

2023

NACIN



National Academy of Customs,
Indirect Taxes & Narcotics, Zonal
Campus, Kanpur



National Academy of Customs, Indirect Taxes & Narcotics, Zonal Campus, Kanpur

SALAAM CHRONICLE

A QUARTERLY NEWSLETTER

(For Departmental Officers)



APRIL, 2023

VOLUME: 02, ISSUE: 01

NACIN, ZC, KANPUR



2023



* ROZGAR MELA *



**Participated by
Inspectors
of
Induction Course**



**At Lucknow
On
20.01.2023**

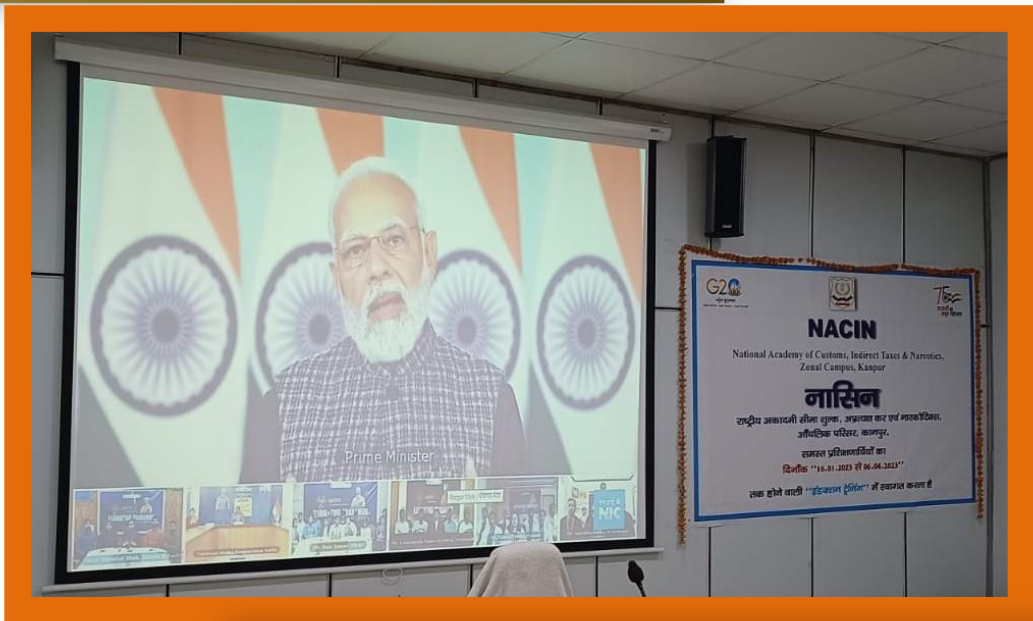


2023



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**At Kanpur
On
20.01.2023**



NACIN, ZC, KANPUR



2023



- **Capacity Building for Ministerial Staff of**
- **Railway Protection Force (RPF) on Procurement Matters***



