

CHAPTER -9

Arrest, Custody, Bail, Remand & Search

Power of arrest

- 200-1.** Chapter 5 of the Code of Criminal procedures 1973 deals with various provisions of arrest (Sec 40 to 60 A) Police Officers derive their powers of arrest without warrant from sections 41, 42, 43(2), 60, 129 and 151 of CrPC. Sections 46, 47, 49, 50, 51, 56, 57, 167 and 169 CrPC inter alia deal with procedures, during and after arrest.
2. Arrests can be made by Police Officers with Warrants issued by the Courts. There is no discretion allowed to the police in executing Warrants of arrests. The Warrant must, be in writing, signed and sealed by the presiding officer. It should specify the offence as well as clearly the identity of the person to be arrested. The Warrant sometimes may specify the date on which the Warrantee is to be produced in the Court. If such a Warrant cannot be executed within the time specified a fresh Warrant might be obtained after returning the earlier one. The validity of a Warrant is an important matter particularly in respect of those meant for arrest of persons in other countries.

Arrest Warrants

3. The Warrants are eitherailable or non-ailable. In respect ofailable Warrants the arrestee should be released on bail, when he offers the required security and in respect of non-ailable Warrants the Police Officer has no discretion, and the person must be produced before the concerned Court. Prompt

execution of Warrant is one of the foremost duties of the Police and should receive high priority.

4. The Warrant must be executed by the officer to whom it is endorsed. If that officer wants warrant to be executed by his subordinate officer he must make endorsement by name accordingly.

Arrest Precautions

- 201.** Articles 21 and 22 of the Constitution lay down that no one shall be deprived of his life or liberty except in accordance with procedure established by law and that arrested persons are entitled to know the grounds of their arrest and a right to consult and be defended by an Advocate of their choice and that every arrested person should be produced before a Magistrate within 24 hours. Arrest takes away the liberty of a person and should therefore be affected in strictest compliance of the law. Wherever it is warranted it should be promptly carried out but arrest is not to be effected just because a police officer has the power. No accurate account of all circumstances under which arrest without Warrant can be made or should not be made can be detailed. He must exercise it with discretion.

Conditions necessitating arrest

- 202-1-A.** To infuse confidence among the terror stricken victims, particularly in grave offences like murder, dacoity, robbery, burglary, rape, organized crime, terrorist offences etc.
- B. In cases where the accused is likely to abscond and evade the

process of law;

- C. The accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint;
 - D. The accused is a habitual offender and unless kept in custody, he is likely to continue to commit similar offences;
 - E. Where it is necessary that his presence is required for the purpose of investigation.
 - F. Where accused is likely to tamper or intimidate or cause physical hurt to witnesses or destroy other evidence.
2. Police Officer making an arrest should record in all the relevant records, the reasons for making the arrest, thereby bring out his conformity to the instructions given in this order and must be able to justify the arrest if required. The Police Constables and Head Constables who make the arrest should submit a report detailing the circumstances of the arrest to the SHO or IO concerned who should incorporate the contents of such reports in the General Diary, Case Diary etc.
 3. All Police Constables, Head Constables and Sub-Inspectors working in the field and empowered under law to exercise the powers of arrest without Warrant, should exercise their powers with prudence and be accountable for the arrest made in the discharge of their assigned tasks and duties.
 4. In the light of these instructions, the action of Police Officers of all ranks in arresting persons where it is not necessary and not

arresting where it is necessary, will amount to misconduct and may entail suitable disciplinary action.

- 203-1. No arrest should be made in a routine manner simply because the law empowers the police officer to do so. The existence of the power to arrest is one thing while justification for the exercise of power of arrest is quite another. The police officer must draw a margin between vindictivity and required.
2. The police officer may without arresting, keep a watch on a person and then arrest him, if subsequent events justify such action. No restraint can lawfully be exercised over a person so long as he is not arrested.
3. The arrest should be avoided if the intention is only to verify the suspicion of involvement against a person. A police officer may under section 160 CrPC issue a notice to the suspected person to attend the police station and interrogate him. He should not be detained for long and more than required.

Arrest of Children and Women

- 204-1. **The Juvenile Justice (Care and Protection of Children) Act 2000** prohibits lodging of children in police lock-ups or being brought to police stations after arrest. Alternatives are provided for lodging the delinquent juveniles. The procedure prescribed therein should be observed in respect of juveniles.
2. The following instructions shall be followed whenever arrest of women is contemplated.

- A. While making arrest of a woman submission to custody should be presumed unless circumstances to the contrary exist. There should be no occasion for a male Police Officer to touch her person. It is therefore advisable whenever it is proposed to arrest a female, women police should be employed.
- B. Arrest of women should as far as possible during night times be avoided unless it is inevitable.
- C. When it is not possible to secure the services of women Police Officers, an officer of the rank of ASI or above should effect the arrests.
- D. Bail may be granted where the offence for which the arrest is made is not of a serious nature. The SHO may exercise his discretion in non-bailable offences to release a woman arrestee on bail.
- E. Whenever a woman is arrested, the services of women Police Officers should be utilized for guarding and escorting her. If women Police Officers are not available in the Police Station, one of the relations of the arrested woman, of her choice can be permitted to remain with her. When interrogation of the arrested woman is done by a male Police Officer the relation or woman Police Officer should be present. If a Woman Police Officer herself is conducting the interrogation, the presence of a woman relative may not be necessary.

Rights of Arrested Persons (Cr.P.C. Sec. 50, 50 A)

3. The arrested persons have certain rights with which the Police Officers should be familiar. These are important from the human rights angle also besides being statutory provisions and should be respected. The important rights are -
 - A. Right to be informed of the grounds of or arrest
 - B. Right to inform about the arrest to any of his friends, relatives or such other persons as may be disclosed or nominated by arrested person for the purpose of giving such information.
 - C. Right to be produced before a Magistrate without unnecessary delay and within 24 hours (Sec 57 CrPC)
 - D. Right to consult a legal practitioner or any one of his choice (Sec 41 D)
 - E. Right to be informed of right to bail
 - D. Right of a person without means to free legal aid and to be informed about it
 - E. Right to be examined by a Medical Officer (Sec 54)

Direction to subordinates to arrest

205-1. When a Police Officer in-charge of a police station, or any Police Officer making an investigation, is himself not able to effect the arrest of a person, he may, under Section 55 of the CrPC depute any officer subordinate to him to arrest the person. When such an officer is deputed, he should be given an order in writing specifying the person to be arrested and the offence or cause for which the arrest is to be made. The officer so authorized shall notify to the person to be arrested, the substance of the order and, if so required by such person, shall show him the order. This section, however, does not take away

the statutory power vested in all Police Officers by Section 41 of the CrPC.

2. A Head Constable in-charge of an outpost or a beat area or check post, without the intervention of the SHO, may take action in offences under special and local enactments, which empower the Head Constable to take action.
1. When a private person arrests any person who commits a non-bailable and cognizable offence in his presence, he shall be taken to the nearest police station immediately and such person shall be re-arrested by the police.

