

Human Rights Awareness to Police

Workshop Report

24 March 2017



सत्ये स्थितो धर्मः

Organized by:
National Law University Odisha

In Collaboration with:
National Human Rights Commission



Introduction

National Law University Odisha organized a one-day workshop on Human Rights Awareness to Police on 24 March 2017 in collaboration with National Human Rights Commission, New Delhi. Key objective of the workshop was to sensitize police on laws and good practices of human rights to develop strong police culture to recognizes, respect and protect human rights. The workshop was held in the Conference Hall of NLUO located at Kathajodi Campus, Sector-14, CDA, Cuttack, Odisha. The workshop was attended by more than 100 persons including as many as 80 police officers from Human Rights Protection Cell of various districts of Odisha.

The workshop began with an inaugural speech form the Honourable Vice-Chancellor of National Law University Odisha, Dr. Srikrishna Deva Rao in which he welcomed all the distinguished dignitaries present, starting with the guest of honour *Justice*



B.K.Mishra, Chairman Odisha Human Rights Commission and the police officers of Odisha State Police. Justice B.K.Mishra asked all the police personnel present introduce themselves and share their impressions of human rights. He stressed police personnel being are human beings and that they too have equal human rights as enjoyed by a common man. However, their hard work and effort they put in, in order to maintain peace and order in the society does not give them the right assault and abuse the people who come to them with their grievances.

Justice Mishra then talked about the infamous Lalita Kumari case wherein it was held that registration of FIR is mandatory under section 154 of the code, if the information discloses commission of a cognizable offence and no preliminary enquiry

is permissible in such a situation. Justice Mishra also talked about an instance of a woman coming to Odisha State Human Rights Commission with her husband and asking for an impartial inquiry in the case of her son's death. Justice Mishra while talking about this case mentioned the amount pressure the police go through while investigating a case. For example the informants happen to inform the media houses about any incident that takes place before informing the police. Justice Mishra also stated a few allegations that are put on the Police such as not registering FIR for some reason, a suspect brought in for interrogation being subject to torture, people being arrested and brought in for questioning without proper paper work and also that many a times people brought in for interrogation are not presented in front of a district magistrate within the given period of time.

Justice Mishra advised the participants that while performing their duty, they should ensure records and paperwork is properly maintained.. He also advised them to refrain from arresting a woman in the absence of a lady officer and not to arrest a woman before sunrise and after sunset. The Criminal Procedure Code manual (CrPC) grants the police the power to grant bail to senior citizens, minor and woman and he also urged the police officers to be a little compassionate towards elderly people and woman and to make use of this power.



Human Rights and Police Functions: Constitutional and Statutory Provisions

Speaker: Prof. Srikrishna Deva Rao, Vice-chancellor, NLUO

Moderator: Dr. Ananya Chakrabarty, Assistant Professor of Law, NLUO

Prof. Srikrishna Deva Rao introduced to the Odisha Police Cadre the concept of Arrest as provided under section 41 of the CrPC and the importance of Protection of Human Rights. The concept of arrest was also related to the victim's social life. Arresting someone is a casual action for a police officer but it adversely affects the victim's life even though after



interrogation that person might have been released. The society starts treating that person as a criminal without his involvement in any activity. It intimidates the person taken to the police station and makes it difficult to live his life. The concept of arrest has to be dealt in relation to the Articles 21 and 22 of the Constitution of India. The importance of human values and rights was discussed in great details in the session as it is provided in the Constitution of India. It was said that police should be respectful and polite when it comes to arresting and it should not be an arbitrary arrest. The person should be informed of the reasons of his arrest and in cases of arresting women, there should be special attention given to respecting their privacy and questioning should be done where it is comfortable for them to answer it. Right to life and liberty and protection from arrest as enshrined in our Constitution should be upheld in all the cases and there should not be any rule contrary to it.

Changing Landscape of Laws of Arrest: Supreme Court Guidelines and Law Commission Reports

Speaker: Mr. Kasinath Panigrahi, Adjunct Faculty, Odisha Judicial Academy

Moderator: Ms. Nanditta Batra, Assistant Professor of Law, NLUO

The session was carried forward by the next speaker, Shri Kashinath Panigrahi. Starting with the concept of police being public servants and having a primary duty to protect the Rights of both the accused and the victim



it continued to discuss in brief the Protection of Human Rights Act 1993. The sections 3 and 21 respectively provided for the National and State Human Rights Commission. The basic object behind these provision was to safeguard the rights of the people in all circumstances and grant appropriate redresses. Initially it was only the rights of the accused which were recognised but later through the amendments to CrPC, even victims right got acknowledged. Human rights concept was discussed relying on the International Covenant of Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. Human rights are fundamental rights provided in the Constitution. The same has also been incorporated in the Section 57 of the CrPC which provides the grounds and procedure for arrest.