**Vote
of
thanks**



**Certificate
Distribution**



2023



TRAINING ON CUSTOMS K-9 FOR INSPECTORS OF INDUCTION TRAINING AT LUCKNOW



**TRAINING
ON
CUSTOMS
K-9**



**TRAINING
ON
CUSTOMS
K-9**



2023



INDUCTION COURSE FOR INSPECTORS CLOSING & CERTIFICATE DISTRIBUTION CEREMONY ON 25.03.2023 AT RPF, LUCKNOW



CERTIFICATE DISTRIBUTION CEREMONY



CLOSING CEREMONY



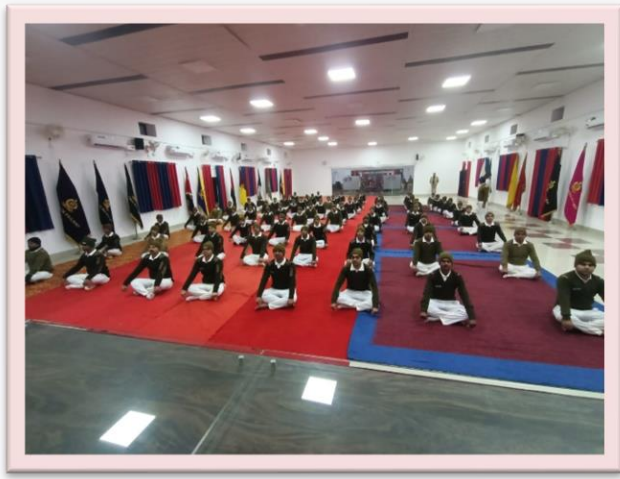
CLOSING CEREMONY



2023



Yoga, PT & Drilling **for Inspectors under Induction Course** **from 02.01.2023 to 06.04.2023 at RPF, Lucknow**



2023



Arms & Ammunition Training for Inspectors under Induction Course from 02.01.2023 to 06.04.2023 at RPF, Lucknow



2023



Arms & Ammunition Training for Inspectors under Induction Course from 02.01.2023 to 06.04.2023 AT RPF, LUCKNOW



NACIN, ZC, KANPUR



2023



Republic Day – 2023 Celebration by NACIN, ZC, Kanpur at Troop Comforts Limited, Kalpi Road Kanpur



NACIN, ZC, KANPUR



2023



Mentorship & Cultural Programme



2023



Class Performance

Self Empowerment



Preventive Vigilance



हिंदी
राजभाषा



NDPS



e-Office



2023



INDUCTION COURSE FOR INSPECTORS CLOSING & CERTIFICATE DISTRIBUTION CEREMONY ON 06.04.2023 AT NACIN, ZC, KANPUR



2023



INDUCTION COURSE FOR INSPECTORS CLOSING & CERTIFICATE DISTRIBUTION CEREMONY ON 06.04.2023 AT NACIN, ZC, KANPUR



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QUARTERLY PERFORMANCE

Training on	No. of Courses	Total No. of Participants	Total Man-Days	Total Man-Hours
GST	1	92	92	460
CUSTOMS	-	-	-	-
NARCOTICS	-	-	-	-
ADMINISTRATION	3	148	8557	40225
INFORMATION TECHNOLOGY	1	159	159	398
VIGILANCE	1	86	86	215
OTHERS	1	44	220	1100
TOTAL	7	529	9114	42398

UP-COMING PROGRAMMES

Next 3 Months

APRIL-2023

GST- Audit two days workshop	05-04-2023	06-04-2023
Capacity Building course for RPF Ministerial staff	10-04-2023	14-04-2023
GST Recent Developments	17-04-2023	17-04-2023
Customs Budgetary changes and Recent Developments	18-04-2023	18-04-2023
Art of Living Program for Gazetted Gr B Officers	17-04-2023	19-04-2023
Operational Awareness Training of Systems for CBIC Officers	19-04-2023	20-04-2023
Wildlife Trafficking changing Role of Customs	21-04-2023	21-04-2023
Orientation Programme for Newley promoted Group A Officers	24-04-2023	28-04-2023

MAY-2023

GST Audit one day workshop	01-05-2023	01-05-2023
Intelligence & Investigation (with tools)	02-05-2023	02-05-2023
Workshop on Cyber Forensic	08-05-2023	08-05-2023
Digital Evidencing and Handling Digital Evidences	09-05-2023	09-05-2023
Prominent Drugs: Detection, Sampling, Testing and their trafficking trend.	12-05-2023	12-05-2023
GST -Service Sector Specific (Construction/Edu/Medical etc.)	15-05-2023	15-05-2023
E Way Bill portal and ADVAIT for CGST and CGST Audit officers	16-05-2023	16-05-2023
Customs Assessment, Classification and Valuation	19-05-2023	19-05-2023
Mid Career Training Programme (MCTP) for officers likely to be promoted	22-05-2023	26-05-2023
E-office (All India)	29-05-2023	29-05-2023
GST Audit one day workshop	01-05-2023	01-05-2023