The following requirements laid down by CrPC and Police Act should be observed in all cases of arrest or detention

- 206-1.** 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. (Sec 41 B)
2. That the Police Officer carrying out the arrest of a person 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 member of the family of the arrestee or respectable person of the locality where the arrest is made. It shall also be countersigned by the arrestee and contain the time and date of arrest. (Sec 41 B)

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 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. (Sec 41 B)
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 general 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 kept.
7. The arrestee should, where he so requests, be also examined at the time of his arrest about major or minor injuries, if any, present on his/her body. The "Inspection Memo" must be signed both by the arrestee and the Police Officer affecting the

arrest and its copy provided to the arrestee.

8. The arrestee should be subjected to medical examination every 48 hours during his detention in custody by a doctor from the panel of approved doctors appointed by Director, Health Services. Director, Health Services should prepare such a panel for all Sub-Divisions and Districts.
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the jurisdictional Magistrate for his record.
2. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
3. Cause the name and other particular of the person arrested to be displayed in the notice board at the place of detention and at such other places as may be prescribed.
4. Inform the arrested person, of his right to engage a lawyer and of the provisions of Legal Aid Authority for getting free legal aid.
5. 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 it should be displayed on a conspicuous police board at the police control room. (Sec 41 C).

Guidelines for a Police Officer in making an arrest

- 207-1.** When a police officer proceeds to arrest a person and cannot identify him personally, he should secure the services of a person who knows the person to be arrested and should also provide himself, if available, with a photograph, a descriptive role and the marks of identification of that person. He should be sure of the identity of the person to be arrested.
2. The police officer should be in uniform with his name and number if any, on the pocket, besides carrying his identity card or, if in plain clothes, carry his identity card and should disclose his identity. He should arm himself with such firearms and accessories required for his defense, if the circumstances demand such a precaution.
3. Police parties engaged on anti-dacoity, terrorist operations or similar duties which are likely to lead to arrests of dangerous persons, should carry handcuffs and leading chains to secure the arrestees, to prevent their escape or violence.
4. The person to be arrested with or without warrant should be informed of the grounds for making the arrest.
5. The arrest should be affected without unnecessary violence or publicity.
6. Section 46 of the CrPC lays down that the police officer making

the arrest of a person shall do so by actually touching or confining the body of the person to be arrested, unless there is submission to the custody by word or action.

7. When a person is to be apprehended and if he resists by force or tries to evade, the arresting police officer may use necessary force to arrest him except causing death. But if the accused to be arrested is involved in an offence punishable with death or imprisonment for life, the force can be even to the extent of causing death depending upon the circumstances.
8. When a person to be arrested is concealing himself in a closed place, the police officer has every right to enter such places even by force to affect the arrest. He can even arrest everyone who obstructs him from discharging his duty. However, he must behave decently with women inmates.
9. Police officer can exercise the right of private defense of his body and others while resisting arrest.

Search of the arrested person by the Police

- 208-1.** Whenever a person is arrested and not released on bail by a police officer a thorough search of his clothes and belongings should be made before putting him in lockup. Articles found upon him other than necessary wearing apparel should be placed in safe custody and if any articles are seized from his person, a receipt showing the articles taken possession by the Police Officer shall be given to such person. The personal articles of the person should be kept in safe custody in the Malkhana and entries made in concerned registers. If there are any incriminating articles or objects or materials, which might

be necessary for investigation, they should be separated and the procedure for recording and dispatch of case property to courts should be followed. The other property should be returned to him or his nearest kith or kin when he is remanded to custody.

2. Whenever it is necessary to cause a female to be searched, the search shall be made by a Woman Police Officer or another female with strict regard to decency.
3. The officer or other person making any arrest, shall seize from the arrested person any offensive weapons, which he has on his person and shall deliver all weapons so taken to the court or officer before which or whom he is produced.

Treatment of the arrested persons

2. Whenever any person is arrested by a Police Officer or by a private person and is brought to the police station, the SHO shall examine the body of the arrested person and note whether he has any injuries over his body. If any, injuries are observed irrespective of their nature, he should forward the said person to the nearest Medical Officer of the Government Civil Hospital or other Hospitals of local bodies authorized for medico-legal work, for treatment and injury certificate. The Medical Officer should be requested to specify the age of each injury.
5. When any person with injuries in a serious condition or a drunken person in uncontrollable condition, who is unable to take care of himself, is brought to the police station, the SHO shall immediately forward such person(s) to the Government Hospital. Any delay may cause death, in which case the Police

Officer in-charge of the police station will be held responsible. The statement of the injured person should be recorded in the hospital and further action taken.

6. When an arrestee demands examination of his body, which will afford evidence to disprove the charge leveled against him and establish his innocence or evidence of an offence against his own body, the Police Officer should forward him to the Medical Officer of the Government Civil Hospital for the examination and injury certificate. Such a certificate shall be forwarded to the Magistrate concerned.

Police Custody

- 209-1.** A person who is arrested and not released on bail shall be detained in a secure area of the Police Station earmarked for such purposes, under constant watch. A prisoner whom the SHO considers being dangerous and is likely to escape should be kept in the lock-up under continuous and effective watch. This should be done only after making a thorough search and necessary entries should be made in the prisoners search register and guard or watch sentry relief book.
2. A person called to a police station for questioning in order to verify his complicity in any offence shall not be kept in lock-up, without effecting arrest. Arrested persons who are known to be goondas, rowdies, dangerous criminals, and members of

organized gangs, terrorist groups, those likely to escape and charged in serious offences of murder, rape, kidnapping for ransom etc. should be kept in the lock up rooms.

3. A person in police custody shall not be permitted to leave the lock-up after sun set, except in special and emergent circumstances (and that too with adequate escort) which shall be recorded in the general diary and the Sentry Relief Book.
4. A person in police custody prior to remand is entitled to see his relatives and an Advocate. He should not, however, be allowed to talk to members of the public. If the arrested person desires that one of his relatives may be permitted to remain with him, his request should be considered unless there are compelling security reasons. If the arrested person for health reasons prefers to get his food from his residence, he can be permitted, but the person bringing food to the police station should be made to eat samples of all the food items before serving to the person in custody. However, in normal course, the arrested persons should be fed at Government's cost as per the rates approved from time to time.
2. Whenever any punitive action is taken or contemplated against a foreigner, he should be provided with facilities, if he so desires, to communicate over the telephone or by a telegram or letter, with the Counsel, High Commissioner or other representative of his country, as the case may be.

Arrest Reports or Memo

210-1. Every person arrested by a police officer without a warrant shall

be forwarded for judicial remand to the nearest Judicial Magistrate within 24 hours excluding the journey time.

2. An arrest report or memo in Form No. containing time, date and place of arrest shall be prepared at the time of arrest and will be sent by the SHO, as required by section 57 CrPC to the Magistrate. The arrest report 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. The arrestee shall also countersign it. The other columns of the arrest card containing time and date etc. should all be filled up.
3. When any person is arrested for his involvement in number of cases under different transactions, separate arrest reports should be forwarded to the Magistrate(s) concerned. In the arrest report, the fact of remanding the arrested person or enlarging him on bail should be mentioned.

