guidelines. According to the guideline, an inspection memo is a short description of the physical condition of the arrested person to be drawn up by the police if the arrested person requests. If “major and minor injuries” are present on his/her body, these must be recorded in the Memo. It must be signed by the arrested person and the arresting officer, and a copy given to the arrested person. The Arrest-Cum-Inspection Memo in West Bengal and the forms in Rajasthan require the recording of injuries, if present, on the arrested person. Please note Section 54 of the CrPC mandates medical examination of all arrested persons by a medical officer.

Comparing the different formats pointed us to gaps in format itself – more so in Rajasthan than in West Bengal – affecting the way necessary components are recorded. It is important that there is a simple and legally accurate format for arrest memos. Arrest memo formats should be short and precise to enable the police to collect all the needed information. We found that there are a few highly beneficial additions that can be incorporated into arrest memo formats to complement and enhance the minimum information required by law. But the substantially longer format of the Arrest/Court surrender form being used in

³⁶ Sample arrest memos from each state can be found in Annexures 2a, 2b and 3.

³⁷ We do not know if this is the only “arrest memo” format in Rajasthan.

Rajasthan is cumbersome to fill in and is far beyond requirements of the arrest memo. This can take away from the necessity to record the crucial arrest memo components at the time and place of arrest. CHRI suggests a model arrest memo template in the recommendations section of this report.

3. Filling in arrest memos: Compliance with mandatory requirements

We examined the arrest memos to gauge the police's compliance with the mandatory requirements. It cannot be stressed enough that an examination of compliance on paper is not sufficient on its own to indicate whether the police are writing the true and correct details in arrest memos. Nevertheless, we were able to glean some insight into practices around arrest memos. We also found that compliance in terms of filling in the mandatory and other requirements was lacking.

Date, Time and Place of Arrest

All the memos from West Bengal contain the date, time and place of arrest. Of the 53 arrest forms from Rajasthan, only 15 recorded the place where the arrest was made. The remaining 38 listed the name of the police station and district relating to the arrest (requirements of the arrest/surrender forms in Rajasthan) but did not list the specific location of the place of arrest. This violates the arrest memo requirements.

Signatures of at least one independent witness (either a relative of the arrested person or someone from the locality where the arrest is made), arresting (Investigating) officer and arrested person

In both Rajasthan and West Bengal, the arrest memos contained signatures of the arrested person and the Investigating Officer.³⁸ The presence of the signature of at least one independent witness was not as consistent, pointing to a serious issue of non-compliance. In Rajasthan, ambiguities in the format made it difficult to ascertain whether the witness was either a relative of the arrested person or a person from the locality where the arrest was made.

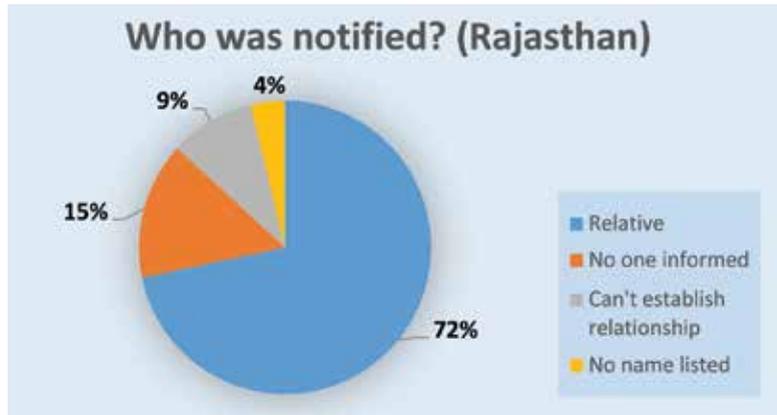
Every arrested person has the right to have his/her friend, relative or person of their choosing informed of their arrest and the police station where they are being held. The police must inform the relative, friend or contact person, and also tell the arrested person of this right.³⁹ Of course, this notification is done post-arrest. The arrest forms/memos in Rajasthan and West Bengal include this information.

³⁸ In speaking candidly, a senior police official from West Bengal shared his view that the presence of the arrested person's signature does not ensure that the legal procedure has been followed, as the police often intimidate people in custody to sign even blank papers.

³⁹ Section 41B(c) and Section 50A, CrPC.

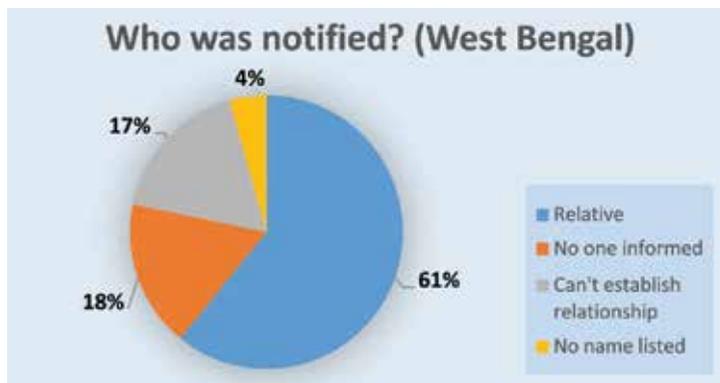
In the formats in both Rajasthan and West Bengal, the name of the person informed and his/her relationship with the arrested person has to be listed in one line, and the signature of the witness (or signatures of witnesses) are at the end of the forms. Usefully in the West Bengal formats, where the signature of the witness is required, it is clearly stated that this must be either a family member of the arrested person or a person of the locality where the arrest was made. This is missing in the Rajasthan format.