JUNE-2023

Creating Gender sensitive space & Combating Gender discrimination and harassment.	01-06-2023	01-06-2023
Preventive Vigilance (for CGST & GST Audit Officers)	02-06-2023	02-06-2023
BIFA-GST Analytics	05-06-2023	05-06-2023
Computer Training-Basic	08-06-2023	09-06-2023
Customs - Search, Seizure, Arrest, Investigation & Prosecution	12-06-2023	13-06-2023
Drafting of SCN, Adjudication order and appeals		
Drug law Enforcement for Sepoy/Constables/Havaldars for assisting Investigating Officers in Operation & Investigations	14-06-2023	16-06-2023
Right to Information Act,2005 & Transparency Audit	19-06-2023	19-06-2023
GST-Inspection, Search, Seizure & Arrest Investigation & SCN Drafting of SCN, Adjudication order and appeals	22-06-2023	23-06-2023
Hindi Rajbhasa	26-06-2023	27-06-2023

Common Law on 'Search and Seizure of Electronic/Digital Evidence'

Digital evidence or electronic evidence is “any probative information stored or transmitted in digital form that a party to a court case may use at trial”. Section 79A of IT (Amendment) Act, 2008 defines electronic form evidence as “any information of probative value that is either stored or transmitted in electronic form and includes computer evidence, digital audio, digital video, cell phones, and digital fax machines”. The main characteristics of digital evidence are, it is latent as fingerprints and DNA, can transcend national borders with ease and speed, highly fragile and can be easily altered, damaged, or destroyed and also time sensitive. For this reason, special precautions should be taken to document, collect, preserve, and examine this type of evidence. When dealing with digital evidence, the principles that should be applied are, actions taken to secure and collect digital evidence should not change that evidence; persons conducting the examination of digital evidence should be trained for this purpose and activity relating to the seizure, examination, storage, or transfer of digital evidence should be fully documented, preserved, and available for review. During the seizure of digital evidence in the course of investigation of a cyber crime (or conventional crime with digital trails), the seizure procedure involves several precautions that are required to be taken in addition to the precautions and care taken during seizure of conventional articles. Since digital evidence is an evolving subject, detailed Standard Operating Procedure/Standing Order on search and seizure of digital/electronic evidences delineating the modalities, procedure, precaution, handling and custody of digital/electronic evidences must be followed.



CHAIN OF CUSTODY: Continuity of possession or the chain of custody of evidence is an important aspect whenever evidence is collected, until it is presented in the court as an exhibit. The chain of custody assures continuous accountability. If it is not properly maintained, an item may become inadmissible in the court. Failure to substantiate the chain of custody may lead to serious questions regarding the authenticity and integrity of the evidence and the examination rendered upon it, making the whole process an exercise in futility. There are cases where failure to mark the items for subsequent identification in the court of law has resulted in the acquittal of the accused. Similarly, failure to account for certain items during a certain period or with a particular agency such as court, laboratory, police station, etc., at a particular time results in inadmissibility of the evidence itself. When any property is seized, it shall be brought to the Police Station concerned and kept in the Malkhana pending the orders of Magistrate or court regarding its disposal. Every item that is so received shall be entered in the Malkhana Register. The Head Moharir is directly in charge of the 'Malkhana' and is responsible for the care and safety of property received and for the correctness of accounts thereof. Each article in the Malkhana shall be labeled. The label shall contain a reference to the entry in the Malkhana register and a description of the article itself and a reference to the case number and serial number off the seizure list. When any property is seized and brought to an outpost it shall be kept in the Malkhana of the outpost. The Head Constable in charge of the outpost shall maintain a Malkhana register in accordance with these rules and shall forward the property with the least possible delay to the Officer in charge.

Arrest: Arrest means “the deprivation of a person of his liberty by a legal authority or at least by apparent legal authority”

Power of Arrest: Chapter V of the Code of Criminal Procedures, 1973 deals with various provisions of arrest (Section 41 to 60). Police officers derive their powers of arrest without warrant from sections 41, 42, 43(2), 60, 129 and 151 CrPC. Provisions of sections 46, 47, 49, 50, 51, 56, 57, 167 and 169 of CrPC deal with various procedures and precautions during and after arrest.

