

2015

REPORT

CONSULTATION WITH TRAINEE JUDICIAL OFFICERS ON THE ROLE OF MAGISTRATES AT FIRST PRODUCTION



COMMONWEALTH HUMAN RIGHTS INITIATIVE

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Co-organized by Rajasthan Judicial Academy, Jaipur and Commonwealth Human Rights Initiative (CHRI)

ABOUT THE CONSULTATION

A consultation with more than 180 trainee judicial officers from the State of Rajasthan was organized by CHRI in collaboration with the Rajasthan State Judicial Academy on 15th December 2015 at Jodhpur. The Consultation was aimed to discuss with a batch of trainee magistrates their role during first production of accused vis-à-vis arrest laws.

A case study approach was followed wherein a typical instance of a person coming in conflict with law was narrated based on the case, questions were posed to the participants. A [presentation](#) was used to discuss the law and share CHRI's findings around the contours of the consultation.

Shri Baldeo Ram Chaudhary, Director, Rajasthan State Judicial Academy; Dr. Mrinal Satish, NLU Delhi (Associate Professor of Law and Executive Director at the Centre for Constitutional Law, Policy and Governance, and Assistant Professor, National Judicial Academy, Bhopal); Shri R.K. Saxena (Retd. I.G. Prisons) were the resource persons for the consultation. Sana Das, Raja Bagga, Tahmina Laskar, and Vibha Vasuki from CHRI along with the trainee magistrates took part in the discussion.

INTRODUCTORY SESSION

CHRI's Sana Das introduced CHRI and its work and the objective of the workshop and the studies conducted. Raja Bagga from CHRI spoke about the crime rate and arrest trends in India and Rajasthan over the last ten years. He discussed how the arrest rate has been increasing in the last few years even though Section 41 of the Cr.PC. has been amended and the jurisprudence on checks on unreasonable arrests has evolved. He pointed to the need to ascertain whether the current level of arrest (600 daily arrests in Rajasthan) is "healthy", and the only way to do so would be to look at arrest practices in each case. In what cases arrests are being made? How are they being made? When does the arrestee come before the Magistrate? What does the Magistrate scrutinize at first production?

CHRI's Vibha Vasuki shared a few findings with the trainee magistrates from a survey done on trainee inspectors in Rajasthan Police Academy, Jaipur regarding the procedures of arrest.

During the course of the consultation, the following areas were looked at using a case study:

- a) necessity of arrests & custody procedures**
- b) compliance to safeguards during arrest**
- c) the magistrate's power to remand**

CASE STUDY

Kiran was a student at Jai Narayan Vyas University, Jodhpur. On 1st April 2014, while coming back from college, he was stopped by the police and taken to the police station for questioning. On reaching the thana, the police officer while talking to a man, pointed the finger at Kiran saying "Aapka chor pakda gaya, ab do din mein ugalwa lenge isse ki motor bike kahan chupayi hai".

The man then came towards Kiran, slapped him, used expletives and left the police station. As Kiran did not reach home, his family started looking for him, and two days later, on 3rd April morning, they came to know that he was arrested by the Ratanada police station. When they went to meet him there, they were told that he was sent to the court for his peshi. The family went to the court, and after hours of searching, found Kiran outside the magistrate court. He was limping and his hands were swollen. He was taken inside the court and the Magistrate assigned him a lawyer. Kiran wanted to say something to the Magistrate, but the lawyer asked him to be quiet. The court remanded the accused to judicial custody for 14 days. The family met Kiran for a minute while he was being taken away to the police station. He was crying in pain and told them that he had not done anything and was being mistreated. Hours later, Kiran's family was informed that he was pronounced dead at the MG hospital.

CASE STUDY AND DISCUSSION SESSIONS

THEME A: CHECKING NECESSITY OF ARREST AND CUSTODY PROCEDURES

In the first session, the necessity of arrests and custody procedures was discussed through the case study. Two questions were put before the trainee magistrates.

1. Was Kiran's arrest necessary? Why?

There were multiple responses to the question. The response from majority of the trainee judicial officers was that the decision to arrest Kiran could be made only after looking at the detailed records, the case diary, and whether there was any information under Section 27 of the Evidence Act. Some said that, given the information at hand, the notice of appearance under section 41A of Cr.P.C. should have been served instead of arresting Kiran. One of the trainees said that while deciding whether Kiran should have been arrested or not, the magistrate should have looked at the *kanoon(law)* as well as the *samajik stithi (social condition)*.

2. If Kiran had been served a notice of appearance before his arrest, what all would you have checked?

There were hardly any responses from the trainee magistrates on this issue.

