

Arrest & Detention



**Police reforms too important to neglect,
too urgent to delay...**

This booklet has been developed by the **Commonwealth Human Rights Initiative (CHRI)** for the **Ministry of Home Affairs** as a part of a series called Police & You: Know Your Rights.

CHRI is an international, independent, non-profit, non-governmental organization headquartered in New Delhi. Its objectives are to promote the practical realization of human rights in the countries of the Commonwealth. CHRI educates on human rights issues and advocates for greater adherence to human rights standards. For more details please visit <http://www.humanrightsinitiative.org>.

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Dadaji and Arjun, age 12, live in crowded Kamla Nagar where lots of crimes have been committed and the police have been in and out of the mohalla. Arjun keeps asking Dadaji about the police and what they do. Suddenly, one morning Arjun sees the police come to the area and take away Ramu-Kaka a shopkeeper of the area.



**RAMU KAKA BEING TAKEN AWAY
BY THE POLICE**

"Dadaji, dadaji the police have taken Ramu-kaka away in their jeep!" he exclaimed.

"Is that so?" Dadaji asked, putting down his newspaper, "Did you see what happened? Did they have a warrant? "It all happened so quickly" said Arjun. "The two policemen, Inspector Khan and Havildar Bhan and Ramu-kaka were shouting at each other then they grabbed him and put him in the van. Ramu-Kaka kept saying that the police had no right to arrest him without a warrant. The Inspector said "We've got

you now, we found this in your house." And they showed him something, Ramu-kaka said I don't know what this is. You can't hold me." Arjun asked, "Dadaji, **What is a warrant?**"

"Beta, **a warrant is a document, that the police must show to a person before they make an arrest. A magistrate can only sign this.** Ramu-kaka knows his rights that's why he was saying that the police need a warrant and can't arrest him just like that. But, Ramu-kaka forgot that **there are certain times when the police can make an arrest without a warrant.**" said Dadaji.

"When can they do that?" asked Arjun.

"The police can make an arrest without a warrant, in eight different cases.

What are they Dadaji?

There are eight different cases in which a person can be arrested without a warrant:

- 1. When a person carries or keeps instruments which can be used for house breaking, such as crossbar, rods, glass cutter etc and when**



A PERSON UNABLE TO EXPLAIN FOR CARRYING INSTRUMENTS FOR HOUSE BREAKING CAN BE ARRESTED

the police ask him "How come" and he is **unable to explain** properly why he has it with him. But suppose the police know I have this long iron bar and a glass cutter and they ask me "How come?". I can explain that there is construction going on at our house. But if I am walking on the street with a big black bag with a mask and a crowbar and a glass cutter and a knife in it and I am not a repair man and these are not necessary tools of my trade then I must be able to explain what I am doing out and about with these things. If they don't believe me, the police can arrest me on suspicion that I may be wanting to do something illegal.

2. **If someone has stolen property.** Looks like this is why the police took away Ramu-kaka just a while ago. If stolen goods are found in a place that belongs to you or in your bag or car then you can be arrested at once.
3. Ramu Kaka I understand was resisting being taken away by the police, this is extremely serious if a police officer is **prevented from carrying out his duty. You know as a citizen you have a duty to help the police - not to do wrong things but to help them carry out their duty.** Now, suppose I deliberately crash my cycle into the police car, so that the officers don't catch a thief they are chasing. I have stopped them, obstructed them in their duty and so I can be arrested.

4. Suppose **a person who is lawfully in police custody tries to escape or has actually escaped then the police can arrest him** without any warrant.
5. There are offences such as murder, rape, dacoity, theft, all these fall under cognizable offences. And if a person has committed such an offence, like someone has stolen something or is suspected for stealing, then the police can arrest him, without a warrant.
6. If a court has said that a person is guilty and he doesn't give himself up to the police, they can go and find him and arrest him without any warrant.
7. If a person is perpetually used to going in and out of jail and is in the books of the police, they call such a person a **habitual offender who needs to be bound down for good behaviour. You know our Ramu-kaka is always in and out of the police station and those friends of his are also always going out late at night and coming home with stuff. Well if Ramu-kaka has a criminal record, or is what is called a habitual offender then he can be bound down so as to ensure his good behaviour.** Police often do this when there is tension in the city. They round up known goondas so that they don't get up to mischief or try to create trouble between the communities for example,

8. "If a person looks like he has deserted from the armed forces then the police can arrest him without a warrant." explained Dadaji. "Now, have you understood? Do you have any more questions?"