1. Police officer shall bear in mind that the arrest is permissive but not obligatory. He may submit final report under section 173 CrPC without affecting the arrest of accused.

COMMON LAW ON 'ARREST' & 'CUSTODY'

2. While affecting arrest of any person, he shall ensure strict compliance of guidelines issued by National Human Rights Commission and the higher judiciary, and safeguards provided under recent amendments of the provisions of Cr.PC 1973.
3. After an arrest of person, during the custody, the officer arresting shall ensure necessary arrangements and precautions that the person in custody is neither physically harmed by anybody or by the person himself.

Arrest Warrants: The warrants are either bailable or non-bailable. In respect of bailable warrants, the arrestee should be released on bail when he offers the required security and in respect of non-bailable warrants, the police officer has no discretion, and the person must be produced before the concerned jurisdictional Court. Prompt execution of warrant is one of the foremost duties of the police and should receive high priority. 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 with Warrant: Section 70-81 under Chapter VI of CrPC, 1973 deals with the issue of warrant of arrest.

COMMON LAW ON 'ARREST' & 'CUSTODY'

- a. The officer entrusted with the service of a Warrant shall be informed of the date on which he is required to return; and on his return the warrant if it has been executed shall be returned to the court with a report endorsed on its back by the officer to whom the warrant was first directed stating how and by whom it has been served.
- b. A warrant of arrest of an accused person remains in force, and shall be retained at Police Station, till the arrest is made or individual surrenders or till the warrant is formally cancelled or withdrawn by the court which issued it.
- c. When a Police Officer to whom a warrant has been entrusted for execution fails to find the accused person, or has reason to believe that he has absconded or is concealing himself, the warrant cannot be executed, he shall submit a report in writing stating clearly reasons for such belief.
- d. A Magistrate issuing a warrant is required to fix a date by which the warrant is to be executed, or failure to execute reported.

If it is not possible to return the warrant duly executed to the issuing court by the date fixed in the warrant, the Officer-in-Charge of the Police Station to whom the warrant has been addressed or endorsed, shall submit so as to reach the issuing court not later than the morning of the date fixed, a report stating the reason why the warrant has not been executed. If the accused is absconding, he shall also send with his report the original report referred to in clause (e) above of the officer to whom the warrant was made over for service together with the list of property belonging to the absconder. It will then rest with the Public Prosecutor to apply for proclamation and attachment if necessary.

- e. An unexecuted warrant for the arrest of a witness shall be returned to the Magistrate on the date fixed therein so that he may take any further steps he may deem fit.
- f. Unexecuted warrants for the arrest of accused person shall be kept in a file until they are arrested or the warrants are cancelled or withdrawn.

COMMON LAW ON 'ARREST' & 'CUSTODY'

Arrest without warrant: The powers of arrest without warrant possessed by Police Officers are laid down in Sections 54, 55, 57 (1), 128, 151 and 401 (3) Cr. PC.

Discretion to arrest: A Police Officer has discretion whether or not to arrest a person of his own motion in a cognizable case and shall be careful to abstain from unnecessary arrests. While making arrest, IO should observe and follow the provisions of Chapter V of the CrPC and guidelines issued by the Hon'ble Court from time to time.

Procedure for making arrest as provided under Cr.PC.: Provisions of Chapter V of CrPC and guidelines issued by NHRC and Hon'ble Court from time to time be observed while effecting any arrest by the IO. Followings are general precaution and guidelines to be followed while making any arrest:

i. Every police officer while making an arrest shall bear an accurate, visible and clear identification of his name which will facilitate easy identification.(Section 41-B of Cr.P.C)

