

HUMAN RIGHTS AND POLICE

- **ARREST GUIDELINES AND LEGAL PROVISIONS**
- **CUSTODIAL TORTURE / DEATH**
- **DEATH IN POLICE ACTION / DISAPPEARANCES**
- **ISSUE RELATING TO UNDER TRIAL PRISONERS**

1. The Fundamental rights under the CONSTITUTION of India are the basic principles to be followed in preserving and protecting the human rights values. The human rights are not available to the police force for they have powers and privileges to enforce laws, to ensure public peace, to prevent crimes, to detect crimes and to bring offenders to JUSTICE. In this policing, the police tasks relating to the arrest and detention of offenders, Search and the crowd control (rob operation) are the sensitive areas where commonly the police have become the bolt of criticism and the target of accusation for any OVER ACTION AND IN ACTION. To **meticulously** deal with such situations, the police should always remain alert, fair and careful unmindful of the environmental pressure, be it political, social, religious and professional. The principles, provisions, and the due procedure laid down under the constitution of India, the code of criminal procedure, 1973 and in other laws for the time being in force should be borne in mind. Any laxity or circumvention in this will land the police into the accusation of violation of human rights. This should be followed and ensured from the beginning of registration of a case till the stage of laying Charge Sheet, whether it applies to the accused, or complaint or witness. Remember there are instances of custodial torture/death in respect of witness

ARREST GUIDELINES AND LEGAL PROVISIONS:

Firstly, we have to see the constitutional provisions on protection of certain rights.

Act.19: Protection of freedom of speech. It is the duty of the state to protect the freedom of expression.

Reasonable restriction:-

- Security of the state
- Friendly relations with foreign states.
- Public order
- Decency and morality
- Contempt of court
- Defamation

Act.20:-

Protection in respect of conviction for offences: A reformatory measure with field of penology. **PROBATION OF OFFENDERS Act,1959.** (Kanral Case, care to abandoned boys (punnagai)

Act.21:

PROTECTION OF HFC AND PERSONAL LIPOERTY

A procedure which keeps a large number of people behind bars without trial so long consent possibly be regarded reasonable.

Section: .167- Crpc-remand/Charge Sheet should be meaningful carried out.

Act.22:

PROTECTION AMONGST ARREST AND DETENTION CASES.

(i) No person who is arrested (Section-50 Crpc) shall be detained in custody without being informed, as soon as may be, of grounds_ for such arrest, not shall be denied the right to consult and to be defended by a legal practitioner of his choice.

(ii) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 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.(section 57 crpc)

3. Nothing in this clause (1) and (2) shall apply

- (a) To an enemy alien
- (b) To any person detained under the preventive detention.

3. RIGHT OF ARRESTED PERSON:

- (a) He shall not be detained in custody without being informed
- (b) The grounds of arrest be justified.
- (c) He be represented by a lawyer of his choice.
- (d) The right is not lost if released on bail.
- (e) Right to be Produce before the nearest magistrate within 24 hours.
- (f) Not to be detained in custody beyond 24 hours.

HABEAS CORPUS - KERALA- Rajan's Case during Emergency (1976-1977) (i.e)
MAN MISSING / DISAPPEARENCES.

The provisions laid down 50, 57,58,167, Crpc should be followed and there shall be no lapse on the part of the police while making the arrest of a person.

4. The following are the **POWER OF POLICE** while arresting a person without a Warrant from a magistrate.

- Section-.41 Crpc - Cog. Offence , etc
- Section-.42 Crpc - NC Case - Can also be arrest when refused to give name, etc.
- Section.129 (2) Crpc- while dispersing unlawful assembly may proceed to arrest and confine the person involved.
- Section .60 Crpc - Escaping from lawful Custody, purse to arrest .
- Section-151 Crpc - preventive arrest.
- Section -300(3) Crpc - the person convicted for an offence , when got altered into severe/ more heinous offence, can be re-arrested .
- Section -432(3)- when govt. carried the permission /suspension of sentence , Pol. May arrest without warrant.

5. PROCEDURE OF ARREST :-

Section 46(1) - The police officer making the arrest shall actually touch or Confine the body.

Section 46(2) - if the person resists the arrest or attempts to evade the arrest, the Police officer may use all means necessary to affect the arrest.

Section 47(3) - to make arrest the police officer may break open any outer or Inner door.

Section 48(4)-A police officer for the purpose of arresting without warrant, Pursue the arrest into any place in India.

Section 48 (5) - the P.S making the arrest shall follow the following.

- a) Search the arrest person.
- b) Place the seized article in safe custody
- c) Give receipt for the seizure

Section 51 Crpc. (6)- Whenever it is necessary to cause a female to be searched , it Should be done by the women police with strict regard to decency

Section 51(2)crpc. (7)- The police officer making an investigation can depute his subordinate to arrest with an order in writing.

Section 55 Crpc. (8)- Any person arrested shall not be detained in the custody for more than 24 hours.

Section 57 crpc.(9)-send arrest care to the court .

Section 167 Crpc.(10) No person who has been arrested by a police officer shall be discharged except on his own bond or on bail , ifailable offences. Otherwise send the arrested person to the nearest magistrate for **REMAND** to judicial custody, or police custody if required.

Section 167 Crpc. (11) an accused who has been produced before a magistrate for the purpose of making a confession U/s 164 crpc and has declined to make it or has made the statement, which from the point of view of the **POLICE IS UNSATISFACTORY**, is liable to be Remanded to jail and the investigation officer should not , expect his the presence of the magistrate see the accused again.

6. UNDER - TRIAL PRISONER;

An under-trial prisoner should not be removed from one place of confinement to another for the purpose of identification.

ESCORT

The escort party should generally be provided by the armed police wing.

Note: Jegan case- it was not the escort party send investigation team, taking of the escort duty.

7. POLICE ENCOUNTER

Police have no power to kill a human being under law. They use force u/s 129 crpc to disperse the mob. They may also use means necessary to bring a person under control u/ s 46 crpc, when he is to be arrested and when he resists the arrest. Police, encounter is an expression in the act of exercising right of private defense falling under various circumstances within the meaning of sections 99,100 IPC .what is required is the justification from the police side. Bear in mind if there is groundless arrest, the errred police officer in bound to fare "payment of compensation" u/s 358 crpc.

8. CUSTODIAL TORTURE/DEATH

The custodial death in any manner including the suicide death is considered to be a death caused in the police custody punishable u/s not less than 304 IPC.

1. Kirumampakkam P.S- custodial death -1998
2. D' Nagar PS - custodial death-2002.

In the first case stated above, lock- up brutalization / physical torture was make on a suspect of a small theft case without making formal arrest.

In the second case , a witness who accompanied the police party to many place to identify one of the main accused person of a murder case, slipped and accessed person of a murder case, slipped and fell down on the portico PS 'D' Nagar which was initially suppressed to hide the story of custodial death.

In the recent villianur custodial case, it is a clear case of suicidal death.

In the custodial alleged rape case (Athiyur vijaya case) Section 160 Crpc was violated and his the consequence the allegation of kidnapping and gang rape emerged.

(Discussion of the above cases)

NOTE: The Eleven directives of the Hon'ble supreme court shall invariably born in mind, specifically the ARREST MEMO to be prepared on the spot of the arrest of a person, duly attested by witnesses, and the INSPECTION MEMO, if injury is noticed, which should be followed up referring the person to the GH for medical certificate from the P.S.