The 53 arrest forms from Rajasthan gave us definitive information on the relative/friend informed of the arrest. A majority of the forms (38) indicated the person was a relative of the arrestee, in eight either a friend/neighbour, in five the relationship was not stated, and in two, no one was informed of the arrest. On the mandatory requirement of an independent witness, while there were signatures present, it was not stated whether the witness is either a relative of the arrested person or a local person. On the forms themselves, there is no way to identify the “independent” witness.



Incidentally, in the 53 forms, there is not a single instance in which the relative or friend/neighbour of the arrested person has also signed as a witness – all of the witness names are entirely different. Not knowing the identity of the witness makes it very difficult to

gauge actual compliance, and adds an additional burden to the Magistrate at first production.



In the 23 memos from West Bengal, 20 memos were attested by a witness, three were missing a witness signature. In two of these, “nobody turned

up” was written in place of the witness signature. In terms of who was informed, 14 memos indicated that relatives were informed, in four memos the relationship was not established, in another four no one was informed, and one memo states “arrest made in front of relative” but no name was listed.

The signature of the independent witness is a lynchpin of the oversight exercised through the arrest memo, but in both states, compliance on this front is not consistent.

From our discussions with police officers, in Rajasthan particularly, we learned there are constraints on the ground that affect compliance on paper. A key constraint is the public’s unwillingness to sign arrest memos as witnesses. If a relative of the arrested person is not available at the time and place of arrest, most people refuse to sign arrest memos. If the arrested person is not a local resident, it is not possible to get a relative’s signature and locals are even more wary to sign an unknown person’s arrest memo. If the arrest takes place in a secluded or isolated location or late at night, this also makes it difficult to get an independent witness’ signature whether relative or local person.

Police officers in Rajasthan told us of strategies used to meet these challenges. If the arrest memo cannot be attested by an independent witness at the time and place of arrest, they note down the name and contact number of the witness to be contacted on the arrest memo and also note whether they were able to contact them or not. This is a good strategy but we were not able to verify whether these notings are actually being written into arrest memos in the course of this study. Unfortunately, the bad practice of police themselves signing as “independent witnesses” is also common by the police’s own admission. This defeats the entire purpose of the arrest memo and should be widely condemned by police supervisors and Magistrates.

If the arrest memo itself cannot be filled at the time and place of arrest due to difficult circumstances, it is filled at the police station. This is not in adherence with the legal requirements, but must be contended with as a reality on the ground. In these cases, in Rajasthan, police officers informed us that a note stating that the memo was not filled at the time and place of arrest is written on the memo. Incidentally, we did not see any such notes on any of the arrest memos we have examined.

4. Additional Features in arrest memos

In our scrutiny of arrest memos, we found that the formats in both states contain components which go beyond the statutory requirements. These include: date and time of first production in court (only in West Bengal), Magistrate’s signature, listing of any

injuries on the arrested person, and the general diary number (explained below). These additions are very beneficial and strengthen the arrest memo format. Unfortunately, compliance in terms of recording the information is seriously lacking.

Judicial scrutiny

While all the documents produced by the police in the course of arrest and investigation up to first production must be presented to the Magistrate for his/her record and scrutiny, there is no statutory requirement for the Magistrate to sign the arrest memo after checking it at first production, or for the time and date of first production of the arrested person in court to be entered in an arrest memo.⁴⁰ Considering the crucial role of the Magistrate's scrutiny of the arrest memo, adopting these checks into arrest memo formats would greatly enhance the arrest memo as a mechanism of judicial oversight of the police. We were very encouraged to find that the Memo. Of Arrest format in West Bengal includes specific information to be filled in on "court where to be produced", "date and time of production in court" and also to whom (Judicial Magistrate) the memo was forwarded. The incorporation of these into arrest memo formats can hugely strengthen the quality of judicial oversight of arrest memos.

Unfortunately, the Arrest-cum-Inspection Memo format of West Bengal does not ask for this specific information, but every memo is signed by the Judicial Magistrate certifying that it has been "Seen" with the date in the upper right hand corner. In Rajasthan, the Arrest forms format asks for the name of the court (if surrendered) to be filled in but there is no information asked to record the Magistrate's scrutiny at first production. We did not find a Magistrate's signature on any of the arrest forms from Rajasthan. In terms of simple paper compliance, the arrest forms in Rajasthan provide no indication whatsoever that a Judicial Magistrate has even seen the arrest form.

Time and Date of Production in Court

Of the 23 memos from West Bengal, 11 are in the Memo of Arrest format which asks specifically for date and time of production in court to be filled in by the Magistrate. Here too, compliance is not perfect - only five recorded the exact date and time of first production. Five recorded the date but did not state an exact time, merely stating that the arrested person was "produced during court hours". One memo had no mention of the date or time of first production.

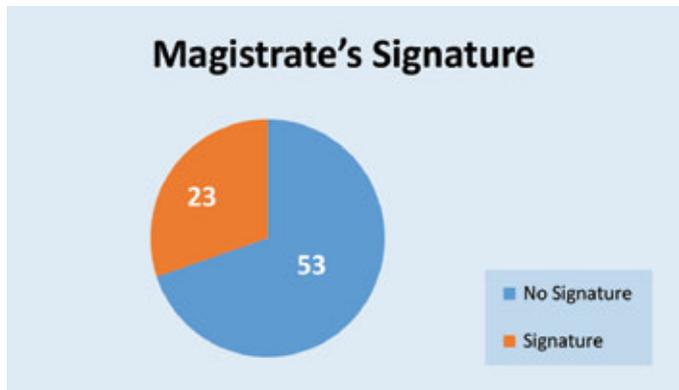
The arrest forms from Rajasthan do not ask for this information to be filled in.