- ii. Every police officer while making an arrest shall prepare a memorandum of arrest which shall be attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made, and countersigned by the person arrested. (Section 41-B of Cr.PC)
- iii. Every police officer while making an arrest shall inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest. (Section 41-B of Cr.PC)
- iv. Every police officer shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information. (Section 50A (1) of Cr.PC). The police officer shall inform the arrested person of his rights as soon as he is brought to the police station. (Section 50A (2) of Cr.PC). An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station. (Section 50A (3) of Cr.PC)

COMMON LAW ON 'ARREST' & 'CUSTODY'

- v. No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. (Article 22 (1) of the Constitution of India)
- vi. Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. (Section 50 (1) of Cr.PC)
- vii. Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf. (Section 50 (2) of Cr.PC)
- viii. A police control room shall be established in every district and at UT level. The names and addresses of the persons arrested shall be displayed on the notice board of the control rooms at every district. (Section 41C of Cr.PC)
- ix. Section 46 of the CrPC lays down that the police officer making the arrest of a persons 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. 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.
- x. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate. (Article 22 (2) of the Constitution of India)

COMMON LAW ON 'ARREST' & 'CUSTODY'

- xi. A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station. (Section 56 of Cr.PC)
- xii. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court. (Section 57 of Cr.PC)
- xiii. No person who is arrested shall be denied the right to consult, and to be defended by, a legal practitioner of his choice. (Article 22 (1) of the Constitution)
- xiv. When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation. (Section 41-D of Cr.PC)

Guidelines issued by Supreme Court in *D. K. Basu Vs State of West Bengal* case for making arrest: 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 insist be recorded in a register.

- i. 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 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.
- ii. 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.

COMMON LAW ON 'ARREST' & 'CUSTODY'

- iii. 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.
- iv. 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.
- v. 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.
- vi. 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.
- vii. 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 concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
- viii. Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.
- ix. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- x. 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 conspicuous notice board.

COMMON LAW ON 'ARREST' & 'CUSTODY'

Search of the Arrested Person:

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 Property Room (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.

Search of Arrested Female: Whenever it is necessary to cause a female to be searched, search shall be made by a Woman Police Officer or another female with strict regard to decency.

The officer or other person making any arrest, shall seize from the arrested person any offensive weapons, which she has on her person and shall deliver all weapons so taken to the court or officer before which or whom she is produced.

Treatment of the Arrested Persons

- i. 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.
- ii. 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

COMMON LAW ON 'ARREST' & 'CUSTODY'

SHO shall immediately forward such persons(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.

- iii. 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.

Arrest in Special Cases:

A. Arrest of Female:

In addition to all the safeguards and procedure to be followed while arresting a male suspect/accused, following additional requirements are to be observed while arresting a female suspect/accused:

1. Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made. [Sec. 46 (4) Cr.PC]
2. Where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest. [Proviso to sub-section (1) of section 46 Cr.PC]
3. Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency. [Sec. 51(2) Cr.PC]
4. Female suspects should not be kept in a police lock-up in which male suspects are detained. They should be guarded by female constables (*Sheela Barse vs. State of Maharashtra*)
5. Interrogation of female suspects should be carried out only in the presence of female police officers/constables. (*Sheela Barse vs. State of Maharashtra*)

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B. Apprehension of a juvenile in conflict with law

The Juvenile Justice (Care and Protection of Children) Act, 2015 provides for certain special provisions in case of apprehension of a juvenile in conflict with law.

- a. As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the designated Child Welfare Police Officer, who shall produce the juvenile before the Juvenile Justice Board (JJB) without any loss of time but within a period of twenty-four hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the JJB. In no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in a jail."
- b. Where a juvenile is apprehended, as soon as may be after the apprehension, inform the parent or guardian of the juvenile, if he can be found, of such arrest/apprehension and direct him to be present at the JJB before which the juvenile will appear.

C. Arrest of Deserter

A deserter shall on arrest or surrender be taken to the Officer-in-Charge of the nearest Police Station who shall communicate to his commanding officer as soon as possible. The deserter shall then be taken to the nearest Magistrate for orders.

D. Arrest of Public Servant

Information of the intended arrest of a public servant shall, if possible, be given to such public servant's immediate superior officer before the arrest is made; otherwise, information shall be given immediately after arrest.