Procedure when arrests relate to Government employees, armed forces etc.

Arrest of Central or State Government or quasi-Government employees

4. When a Central government employee of any department or a State Government employee or an employee of a quasi-Government Organization is to be arrested by the police, wherever it is practicable and desirable, prior intimation of the arrest of such an employee should be sent to his immediate superior officer or the officer in-charge of the institution or department. The prior intimation must be treated as secret. Whenever prior intimation is

given by telephone it should be followed by a written intimation mentioning the time and date of such conversation. The fact of telephoning should be recorded in the General Diary if intimation is by SHO. If the intimation is by a superior officer he should make a record of it in the Telephone Register after the arrest by the police.

- A. intimation of the arrest along with a copy of arrest memo should be sent immediately to the highest officer of the department available in the district to which the person belongs with a copy to the immediate superior officer (of the person) if, for any reason, prior intimation could not be given; and
- B. This should be followed by a detailed report of the offence committed together with an indication as to whether the arrested person is being released on bail or personal bond, by the police.

Arrest of public servants on operational duty

- 5. When a public servant on operational duty of a department of the Central or State Government, e.g electricity department staff like sub-station attendants, is to be arrested, prior intimation should be given to his immediate superior, as a rule, to facilitate them to make alternate arrangements. Departure from the procedure should be made only in very exceptional cases and even in such cases; intimation should be given to the superior officer immediately after the arrest of the public servant.

Arrest of employees of Foreign Diplomatic/Consular Missions

6. In the event of the arrest of an Indian employee of a Foreign Diplomatic/ Consular Mission, intimation should immediately be given to the Foreign Diplomatic/Consular Mission through the Government.

Arrest of foreigners

7. When a foreigner is arrested, reports as required in Order of Chapter on Foreigners should be sent.

Arrest of Military employees

- 8-A. The arrest of personnel of Armed Forces including Navy and Air Force charged with the commission of an offence should be intimated to the Commanding Officer to enable him to take appropriate measures for the defence of the personnel.
- B. Subject to sub-order (A) above, the person so arrested shall be dealt with in all respects like any other person in the matter of the investigation of the offence in respect of which he is arrested. The question as to whether he is to be tried by a Court Martial or a Court functioning under the CrPC is a matter for decision between the Commanding Officer and the Magistrate before whom he is brought by the police, in accordance with the rules made by the Government of India under Section 475 CrPC.

- C. When any investigation, search or arrest is contemplated within military lines (quarters), the Police Officers concerned should be in uniform and if in plain clothes should carry identity cards and, so far as circumstances permit, prior notice should be given confidentially to the Officer Commanding, Adjutant or Orderly Officer concerned.

Arrest of Indian Army Reservists

9. When a reservist of the Indian Army is arrested and remanded on a criminal charge, the facts of arrest and remand will at once be reported to the DGP with information to the Army unit to which the person arrested belongs. When the case is completed, its result and, in the event of conviction, the period spent in jail by the accused while under trial, prior to conviction and the sentence awarded shall be reported. The information so reported will be communicated by the DGP to the appropriate Army authority.

Arrest of Members of State and Union Legislatures

- 211.** All the rights that any arrested person has are available to Members of Legislature and Parliament whenever they are arrested. All guidelines and instructions contained in this Chapter apply to them. The procedure contained in this should be scrupulously observed whenever any Member of Legislative Assembly/Council or Parliament is arrested by the police.

1. The privilege of freedom from arrest to the Members of Parliament/Legislature is confined only to civil cases for the duration of the session and for a period of 40 days before and 40 days after the session.

The arrest of a Member of Parliament in civil proceedings during the period when he is exempted from such arrest is a breach of privilege and the member concerned is entitled to release. This privilege of freedom from arrest does not, however, extend to criminal offence or cases of detention under the preventive detention.

2. Although Members do not have any privilege or immunity from arrest on a criminal charge or under any law for preventive detention, the house has a right to receive immediate information of the arrest, detention, conviction, imprisonment or release of a member. The failure on the part of a Judge or a magistrate or other authority to inform the house of the arrest/detention or imprisonment of a member would constitute a breach of privilege of the house.

3. Whenever a member of a State or the Union Legislature is arrested on a charge of involvement in a criminal offence, SP shall intimate the concerned DIG and DGP regarding the same by wireless/e-mail/fax and also immediately intimate the same to the Speaker of the Lok Sabha/Legislature or the Chairman of the Rajya Sabha as the case may be, indicating the reasons for the arrest of the said Member and the place of detention or the imprisonment in the form prescribed in the third schedule of the book titled "Rules of Procedures or conduct of business for Lok Sabha". Similar intimation shall be given to the Presiding Officers of the State Legislature in case of arrest of Members of those Legislatures. Where intimation of arrest or detention is sent by wireless or e-mail or telegram, the information on all the

points mentioned in the form should be given succinctly and clearly. Information whether an arrested Member has been released on bail pending investigation on trial should also be given to the concerned authorities. The members arrested should immediately be produced before the Magistrate concerned and there should be absolutely no delay. Failure to send immediate intimation to the Presiding Officer of the Legislature concerned will constitute a breach of the privilege of the House.

4. If a member of the Union or a State Legislature is concerned in an unimportant case, he need not be arrested, except when it is really necessary. When arrest is made in a bailable offence, the member should be immediately released on his own recognizance. If the offence is a non-bailable one, the member should be immediately produced before the Magistrate. In any case the fact of arrest and release on bail or remand should be intimated to the Speaker. Though the instructions are that the Magistrate should send intimation to the Presiding Officer of the Legislature concerned, prompt reporting by police is necessary.

3. A report of the arrest (whether released on bail either by the Police or by the Magistrate) should be sent by the SP in whose jurisdiction the arrest is effected to the Speaker of the Lok Sabha, the Chairman of the Rajya Sabha or the Speaker of the State Legislative Assembly as the case may be, by telegram or Radiogram or fax with a copy of confirmation dispatched simultaneously by speed post along with a copy of Arrest Memo in Form- .

4. The message should contain the information as furnished in the arrest memo sent to Magistrate and relatives (Form). Thereafter a detailed report should be sent to the Presiding Officers concerned containing the following information:

A. The place of custody or detention of the Member;

B. When a Member, who is under detention or is undergoing, a sentence of imprisonment is transferred from one jail to another, the change in the place of detention or imprisonment; and

C. When a member is released from jail on any ground e.g., on bail pending appeal or on the sentence being set aside on appeal or on the remission of sentence by Government on completing the sentence or on the termination of preventive detention, such release.

7. No arrest, whether of a member or of a stranger can be made within the precincts of the house without obtaining the prior permission of the Chairman/Speaker and that too in accordance with procedure laid down by the Home Ministry in this regard. Similarly no legal process, civil or criminal shall be served within the precincts of the House without obtaining prior permission of the Chairman/Speaker whether the house is in session or not.

8. The SP also should simultaneously report the arrest by telegram or radiogram to the DGP, to enable him to report it forthwith to the reports should also be sent to the superior police officers.