⁴⁰ The D.K. Basu guidelines states: *Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.*

The importance of indicating the date and *exact* time (particularly) of first production in court in the arrest memo cannot be overstated as one way to test whether arrested persons are being produced within 24 hours of arrest. While this cannot absolutely eliminate police practices of producing arrested persons after the 24 hour rule and fudging dates and times to get away with it, including it in arrest memos could help Magistrates to be more vigilant and probing to crosscheck the date and time of arrest recorded against time of first production. In probing, discrepancies can be discovered, abuses unearthed and accountability exercised. Over the long term, this could strengthen judicial oversight and hopefully reduce police abuses.

Magistrate's Signature

Again while not a statutory requirement, ensuring the Magistrate's signature on every arrest memo indicates that it has been seen and some judicial oversight has been exercised. All the arrest memos from West Bengal contained the Magistrate's signature. As stated, the arrest/surrender form of Rajasthan has no requirement



for the Magistrate to sign. Not a single arrest form from Rajasthan contained the Magistrate's signature.

Details of Injury

Though not a requirement under Section 41B(b), CrPC, all of the arrest memo formats we collected asked for details of any injuries on the arrested person to be recorded – except for the Memo of Arrest format from West Bengal. Of the total 76 arrest memos we examined, 65 asked for injuries to be listed. Of these, only one memo contained a record of injuries on the arrested person. In the rest, this was either left blank or stated that the arrested person said he had no injuries. Compliance is practically nil.

General Diary Number

Under the Police Act of 1861, it is the duty of every Officer-in-charge of a police station to maintain a general diary for the police station (also called station diary).⁴¹ The general

⁴¹ Section 44, The Police Act 1861.

diary is the principal register to be maintained at the police station to record *all* that happens in the police station in the course of 24 hours. It is meant to be a mirror of all the activity and actions taken by each police station and must be updated diligently.

Notably, all of the arrest memo formats from both Rajasthan and West Bengal asked for the entry of the GD number (this would correspond to the GD entry number of the arrest made with the relevant details). Again, this is very good practice (while not a statutory requirement) as it provides an additional check to verify arrest details in the arrest memo itself.

Out of 76, only 27 memos recorded the General Diary entry number, the rest left this blank.



Trends in compliance

Compliance, even only on paper, is lacking and inconsistent. This is of serious concern.

In sum, we found:

- There is no standardised format for arrest memos in Rajasthan and West Bengal. The Arrest/Court surrender forms from Rajasthan, while they contain the statutory requirements in terms of format, are too detailed to be seen as arrest memos. The Rajasthan arrest form format does not properly indicate whether the independent witness signing is a relative of the arrested person or a person from the locality.
- Useful additional features are included in arrest memo formats, including: notification of person informed (relative, friend) of arrest; listing of any injuries on the arrested person; date and time of production in court and Magistrate's signature (only in West Bengal) and general diary number. These strengthen arrest memos as mechanisms of accountability.
- Of the mandatory requirements, exact place of arrest and independent witness

signature were not filled in consistently. This requires serious attention by police departments and Magistrates.

- Of the additional features, compliance in terms of filling in the needed information was seriously lacking.

Arrest memos in all arrests

In Rajasthan, through our interactions with Station House Officers, we learned the police do not prepare arrest memos for arrests made for bailable offences.⁴² In fact, in a training session at the Rajasthan Police Academy with 239 trainee Police Inspectors in late 2015, we conducted a quick survey on arrest memo provisions – 79 percent responded that they do **not** file arrest memos in cases of bailable offences, only 18 percent responded that they do. This signals a lack of understanding as the law makes no distinction between bailable and non-bailable offences for drafting of an arrest memo. An arrest memo must be filed for every arrest made. This needs to be made absolutely clear to all arresting officers.

Judicial scrutiny

It is the Magistrate's duty to scrutinise each arrest memo at first production. We fully recognise the huge challenges before Judicial Magistrates who oversee a large number of first productions in a day, as well as other cases. Nevertheless, the *D.K. Basu* guidelines and of course the statutory duties are binding on the police and Magistrates. In fact, the Magistrate's role is key not only to the ultimate enforcement and protection of constitutional and legal rights but also to the linked aspect of police compliance with law and procedure.

In our interactions with Judicial Magistrates in Rajasthan and West Bengal, we identified some trends in judicial oversight of arrest memos and point to ways in which this can be strengthened.

Checking for the signature of an independent witness

Without making deep comparisons, broadly, we found that Magistrates in West Bengal are more vigilant about checking for the independent witness signature. In Rajasthan, among the few Magistrates we spoke to, their emphasis seemed to lay in checking the

⁴² All criminal offences are divided into bailable or non-bailable in criminal law, depending on their gravity. Every arrested person has a right to bail if arrested for a bailable offence. It is the court's discretion to grant or withhold bail for those arrested for non-bailable offences.

date, time, and place of arrest and whether the family or friend has been informed or not, and less so on checking for the witness signature. This is particularly concerning as there is a trend of police officers themselves signing as witnesses and this practice must cease.

Cross-checking arrest memo details with the arrested person

In our interactions with both police and Magistrates in both states, we were repeatedly told that the mere presence of the arrested person's signature or other details on the arrest memo are not an absolute indication that procedure on arrest has been scrupulously followed. This prompted us to ask Magistrates whether they cross-check the details of what is listed in the arrest memo with the arrested person him/herself at first production. We received a variety of telling responses: some do not cross-check with the arrested person at all; others said due to the sheer volume of cases they cannot cross-check in every case, and do so for every few cases; and a few others said they cross-check only in cases where a discrepancy cropped up or there is an allegation of torture or ill-treatment at arrest. This indicated that cross-checking with the arrested person him/herself is not a matter of routine, when it should be. Recognising the challenge of the number of first productions to get through in a single day, we maintain that the very act of cross-checking with the arrested person can bring discrepancies to light and make the police answerable. In itself, it can enliven and give substance to the act of checking the arrest memo. The more it is adopted as regular practice, the more the police will feel the pressure of oversight. Notably, some Magistrates shared the good practice that they cross check the details of the arrest in the memo against the details stated in the Investigating Officer's case diary, strengthening the rigour of judicial oversight.