E. Arrest of Persons Belonging to the Indian Army, Navy or Air Force and Instructions regarding Military Criminal Jurisdiction:-

On the arrest by the police of a person subject to Military, Air Force, Naval law charged with the commission of an offence early intimation shall be sent to the Officer Commanding the Unit to which such person belongs.

- F. Where the arrested person is **foreigner**, then in accordance with

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the provision of Vienna Convention on Consular Relations, he/she has a right to contact and inform about the factum of arrest to the diplomatic or consular officials of his or her country.

G. Arrest of Judicial Officer: The Supreme Court in the case of *Delhi Judicial Service Assn. vs. State Of Gujarat* has laid down the following guidelines for the police while arresting a judicial officer:

- a. If a judicial officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.
- b. If facts and circumstances necessitate the immediate arrest of a judicial officer of the subordinate judiciary, a technical or formal arrest may be effected.
- c. The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.
- d. The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the District & Sessions Judge of the concerned District, if available.
- e. Immediate facilities shall be provided to the Judicial Officer for communication with his family

members, legal advisors and Judicial Officers, including the District & Sessions Judge.

f. No statement of a Judicial Officer who is under arrest be recorded nor any panchnama be drawn up nor any medical test be conducted except in the presence of the Legal Advisor of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.

g. There should be no handcuffing of a Judicial Officer. If, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be over-powered and handcuffed. In such case, immediate report shall be made to the District & Sessions Judge concerned and also to the Chief Justice of the High Court. But the burden would be on the Police to establish the necessity for effecting physical arrest and handcuffing the Judicial Officer and if it be established that the physical arrest and hand-cuffing of the Judicial Officer was unjustified, the Police Officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court.

COMMON LAW ON 'ARREST' & 'CUSTODY'

H. Arrest, Detention, Release of Members of Parliament/Members of Legislative Assembly

- a. Information about the arrest, detention, release, etc., of the members of the Parliament or State legislative Assembly should be sent immediately by fastest means of communication to the Speaker/Chairman, as the case may be, by the Superintendent of Police concerned.
- b. As per Section 222 A of the Rules of Procedures and Conduct of Business of the Rajya Sabha, the Police, Judge or Magistrate would, have to intimate the Chairman of the Rajya Sabha about the reason for the arrest, the place of detention or imprisonment in an appropriate form.
- c. The main privileges of Parliament/MPA are in civil cases. As per section 135 of the Code of Civil Procedure, they have freedom from arrest during the continuance of the House and 40 days before its commencement and 40 days after its conclusion. However, privilege of freedom from arrest does not extend to criminal offences or cases of detention under preventive detention.
- d. No arrest can be made within the precincts of the House without the

prior permission of the Chairman/Speaker of the House. Similarly, no legal process, civil or criminal, can be served within the precincts of the House without obtaining the prior permission of the Chairman/Speaker whether the House is in Session or not.

- e. The only protection from arrests is to the President of the India, who is immune from civil and criminal proceedings until their term is over.

Instructions for effecting arrest in jurisdiction of Police Station of other States/UTs:

In addition to guidelines for arresting any accused, following instructions should be followed when any accused is arrested in the jurisdiction of Police Station of other State/UT:

- i. The IO and other police officer/staff should take the prior written permission of the superior officer to going out to other State/UT. He can take permission on the phone only in case of urgencies. Further, DD/GD entry be made in the police station in this regard.
- ii. A lady police officer should be made part of a team if the arrestee (the person to be arrested) is a female.