Cases of D.K Basu v. State of Bengal, Jogendra Kumar v. State of U.P were discussed in details as they are the landmark cases which elaborated the concept of arrest. The cases had issued 11 Mandatory Guidelines which were supposed to be pasted in every police station and adhered to strictly. It was essential both for the officers as well as the layman to understand these guidelines and be aware of the rights available to them and it was also held as to look into the intention which should not be malafide, the arrest should be justified. The case of Bhim Singh v.

State of Jammu and Kashmir, was also discussed in brief as to it is the duty of the police to protect and not to abduct the suspect.

There were discussions on topics as to investigation before filing FIR and the crimes which had a sentence of 7 years or more. It was discussed that how the rights of the people should be of paramount importance. An example of the doctor not treating a raped victim before police notice is violating the rights of the victim. It should be the duty of the doctor or any other person to first get the help of the doctor and then get into the investigation.

Guidelines in the Case of Arnesh Kumar v State of Bihar and the 2009 Amendments in Cr.PC

Speaker: Shri Sanjeev Arora, IPS Deputy Commissioner of Police, Cuttack
Moderator: Mr. Ramakrishna Das, Assistant Professor of Law, NLUO



He started the session by discussing the guidelines laid down by the Hon' Supreme Court of India in the case of *Arnesh Kumar v. State of Bihar* wherein issuing of Notice of appearance in terms of Section 41A of Cr.PC was made mandatory to the accused in all cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, and cases where offence is punishable with imprisonment for a term

which may be less than seven years or which may extend to seven years; whether with or without fine.

The main point of discussion in this case was to strike a balance between the police rights and human rights, to prevent the abuse of power of arrest, and protection of rights of the accused to the fullest possible manner. He went on to clear our understanding of the word 'reasonable arrest' and 'arrest'. He also referred to the case of *State of Punjab v. Ajai Singh*, where the Hon' Supreme Court laid down the proper definition of the word 'arrest'.

He then discussed about the types of arrest which are mentioned from section 41 to section 60 of Cr.P.C. There are basically two types of arrest- arrest under warrant issued by the court and arrest without warrant issued by the court. The session focussed on arrest without warrant issued by the court. He went on to discuss the section under which who can arrest and how. A police personal can do so under section 41, private person under section 43, Magistrate under section 44. Further, he discussed about the necessities of arrests. Immediate arrest can prevent commission of more serious cognizable offences. Cognizable offences help to eliminate bias officers and promote consistent police response. It also reinforces legal sanctions and breaks through a victim's isolation.

The *Jogender Singh* case led to the Cr.P.C. amendment Act 2009, which established basis. Accordingly, under section 41(a), arrest of a person is required if there is - (a) a reasonable complaint, (b) credible information and (c) cognizable offence. It is also done to prevent the accused from committing any further offence, for proper investigation, to prevent tampering with evidence, and to prevent such persons from making inducements. The discussion then proceeded to the case of *Rini Johar v. State of M.P.*, which talked about arbitrary arrests. The police officer shall forward the checklist along with the reasons and materials which necessitated such arrest, while producing the accused before the Magistrate for any further detention. Failure to comply with these directions shall be liable for contempt of court.

Factors Influencing Discretionary Powers of Police in Arrests

Speakers: Dr. Anup Pattanaik, Adjunct Professor of Law, NLUO (Former D.G.P, Vigilance) & **Shri Satyajit Mohanty, IPS** Addl. D.G. of Police (Hdqrs), Odisha

Dr. Anup Kumar Patnaik discussed various external factors which lead to exercise of discretion in matters of arrest. He called police as gatekeepers of justice and they should exercise their discretion judiciously. Next Shri.



Satyajit Mohanty took the session forward with the case of Jogendra Kumar case which lays down the guidelines for arrest. He mentioned Arnesh Kumar case to bring out how these guidelines are not being followed at the ground level. The police has failed to change with changing laws and it's a matter of great concern. He then discussed whether such discretion is good or bad.