We found that in the cases where the arrested person had a lawyer representing him/her at the first production hearing, Magistrates felt the lawyer's presence was an adequate safeguard and they did not have to be as probing (for instance to check the arrest memo) as in the cases where a lawyer is absent. While the presence of a lawyer can be a huge assurance, we highly recommend that Magistrates still cross-check the details of arrest with the arrested person even with a lawyer present to be absolutely certain there are no discrepancies.

Acting on discrepancies

Discrepancies in arrest memos could be signals of larger violations such as illegal arrest and custody. Understandably, unearthing these kinds of violations requires further inquiry. But certainly, any discrepancies should put Magistrates on the alert. On being asked what action can be taken when they find discrepancies in arrest memos, Magistrates in both

states responded to say they do not take *suo moto* action unless a written complaint is received. Some said they reprimand the Investigating Officer; and others shared they also call for the case diary and an explanatory report from the Investigating Officer.

They admitted that they often receive verbal complaints of unlawful detention, but do not take action unless they receive a complaint in writing. This raises the critical issue of the immense difficulties in accessing justice for victims of custodial violence and certainly calls attention to the need for Magistrates to have *suo moto* powers to refer any complaint of custodial ill-treatment or torture for investigation.⁴³

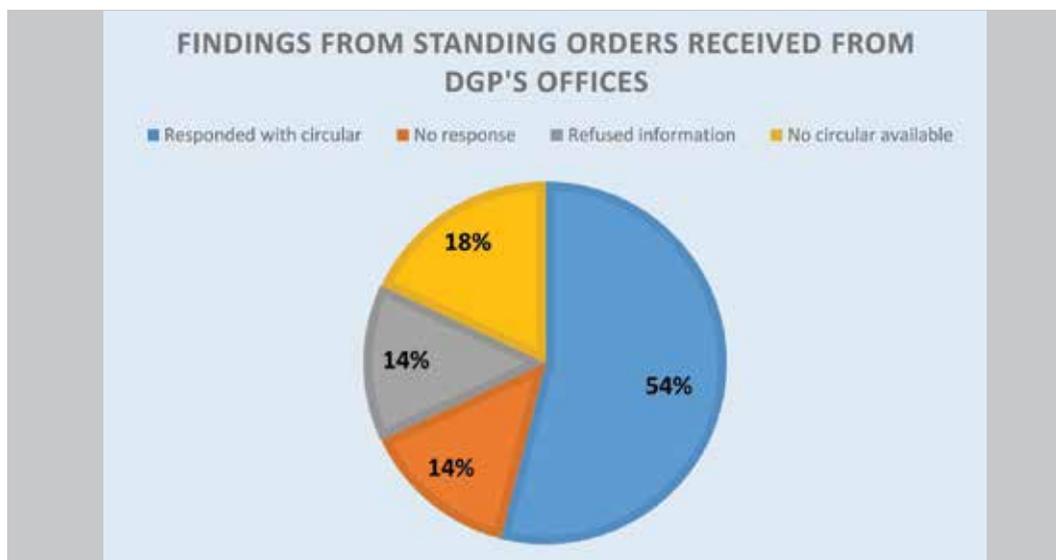
43 Ramakrishnan, Nitya (2013), *Law, Impunity and Prisoner Abuse in South Asia*, page 62.

Guidelines for Implementing Section 41B(b)

Our second strand of RTI applications asked police departments to provide *a certified copy of all standing orders/ office memoranda/ instructions/ guidelines/ circulars etc. issued for the purpose of implementing Section 41B(b) of the CrPC*. Please note we asked specifically for guidelines issued for the purpose of implementing Section 41B(b) and not Section 41B in its entirety. We wanted to find out whether guidelines for implementation had been issued and if so: What kind of guidance do they provide to ensure proper compliance?

We sent RTI applications to 28 states (the newly formed state of Telangana was excluded). We received responses from 15 states of which 13 attached circulars issued. Four states refused to provide the information, four states did not respond at all, and five states responded stating they had no information. While this appears fairly encouraging in terms of the extent of procedural guidance in place, none of the guidance is in the form of detailed, explicit and practical guidelines that clearly lay out how Investigating Officers must draw up arrest memos.

Both Rajasthan and West Bengal are among the states that issued circulars, but these just reproduce Section 41B verbatim and provide nothing more.



1. States which responded with Circulars or Standing Orders

Sl. No.	State	Brief of Contents in Circular/ Standing Order	Remarks
1.	Bihar	<p>Circular No. 4998/XL (Miscellaneous) 203-2011 dated 16.12.2011.</p> <p>The circular simply states that Section 41B CrPC must be strictly followed. It calls attention to 41B(b) and references the Supreme Court directives in <i>Arnesh Kumar Vs State of Bihar</i>.</p>	<p>We were not sent the circular directly but were asked to look it up on the Bihar Police website.</p> <p>The circular provides no real procedural guidance on compliance with Section 41B(b).</p>
2.	Gujarat	<p>Standing Order No. 1/2014 dated 20.10.2014.</p> <p>These are guidelines issued for arrest of individuals under Section 498A of the Indian Penal Code (husband or relative of husband subjecting a woman to cruelty), the Dowry Prohibition Act 1961, and for all offences punishable up to 7 years (as per Section 41 of the CrPC).</p>	<p>These are not guidelines to implement Section 41B. 41B is reproduced verbatim only as a part of the law on arrest beginning with Section 41.</p> <p>If this is what was sent in response to our query, we can assume that no specific guidelines to implement Section 41B(b) exist in Gujarat.</p>
3.	Haryana	<p>Memo No. 8473-99/Spl.Cell/ dated 17.10.2011.</p> <p>The Director General of Police Haryana sent this Memo to all senior officers in the field calling their attention to the amendments made to Section 41 and the additions of 41A to 41D. They are requested to follow the amended provisions in "letter and spirit".</p>	<p>The Memo encloses the amendments made to Section 41 and the new provisions of 41A to 41D verbatim with no further detail or explanation.</p>