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- iii. The local police in whose jurisdiction accused is to be arrested should be informed and assistance and cooperation from the concerned police station should be sought. However, in case of exigency or apprehending his/her escape or for reasons to be recorded in writing, prior intimation may not be made.
- iv. The police officer shall prepare an arrest memo specifying the time and date of arrest and the name of the relative or friend to whom the information of arrest is given.
- v. After arrest, the IO/police team must visit the local police station, and an entry in the Daily Diary must be made indicating the name of the persons arrested. Articles (things) must also be mentioned in the Daily Diary, if anything is recovered. In case, victim is recovered, details of victim must also be given.
- vi. Transit remand must be obtained after producing the arrestee before the jurisdiction magistrate. The arrestee must be produced in front of the magistrate before 24 hours.
- vii. The IO/police officer must make an arrival entry in the record after arriving at the police station. Details of person arrested and the articles recovered, if any, be entered in the DD/GD. Further, he

must also inform the concerned SHO or senior police officer about it immediately.

- viii. After arrival, the arrested person must be produced at the earliest before the Jurisdictional Magistrate (within 24 hours of the arrest, excluding the time of the journey).
- ix. If during investigation, any victim is recorded, then statement of the victim must be recorded at the earliest. If the victim recovered is minor, he/she should be produced before the local Child Welfare Committee for a further decision concerning the custody. In any circumstance, minor victim shall not be made to stay in the police station during the night hours.

Requisition to Arrest by any other Police Officer:

Any police officer may cause any person whom he is empowered to arrest under section 54(I) clause 9, Cr. PC to be arrested by giving to any other Police Officer the information which will justify that officer in making the arrest in the exercise of his own powers under that section. The requisition shall specify the person to be arrested and the offence or other cause for which the arrest is to be made.

COMMON LAW ON 'ARREST' & 'CUSTODY'

USE OF HANDCUFF: 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 repeatedly explained and mandated in judgment of the Supreme Court in *Prem Shanker Shukla v, Delhi Administration* [(1980) 3 SCC 526] and *Citizen for Democracy v. State of Assam* (1995) 3 SCC 743]. The Court expressly declared, directed and laid down the following as a rule regarding handcuffing:

- i. Handcuffs or other fetters shall not be forced on a prisoner - convicted or under-trial-while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back.
- ii. The police and the jail authorities, on their own, shall have no authority to direct the hand-cuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.
- iii. Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate.
- iv. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, 'his tendency to escape,

he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available', the Magistrate may grant permission to handcuff the prisoner.

- iv. In all the cases where a person arrested by police, is produced before the Magistrate and remand - judicial or non-judicial - is given by the Magistrate, the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.
- v. When the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.
- vi. Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guide-lines given above, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate.

COMMON LAW ON 'ARREST' & 'CUSTODY'

GUARD FOR LOCK-UP:

- a. On the arrival of an arrestee, the Officer-in-charge of a Police Station shall put a guard and place a Head Constable or a Constable as in charge. He shall enter their names and their hours of duty in the Sentry Relief Book.
- b. At the time of relieving sentries, the officer-in-charge of the guard and the relieving sentry shall count the arrestee and see that all is well.
- c. The key of the Lock-up shall remain with the sentry and except in urgent cases, such as an outbreak of fire, he shall not unlock the door without first calling the Officer-in-charge of the Police post. No arrestee/inmate shall be permitted to leave the lock-up after nightfall except in special or emergent circumstances which shall be recorded in the sentry relief book.
- d. There shall be proper lighting to illuminate the interior of the lock-up.
- e. If it becomes necessary to take out a arrestee/inmate, the Officer-in-charge of the guard shall be called and the assistance of other Constables may be taken, if required.

POLICE LOCK-UPS AND TREATMENT OF PERSONS IN CUSTODY:

- a. Once a person is in custody of the police, the responsibility for his life and safety is 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 may 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.

COMMON LAW ON 'ARREST' & 'CUSTODY'

- c. There should be a watch on the person all the time. The room or place where he is kept should be as such as to afford a full view to the Police Officer posted to watch him.
- 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 and the person should be sent for Medical examination with a report.
- 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 as per law.
- h. No one shall be subjected to torture, or to cruel inhuman or degrading treatment in custody.
- i. Appropriate number of blankets should be supplied for the use of persons in police custody for each lock-up. These should be kept clean, washed and dried. These articles will be treated as station property and the officer in-charge of the station will be responsible for their custody and issue to arrestees.
- j. The police lock-up, toilets, blankets etc. should be kept clean.
- k. The persons in custody shall be given daily food as prescribed at government cost. If food is brought by their relatives, each item of the food should be tested by the family member in the presence of police.