Then he discussed about major components of discretion and how it is limited by putting checks and balances engaging with judiciary and executive bodies. He discussed the Rini Johar case and referred a study by American Bar Association in which it was found that the term discretion was misunderstood as corruption. He said discretion has to be differentiated from the term corruption. He mentioned that in India factors like insufficiency of law to address all the criminal behaviours, failure to repeal obsolete laws, failure in enforcing the laws and religious bias have lead to improper use of discretionary powers by the police. He discussed the cases of R v. Beaudry, Holgate-Mohammed v Duke [1984] AC 437 to bring forth the idea that discretion is to be exercised considering ethics and public interest. Landmark Indian cases were also discussed like A. K. Gopalan and Joginder Kumar case to how arrests should be made. He strongly emphasised on the amendments made in the

Cr.P.C in 2009 by which legislators intended to restrict the scope of discretion however, practically it expanded the scope of it. Lawmakers wanted to limit the discretion to avoid fake arrests. The new amendment and the Arnesh Kumar judgment should have decreased the number of arrests however the empirical data points out that there have been constant rise in no of arrests since the amendment. He also cited major reasons like:

1. Societal pressure.
2. Sub culture dimensions (Dirty harry syndrome)
3. External dynamics.
4. Loopholes in the Organisational framework.

He gave suggestions to deal with these issues like:

1. We need to increase Accountability (external as well as internal within the police department) and take strict actions against those who found guilty.
2. Better training and education (ethics should be included in the training curriculum of the policemen).



Annexure-1: Law of Arrest

Arrest is taking into custody of a person to answer a criminal charge or preventing the commission of an offence. A person needs to be arrested only when there is real requirement of that person during the investigation. The decision to arrest a person requires to be taken in public interest after consideration of conflicting interest of both the freedom and liberty of individual detainee and the society.

The police have the power to arrest without warrant under three circumstances. Firstly, under Sections 41 and 42 of the Criminal Procedure Code; secondly, the police can make preventive arrests in the name of security proceedings under Sections 108 to 110 of CrPC and thirdly, Section 109 of Cr.P.C. specifies the person who can be arrested without warrant. There are several important issues to be communicated to the detainee after arrest to safeguard their freedoms and liberty. These issues are:

Intimation of Arrest: The National Police Commission in its Fourth Report influenced the amendment to Cr.P.C. for insertion of Section 50(a) in Criminal Procedure Code that an intimation has to be given about the arrest of a person to anyone who may be reasonably named by him for sending such intimation to avoid agonizing suspense to the members of his family about his whereabouts.

Time Limit: In case of every arrest whether it is with warrant or without warrant, the arrested person shall be produced before the magistrate without unnecessary delay and such delay in no case shall exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the court. The basic object of this provision is to have an earlier recourse to judicial scrutiny to test the reasonableness and legitimacy of arrest. This right has been created with a view to afford an early recourse to a judicial officer independent of the police regarding reasonableness of arrest. It is also to prevent arrest and detention for the purpose of extracting confessions and not to use police station as 'detention centres'.

Review of arrest and detention: The review of arrest decision is made only by the court after the arrested person is produced before the Court within 24 hours. During this time, between the arrest and the production before the magistrate, the police have the total control over the arrested person. The Supreme Court in Sheela Barse realised the lack of proper review of arrest by an independent third party and suggested intimation of suspects and arrested to the District legal aid committee.

The most landmark case where the Supreme Court issued guidelines as preventive measures to be followed as requirements in all cases of arrests and detention changed the course human rights. The guidelines are as follows:

- 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.
- 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 either be 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 countersigned by the arrestee and shall contain the time and date of arrest.
- 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.
- The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- 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.
- 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.
- 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.
- 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 State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

- Copies of all the documents including the memo of arrest, referred to above, should be sent to the Ilaqa Magistrate for his record.
- The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- 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.

The Supreme Court directed that failure to comply with the above requirements shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

2. THE PROCEEDURE OF ARREST REGULATED AFTER 2009: Arrest brings humiliation, curtails freedom and cast scars forever. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result until Arnesh Kumar v. State of Bihar. It was held that power to arrest is one of the lucrative sources of police corruption and the attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive. Thus, the Supreme Court laid down the following directions which were then included via amendment in Section 41 of CrPC:

- All the State Governments shall instruct its police officers not to automatically arrest when a case under 498A (but not limited to) of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down in Section 41, Code of Criminal Procedure;
- All police officers be provided with a check list containing specified sub clauses under Section 41(1) (b) (ii)
- The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention.