4.	Karnataka	<p>Circular No. CRM-2/92/Warrant /2012 dated 25.07.2012.</p> <p>The circular directs all police officers and unit officers to refer to the “power of police to arrest without warrant” under Sections 41, 41A-41D of the CrPC. It admonishes Investigating Officers for not following the new provisions strictly.</p>	<p>The circular does not provide any specific guidance on Section 41B(b) or arrest memos.</p>
5.	Kerala	<p>Two circulars were sent: Circular No. 07/2011 dated 16.03.2011 and Circular No. 20/2014 dated 13.08.2014.</p> <p>Circular No. 07/2011 refers to the CrPC amendments and directs officers to pay special attention to Sections 41 and 41A-41D.</p> <p>Circular No. 20/2014 issues directions to be followed on arrest of persons under Section 498A IPC, Dowry Prohibition Act, and for offences punishable up to seven years.</p>	<p>Circular No. 07/2001 reproduces the legal provision on the arrest memo but does not provide any further detail.</p>
6.	Madhya Pradesh	<p>Circular No. AAB/ Miscellaneous/ 165/10/39/11 dated 19.01.2011</p> <p>The circular lists all the CrPC amendments made in recent years (as well as Penal Code amendments).</p>	<p>The circular is certainly very exhaustive in terms of highlighting the amendments made. However, it does not contain any specific guidelines on arrest memos.</p>

7.	Meghalaya	<p>We received three Circulars.</p> <p>Circular No. 2/2005 calls for strict adherence to the <i>D.K. Basu</i> guidelines. It specifically states that arrest memos are maintained but they are not properly filled by Investigating Officers. It reinforces that failure to comply with the directives make the concerned officials liable for departmental action and even contempt of court. It calls on all Superintendents of Police to “personally” ensure that the Court’s directives are strictly followed and they will also be held accountable in cases where junior officers fail to comply.</p> <p>Circular No. 35/2011 issued by the Office of the Director General & Inspector General of Police, Meghalaya, notifies the police department of all the amendments passed through the CrPC Amendment Act, 2008. The circular contains the amendments verbatim and all police officers are instructed to adhere to the amended law on arrest.</p> <p>Circular No. 13/2014 contains Standard Operating Procedures (SOPs) issued by the Director General of Police to “deal with” arrested persons in custody.</p>	<p>None of these circulars provide explicit guidance on compliance with Section 41B(b). But the renewed call to accountability for adherence to the <i>D.K. Basu</i> guidelines, particularly accountability of supervisory officers, is welcome and sets a good precedent.</p> <p>The existence of SOPs for police to follow when handling arrested persons in custody is good practice. The SOPs reiterate that procedures laid down in Section 41B, CrPC, must be followed, but offer no further details.</p>
----	-----------	--	--

8.	Mizoram	<p>We received a letter (No. CB/PHQ/RTIA/2014(I)55) in October 2014 stating that no guidelines of any kind have been issued “so far” on Section 41B(b), adding that the <i>D.K. Basu</i> guidelines were circulated to all District Superintendents of Police in the state in 2001 (the letter from 2001 was enclosed). The letter went on to assure that the D.K. Basu guidelines are adhered to by all police officers in Mizoram.</p>	<p>It is of concern that the Mizoram Police holds Section 41 as “newly amended” in 2014, when the amendments came into force in 2010.</p>
9.	Maharashtra	<p>We received two circulars.</p> <p>The first is a Circular (No. DGP/14/Guidelines for arrest/2012 dated 31.10.2012) that contains general guidelines on arrest and for handcuffing. These contain the arrest memo provision verbatim.</p> <p>The second Circular is more recent from 2014 (No. DGP/23/54/IPC-498-A/725/2014) and contains the guidelines issued by the Supreme Court in the <i>Arnesh Kumar</i> judgment, with the judgment itself enclosed.</p>	<p>While the guidelines on arrest are useful, they do not provide explicit original guidance on Section 41B(b) or arrest memos specifically. Notably, while the guidelines are quite extensive, they do not reference the sections of the CrPC from which the provisions derive.</p>

10.	Nagaland	<p>Circular No. IG/R/CB-12/2012-13/372 dated 03.11.2012</p> <p>The circular relates to the display of names and addresses of arrested persons, and the names and designations of the arresting officers, on the notice boards outside district Police Control Rooms, as mandated under Section 41C, CrPC with instructions to field level officers. It also enclosed a verbatim copy of Sections 41A - 41D, CrPC.</p> <p>A copy of the arrest memo format used by police stations in Nagaland was also enclosed.</p>	<p>There is no explicit or specific guidance issued compliance with Section 41B(b).</p> <p>The arrest memo format is incomplete and incorrect. It lists certain rights of the arrested person, and asks for the arrested person's signature to acknowledge that s/he has been informed of these rights. It also asks for the name and address of the person informed of the arrest. Crucially, it is missing the essential components of time, date and place of arrest; the signature of at least one independent witness (this should be seen differently as the person informed of the arrest unless the Memo format specifically states otherwise in the case of a relative), and the signature of the arresting officer.</p>
11.	Rajasthan	<p>Circular No. B-15 A (23) Criminal/Law/2014/10530-82 dated 10.07.2014</p> <p>This Circular only lists amended CrPc provisions on arrest, with no further explanation.</p>	<p>There is no guidance on compliance with Section 41B(b) or arrest memos specifically.</p>