COMMON LAW ON 'ARREST' & 'CUSTODY'

ESCAPE FROM CUSTODY:

- a. In all cases of escape of arrestee/prisoners from police custody including those from jails where police guards are posted a FIR should be registered for investigation and search immediately launched.
- b. The radio or telephonic report shall immediately be followed by a detailed report furnishing the circumstances under which the person escaped, whether the escape of the arrestee/prisoner was accidental or as a result of collusion or negligence, the action taken to apprehend hi, 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.
- c. Copies of the reports shall be sent by the Superintendent of Police to the IGP/DGP.



Common Law on 'Panchnama'

The only occasion on which a document which is popularly styled as a panchanama is required by law to be drawn up are when (i) some articles are seized in the course of search of a place under Section 100 of Criminal Procedure Code or (ii) an investigation into the cause of death is made under Section 174, Criminal Procedure Code. The holding of panchnamas on other occasions is not a duty imposed upon a Police officer by law, though in practice a Police officer resorts to it as a mode of procuring independent evidence to corroborate the results of his own inquiry and observation. In such cases a panchnama by itself has no evidentiary value. It is merely a memorandum of what has been observed by the panch and the investigating officer, who are apt to forget many of the details observed by them, in the interval between the events themselves and the day on which they are called on to testify to them in Court. Hence a panchnama is useful only as a piece of corroboration of the oral evidence of the panch and the investigating officer (Section 157, Evidence Act) or as a memorandum of facts observed by them, which they may use to refresh their memory while giving evidence of those facts (Section 159, Evidence Act). For the latter purpose, it is essential that the person using the panchnama must either have written it himself immediately after having observed certain facts or must have personally read it soon after it was written up by someone else, and found it to be correct.

The following general hints should be borne in mind in holding panchnamas:

- i. The panchnama should be written up at the place where and immediately after, the proceeding concerned, e.g., a search, is held.
- ii. It should be held ordinarily during day, but if the circumstances demand it, even during night time.
- iii. As many fair copies are supposed to be made, it should be written up very carefully, so as to avoid the need for insertions or erasures. All erasures or insertions, if inevitable, should be initialed by at least two of the panch. Copy of the panchnama should be given to the person concerned without his asking for it.
- iv. In all murder cases the investigating officers should themselves draw the panchnamas.

Common Law on 'Panchnama'

- v. In case of the attachment of currency notes or documents, the identification of which is a material point, the initials of the panch should be taken on them, and in case of currency notes, the numbers should also be noted in panchnama.
 - vi. Where the complainant or informant is present, the identification of property attached should be done in the presence of the panch and the fact noted in the panchnama.
 - vii. When ornaments are concerned, they should be got properly weighed by a goldsmith who may be included among the panch
 - viii. Where any property is produced by the accused, the exact place where it was found and the fact that the panch accompanied the accused producing it should be mentioned.
 - ix. Care should be taken to avoid the inclusion in the panchnama of-
 - a) any statement of accused person except to the extent admissible under Section 27 of the Evidence Act,. or of other persons except when the statement is coupled with some relevant conduct, e.g., the owner of property in identifying it makes a statement that it is his own. Statements of accused should be incorporated in the panchnama only) if the accused has made the statement in the presence of the panch witnesses. It should be borne in mind that the value of such a panchnama is reduced to a great extent, if some part of it is found to be untrue.
 - b) the opinions of the panch or the investigating officer except to the extent permitted by Section 174, Criminal Procedure Code.
 - x. For certain specific duties the Home Guards are a part of the Police Organization and as such member of the Home Guards cannot be regarded as an independent person in the judicial sense. In view of this, Police officers should refrain from using Home Guards as Panch witnesses.
 - xi. A fresh panchnama should be drawn up every time when the offender is approached by a bogus customer in a trap case.
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