- The magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;
- The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;
- Notice of appearance in terms of Section 41A of Code of Criminal Procedure be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the for the reasons to be recorded in writing;
- Failure to comply with these directions shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.
- Authorising detention without recording reasons as aforesaid by the judicial magistrate concerned shall be liable for departmental action by the appropriate High Court.

3. POLICE DISCRETIONARY BEHAVIOR IN ARREST: As per the guidelines laid down by Ministry of Home Affairs in 1985, following points should be focused on by the police officials:

- The police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it. They should not question the propriety or necessity of any law duly enacted but should enforce the law firmly and impartially, without fear or favour, malice or vindictiveness.
- The police should recognize and respect the limitations of their powers and functions. They should not usurp or even seem to usurp the functions of the judiciary and sit in judgment on cases to avenge individuals and punish the guilty.
- The prime duty of the police is to prevent crime and disorder and the police must recognize that the test of their efficiency is the absence of both and not the visible evidence of police action in dealing with them.
- The police should always keep the welfare of the people in mind and be sympathetic and considerate towards them. They should always be ready to offer individual service and friendship and render necessary assistance to all without regard to their wealth and/or social standing.

- The police should always be courteous and well mannered; they should be dependable and impartial; they should possess dignity and courage; and should cultivate character and the trust of the people. Integrity of the highest order is the fundamental basis of the prestige of the police.
- As members of a secular, democratic state, the police should strive continually to rise above personal prejudices and promote harmony and the spirit or common brotherhood amongst all the people of India, transcending religious, linguistic or sectional diversities and to renounce practices derogatory to the dignity of women and disadvantaged sections of society.

Annexure-2: Case Laws

1. Joginder Kumar v. State of U.P. (1994 AIR 1349)

Facts: An advocate was called into the office of Police Officer with reference to inquire in a case. He was detained while his companions left after being informed that he would be free later in the day. A few days later, it came to light that the advocate was being detained without production before the concerned magistrate by another official who claimed it was in reference to a case. When the brother of the advocate wished to enquire into his well being, it was found that the advocate had been taken to an undisclosed location. Consequently, a petition was filed under Article 32.

The police officers claimed that the advocate had been released and there was no question of detaining him as he was cooperating with them in some abduction related matters.

Supreme Court: The Hon'ble Supreme Court of India made the following observations:-

1. No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so.
2. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. No arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.
3. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified.

The following requirements were also prescribed in the judgement:-

- An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

- The Police Officer shall inform the arrested person when he is brought to the police station of this right.
- An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22 (1) and enforced strictly.

2. D.K.Basu v State of West Bengal, (1997) 1 SCC 416

Guidelines laid down by Hon'ble SC to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

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.
2. That the police officer carrying out the arrest of the arrestee shall **prepare a memo of arrest** at the time of arrest 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 Organisation 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 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 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.

Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

The requirements, referred to above flow from Articles 21 and 22 (1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.

These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

3. Arnesh Kumar v State of Bihar (AIR 2014 SC 2756)

1. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, **the police officers must be able to justify the reasons** thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation.
2. A person accused of offence punishable with imprisonment for a term which may be less than seven years or which **may extend to seven years with or without fine**, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.
3. Law mandates the **police officer to state the facts and record the reasons in writing** which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.PC.
4. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57, Cr.PC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey.

During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 Cr.PC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner. Before a Magistrate authorises detention under Section 167, CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest under Section 41 Cr.PC has been satisfied and it is only thereafter that he will authorise the detention of an accused. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorize the detention of the accused. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant and secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

5. In all cases **where the arrest of a person is not required under Section 41(1), Cr.PC, the police officer is required to issue notice directing the accused to appear before** him at a specified place and time. Law

obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

6. SC wanted to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically by giving the following directions:
 - i. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;
 - ii. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);
 - iii. The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;
 - iv. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;
 - v. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;
 - vi. Notice of appearance in terms of [Section 41A](#) of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

Authorizing detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

4.Rini Johar & anr. v. State of M.P. (2016 (2) ALD (Cri) 235 (SC)

