

DRAFT STANDARD OPERATING PROCEDURES/ GUIDELINES
FOR SAFEGUARDING PERSONS
TO BE ARRESTED/ DETAINED BY THE POLICE AUTHORITIES
AGAINST CUSTODIAL VIOLENCE

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CHAPTER 01: PRELIMINARY

Part 01 – Introduction:

Entries 1 and 2 of Schedule VII, List II - State List of the Constitution of India, pertain to Public Order and Police, respectively. The Code of Criminal Procedure, 1973, contains provisions granting power to police to arrest or detain an individual in the process of investigation of crime and/ or maintenance of order. The provisions of the Cr.P.C., 1973, enumerate the conditions in which arrest / detention can be made, along with the procedure for arrest or detention. These powers, when used indiscriminately, lead not only to abuse of the procedure, but also result in the violation of the fundamental rights of the citizens as enshrined in the Constitution of India. Indiscriminate arrest by the police and custodial violence, while the individual is in police custody, are serious issues that need to be dealt with utmost sensitivity at the highest levels of the police leadership with a view to put a complete stop to such repugnant practices.

Statement of the Problem.

1. Abuse of powers of arrest / detention, as spelt out in the Cr.PC by the police and the inhuman treatment meted out to the suspects/accused in police custody results in custodial violence.
2. A grave consequence of this is the violation of fundamental rights of the individual, which are enforceable in a Court of Law.
3. It not only has a "Chilling Effect" on society, but also erodes the credibility of the police organization, thereby creating a chasm between the police and the society.
4. Wide coverage of the incidents of custodial violence by the media, including the social media causes a serious loss of face to the police. The image of the police takes a severe beating, as immense good work done by the police is overshadowed by such abhorrent incidents of custodial violence.
5. No Police Agency without the constructive support of the society can ever successfully achieve its objectives of crime control, maintenance of order.

Part 02 – Objectives of the Standard Operating Procedures.

The instant draft SOP has been prepared by the BPR&D on the directions of the Ministry of Home Affairs, Government of India.

The objectives of the SOP are as enlisted below:-

1. To lay down professional guidelines for Police officers to deal with accused person / detenu in Police Custody.
2. To draft guidelines that will enable all Police Organizations to frame mechanism to stop custodial violence in their respective States / UTs / Organizations and fix responsibility of the erring officers / personnel, if such mechanism does not

exist, as well as to review the existing mechanism dealing with custodial violence and custodial death, if one such exists.

3. To standardize preventive and remedial police response with reference to situations of custodial violence.
4. To review the policy of capacity building in respect of knowledge and understanding and skills of Police Officers about Human Rights and its implications in such cases.
5. To bring behavioral and attitudinal change in Police officers while discharging their duties and enhance the trust and cooperation of public in police functioning.
6. To utilize this SOP as an instrument to restore a sense of security among the public and regain the diminishing faith and confidence of the public in the police and its working engendered due to incidents of custodial violence.
7. To ensure strict implementation of section 41 Cr.P.C, 1973.

CHAPTER 02: PRE-ARREST CHECKLIST

2.1] To avoid unnecessary arrest, a notice of appearance before Police Officers u/s 41A of the Code of Criminal Procedure-1973, be sent to a person against whom a reasonable complaint, credible information or reasonable suspicion exists that he was part of commission of any offence. Such a person can be sent such a notice of appearance at a given place and time.

2.2] In case of failure or unwillingness to comply by such a person, of notice of appearance u/s 41 Cr.PC or unwillingness to identify himself by such a person, then Police Officers can arrest the said person(s) after issuance of orders by competent authority¹.

