

# Police Interrogation and Questioning

## Police and You Know Your Rights



**CHRI**  
Center for Human Rights Initiatives

## INTERROGATION AND QUESTIONING

It is a fundamental duty of the police to conduct investigation in every case that is reported. Interrogation and questioning are integral parts of police investigation. The police gathers crucial information by asking questions about the alleged offences. It is every person's duty to provide correct and accurate information to aid police investigation when called upon to do so. In turn, anyone who is interrogated or questioned by the police has legal rights which have to be upheld.

This pamphlet explains the legal rights you have if you are interrogated or questioned by the police either as an accused or a witness. An accused is a person charged with a crime, and may either be arrested and in custody, or out on bail and summoned for interrogation as needed. In specified cases under the law, you may not be under arrest and in custody, but you are a suspect who is regularly summoned by the police for questioning and could be arrested at any time [Sections 41 and 41A, Code of Criminal Procedure (CrPC)]. A witness in a case is not an accused, and will be treated differently. A witness is questioned by the police if s/he has information about the relevant facts of the case under investigation.

**Whether you are an accused or a witness, you have legal rights when you are being interrogated or questioned that the police have to**

**uphold. It is important that you know these rights and the correct procedures that the police must follow.**

## **AN ACCUSED HAS THE FOLLOWING RIGHTS DURING INTERROGATION:**

- The police cannot compel you to make any statement or answer any question that would point to your guilt for the offences you are accused of. This is your constitutional right. The police have a duty to inform you of this right. [Article 20(3), Constitution of India]
- The police cannot threaten or compel you in any way to admit to an offence. [Section 24, Indian Evidence Act and Section 163, CrPC]
- You have a right to consult a lawyer at the time of interrogation. The lawyer can be at your side during the interrogation, but not throughout it. The police must inform you of this right. [Section 41D, CrPC]
- Do not sign any statement you have given to the police during your interrogation. This is the law! You cannot be forced to sign your statement. Never sign on a blank paper even if the police tell you to. [Section 162, CrPC]
- Any confession you make to the police cannot be held against you, or

entered as evidence, until it is made before a judicial Magistrate as per the legal procedure. [Section 26, Indian Evidence Act]

- If you want to confess to an offence you have committed, you should do so before a judicial Magistrate. A specific procedure must be followed. It is the Magistrate's duty to tell you that you should not confess to an offence under any pressure. Once you choose to confess, anything you say can be used against you as evidence. If the Magistrate thinks you are not confessing willingly, s/he will not record your confession. [Section 164, CrPC]

**Remember:** Women arrestees have to be interrogated in the presence of women police officers [Supreme Court judgment, Sheela Barse vs. State of Maharashtra]

### **Custodial violence is a crime**

No one can be tortured, slapped, abused or ill-treated while they are being interrogated or questioned. If the police beat or injure you during interrogation, they can be punished under the law. Custodial rape is a punishable offence under the law.

If you are a witness in any case or are acquainted with the facts of a case, the

police can examine or question you about what you know. In fact, giving a statement as a witness is a legal duty.

## **A WITNESS HAS THE FOLLOWING RIGHTS DURING QUESTIONING:**

- A police officer can call a witness to the police station for questioning only through a written order. [Section 160(1), CrPC]
- The law says that women, children below 15 years of age, any person aged above 65 years, or a mentally or physically disabled person cannot be summoned to a police station for questioning. They can only be questioned in their residence in the presence of their family members. [Section 160, CrPC]
- If you are called for questioning, you are bound to cooperate with the police and truthfully answer the questions the police ask. But remember, you can refuse to answer any question which could implicate or expose you to a criminal charge. [Section 161(2), CrPC]
- The witness statement must be put in writing immediately [Section 161(3), CrPC]. As far as possible, the statement should be recorded in the language known to the witness. After taking the statement, the police officer must read it over to the witness who must acknowledge it is

correct. If the statement recorded varies from the statement given by the witness, the police officer recording it should be told and s/he will be required to make those changes and read the statement back to the witness.

- The witness's signature cannot be taken on his/her statement. [Section 162, CrPC]
- It is forbidden by law to tamper with or influence a witness's statement, or threaten a witness in any way. [Section 163(1), CrPC]
- As per the appropriate rules, the police can pay the expenses incurred by a witness called to any other place besides his/her residence. [Section 160(2), CrPC]

## **THINGS YOU SHOULD REMEMBER**

- Take a relative or friend along with you when you go to the police station for questioning
- Answer the questions asked by the police in a calm and composed manner
- State the true facts of the incident as they occurred
- Do not exaggerate facts
- Never make vague or unclear statements

## **IF YOU HAVE COMPLAINTS REGARDING YOUR INTERROGATION OR QUESTIONING BY THE POLICE, YOU CAN DO THE FOLLOWING:**

- Send your complaint to the Superintendent of Police (SP) by registered post. If the SP is satisfied with your complaint, s/he will either personally investigate your case, or order an investigation to be done
- Complain directly in person to senior officers including the SP, or even higher officers like the Deputy Inspector General of Police (DIG) or Inspector General of Police (IGP)
- File a complaint with the Magistrate in the appropriate court with jurisdiction
- Make a complaint to your State Human Rights Commission, if there is none in your state, you can complain to the National Human Rights Commission
- Make a complaint to your Police Complaints Authority, if there is one in your state. These are special bodies in states that look at complaints from the public about the police
- File a writ petition directly under Article 226 of the Constitution of India in the High court; or under Article 32 in the Supreme Court. If the Court agrees that there has been a violation of a fundamental right, it will direct the relevant authority to register the complaint, or order

accordingly as it deems fit. You can even write down your grievance in a letter and send it to the High Court or the Supreme Court. If the Court feels that your complaint deserves attention, it can treat this letter as a writ petition

## **ABOUT CHRI**

The Commonwealth Human Rights Initiative (CHRI) is an international, independent non-profit organisation headquartered in India. Its objectives are to promote the practical realisation of human rights in the Commonwealth. CHRI advocates for greater adherence to human rights standards.

### **Our programmes are:**

- ❖ Access to Justice (Police Reforms)
- ❖ Access to Justice (Prison Reforms)
- ❖ Access to Information
- ❖ International Advocacy and Programming



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