Facts: The petitioner no. 1 is a doctor and she is presently pursuing higher studies in the United States of America (USA). She runs an NGO meant to provide services for South Asian Abused Women in the USA. Petitioner no. 2, is a practicing Advocate in the District Court at Pune for last 36 years. However, petitioner no. 1 is associated with M/s. Progen, a US company. The respondent no. 8, had sent an email to the company for the purchase of machine Aura Cam 6000 and the concerned company sent an email to the respondent making a reference to the petitioner no. 1. Thereafter, the said respondent sent an email asking her to send the address where he could meet her and have details for making payment. He also expressed his interest in becoming a distributor. The informant AKA respondent no. 8 visited the petitioner no.1 at Pune and received a demo Aura Cam 6000 and being satisfied decided to purchase a lesser price machine i.e., "Twinaura Pro" for a total sum of Rs. 2,54,800/-. He paid a sum of Rs. 2,50,000/- for which a hand wrote receipt was given as the proof of payment. During the course of the said meeting, the 8th respondent expressed his desire to purchase a laptop of M/s. Progen of which the petitioner no. 1 was representative. In pursuance of the discussion, the laptop was given to him who acknowledged it by stating that he owed a sum of Rs. 4,800/- as balance consideration towards the Aura Cam and an amount of USD 350 (INR. 23,562) towards the laptop. An assurance was given for remitting the money within a short time. The respondent no. 8 had never raised any grievance relating either to the machine or the laptop. Certain transactions between the informant and the US company have been mentioned and the allegations have been made against the 8th respondent that he represented himself as the sole distributor in India which was brought to the notice of the concerned police in the State of M.P. by the competent authority of the Company. When the matter stood thus, the respondent no. 8 filed a complaint alleging that the petitioner no.1 and Mr. Guy Coggin had committed fraud of USD 10,500 (INR. 7,06,686). On the basis of the complaint made, FIR was made under Sec. 420 and 34 of the IPC and Sec. 66-D of the Information Technology Act, 2000 against the petitioners. The petitioners were, however, arrested from their residence at Pune. Various assertions were made as regards the legality of the arrest. It is also asserted after they were arrested; they were taken from Pune to Bhopal in an unreserved railway compartment marked- handicapped. Despite the request, the petitioner no.2 an old lady was not taken to a doctor and was compelled to lie on the cold floor of the train compartment without any food and water. Undignified treatment and humiliation faced by the petitioners have been

mentioned. They were presented before the learned Magistrate at Bhopal and the petitioner no. 2 was enlarged on bail after being in custody for about 17 days and the petitioner no. 1 was released after more than 3 weeks. There is an allegation that they were forced to pay Rs. 5 lakhs to respondent no. 3. However, later a charge sheet was filed and thereafter a petition before the High Court for quashing the FIR. Three years later, the petitioners filed an application for discharge and the learned Magistrate passed an order discharging the petitioners in respect of the offence punishable under Sec. 66-D of the Act. Since the manner in which they were arrested, and how the norms fixed have been flagrantly violated and how their dignity has been sullied brought them to this Court.

Supreme Court: The Court referred opined that it is quite vivid that the arrest of the petitioners was definitely not made by following the procedure of arrest. Sec. 41-A CrPC as interpreted was not followed. The reports clearly showed that were a number of violations in the arrest, and seizure. Therefore, in such a situation the Court clearly was inclined to think that the dignity of the petitioners, a doctor, and a practicing Advocate has been seriously jeopardized. Since the officers of the State played with the liberty of the petitioners and, in a way, experimented with it, the Court granted a sum of Rs. 5,00,000/- towards compensation to each of the petitioners to be paid by the state of M.P. within three months. Therefore, on a perusal of the FIR, it was clear that the dispute was purely of a civil nature, but a maladroit effort has been made to give it a criminal color. Hence, in the present case, it can be stated that no ingredient of Sec. 420 IPC was remotely attracted.

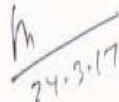





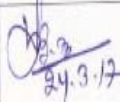

Annexure-3: Agenda**Workshop on Human Rights Awareness to Police**

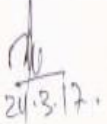



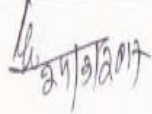

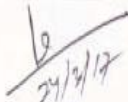
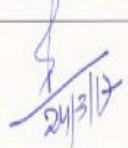
March 24, 2017



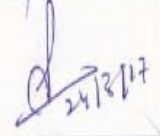

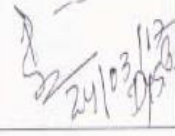

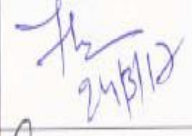
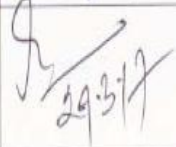
Programme Schedule