Look out notices/circulars

1. In case it is suspected that the absconding accused may flee the Country, look out notices/circulars may be got issued to prevent and monitor affectively the entry or exit of persons who may be required by law enforcement authorities.
 - (i) The basic substantive guidelines regarding publication of the LOCs in relation to Indian Citizens issued by the MHA enunciate the following cardinal principles.
 - (ii) The request for opening of LOC is required to be made to all immigration Check posts in the Country in the Official Format prescribed by the MHA.
 - (iii) The request for opening of LOC must invariably be issued with the approval of an officer not below the rank of Deputy Secretary to the Government of India/Joint Secretary in the State Government/Superintendent of Police concerned at the district level.
 - (iv) The originating agency must ensure that complete identifying personal particulars of the person, in respect of whom the LOC is to be opened, are clearly mentioned in the prescribed proforma. The LOC will not be opened for less than three identify parameters other than name of the subject.
 - (v) An LOC is valid for a period of one year. However, in case the originating agency wants to extend the validity beyond one year if can ask for the extension before the expiry of the one year period. If no request is made for the extension of the LOC within the stipulated period of one year, the immigration officer concerned is authorized to suspend the LOC.
 - (vi) Further Ministry of External Affairs, New Delhi may also be requested not to provide passport fascilities to the absconding accused ans also for the revocation of the Passport, if already issued as provided under section 6 and 10 of the Passport Act, 1967. SSP/SP CID-CB will be the nodal officer for such matter

in the State.

Red Corner notice

In case the accused is suspected to be abroad, a Red Corner Notice may be got issued from Interpol (IPSG Lyons) against him. For getting the Red Corner Notice issued, the prescribed proforma may be obtained from Interpol Wing of CBI and it may be forwarded to Interpol wing, duly filled in, along with an attested copy of warrant of arrest, with English translation, photograph and the fingerprint of the accused, if available. The Interpol Wing will forward the proforma to IPSG and after the Red Corner Notice is issued, a copy will be sent by Interpol Wing to the State on whose request it was got issued.

Extradition

1. Extradition may be defined as the process by which one State upon the request of another surrenders to the latter a person found within its jurisdiction for trial and punishment or, if he has been already convicted, only for punishment, on account of a crime punishable by the laws of the requesting State and committed outside the territory of the requested State.
2. In India the extradition of a fugitive from India to a foreign country or vice-versa is governed by the provisions of Indian Extradition Act, 1962. The basis of extradition could be a treaty between India and a foreign country. Under section 3 of this Act. a notification could be issued by the Government of India extending the provisions of the Act to the Country/Countries notified.
3. Information regarding the fugitive criminals wanted in foreign countries is received directly from the concerned country or through the General Secretariat of the ICPO-Interpol in the form of red notices. The Interpol Wing of the Central Bureau of Investigation immediately passes it on to the concerned police organization. The red notices received from the General Secretariat are circulated to all

the State Police authorities and immigration authorities.

4. Action can be taken by the Police on receipt of information regarding a fugitive criminal wanted in a foreign country under the Indian Extradition Act Article No. 34 (b) of 1962. This act provides procedure for the arrest and extradition of fugitive criminals under certain conditions which includes receipt of the request through diplomatic channels ONLY and under the warrant issued by a Magistrate having a competent jurisdiction.
5. Action can be taken under the provisions of Section 41 (1) (g) of the CrPC 1973 which authorizes the police arrest a fugitive criminal without a warrant, however, they must immediately refer the matter to Interpol Wing for onward transmission to the Government of India for taking a decision on extradition or otherwise.
6. In case the fugitive criminal is an Indian national, action can also be taken under Section 188 CrPC 1973 as if the offence has been committed at any place in India at which he may be found. The trail of such a fugitive criminal can only take place with the previous sanction of the Central Government.
7. India has signed Extradition Treaties, which are in force as on 2003 – 2008

Sl.No	Name of the Country	Year of Treaty
1.	Belgium	1958
2.	Bhutan	1997
3.	Canada	1987
4.	Hong Kong	1997
5.	Nepal (old treaty)	1963
6.	Netherlands	1989
7.	Russia	2000
8.	Switzerland	1996
9.	UAE	2000
10.	UK	1993

11.	USA	1999
12.	Uzbekistan	2000
13.	Spain	2003
14.	Mongolia	2004
15.	Turkey	2003
16.	Germany	2004
17.	Tunisia	2004
18.	Oman	2005
19.	France	2005
20.	Poland	2005
21.	Korea	2004
22.	Bahrain	2005
23.	Bulgaria	2006
24.	Ukraine	2006
25.	South Africa	2005
26.	Belarus	2008
27.	Kuwait	2007
28.	Mauritius	2008

India has Extradition arrangements with following countries

Sl. No	Name of the Country	Year of Arrangement
1.	Australia	1971
2.	Fiji	1979
3.	Italy	2003
4.	Paua New Guinea	1978
5.	Singapore	1972
6.	Sri Lanka	1978
7.	Sweden	1963
8.	Tanzania	1966
9.	Thailand	1982

8. Extradition request for an accused/fugitive can be initiated after charge-sheet has been filed before an appropriate Court and said court having taken cognizance of the case has issued orders/directions justifying accused/fugitive committal for trial on the basis of evidence made available in the charge sheet and has sought presence of the accused/fugitive to face trial in the case.
9. All extradition requests should be supported by documents and information enumerated below.
 - (i) If an extradition treaty exists between India and the requested country, the extradition request and documents connected therewith should be prepared on the basis of provisions of Extradition Treaty.
 - (ii) It should be in spiral bound and contain an index with page numbers.
 - (iii) The request should be supported by a self-contained affidavit executed by the Court by whom the fugitive is wanted or by a Senior Officer in charge of the case(not below the rank of Superintendent of Police of the concerned investigating agency) sworn before the judicial magistrate (of the court by which the fugitive is wanted for prosecution). The affidavit should contain brief facts and history of the case, referring at the appropriate places the statements of witnesses and other documentary evidences. Criminal's description establishing his identity; provision of the law invoked etc. so that a prima facie case is made out against the fugitive criminal.
 - (iv) Paragraph 1 of the affidavit should indicate the basis/capacity in which the affidavit is executed.
 - (v) The affidavit should indicate that the offences for which the accused is charged in India.
 - (vi) The affidavit should also indicate that the law in question was in force at the time of Commission of offences and it is still in force, including the penalty provisions.

- (vii) The evidence made available should be admissible under Indian laws. Accordingly, the affidavit should indicate whether the statements of witness are admissible as evidence in India in a criminal trial/prosecution, statements of witnesses should be sworn before the Court.
- (viii) The affidavit should also indicate that if the accused were extradited to India, he would be tried in India only for those offences for which his /her extradition is sought.
- (ii) Copy of First Information Report (FIR), duly countersigned by the competent judicial authority, should be enclosed with the request.
- (iii) Competent authority should countersigned copy of charge sheet, which is enclosed with the documents.
- (iv) A letter/order from the concerned court justify accused person's committal for trial on the basis of evidence made available in the charge sheet, with a direction seeking accused person's presence in court to stand trial in said court from the country of present stay.
- (v) Nationality, identity and address of the accused including his photograph should be available with the request.
- (vi) Copy of the relevant provisions under which the accused is charged along with the provisions of the relevant laws indicating that the maximum sentence prescribed for the offence for which the accused is charged or convicted.
- (vii) The extradition request is to be made in quadruplet (four copies). All original and copies should be attested/authenticated by the concerned court.
- (viii) All the documents should be very clear, legible and in presentable form as they are to be presented to the sovereign Government of Foreign Countries.
- (ix) Original documents in national languages should be

sent along with certified English translation of each such document from authorized translators.