2.3] Before making an arrest, it is necessary for a police officer to make sure that at least any one of the following conditions is fulfilled and reason and necessity of arresting a person may be recorded in writing. The same should be intimated either to the court of law or to a superior police officer:-

- a. To prevent such a person from committing further offences.
- b. To ensure proper investigation of the crime(s) committed.
- c. To prevent such a person from destroying or contaminating the evidences related to crime committed in any manner².
- d. To ensure co-operation from fear stricken victim(s) who will otherwise be reluctant to come forward due to fear of the accused³.
- e. To prevent such an accused person(s) from issuing threats or using undue influence, coercion, inducements etc. or other unlawful means to prevent either victim or witnesses to depose before a Police officer or a Court of Law.
- f. To prevent any chances of such accused person(s) from fleeing away or going out of jurisdiction of a Police officer or a Court of Law.
- g. An unwillingness of an accused person(s) to be identified for serving a summons or warrant⁴.
- h. If his presence is required for the process of investigation⁵.

In case of any or all of the conditions mentioned above (a to h) are fulfilled than Police officers should exercise their power of arrests except under extraordinary circumstances.

The Police officer should not engage in following:-

- Arresting as a regular act or arresting for the sake of routine issues.⁶

¹ The Code of Criminal Procedure, 1973

² The Code of Criminal Procedure, 1973

³ Hon'ble Supreme Court Judgment, Shri D.K.Basu, Shri Ashok Johri Vs State of West Bengal

⁴ The Code of Criminal Procedure, 1973

⁵ Andhra Pradesh Police Manual

⁶ Andhra Pradesh Police Manual

CHAPTER 03: PROCEDURE TO BE FOLLOWED WHILE ARRESTING A PERSON

Part A – Precautions while arresting a person.

1. The Police personnel involved in arresting any person must wear visible name tags and their names should also be recorded in Police diary.
2. Arrest memo of the arrestee must be prepared, mentioning date, time and place of arrest and must be signed by at least one reputed local witness and countersigned by the arrestee himself.
3. One person of the arrestee's choice must be informed about the arrest. Date, place and time of detention must also be conveyed as soon as practicable unless the witness to memo of arrest was the person of his choice and was present at the venue of arrest. The same should also be recorded in Police diary⁷.
4. Police personnel affecting the arrest must do it with minimum use of force and publicity.
5. A person must be informed why and by whose authority, his arrest is being executed. Arrestee should be requested to cooperate⁸.
6. Information about all such arrests must be forwarded to Senior Police Officers and District Control Room⁹.
7. Ensure that medical examination of the arrestee is done at the time of his arrest (Sec 54 CrPC) and the same is specified in Arrest memo.
8. Detailed guidelines on use of handcuffs are given in Supreme Court's judgments Prem Shankar Shukla Vs Delhi Administration (1980) & Citizen of Democracy Vs State of Assam (1995). Use of handcuffs should be an exception and not a rule. Handcuffing to be used only in certain cases- serious non-bailable offences, previously convicted, likely to escape, violent or disorderly character.
9. Ensure that a written order is sent to any person who may be required to come to the police station for the purpose of questioning. (Section 160 (1) Cr PC).
10. Ensure that a GD entry is made in the police station regarding the questioning/detention.
11. Statements given to police under 161 Cr PC are not admitted as evidence for prosecution in the court. (Section 162 Cr PC).
12. Police cannot obtain signature/thumb impression of the witness on any statement made to police. (Section 162(1) Cr.PC)

⁷ The Code of Criminal Procedure,1973

⁸ Maharashtra Police Manual

⁹ Section 41 of the Code of Criminal Procedure,1973

13. Do not force a person to compelled testimony i.e. force him to give evidence/statement that may incriminate him or testify against any person. (Section 161(2) Cr PC & Article 20 (3))
14. Do not summon to police station any male person below 15 years of age or above 65 years of age or a woman for the purpose of questioning. They shall be questioned at their place of residence. (Section 160 (1) CrPC)
15. Do not subject any person in custody to torture, beating or cruel treatment. Ensure not to detain anyone for prolonged period in the name of interrogation as this may amount to wrongful confinement and illegal detention. (Offence u/s 342 IPC)
16. Arnesh Kumar Vs State of Bihar (2014/SC) – In cases where offence is punishable with imprisonment for a term less than 7 years or which may extend to 7 yrs, police officers to follow section 41(1)(b)(ii) CrPC strictly. Arrests not to be made in routine and mechanical manner.