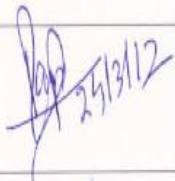
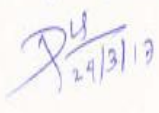

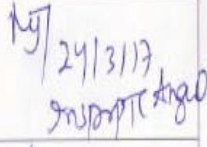




Time	Events	Guest
9.300 am	Registration	
10.00 -10.10 am	Welcome address	Prof. Srikrishna Deva Rao, Vice Chancellor, NLUO
10.10 – 10.25 am	Inaugural address	Hon'ble Mr. Justice B.K. Mishra Chairperson, Odisha Human Rights Commission
10.25-10.30 am	Vote of Thanks	Dr.Dolly Jabbal Registrar I/C NLUO
10.30-11.00 am	Introduction and sharing	Participants
11.00 -11.30 am	Tea break	
Technical session -1		
11.30 -12.30 pm	Concept of Human Rights and Police Functions: Constitutional and Statutory Provisions	Speaker Prof. Srikrishna Deva Rao, Vice Chancellor, NLUO Moderator Dr. Ananya Chakrabarty, Assistant Professor of Law, NLUO
Technical session -2		
12.30 -1.30 pm	Changing Landscape of Laws of Arrest: Supreme Court Guidelines and Law Commission Reports	Speaker Mr. Kasinath Panigrahi Adjunct Faculty, Odisha Judicial Academy Moderator Ms. Nanditta Batra, Assistant Professor of Law, NLUO
1.30 -2.30 pm	Lunch	
Technical session -3		
2.30 -3.30 pm	Guidelines in the Case of Arnesh Kumar v State of Bihar and the 2009 Amendments in Cr.PC	Speaker Shri Sanjeev Arora, IPS Deputy Commissioner of Police, Cuttack Moderator Mr. Ramakrishna Das Assistant Professor of Law, NLUO
3.30-4.00 pm	Tea break	
Technical session -4		
4.00 -5.00 pm	Factors Influencing Discretionary Powers of Police in Arrests	Speakers Dr. Anup Pattanaik, Adjunct Professor of Law, NLUO & Shri Satyajit Mohanty, IPS Addl. D.G. of Police (Hdqrs), Odisha
5.00 -5.30 pm	Way Forward	

Annexure-4: Participants

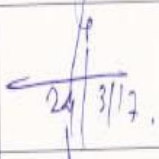
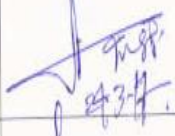
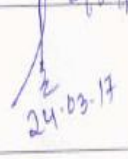




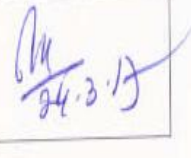
Sl.No.	Name (CAPITAL LETTERS)	Designation & Office	Mobile No & Email	Signature
1	SRIKRISHNA BEHERA	ADNL S.P. State HRPC Cuttack	9438093737	 24.3.17
2	SRI AJAY KUMAR MANDAL	Dy.S.P. State HRPC, Odisha Cuttack	9438914832 amandal033@gmail.com	 24.03.2017
3	Anupama James.	SDPO Boudh.	9867657290/ 8763004077	 24/03/2017
4	Achodeku. Akshay	Dy.S.P. DHRPR, KDT	9437281300	
5	Purusottam Sethi	SDPO, Jharsuguda	94371-23607.	
6	Raki narayan Banti	S.D.P.O. R.Vdayapati	94370-41076	
7	Kuber Barika.	Dy.S.P. HRPC Cuttack	9437842375	 24.3.17
8	Anupama Setty	InsP HRPC, Cuttack	9937399637	 24-3-2017

Sl.No.	Name (CAPITAL LETTERS)	Designation & Office	Mobile No & Email	Signature
9.	ARATI MISHRA	INSPECTOR OF POLICE OF CUTACK DIST.	9437596064.	 24.3.17.
10	Smt Manda Hansida	IIC JSR GR/S	9437936212	 24.3.17
11	Kahnce Charan Goudam	IIC, B: Saronathpur PS, Dist. Bhubaneswar	9439860029	 24.2.17
12	Sreedam Maleik	IIC Mahulpali PS Dist. Sambalpur	9438311292	 24/3/17
13	Rakshabha Kumari Mishra	S.D.P.O. Rairakhal Dist. Sambalpur	9437287416	 24/3/17
14.	Prakash Chandra Jant.	S.D.P.O, Chiruti Bhubaneswar.	9439476766	 24/3
15.	SUBASH CHANDRA PANIGRAHI	S.D.P.O. Anka Jagann	9437620303	 24/3/17
16,	Bishwarajan Nayak	IIC Sitabadi PS	9438305576.	 24/3/17