- (x) Extradition requests/ documents to the country where English is not first language should be submitted along with duly translated copy in host country's local language. The Court issuing warrant should certify such translated copy.

10. After completion of necessary formalities, the request for extradition should contain a letter/note from a Senior Official (not below the rank of Joint Secretary) or the concerned State Government indicating the correctness of the case/material with a request to the Central Executive to forward it to the Government of the concerned foreign country.

N.B: if the concerned court is requesting for extradition of a person, the request in the form of an affidavit should be in first person, i.e by the Hon'ble Magistrate/Judge himself/herself. (Such requests are usually received from Court Masters or other court officials writing in third person on behalf of the Court. Requested States object to it)

NOTE: the request for extradition and the documents thereof should be prepared as per the requirements of the extradition treaty between India and the Country concerned from which the fugitive is to be extradited to India.

Police lock-ups and treatment of persons in custody and undertrial prisoners

212-1-A. Once a person is in custody of the police, the responsibility for his life and safety will be totally on the police. The physical and psychological condition of every person in custody is a major

factor that should determine the precautions, facilities and arrangements required to be made. The other factors such as the nature of the offence in which he is involved, the investigation required to be done, the antecedents, age, sex, ignorance and vulnerability are all vital and crucial. While every case has its peculiar features and circumstances, certain important stipulations should be observed.

- B. The first requirement is physical safety of the person in custody. This includes safety from injury and death, whether self inflicted or otherwise. As the psychological state of each individual cannot be accurately gauged, it is necessary to realize that the general mental state of a person arrested and brought to police station would be fear, shock, trauma, sense of guilt and shame etc. Suicidal tendencies therefore develop. Hence the place where he is lodged should not contain anything including his apparel or belongings that afford him any opportunity to attempt or commit suicide.
- C. There should be a watch on the person all the time, at least by one policeman. The room or place where he is kept should be such as to afford a full view to the Police Officer posted to watch him and also to the Station Writer, HC or Duty officer. The place of work of these two should be so adjusted as to afford a complete view of the lock up rooms.
- D. Wherever any attempt or suspicion about the movements or action comes to notice, the lock up room should be opened and searched. There should be effective intervention to prevent attempt at suicide and injuries. The whole episode should be recorded in the station General Diary, Sentry Relief Book and

the person should be sent for Medical examination with a report. The Magistrate and all other authorities to whom Form report is made should also be informed in writing.

- E. The statements of other persons in custody and those present should also be recorded and enclosed to the report.
 - F. Since the person is in custody, sometimes even self-inflicted injuries or suicides can be interpreted as those caused by police. Hence effective and timely intervention, contemporaneous recording of events, reporting to all concerned of such attempts by persons in custody are important.
 - G. No Police Officer or IO shall use any force or cause any physical injury during interrogation of the person in custody. If such injuries are caused and result in death of the person, the Police Officers concerned will be liable for prosecution for homicide and the burden of proof of their innocence lies on them.
 - H. No one shall be subjected to torture, or to cruel inhuman or degrading treatment in custody.
2. Four blankets and two dhurries for rural stations and six blankets and four dhurries for town police stations having lock-ups should be supplied for the use of persons in police custody for each lock-up. These should be always kept clean, washed and dried. These articles will be treated as station property and the officer in-charge of the station or Outpost will be responsible for their issue to such of the prisoners who do not provide themselves with their own bedding.

3. The police lock-up, if it contains a prisoner or prisoners shall be unlocked at daybreak. The bedding of the prisoners, shall be at once brought outside, well shaken and left for some hours in the sun.
4. Toilets should also be thoroughly cleaned.
5. The persons in custody shall be taken to the latrine and shall be allowed to wash. They shall be given food daily at 10.00 am or earlier if necessary before he is taken to Court and again at 5 pm. If prisoners are not brought to the station before the hours prescribed for meals they should be given food as soon as possible after they are confined in the lock up rooms. They should be fed at government cost. If food is brought by their relatives it should be tested by the family member in their presence.
6. Officers in-charge of Police stations and officer in-charge of guards will be held personally responsible for strict compliance of these orders.
7. Prisoners are not to be subjected to needless indignity or harsh treatment. At district Headquarters or at places where police vehicles are available, prisoners should be conveyed from jail to court and back in the police vehicles. Prisoners whose confessions are to be recorded should be taken to the Court from the jail in a police van, when available, escorted by warders as a special case. In places where there is no police van, but where public transport is available, under-trial prisoners should be conveyed by normal bus service,

irrespective of the distance to be travelled, provided that the number of prisoners to be taken at a time is small and can be controlled easily and provided that their presence in the bus does not cause inconvenience or annoyance to members of the public using it. In places where none of the above modes of conveyance are available, under-trial prisoners who are persons of good social position, accustomed to use a conveyance, may be allowed a conveyance, provided their safe custody is not jeopardized. The same rule should be followed in the case of prisoners who are certified by a Medical Officer to be physically unfit to walk. In other cases, prisoners should go on foot except in the cases noted below, but no prisoner should be compelled to march on foot for long distances.

- A. When convicted prisoners are escorted along with under-trial prisoners, the former may be conveyed by the transport Bus in which the latter are conveyed, irrespective of the distance travelled, in order to avoid the inconvenience and expense of providing a separate escort for them.
- B. Whenever women prisoners have to be escorted by road, they should be provided with a conveyance, where the distance to be travelled by them exceeds 2 km. Conveyance may also be provided for shorter distances for reasons of health or custom or for other valid reason. Failure to make such provision would cause undue hardship to them.

Use of handcuffs

- 213.** The use of handcuffs or leg chains should be avoided and if at all, it should be resorted to strictly in accordance with the law

mandated in judgment of the Supreme Court in Prem Shanker Shukla vs. Delhi Administration (1980, 3 SCC 526) and Citizen for Democracy vs State of Assam (1995, 3 SCC 743). The points to be observed in this regard are as follows:

1. When an accused is in Court during the trial, he must be held to be in the custody of the Court. If an accused is so dangerous that it is necessary to handcuff him, representation should be made to the Court, and the Court will issue appropriate instructions in the matter. Accused persons while in Court during trial should not be handcuffed except with the permission of the Court.
2. Under-trial prisoners and other accused persons shall not be handcuffed and chained without specific permission of the court and only if there is a reasonable apprehension, either due to heinous nature of the crimes with which they are charged or from their character or behavior that such persons will use violence or will attempt to escape or that an attempt will be made to rescue them. The same principle shall be applied to convicts proceeding in public places while in police custody. Vindictivity is to be differentiated from necessity.
3. Whenever non-convicted accused persons are handcuffed with court's permission, the fact and the reasons for it shall be stated in the Station House general diary, the sentry relief book, and in the remand diary forwarded to the Magistrate.
4. The prisoners either convicted or under trial and confined in a sub-jail shall not be handcuffed, whenever they are taken out in the precincts of the sub-jail for food or other necessities, rather

the entire guard including the guard commander shall be present. If there is more number of prisoners, the guard in-charge should inform the officer in-charge of the police station to send two or three constables to assist the sub-jail guard during the period when the prisoners are taken out. The officer in-charge of police station shall provide extra manpower as required by the guard-in-charge.