A-1) If the person to be arrested is a Woman.

1. No woman should be arrested after the sunset and before the sunrise unless under exceptional, circumstances the woman police officer shall by making a written report obtain the prior permission of the judicial magistrate of first class within whose jurisdiction the offence has been committed or the arrest is to be made, as per section 46(4), CrPC 1973.
2. Procedure for arrest of women shall be strictly in keeping with section 42 of the Cr.P.C, 1973 where only a lady police officer can arrest a woman.
3. If a woman police official is not available then the woman to be arrested should be allowed to have one person who should be a woman with her as a companion and should be allowed to remain with the arrested woman throughout the process¹⁰.
4. Do not summon a woman for questioning at police station but do it at her place of residence/choice. (Section 160(1) Cr PC).
5. The statement of a woman victim under 160(1) Cr PC to be recorded by a woman police officer only.

A-2) If the person to be arrested is a child in conflict with law.

1. A child in conflict with law is a person who is below the age of 18 years at the time of making arrest or at the time of commissioning of crime.
2. A child alleged to be in conflict with law, apprehended by the police shall be placed under the charge of either a designated child welfare police officer in

¹⁰ Andhra Pradesh Police Manual

every police station or Special Juvenile Police Unit to be formed in every district as per provision of section 107 of the Juvenile Justice (Care and Protection of Children) Act-2015.

3. A child alleged to be in conflict with law shall not be kept in police lockup or in a jail under any circumstances. Such child shall be produced before the board without the loss of time but within a period of twenty-four hours of being apprehended¹¹.
4. Special care must be taken to not to use accusatory or adversarial language while interacting with children in conflict with law. Such children should be dealt with empathy and great care. They should not be treated at par with adult offenders.
5. Do not arrest a child below 7 years of age. [Sec.82 IPC]
6. Do not call a person/child below 15 years of age at the police station for questioning. [Sec.160(1) CrPC].
7. The identity of the child should not be disclosed to the media or in public such as his name, address, photograph, school, family details etc. (Sec.23 POCSO & Sec21 JJ Act).
8. The statement of the child shall be recorded at the residence of the child or at a place of his choice and as far as practicable by a woman police Sub-Inspector. (Sec.24(1) POCSO Act).
9. The police officer while recording the statement of the child shall not be in uniform. (Sec.24(2) POCSO Act)
10. No child shall be detained in police station in the night for any reason. (Sec. 24(3) POCSO Act)
11. The victim child should be immediately given medical aid, if required and medical examination to be done with consent and in presence of parents within 24 hrs. (Sec.164A Cr.PC and Sec.27 POCSO Act)
12. In case the child has mental or physical disability, the police officer may take assistance of an expert doctor or qualified person, to record the statements. (Sec.26(3) POCSO Act)
13. Do not handcuff a juvenile. (SC guidelines)

A-3) If there is a perceived threat to life or possibility of violent resistance.

1. Whenever there is a possibility of violence or armed resistance to arrest or lives of police officials executing arrest are under threat, then following steps must be taken to ensure safety:-

¹¹ Section 10 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

- a. Police officials detailed for making arrest of a person or persons must proceed with the procedure of arrest with great foresight, planning and preparation based on proper information and intelligence inputs. They should carry proper arms, equipment including handcuffs and other restraining equipment. Sufficient copies of arrest and seizure memos should be carried. They should also have sufficient evidence collecting and sealing materials¹².
- b. Police officials making arrest shall prepare the memorandum of arrest and follow due procedure of getting it attested by a member of the family of the arrested person or respectable member of the locality where the arrest is made¹³.
- c. The person arrested shall be subjected to reasonable restraint to prevent his escape¹⁴.

¹² Andhra Pradesh Police Manual

¹³ Section 41B (b) of the Cr. P.C., 1973.

¹⁴ Section 49 of the Cr.P.C, 1973.

CHAPTER 04: WHILE THE ARRESTED PERSON IS IN CUSTODY

Part A– Human Rights of person in police custody.