12.	Tamil Nadu	<p>We received two Circulars on procedures of arrest: Circular No. 279952/Crime II/2011, and Circular No. 120055/Cr.4 (3)/2014</p> <p>The 2011 Circular summarises the amendments made to Section 41 and the addition of 41A, with the emphasis on the procedures to be followed for arrest in offences punishable up to seven years. Annexure II of the circular lists other important provisions on arrest, including on arrest memos.</p> <p>The 2014 circular lists the directions laid down in the <i>Arnesh Kumar</i> judgement (with a checklist template enclosed).</p>	<p>The content and quality of these circulars are more instructive than in other states. While it does not give additional guidance, Annexure II clearly lays down the requirements for an arrest memo.</p>
13.	Uttar Pradesh	<p>In the letter we received, we were informed that the Supreme Court directives in the <i>Arnesh Kumar</i> judgment were circulated in the state. An advisory issued by the Ministry of Home Affairs on measures to be taken by states and Union Territories to curb the misuse of Section 498A of the Indian Penal Code was annexed.</p>	<p>There was no specific mention of Section 41B(b) whatsoever.</p>

14.	Uttarakhand	Circular No. DG-AP-179/2013 dated 13.02.2013 The Circular lists all the amended CrPC provisions verbatim relating to arrest.	The circular provides no procedural guidance on compliance with Section 41B(b) or arrest memos specifically.
15.	West Bengal	We received two circulars. Circular No. Org No. 258/Law Cell dated 03.11.2011, and Org. No. 286/Law Cell dated 21.12.2011. Circular 286 is a verbatim copy of 258. Circular No. 258 summarises the amendments made to Section 41, CrPC and the additions of Sections 41A-41D. Section 41B(b) is reproduced verbatim.	There is no explicit or specific procedural guidance provided on compliance with Section 41B(b).

Looking at the Circulars and Standing Orders in place, not a single one provides explicit, or substantive guidance on how to best comply with Section 41B(b) that lays down the arrest memo requirement. The circulars sent by Gujarat and Uttar Pradesh had no relevance to what was asked in our RTI application. While the circular sent by Nagaland related to the implementation of Section 41C not 41B, the arrest memo format apparently in use in the state is incomplete and incorrect, pointing to a lack of understanding of the requirements.

Across the board, guidelines for implementation boil down to verbatim listing of legal provisions. It is certainly positive that the amendments made to Section 41 and the additions of 41A-41D have been widely circulated within many police departments, but that should only be the first step. The real effort must be towards framing practical guidelines to effectively *operationalize* new legal provisions, particularly for aspects as complex as arrest. This is seriously lacking.

The overall quality of arrest memos obtained from Rajasthan and West Bengal shows a serious need for explicit and practical operational guidance for the police on how best to comply with the arrest memo requirement. Firstly, this guidance can prescribe a standardised format for the arrest memo to be adopted by all police stations in the state. This can enumerate all the requirements of what must be filled in an arrest

memo, with specific reference to Section 41B(b) and the *D.K. Basu* guideline. It must clearly state that an arrest memo must be drawn up for all arrests made, whether for bailable or non-bailable offences. There must also be clear instruction that an arrest memo be completed at the place of arrest – and not in transit to the police station or when the arrested person is brought back to the police station. It also should prescribe strict procedure for when it is not possible to draft the arrest memo at the place of arrest, and ensure this is the only deviation allowed. Police officers must be strictly prohibited from signing as witnesses on arrest memos.

1. States which refused to provide any information⁴⁴

The Offices of the Director General of Police in the states of Odisha, Manipur, and Tripura refused our request for information on guidelines altogether. These refusals throw up a larger trend of state governments shrinking the space for citizens' to access information (often related to policing and/or national security), through faulty interpretations of the *Right to Information Act, 2005*.

In the three states of Odisha, Manipur and Tripura, state governments have issued notifications that exempt certain public authorities, in some cases entire government departments, from the purview of the RTI Act, with the exceptions of allegations of corruption and human rights violations. Section 24(4) of the RTI Act is commonly invoked:

“Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section...”

The rejections we received:

- The Office of the Director General of Police, Odisha, rejected our application citing that the information could not be provided as the Crime Branch, Criminal Investigation Department (this is a unit of the Odisha Police) has been exempted from the application of the RTI Act through Notification no. PC-106/2005-29086/IPR dated 29.10.2005 issued by the Information and Public Relations Department of the Government of Odisha. The rationale being these distinct units hold highly sensitive information that, if disclosed, might endanger national security. The connection to

⁴⁴ The state of Jammu & Kashmir refused our application due to an oversight on our part. As per the Jammu and Kashmir Right to Information Act 2009, only residents of the state can submit RTI applications. Our application was refused on this ground.

our RTI request is that the CB-CID issued a circular in 2011 on the amendments made to the law on arrest.

- The Office of the Director General of Police, Manipur refused the information as the Police Department, Manipur, is exempt through Government of Manipur Notification No. 11/4/2005-AR dated 28.5.2011.
- The Office of the Director General of Police, Tripura, refused the information as the Home (Police) Department is exempt through Notification No. F.3(5)-GA(AR)/2005/VI dated 27.09.2005 issued by the General Administration Department, Government of Tripura.

We appealed all of these on various grounds. We received no responses from Manipur and Odisha. From Tripura, we have not received any information even after first appeal and arguments before the Tripura State Information Commission in second appeal hearings.

These are sweeping exemptions, while the exceptions cited in the Right to Information Act are very limited exemptions. Notifications like this which seek to exempt the entire Home and/or Police Department are simply not justified and contravene the core principle underlying the Right to Information Act, 2005, which is in favour of disclosure but for highly exceptional circumstances.