5. Whenever, it is considered necessary to handcuff certain prisoners confined in sub-jail, while they are taken out, the written orders of the Magistrate should be obtained and the permission granted by him should be maintained in a book to be kept by the guard officer.
6. With regard to a refractory, violent or dangerous prisoner, the officer in-charge of the sub-jail guard or the senior Police officer present may control him only by utilizing more personnel and by such force as may be necessary, while rushing a messenger to the concerned court or Magistrate for permission to handcuff him.
7. Under-trial-prisoners or accused persons in Hospital should not be handcuffed without permission of the court. In no case should prisoners or accused persons who are aged and bed ridden in hospital or women prisoners, juvenile prisoners or civil prisoners be handcuffed or fettered. If necessary extra guard should be provided.
8. The restriction on use of handcuffs is not to place any embargo on use of minimum force to control a violent prisoner.

Sick prisoners

- 214-1.** When a prisoner, who arrives at a Police station, is seriously ill, medical aid should be provided. When not available, the prisoner should be sent by the quickest conveyance available, if his condition admits of it, to the nearest station where medical assistance can be procured.
2. Prisoners attacked by cholera or other infectious or communicable disease in a police station should be removed from the lock-up and placed in an airy part of the station and all possible treatment provided.
3. Whenever sick prisoners are brought from rural police stations to district head-quarters hospitals and admitted as in-patients, the fact should be reported to the Superintendent of Police of the district or SDPO or SHO of local Police Station in whose area the hospital is located, and an armed guard will be provided.
4. If the prisoners ward is not available in the hospital the SP should take up the matter with the concerned authority and ensure that the prisoners' ward as per the norms is provided. The prisoner irrespective of his status should be lodged in the prisoners' ward as to ensure their safety and enable the police to guard them effectively. This would also prevent inconvenience to other patients. Arrangements are to be made for their treatment in the prisoners' ward, if available. However, if necessary they may be shifted in emergencies either to an operation theatre or to an Intensive Care Unit.
5. In case of death of a prisoner admitted to the hospital, the officer in-charge of the police station in whose jurisdiction the

hospital is situated shall register a case under section 174 CrPC and, inform the Executive Magistrate to hold inquest and make such other enquiries. Finally the dead body will be handed over to the relations through concerned police.

Scale of accommodation for prisoners

- 215-1.** The maximum number of prisoners that can be confined in a lock-up should, in each case be fixed by the Superintendent of Police in consultation with the Executive Engineer, Building & Housing Department having regard to the accommodation available therein. A notice in English should be displayed outside the lock-up, showing the maximum number of male or female prisoners who may be confined in it. The number so fixed shall never be exceeded; and any excess over the authorized number shall be accommodated in any convenient building with adequate guard.
2. For purpose of the above Order, 16 cubic meter of breathing space and 4 square meter of ground space should be taken as the minimum requirements for each prisoner to be accommodated in a police lock-up.
3. The design of the lock-up rooms should be prepared in such a manner as to ensure adequate ventilation and light and other safety measures. The electrical wiring should be concealed and the lights embedded in the roof with the switch being kept outside at the entrance to the lock-up. There should be no rods or hooks either on the ceiling or on the walls and both ceiling and walls should be smoothly polished and white washed

frequently.

Accommodation of persons outside the lock-up rooms in the station premises

4. Those prisoners who are not likely to escape or create any problem or those who are not involved in any serious crimes and the women may be allowed to be in any area of the police station under watch. They should not however be allowed any contact with outsiders except with their advocate or in case of women with a female relative.

3. In case where large numbers of persons are arrested under 151 CrPC to prevent breach of peace, they may be made to sit in a place either within the premises of police station or in another building which has access control and with facilities for drinking water and toilets. Where it is not necessary to detain them for any length of time they should be released after making a complete record of each person and the reasons for arrest in the concerned records. Where it is felt necessary to detain them for a few hours and they are not required to be produced before a Magistrate for any specific offence they may be released by the SHO at any time that he considers appropriate. The detention should, in any case, not exceed 24 hours as laid down in section 57 of CrPC. They should all be given food at government cost if not arranged by their relatives or friends.

Confinement of other department prisoners in lockup

- 216-1.** When any prisoner arrested and escorted by officers of other units such as police stations & CID, Excise, Customs etc., are

brought for confinement in the police station lock-up, a written requisition shall be given to the officer in-charge of the police station and the latter shall keep such prisoners in the lock-ups. The Officers of the other units will keep their subordinates besides police station guard. If there are no prisoners in the concerned police station lock-up, the key of the lock-up shall be given to the officers of other branches or units or departments and they will be responsible for the prisoners safe custody.

2. In the lock-up if there are already prisoners of the concerned police station, the key shall remain with the in-charge of the guard.
3. In all circumstances, the duty of supplying the prisoners with food and guarding them, when taken outside the lock-up, shall lie with the outside officers.

Escape from Custody

- 217-1.** In all cases of escape of prisoners from police custody including those from jails where police guards are posted, a report by Fax, Radio or Telephone shall immediately be sent by the Superintendent of Police to the Director General of Police, Addl. DGsP/IGP/L&O, Special Branch, DIGP/Range who will communicate the information immediately to the government.
2. The radio or telephonic report shall immediately be followed by a detailed report in triplicate furnishing the circumstances under which the person escaped, whether the escape of the prisoner was accidental or as a result of collusion or negligence, the action taken to apprehend him, the person or persons

responsible for the escape, the exact quantum of responsibility to be attached to the Police personnel involved and the action taken against them, and other relevant particulars. These reports should be properly drafted and neatly typed with proper care.

3. Copies of the reports shall be sent by the Superintendent of Police to the DIGP/Range . Copies of the reports in respect of cases of escapes from jails where Police Guards are posted shall also be sent to the DIG/SP Jail.
4. The above orders apply also to juvenile convicts.

Bail

- 218-1.** Bail broadly means security for release of a person who is arrested. A person is released on bail with or without sureties. Offences are of two types as far as bail is concerned, bailable and non-bailable. When a person is arrested for a bailable offence, he is entitled to be released on bail either by the SHO or by court. In cases of arrests for non-bailable offences, bail is discretion.
2. **Bail in bailable offences:** The SHO is competent to release a person on bail when arrested for bailable offences. If the arresting police officer is not the SHO, the arrestee shall be produced before the SHO with a written report for release on bail. If the accused jumps bail in a bailable offence and when he is arrested again, it should be treated as a non-bailable offence. In case bail is given by SHO in bailable offence the

bond should be taken in Form . The detailed addresses of the sureties have to be noted there in.