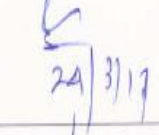
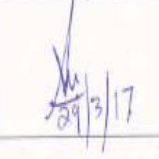
Sl.No.	Name (CAPITAL LETTERS)	Designation & Office	Mobile No & Email	Signature
17	CHANDRA SEKHAR SARKAR	Inspector of Police Koraput District.	9437722485	 24.3.17
18	JANATA NAYAK	Off. of Police	9437103666	 24/3/17
19	CH. HRUDAYANANDA	SDPO, Khariar Dist. Nuapada.	9457206801	 24/3/17
20	Sarad Kumar Mishra	SDPO, Rly. etc	9439120866	 24-3-17
21	Ms. Pramila Nayak PRAMILA NAYAK	Dy. S.P. BPSPA, BBSR	9438326384	 24/03/17
22	Rajendra Sial (RAJENDRA SIAL)	Inspector of Police, IC Jagdalpur ps Dist. Bargarh	9178701878	 24-03-2017 IC Jagdalpur ps
23	DILIP KU SWAIN	INSPECTOR OF POLICE GDC, CDAPS	9437864735	 24/3/17
24	Sanjay Kumar Das	SP, Laxmapur Je, Laxmapur Jharsuguda	9939105079	 24-3-17


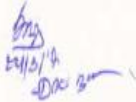





Sl.No.	Name (CAPITAL LETTERS)	Designation & Office	Mobile No & Email	Signature
25	PRAMOD KUMAR PANIHRAHI	INSPECTOR OF POLICE KATNIHARAL	9437112052	 25/3/17
26	JITENDRA KUMAR SAHU	INSPECTOR OF POLICE DHENKANAL	9937106667	 29/3/17
27	Sanghamita Nayak	INSPE. HRPE PURI	9437887386	 24/3/17
28	Mamata Jera	INSPE PTC ANGUL	9439210010	 24/3/17 INSPE PTC ANGUL
29	Sudh Anj Kumar Nayak	INSPE HRPE MALANGIRI	9437236418	 24.3.2017
30	Dhananjay Naik	INSPE HRPE MALANGIRI	9777689626	 24.3.17
31	Hemabrita Naik	INSPE of Police BSPA	9439031504	 24/3/17
32	Gupta Chandra Behera OPB	Dy.SP. BSPA, BBSR.	9437076796	 24.3.17

Sl.No.	Name (CAPITAL LETTERS)	Designation & Office	Mobile No & Email	Signature
33	PREMANANDA LENKA	Inspector of Police Angul Dist.	9438244660	pe 24/03/17
34	ANTHONY TIRKEY	DSP (HRPC) Deogarh	9438645112	ATP 24/3/17
35	AJAY KUMAR TIRKEY	Insp. Deogarh	9437839205	AT 24-3-17
36	Sajaya ku. Pattanaiki.	Insp. of police Khurda dist	9437342855	Sajaya 24/3/17
37	Sudhakata Sena, OPS	S. 2-P.O. Bhatrak	9437092360	Sen 24/3/17
38	Prasanna Kumar Bishui	Safo B.M. Am	9437209192	Prasanna 24/3/17
39	Meena Bindhani	Insp. of police Bhatrak Dist.	9439454311	MB 24-3-17
40	Bijay Kumar Mallick	DSP, HRPC KDA	9437319632	B 24/3/17

Sl.No.	Name (CAPITAL LETTERS)	Designation & Office	Mobile No & Email	Signature
41	ANNAPURNA BEHERA	Inspector of Police	889 5087375 bannaperna386@gmail.com	 24/3/17
42	Hinjay Kumar Das	Inspector	9437355934	 24/3/17
43	Roshni Barla	Inspector of Police N.S. Suby & Suburban	94376 51123	 24-03-17
44	Debi Prasad Das	Inspector of Police Sundargarh	9437245794	 24/03/17
45	Shesha Div Barun	SDPO Tahsil Balasore	94371 80459	 24.3.17
46	Rojalin Behera	Inspector of Police Balasore	9861291566	 24/03/17
47	Rama Behera	Inspector of Police Mayurbhanj	9437785412	 24/03/17
48	BINAY KRUSHNA KAMILA	DSP Crime Mayurbhanj Baripada	9437238280	 24.3.17