Dr Mrinal Satish explained that the right to legal representation at the time of arrest has been laid down very clearly. However reading the Supreme Court judgement in *Nandini Satpathy vs Dani (P.L.) And Anr 1978 SCR (3) 608* in conjunction with Section 161(2) Cr.P.C makes it clear that a person has the right to a lawyer even at the time of notice of appearance.

Dr Mrinal Satish and Sana Das also suggested that the Magistrate should check the number of times and duration for which the person was called by the police under notice of appearance. Also, whether the family was informed or not or whether any other precautions were taken if the person called was a woman. The Hon'ble Supreme Court in *Arnesh Kumar v State of Bihar 2014 8 SCC 273* that gave guidelines on implementation of S.41 Cr.P.C. on notice of appearance did not address these areas. One of the trainee magistrates shared the opinion that while the Supreme Court did not make provisions for all the eventualities, it is the responsibility of the magistrates to fill these gaps by interpreting the gap areas as per the safeguards already established by law.

THEME B: SCRUTINY OF COMPLIANCE TO SAFEGUARDS AT THE TIME OF ARREST AND TREATMENT IN POLICE CUSTODY

In the second session, based on the case study, the following questions were asked:

1. How would you ascertain whether Kiran was produced in front of you within 24 hours?

Few of the trainee magistrates in response to this question said that they would check the time of arrest in the arrest memo. To this Mr. Saxena added that the medical reports of injuries also can point to the fact if the accused was produced within 24 hours of arrest. The decision in **Chiguluri Krishna Rao v. Station House Officer and Ors. (1989 CriLJ 501 (at High Court of Andhra Pradesh)** was also discussed along with this.

The provision of the Criminal Procedure Code regarding arrest memos {Section 41 B (b)} and relevant portions from the DK Basu case too were reiterated. Tahmina Laskar from CHRI shared a few findings from the study on compliance with Section 41 B (b) of the CrPC done by CHRI, with the trainee magistrates.

2. How would you ascertain how Kiran was treated in police custody?

On being asked how would they ascertain how Kiran was treated in police custody most of them said they would look at the physical condition of Kiran to ascertain the same. At this point Ms. Laskar shared a recorded anecdote from the interviews of Magistrates done during study on compliance with Section 41 B (b) of CrPC where a magistrate himself had asked the accused about his injuries and then found out that how the injuries were caused. She emphasised on the fact that how taking note at the first production itself brought torture during custody to light and how it is a good practice. She also quoted relevant provisions from CrPC which relate to compulsory medical examination by the accused.

3. How would you ascertain whether Kiran had a lawyer at the time of interrogation? Does the magistrate have an even more crucial role to play when the accused does not have a lawyer at the time of arrest?

The trainee magistrates did not seem to have a response to this question. However, the panelists reiterated the constitutional provisions around legal representation and relevant legal provisions in the CrPC. They also referred to the work and role of District Legal Services Authority who could be notified by police when the suspect does not have a lawyer and how a magistrate could be a catalyst in ensuring effective legal representation by intervening during the first production if s/he there is no legal representation or feels it is not adequate.

4. How would you ascertain whether Kiran was a juvenile?

Most of the trainees responded to the question by saying that they would figure out the fact from the appearance of Kiran. To this Mr. Saxena added that whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or under taking an inquiry, an inquiry must be made about the age of the accused on the date of occurrence and if necessary, the Magistrate may refer the accused for medical examination so that age can be determined.

5. What would you do if you ascertain that the rights mentioned in question 2 were not safeguarded?

There was no response to this question. However the panelists pointed out the relevant provisions in the Indian Penal Code which can be exercised by the Magistrate in case the rights are not safeguarded. They also pointed out that the magistrate could complain to the senior supervisory authority of the investigating officer and seek disciplinary action.

THEME C: EXERCISING THE POWER TO REMAND OR RELEASE

Questions pertaining to the reasonability of remand and release and application of judicial mind were discussed

1. What were the options available to the magistrate with regard to Kiran's further custody?

The responses included the following:

- a) Discharge the Arrestee: Section 59 Cr.P.C.
- b) Bail: Section 437 Cr.P.C.
- c) Remand to Police Custody or Judicial Custody: Section 167 Cr.P.C.