2. States which did not provide any response at all

The Offices of the Director-General of Police in the states of Andhra Pradesh, Assam, Jharkhand, and Sikkim did not reply, nor even acknowledge, our RTI requests.

3. States which said no information is available

The states of Arunachal Pradesh, Himachal Pradesh, Chhattisgarh, Goa, and Punjab replied that no circulars or guidelines have been issued.

Recommendations

The requirement for the police to draft an arrest memo for every arrest was first laid down in 1996 as a directive in the Supreme Court judgment in *D.K. Basu*. In 2010, this requirement was codified into the Code of Criminal Procedure in Section 41B(b). There is no doubt that the arrest memo is a key safeguard against illegal arrest and a crucial component of the legal procedure on arrest. Full and consistent compliance is a responsibility of both the police and the magistracy.

The extent to which police departments or the lower judiciary actively monitor the extent of compliance with Section 41B(b), CrPC is not widely known. This study set out to gauge compliance in Rajasthan and West Bengal. We faced considerable and unexpected constraints which constricted the fuller scope we had envisioned. Nevertheless, we have identified gaps in compliance and now point to implementation challenges in both states.

Based on this study's findings, CHRI makes the following recommendations towards strengthened compliance with the arrest memo requirement:

1. Arrest Memo Format

Each police department should prescribe a standardised format for the arrest memo which is uniformly used by every police station. The format must contain all the mandatory requirements and necessary additions. We strongly recommend that details attesting to judicial oversight of the arrest memo are included in arrest memo formats. CHRI puts forward the following format:

Name of the arrested person:

Age:

Gender:

Address:

- 1. Date and Time of Arrest:**
- 2. Place of Arrest:**
- 3. Name of Police Station:**
- 4. Name and Designation of the Arresting Officer:**

5. **G.D. Entry No.:**
 6. **Name and address of the friend/relative informed of the arrest:**
 7. **Signature of witness (may be a relative of the arrested person or a respectable person of the locality):**
 8. **Signature of the arrestee:**
 9. **Signature of arresting officer:**
 10. **Name of court where produced:**
 11. **Date and time of production in court:**
- Checked: Signature of Magistrate**

2. Circular or Standing Order on Arrest Memos

Police leadership must draft a specific Circular or Standing Order that clearly lays down all the requirements around arrest memos specifically, including:

- a strict stipulation that an arrest memo must be fully and correctly drafted for every arrest made as per Section 41B(b), with no exceptions whatsoever;
- a prescribed format for the arrest memo;
- responsibility for any and all lapses in the filling of arrest memos be assigned to the Investigating Officer as well as to the Officer In Charge of the police station and the Superintendent of Police;
- specific procedures to be followed when 1) the arrest memo cannot be drafted at the place of arrest or, 2) when the signature of an independent witness cannot be obtained at the place of arrest, with the stipulation that only these procedures be followed in all these cases.

This should be circulated across the police department - to all police stations, district offices, special units, and Police Headquarters; and strictly adhered to.

3. Responsibilities of supervisory officers

Officers-in-charge of police stations must check arrest memos to ensure they are properly filled in by their Investigating Officers when arrested persons are brought back to the police station. As far as possible, they should cross-check the details of arrest in the memo against the entries in the relevant police station registers, including the General Diary and the Arrest register, and with the case diary. They should ensure that a relative or friend of the arrested person has been informed of the arrest, and the arrested person has been informed of his/her rights on arrest.

4. For Judicial Magistrates at first production

- At the first production in court of every arrested person, Magistrates must check that an arrest memo has been prepared and duly filled. In every instance in which an arrest memo is absent or improperly filled, Magistrates must immediately pass strictures against the Investigating Officer and press for departmental action to be taken against him or her.
- As far as possible, Magistrates should routinely cross-check details entered in arrest memos with the arrested person to confirm these are accurate. This should be done even if the arrested person has a lawyer present at the first production hearing.
- Magistrates must also routinely crosscheck the details of arrest entered in arrest memos against the relevant details entered in the Investigating Officer's case diary.
- As stated above, arrest memo formats must call for the Magistrate's signature to attest that the memo has been seen by a Judicial Magistrate. We highly recommend that even if the format being used does not stipulate the Magistrate's signature on the arrest memo, Magistrates make it a practice to sign arrest memos upon examination to attest that it has been "seen", with date and time entered.
- Considering police stations fall within the jurisdiction of the Magistrate's court, and the same police stations' Investigating Officers appear before the Magistrate for first production, Magistrates can easily take note of repeated lapses by Investigating Officers in filling arrest memos. Whenever they find repeated lapses, Magistrates should note continued mistakes by Investigating Officers and call for the necessary action.