1. The onus of safety, security and health of a person in police custody lies entirely on the police. Hence utmost care should be taken to ensure that human rights of persons in police custody are not violated.
2. Any person being arrested, is entitled to certain basic Human Rights, enumerated as below:-
 - a. Right to be informed why he is being arrested and which authority has ordered the arrest¹⁵.
 - b. Right to consult and have a legal practitioner to defend himself; a lawyer can also be consulted while interrogation is going on but not throughout the duration of the entire interrogation¹⁶.
 - c. Right to be presented before a Magistrate within twenty four hours of arrest¹⁷.
 - d. Fundamental right to life subject to restrictions placed on it by appropriate court.
 - e. Right to be examined by a Medical Officer in every forty eight hours of his detention¹⁸.
 - f. Right of the person without means to be given free legal aid and to be informed about it.
3. It is very important and significant to appreciate that the above mentioned Human Rights are inalienable and must be adhered to, by police officials while making an arrest and care of a person during police custody/detention.

Part B – Guidelines to be followed while the Person is in Custody

1. Person in police custody must be provided with food and water at regular intervals.
2. The details of all such person(s) in custody should be displayed on notice boards¹⁹.
3. If the arrestee is to be transported from one place to another, he should be taken first to the Judicial Magistrate in whose jurisdiction the arrest was effected for the purpose of seeking a transit remand.
4. The family members of the arrested person must be informed by physical/postal/electronic means of the place and time of arrest.

¹⁵ Andhra Pradesh Police Manual

¹⁶ Andhra Pradesh Police Manual

¹⁷ Andhra Pradesh Police Manual

¹⁸ Andhra Pradesh Police Manual

¹⁹ Judgment of Hon'ble Supreme Court of India, Shri D.K. Basu, Ashok K. Johri vs State of West Bengal

5. Necessary arrangements for providing food, water, medical treatment, must be ensured in course of the journey.
6. The arrested person must be produced before the Judicial Magistrate of the destination location without any loss of time.
7. The arrestee should be interrogated in an appropriate manner with the aid of scientific methods of interrogation and investigation and without the use of violence.
8. Arrested person must be searched by the police officials of same gender by keeping in mind basic human dignity and decency. Women arrestees shall be kept in separate lockup/room with screen that gives them reasonable privacy when asleep.
9. Arrested person must be provided facility to have a bath and change of clothes – undergarments in particular, on everyday basis. This is important for the hygiene of the arrestee as well as the Police officers interrogating and dealing with the arrestee.

CHAPTER 05: GUIDELINES FOR SENIOR POLICE OFFICIALS

1. The SOP can be effectively understood, internalised, and enforced only when it is mandatorily integrated in all training programs at all levels of training and for each of the police organizations.
2. These Standard Operating Procedures must therefore, be incorporated in Police Training Schools and Institutions for training and sensitization of the Police Force compulsorily at the following levels of training:-

I. Levels

- a. Basic Courses
- b. Refresher Courses
- c. Pre-promotional courses

II. Courses to be conducted

- a. Scientific methods of investigation and interrogation
 - b. Custody management
 - c. Human rights
 - d. Importance of police-public rapport in citizen centric policing.
3. Mechanism needs to be established in the State/UT/Police Organization for regular monitoring of incidents of custodial violence/abuse and for awarding strict punishment to erring officials in cases of occurrence of such incidents.
 4. Physical and mental health of police officials must also be given due priority with implementation of health and welfare related programmes to ensure de-stressing of the personnel who are prone to act in a rash manner due to severe stressful work conditions.
 5. Compulsory installation of CCTV Cameras in police premises and lockups to ensure safe custody of accused/ detained person (Supreme Court Order in Shafhi Mohammad v. State of Himachal Pradesh (2018))

6. **REFERENCES:-**

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 - b. Hon'ble Supreme Court of India, Shri D.K. Basu, Ashok K. Johri vs State of West Bengal, State Of U.P on 18 December, 1996, Bench: Kuldip Singh, A.S. Anand, Petitioner: Shri D.K. Basu,Ashok K. Johri Vs. State Of West Bengal, State of U.P.
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