Mr. Bagga, along with relevant provisions from CrPC also discussed the case of J. Vanaraj vs State of Tamil Nadu, 2003 in this regard. He also shared the findings from CHRIs Remand Study where remand orders of 60 cases from 5 courts in Jodhpur in 2014 were looked at which showed that the option of discharging or granting bail at first production was never used. The findings were as follows:

- a) Discharge the Arrestee/ Accused: 0
- b) Bail: 0
- c) Judicial Custody: 42 cases (70%) and Police Custody: 18 cases (30%)

2. Was it 'reasonable' for the magistrate to remand Kiran for 14 days?

While some of them responded by saying that it was reasonable, some said it actually would differ from case to case. When one of the trainee magistrates said that due to pendency longer periods of remands are necessary, Dr. Satish pointed out that the same cannot be a legal reason. Mr. Saxena and Dr. Satish at this juncture emphasized that application of judicial mind is necessary to ascertain such reasonability. According to them the factors like Kiran being a college student, thus has roots in the society, his name and address being available, and so can be called for questioning when required made such remand unreasonable. However the panellists added that factors like flight risk, accused exercising undue influence or the danger that the evidence may be tampered with and the witness may be threatened could be valid grounds for remand but a prudent judicial mind may consider remanding for a time period less than the maximum limit of 14 days.

3. What should the magistrate have noted in the order at the time of first production?

The time did not permit us to discuss this important issue in detail. However, there was agreement that the order sheet should reflect the elements of the proceedings including the ones that were missing from the proceedings. Discussion around the last question emphasized on the need for reasons for remand to be recorded in all cases. CHRI shared good practices from Jodhpur based on its remand order study and also a template of the minimum elements that an order sheet should contain.

Order Sheet Elements
Name & Case Details of the Accused
Observations on Section 41 CrPC Checklist
Observations on Section 41(B) CrPC - Arrest Memo
Observation on Medical Examination of the Accused
Age of the Accused
Name of the Lawyer (Whether Legal Aid)
Signature of the Accused
Signature of the Defence Counsel
Signature of the Public Prosecutor
Signature of the Magistrate
Reasons for Remand

The consultation ended with a vote of thanks from Sana Das.

AGENDA

CONSULTATION WITH JUDICIAL OFFICERS ON ROLE OF MAGISTRATES AT FIRST PRODUCTION

Venue: Rajasthan Judicial Academy, Jodhpur

15th December 2015

9.30 am - 10.00 am	Registration and Tea
10.00 am- 10.05 am	Introduction to the Programme on Obligations of Magistrates at First Production and its Significance Sana Das, Coordinator Prison Reforms Programme, CHRI
10.05 am – 1.00 pm Tea Break: 11.30 am-11.45 am	Interactive Session: Simulation Exercise on Obligations of Magistrates at First Production Panel: Dr. Mrinal Satish , NLU Delhi (Associate Professor of Law and Executive Director at the Centre for Constitutional Law, Policy and Governance, and Assistant Professor, National Judicial Academy, Bhopal); and Mr. R.K. Saxena (Retd. I.G. Prisons). Moderator: Ms. Sana Das , CHRI Methodology: Case studies and situations will be presented on power point in the form of simulation as if these cases were being produced in the courts of the participants for the first time. We plan to divide the discussion on first production through three steps given below and each step will be discussed for 45 minutes approximately: (a) Checking Necessity of Arrest and Custody Procedures (b) Scrutiny of compliance to safeguards at the time of arrest and treatment in police custody (c) Exercising the Power to Remand or Release Magistrates will give their views on their obligations at every step of first production. This will inform the panel to provide both legal and practical inputs. We will start with a case study on the application of judicial mind to check reasonableness of arrest in the light of Section 41 and Section 41 A of the CrPC. This will be followed by a discussion on the statutory checklist magistrates should follow towards ensuring procedural compliance of Section 41 B and 41 D, and directions laid down by the Supreme Court. The last step to be taken up will be application of mind with regard to exercising remand and release options.

	CHRI representatives will share findings from their micro compliance studies on Sections 41B and 41C Cr.P.C, Section 167 and other court practices including legal representation and legal aid.
1.00 pm- 1.15 pm Lunch: 1.15 pm onwards	<p>Valedictory Session</p> <p>Voices from the Participants: “One Key Learning about Obligations of the Magistrate at the time of First Production and Future Commitment”</p> <p>The participants will also be requested to fill up a short feedback form</p> <p>Vote of Thanks: CHRI</p>

About CHRI and its Prison Reform Programme: The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights across the Commonwealth. CHRI was founded in 1987 by Commonwealth professional associations; it is headquartered in New Delhi, India since 1993, and has offices in Accra, Ghana and London, UK.

The Prison Reforms Programme of CHRI is more than 15 years old. The programme focuses on improving prison monitoring through the strengthening of undertrial review mechanisms and prison visiting system nationally, and ensuring early safeguards against unnecessary pre-trial detentions, specifically in Rajasthan and West Bengal. The programme also advocates for timely repatriation of foreign national prisoners and immediate release of asylum seekers. Evidence-based research, advocacy, capacity-building of actors of the criminal justice system including prison officials, welfare and probation officers, criminal defense lawyers, magistrates, legal aid functionaries and civil society actors are the regular activities of the programme.

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