Annexure 1

Police stations and the corresponding courts to which we filed RTIs

STATE	POLICE STATION	PUBLIC INFORMATION OFFICER	CORRESPONDING COURT	PUBLIC INFORMATION OFFICER
Rajasthan	Shergarh PS	PIO, Office of the Superintendent of Police Rural, Police Lines, Ratanada, Jodhpur	Chief Judicial Magistrate (Rural), Jodhpur	Public Information Officer, Office of the District & Sessions judge, District Court Complex, Jodhpur
Rajasthan	Ratanada PS	PIO, Office of the Police Commissioner, Jodhpur Metropolitan, Police Lines, Ratanada, Jodhpur	Chief Metropolitan Magistrate, Ratanada	Public Information Officer, Office of the District & Sessions Judge, District Court Complex, Jodhpur
West Bengal	Alipore PS	PIO, Office of the Joint Commissioner of Police (Administration)	Chief Judicial Magistrate (South 24 Parganas), Police Courts, Alipore,	Public Information Officer, Chief Judicial Magistrate (South 24 Parganas), Police Courts, Alipore, Kolkata
West Bengal	Liluah PS	PIO, Office of the Deputy Commissioner of Police (HQ), Howrah, 28 Nityadhan Mukherjee Road, Howrah	District & Sessions Judge, Howrah	Office of the District & Sessions Judge, Howrah
West Bengal	Chandannagar PS	PIO, Hooghly SP-DIG Office Chinsura Police Line	Chief Judicial Magistrate, Chandannagar	Asst. PIO, Office of the Addl. Chief Judicial Magistrate, Chandannagar
West Bengal	Barasat P.S	Sub-Divisional Police Officer, Barasat	Barasat District Judges Court	CPIO, Barasat Distt. Judges Court (North 24 Pgs.)
West Bengal	Gariahat P.S	PIO, Office of the Joint Commissioner of Police (Administration)	Chief Judicial Magistrate (South 24 Parganas)	PIO, Office of the CJM South 24 Pgs.
West Bengal	Golabari PS	Deputy Commissioner of Police, Headquarters and SPIO, Howrah	Chief Judicial Magistrate, Howrah	Office of the District & Sessions Judge, Howrah

Annexure 2b

Arrest memo format in West Bengal

MEMO. OF ARREST

3-1-13

1. Name of the person arrested (with father's name) *Mr. ...*

Sex: *Male*

Age: *...*

2. Residential Address *...*

3. Name of relative friend whom the person taken in custody intends to inform *...*

4. Date and time of arrest *...*

5. Place of arrest *...*

6. Name, rank of state and time of arrest and place of detention to the friend relative (if outside the town through 1972 Act) organization and local PS concerned within 24 hours of arrest. This is not required if the same person is the witness *...*

7. Case Reference with sections of law *...*

8. (1) Case No. (to be made at the place of detention) enclosing the name of the next friend of the person arrested and the particulars of the Police official in whose custody the arrested is; *...*

9. Name of the PS in whose stationery place of detention *...*

10. Name and designation of the officer apprehending the suspect and taking the suspect in police custody *...*

11. Registration Number of Vehicle (if used during arrest) *...*

12. Courts where to be produced *...*

13. Date and time of production in the Court *...*

14. Signature of the witness (either a member of family or a respectable person of the locality) *...*

15. Countersignature of the arrestee *...*

16. Certified that the person arrested has been informed of his right to have someone informed of his arrest or detention *...*


Signature of the Arresting officer with date and designation

17. The witness must be arrested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from whom the arrest is made

18. The friend or relative or other person known to the person arrested or having interest in his welfare must be informed, as soon as possible, that he has been arrested and is being detained at such and such place

19. For favour of information, *...*

10 (i) Name of the person (in Hindi) ... (ii) Occupation (in Hindi) ...
 10 (ii) Name of the person (in English) ... (iii) Occupation (in English) ...

11. Socially weaker section (Annual income below Rs. 25,000/-)
 (a) Lower middle income (Rs. 50,000/- to Rs. 1,00,000/-)
 (b) Upper middle income (Rs. 2,00,000/- to Rs. 3,00,000/-)
 (c) Lower income (Rs. 25,000/- to Rs. 50,000/-)
 (d) Middle income (Rs. 1,00,000/- to Rs. 2,00,000/-)
 (e) Upper income (Above Rs. 3,00,000/-)

Whether the arrested person, as per observation and known police records, is dangerous or generally armed or is a known criminal or is likely to jump bail or is a flight risk or is wanted in any other case.

- (a) Is dangerous? Yes/No No
 (b) Is generally armed? Yes/No No
 (c) Is known/criminal? Yes/No No
 (d) Is likely to jump bail? Yes/No No
 (e) Is a flight risk? Yes/No No
 (f) Is wanted in any other case? Yes/No No
 (g) Previously punished any bail? Yes/No No
 (h) Operates with accomplices? Yes/No No
 (i) Is recidivist? Yes/No No
 (j) If released on bail, likely to commit crime or threaten victims/witnesses? Yes/No No

If Yes against item (b), (c) or (i), give true reference/collections. Attach separate sheet, if required.
 (If Yes, give name of the person, address, date of birth, etc. as applicable.)

12. Name and address of the witnesses (At least one witness is necessary).
 (Name, address, phone number, etc. of the witnesses.)

13. Signature of the person ...
 14. Signature of the person ...
 Signature of the person ...
 Signature of the person ...
 Signature of the person ...

CHRI Programmes

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

Access to Justice

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

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

Access to Information

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

Strategic Initiatives Programme

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

Set firmly in the context of police compliance with the law, this study examines adherence to Section 41B(b) of the Code of Criminal Procedure, 1973 in the two states of Rajasthan and West Bengal. Section 41B(b) establishes a key safeguard against unlawful arrest by the police in the form of a “memorandum of arrest”. It stipulates an arrest memo be prepared by the arresting officer for every arrest made, with no exceptions. The memo must record the time, date and place of arrest, be attested by at least one independent witness, and countersigned by the arrested person. These are the minimum mandatory requirements. This study explains the larger legal framework and provides an overview of police compliance, judicial scrutiny, and the availability and quality of procedural guidance issued by police departments on how best to comply with Section 41B(b). It identifies trends and gaps in compliance and forwards recommendations on how key challenges in implementation can be addressed.

The image on the front cover is purely representational and is not an actual arrest memo



Commonwealth Human Rights Initiative

55A, Third Floor, Siddharth Chambers-1, Kalu Sarai,
New Delhi 110 016 (India)

Tel: +91-11-4318 0200 | Fax: +91-11-2686 4688
info@humanrightsinitiative.org | www.humanrightsinitiative.org