3. **Bail in non-bailable offences:** When a person is arrested for a non-bailable offence ordinarily he shall be produced before the court but the SHO may release on bail in exceptional cases covered by section 437(1) and (2) CrPC after obtaining express permission by SP concerned.
4. **Points for opposing bail in non-bailable offences:**
 - A. Likelihood of absconding.
 - B. Possibility of tampering with evidence, intimidation and threat to witnesses.
 - C. Likelihood of repeating the offence.
 - D. Nature of the offender and the seriousness of the offence.
 - E. Likelihood of breach of peace and tranquility in the locality.
 - F. Likelihood of retaliations by the victim's party.
5. **Bailable warrants:-** When a person is arrested under a bailable warrant, he should not be compelled to come to the police station to give bail. He should be given bail at the place of arrest if he offers security.
6. No police officer has powers to re-arrest an accused person in the same case, who has been released on bail u/s 437 CrPC

1973. When re-arrest is deemed necessary, an application should be made to the competent Court for the cancellation of the bail bond and issue of a warrant of arrest in accordance with the provision of Sec 437 (5)

Anticipatory bail

- 219-1.** When a person apprehends arrest for a non-bailable offence on a reasonable suspicion, he may apply to the High Court or Sessions court to give a direction to release him on bail in case he is arrested.
2. In such cases the court gives notice to the P.P/A.P.P for his objections, if any. The SHO must furnish the P.P/A.P.P with sufficient information to enable him to argue the case.
3. In case the order is given in favour of the petitioner, the direction will be that he should be released on bail in case he is arrested on taking security as specified in that order. This clearly shows that the police officers are competent to arrest even if one gets such order. The only facility is that he should be released on bail in case of arrest without producing him in court.
4. The court may be requested to impose conditions in case an order is given in his favour. Such conditions can be;
 - A. That the person shall make himself available for interrogation as and when required.

- B. That, he shall not directly or indirectly tamper with evidence or witnesses.
- C. That, he shall not leave the place or the country.
- D. That, he shall co-operate with the investigation.

Remand of arrested accused

- 220-1.** When a person is arrested during the course of investigation and if the investigation is not completed within 24 hours, the officer in charge of the police station shall forward the accused to the nearest judicial magistrate along with a remand report enclosed by the case diary written till that date.
2. The accused will be remanded only when the investigation discloses some offence against him so far and further investigation is needed for completion.
3. A remand at a time will be for a maximum period of 30 days.
4. Further remand, if necessary, is only by the jurisdictional magistrate.
5. The police can seek remand for 60 days in ordinary cases where offences are punishable with imprisonment for less than 10 years and 90 days in cases punishable with death or life imprisonment or with imprisonment for not less than 10 years. If the charge sheet is not filed within that period, the accused shall be entitled for a bail even in a serious case like murder.

6. No accused shall be remanded to judicial custody unless he is produced before Magistrate.
7. An accused can be remanded separately for each and every case committed under different transactions.
8. Remands always shall be given by the Judicial Magistrate, but in the absence of any Judicial Magistrate, an executive magistrate on whom the powers of Judicial Magistrate are conferred can give remand, if the arrested person is produced before him. In such cases the remand can be only for a maximum period of 7 days by executive magistrate. Beyond this, remand can be given only by the competent Judicial Magistrate.

Police custody

- 221.** Some times it is necessary for the police to interrogate an accused who are remanded to Judicial custody. In such cases whenever a police officer requires any accused to police custody, the following points shall be borne in mind:
1. Taking a person to police custody is only granted when the magistrate finds sufficient reasons. Therefore the police officer in his requisition shall state satisfactory reasons.
 2. Police custody can be given only within the first thirty days of remand and that too to a maximum period of 30 days. Police

custody can be taken for different remands made in different cases.

3. After the period of custody is over, the accused person shall duly be produced before the magistrate within time.
4. In the case of a woman under 18 years of age, the detention shall be authorized in the custody of a remand home or a recognized social institution.

Searches

222. Searches, personal and house, are important tools of investigation. Police Officers are empowered to conduct these searches as per the various provisions under CrPC. Personal search is conducted immediately after a person is arrested and taken under the custody. House search can be conducted prior to arrest or after the arrest as per the needs and demands of the investigation.

223. **Powers of Search**

- i. An Officer in charge of a Police Station or an Investigation Officer, having reasonable grounds for believing that anything necessary for the purpose of investigation, may be found in any place within the limits of the Police Station, and that such thing cannot in his opinion be otherwise obtained without undue delay, may search the place under Section 165 of the Code of Criminal Procedure. Before making the search, the Police Officer must record in writing the grounds of his belief, specifying therein the thing for which the

- search is made. If the Investigating Officer is unable to conduct the search in person, he may require any officer subordinate Police Officer so deputed should be given an order in writing specifying the place where and the thing for which the search is to be made. Copies of records made above should be sent to the nearest Magistrate empowered to take cognizance of the offence.
- ii. When a search has to be conducted in the jurisdiction of another station, whether in the same or a different district, an officer in charge of a Police Station making an investigation may require under Sub-Section (1) of Section 166 of the Code of Criminal Procedure, the officer in charge of the former station to make a search or cause search to be made. But, where there is reason to believe that the delay occasioned by such a procedure might result in evidence being concealed or destroyed, the Investigating Officer may, under Sub-Section (3) of Section 166 of the Code of Criminal Procedure, make the search himself or cause the search to be made, in which case, he shall forthwith send a notice of the search together with a copy of the list prepared under Section 100 of the Code of Criminal Procedure to the Officer in charge of the Police Station, within the limits of which the place searched is situated and to the nearest Magistrate empowered to take cognizance of the offence. When a search is made under Section 165 or Section 166 of the Code of Criminal Procedure, a copy of the list prepared under Section 100 of the Code of Criminal Procedure, signed by the witnesses, shall be delivered to the owner or occupier of the place searched.
 - iii. Under Section 165(2) of the Code of Criminal Procedure, the Station House Officer or Investigating Officer must, if practicable, perform the actual searching in person. If incapacitated from so

doing he must comply with Sub-section (3) of that section and deliver to his subordinate the prescribed order in writing. A verbal order given on the spot will not fulfill the requirements of the section.

224. **Procedure for Search**

- i. At least two respectable witnesses of the locality shall be asked to be present at a search. The search shall be conducted in their presence and the list of things seized should be signed by the witnesses. The occupant of the place or his representative shall be allowed to be present during the search and a copy of the search list signed by the witnesses shall be given to him.
- ii. When any person is searched under sub-section (3) of Section 100 of the Code of Criminal Procedure, a copy of the list of things taken possession of shall be given to him. Before the commencement of the search, the person of the Police Officer and the witnesses should be searched, so that there may not be suspicion of something extraneous being planted in the house or the place to be searched.
- iii. The law does not require a search under the Code of Criminal Procedure to be made only by daylight, but, normally, daylight should be awaited. If information is received after dusk necessitating the immediate search of a house and if it is apprehended that delay till daybreak might result in evidence being concealed or destroyed, the house should be sealed and guarded and if that is not possible, search should be conducted during the night itself. Before entering the premises to be searched, the exterior of the place shall be inspected to see

whether facilities exist for introducing property from outside. Search must be systematic and thorough. Women should be allowed to withdraw. Indiscriminate search and damage to property should be avoided.