Sl.No.	Name (CAPITAL LETTERS)	Designation & Office	Mobile No & Email	Signature
49	PAATAD KUMAR RAMA	Inspector of Police. 116, Bungalip S, Jy.	9556924041 memapsofop11272@gmail.com	
50	SATYAJIT KANDANKE	INSPECTOR OF POLICE. IIC, TUREKELA P.S. BOLANGIR	9556078914. satyajitbgh@gmail.com	
51	MAMATA PATI	Inspector of Police Nayagarh	9437514646	 24/3/17
52	RASHMI REKHA MAHALIK	Inspector of Police (Crime) Eastern Range, Balasore	94393 - 56154	 24.3.17
53	PRAMOD KUMAR LENKA	IIC, NIKIRAI P.S, DIST- KDP	9438916269	 24.03.17 IIC
54	Banarshi Mishra (OPB)	DSP HRPO JSPM	94371. 23006.	 24.3.2017. DSP HRPO JSPM
55	ANIRUDHA ROU TRAY	I.I.C. Biridi P.S. Dist- Jagatsinghpur.	9437070088	 24/3/2017
56	HEMANTA KUMAR PADIHI	SDPO, Laganpur Dist- Koraput	9437118263	 24.3.17

Sl.No.	Name (CAPITAL LETTERS)	Designation & Office	Mobile No & Email	Signature
57	Kal KALANDI BEHERA	INSPECTOR OF POLICE	9438234492	 24/3/17
58	JYOTI RANJAN SAMANTRAY	INSPECTOR OF POLICE	9438830522	
59	JYOTI RANJAN SAMANTRAY	INSPECTOR OF POLICE	9439956587	
60	ANIL KUMAR MISHRA OPD	ASST. COMMISSIONER OF POLICE	9437344359	
61	Rabindra Nath Das	S.2 PO Atenu	9437198020	
62	Prasant Kumar Bisaya	S.2 PO Hindol Bhenukani	9437151013	 24/3/17
63	Sangram Tudu	Asst. Adyos Bmn	9437501196	 24/3/17
64	Saumya Mishra	SDPO Parposh, Kankala	7017235320	 29/3/17

Sl.No.	Name (CAPITAL LETTERS)	Designation & Office	Mobile No & Email	Signature
65	Dillip Chandra Bag	SDRPO, Jharsuguda.	9437152771	
66	Suresh Kumar Nanda	SDPO, Bargarh	9437109943	
67	Rabindra Kumar Jena	SDPO, Nalanda. Bargarh	9437211118	
68	Maheshwar Gelle,	DSP Hdqrs. Keonjhar	8763806533	
69	Rajendra Kishor Rout	DSP Hqr., Juxi.	9437222799	
70	Debabrata Chakra	Insp., Gajapat.	9438916701	
71	Debandra Nath Pringua	Insp. of Police, Kempur	9437821804	

Sl.No.	Name (CAPITAL LETTERS)	Designation & Office	Mobile No & Email	Signature
22 <i>Students</i>	RAJ KISHORE PANDA	student Bareilly Lawyer's College	9124233332 904011128. 16avdp5007@nlvo.ac.in	Raj Kishore Panda
23 <i>Students</i>	DEVASHISH SRIVASTAVA		9793509330 ds0293@gmail.com	<i>Devashish Srivastava</i>

Sl.No.	Name (CAPITAL LETTERS)	Designation & Office	Mobile No & Email	Signature
74	PADMA MISHRA		8763131407	<i>Padma</i>
75	ANUBHA SINGH DHAPWAL		8763131160	<i>Anubha</i>
76	SHEFALI AGARWAL		8984699968	<i>Shefali</i>
77	TRILOK CHAND		7064361549	<i>Trilok</i>
78	SHIVENDRA PANDEY		8979880633	<i>Spandey</i>
79	MADHAV VYAS		7425099667	<i>Madhav</i>
80	AMIT CHAWLA		09452503596	<i>Amit</i>
81	K. AISWARYA		8811082088	<i>Aiswarya</i>