Search proceedings shall be rendered in Form and seizure list prepared in Form .

- iv. A search list/seizure list shall be prepared on the completion of the search in quadruplicate, all the copies being signed by the Police Officer making the search and the witnesses to the search. One copy will be handed over to the owner or occupant of the house, the second copy should be sent to the Magistrate and the third copy should be sent with the case diary to the superior officer to whom case diaries are sent. The fourth copy will form the station record. If blank paper has unavoidably to be used, four copies of the list should be made and dealt with as above affixing the fourth copy to search list book, on return to the station.

Precautions for Conducting Searches

225. The following precautions should be taken while conducting searches:

- i. Searches, as far as possible be conducted during daytime, except when circumstances otherwise warrant. Before proceeding to conduct a search, prepare a record indicating reasonable grounds for making the search, the place to be searched, the thing or things for which search is to be made, and why such thing or things cannot otherwise be obtained without undue delay.
- ii. Search report and one copy of the record so prepared without delay

- should be sent to the Magistrate and duplicate copy to be submitted to the senior officer, and the third copy be kept in case diary file. The witnesses should be respectable and should be inhabitants of the locality. When it is not practicable to do so witnesses have to be selected from any other place, make a record of the reason in case diary. Avoid calling the same witness in several searches. If, for any reasons, the same witnesses have witnessed more than one search, make a record of those reasons in case diary. When the witnesses are selected, serve an order on each of them requesting them to attend and witness the search.
- iii. Commence the search only after securing the presence of witnesses and explaining to them the object of the search and the articles for which it is made. The occupant of the place to be searched should be asked to be present and to attend the search. If the occupant is not willing or fails to be present to attend the search, make a record of it in the search list and the case diary.
 - iv. If there is reasonably apprehension that the delay caused in securing the attendance of the occupant frustrates the very object of search, proceed with the search in the presence of whosoever present on his behalf and record the reasons for so proceeding, in case diary and search list. Get yourself and the witnesses searched in the presence of the owner or occupier or any other adult male member of the house, if available, before the commencement of the search. When once the search is started, do not allow persons inside the house to go out or those outside to come in. Conduct the search in each room in the actual presence of the witnesses.
 - v. After the search is completed and the thing or things for which the search was conducted and any other incriminating articles are

found or brought out, get yourself and the witnesses again searched and make a record of it in the search list. Mention clearly in the search list every item of property seized, the exact place where it was found and how and by what means it was taken out from that place. Note in the search list the descriptive particulars and identification marks of the incriminating articles recovered. Make out the search list on the spot even if no articles are seized. Record the number of the house and other particulars including the occupant's name, parentage and occupation.

- vi. Recover documents, if any, to prove the ownership or occupancy of the person from the place where incriminating articles are recovered and record such recovery in the search list. Sign with date on all pages of all copies of the search list and obtain the signatures of the witnesses on all pages of all the copies. Give under acknowledgment a copy of the search list immediately to the occupant of the house searched.
- vii. On completion of the proceedings send without delay one copy of the search list to the jurisdictional Magistrate, attach another copy to the case diary of the relevant date to be sent to your officer, file the third copy in your case diary file, and attach the fourth copy to the final report to be sent to the court.

Custody of Property

226. According to Section 451 of the Code of Criminal Procedure, when any property regarding which any offence appears to have been committed or which appears to have been used for the commission of any offence is produced before any criminal court during any inquiry or trial, the court may make such order as it thinks fit for

the proper custody of such property pending the conclusion of the inquiry or trial. If the property is subject to speedy or natural decay or if it is otherwise expedient so to do, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. Thus, this section provides for the interim custody of property. The Magistrate, as a rule, will provide a place for the safe custody of property seized in cases. If however, he refuses to take charge of it, the police must be responsible for it. Such property should be kept under lock and key in a lock-up cell or in an iron clamped box in custody of guard.

Disposal of Property if Court Declines to Take Possession

227. When a court or a Magistrate refuses to receive any property from the police or to pass any order under Section 452 of the Code of Criminal Procedure regarding its disposal on the ground that he does not believe that an offence has been committed in regard to it the following instructions should be followed:
- a. The police shall retain the property sufficiently long to enable the parties to appeal to a higher court against the court's or Magistrate's procedure.
 - b. If no application for revision is made nor order passed on revision, the police shall return the property to the person from whom it was taken, unless there is obvious objection to so doing.
 - c. In doubtful cases the police may apply for an order under Section 457 of the Code of Criminal Procedure to the Magistrate having jurisdiction.
 - d. When no order can be obtained from a Magistrate or court the ownership of the property is in dispute or difficult of determination, the safest course will be for the police to retain the property until one of the parties obtains the order of a court. Such

case shall be reported to the Director General for orders.

- e. The police shall not hand over property seized in a criminal case to a person, other than the one from whom it was taken, without the orders of a court or Magistrate.

Live-Stock

228. The seizure of live-stock by the police in criminal cases shall be forthwith reported to the Magistrate for orders under Section 457 of the Code of Criminal Procedure. Pending the orders of the Magistrate regarding its disposal, the live-stock shall remain in the custody of the police, but they may deliver it to the charge of the Panchayat or its owner to be produced when required..

Search for wrongfully confined persons

229. In case of wrongful confinement, the Police Officers do not have powers for conducting search of the confined place without search warrant. The Police Officers have to obtain a search warrant under section 97 CrPC. So is the case in respect of a woman or a female child under the age of 18 years, kidnapped or abducted for any unlawful purposes. Search warrant has to be obtained under section 98 CrPC to search and secure her presence. The person rescued from wrongful confinement shall be produced before Magistrate.

Disposal of the Property coming into the hands of the Police

230. Form should be used for sending property to the Magistrate. Three copies of the form should be prepared by means of carbon paper. The triplicate should be retained in the station and the remaining two copies sent to the Magistrate with the property. When the duplicate

copy is received back from the Magistrate, with his orders thereon, it should be pasted in the book. The Investigating Officer shall write a case diary for dispatch of the property to the court and for the endorsement made by the Magistrate on the duplicate copy of Form

Recovery of stolen property otherwise than on house search - record of material facts

231. When any property is recovered by a Police Officer otherwise than on a formal search of premises, a contemporaneous record of the facts relating to such recovery may be prepared by him in Form and attested by witnesses present at the time of such recovery. This record shall be sent to the Magistrate without any delay. The record so made is admissible in evidence to corroborate the testimony of the police officer, who is prepared it or may be used to refresh his memory. The signature of the attesting witnesses may be used in evidence only to corroborate the statement of the Police Officer that they were present at the time of the recovery of the property and attested the record prepared by him.

232. Chapter 7-A CrPC consisting of sections 105-A to 105-L deals with the provisions and procedure for seizure, arrest, production of documents needed for investigation as well as forfeiture of properties derived from crime.