"But Dadaji, can the police arrest anyone they are suspicious of?" asked Arjun. "No beta, they can't. If they could then policemen could arrest even you and me just by saying they thought we looked suspicious or they thought we might do something wrong. We are citizens with rights. The police are here to help us and protect us, they must do their duty only according to the law and according to what is reasonable. The police must have good reasons for their suspicions before they make an arrest. If they don't then arrest without a warrant is not allowed. It is not allowed under law and keeping people in the police station that way is called **illegal detention**. And the police can be punished for it."

Neeta, Arjun's sister who had come into the room was very interested and asked Dadaji: "**Who can make an arrest** - is it that only the police can make an arrest? Can I make an arrest as well?"

Dadaji laughed, "That's a good question, Neeta. **"The police aren't the only ones who can make an arrest." Even you and I or any citizen can arrest another person who is a proclaimed offender or who commits a cognizable offence and non-bailable offence in our presence."**



Neeta looked very happy: "Excellent" she said, "You behave yourself Arjun or I will arrest you and hand you over to the police."

Arjun, drew himself up: 'And I will sue you for wrongful arrest if you do, so you better have a very good reason. Dadaji smiled and went back to his paper, happy that the children understood their rights. That is important.'

Within a week of the incident involving Ramu kaka, the police again visited Kamla Nagar. This time, they paid a visit to Vineet, the PCO/STD operator. Vineet was sitting outside his

phone booth, when the police jeep rolled by and stopped a few feet away from him. Inspector Khan got out and went up to Imran, who ran the paan shop next to the phone booth.

As Vineet watched, Inspector Khan tried to force Imran to give him a few packets of cigarettes for free. Realizing that the Inspector was coercing Imran, Vineet got up and went to the paan shop, saying, "Sir, how can you do this? Imran is a poor man and he hardly makes Rs. 50 a day for a living, and with that he runs his whole family. Sir, please pay for the cigarettes and save the poor man from going hungry."

Inspector Khan not quite used to being sermonized, glared at Vineet, and snapped, "Who do you think you are? Do you think you are so important, that you can tell me what I should be doing? That you can give orders to a police officer? I'm going to teach you a lesson in politeness." He called Havildar Bhan from the jeep to take Vineet to the police station.

By that time a large crowd had gathered. Despite protests from Vineet, he was shoved roughly into the police vehicle and taken away by the policemen. He came back to Kamla Nagar after two days, a completely changed man. His clothes were badly torn, eyes sunken and with a dry cough.

He met Neeta, Dadaji's eldest granddaughter in the market.

"Vineet! I heard about what happened. When did the police let you go? Are you alright...did they mistreat you?" Neeta exclaimed when she saw him.

"No, Neeta didi, they didn't beat me or anything, thankfully, but they threw me into the lock-up and kept me there for two days," said Vineet. "What do you mean, they kept you there for two days?" asked Neeta. **"The police have no right to take you away without any valid reason!"**

"That doesn't matter, didi," sighed Vineet, "there's nothing I can do now." "Of course there is, Vineet," said Neeta. "Dadaji says that **if you have been arrested or kept at the police station without registration of a case, (it is known as illegal detention), which is a very serious offence, then you can:**

1. **Meet or send a registered post to the District Superintendent of Police or any other senior officer or**
2. **File a complaint with the magistrate of the area or**
3. **File a complaint in court by sending a letter to the High Court or Supreme Court, and if the court finds the complaint fit, they can treat the letter as a writ petition.**
4. **And if our state has a State Human Rights Commission, then we can file the complaint there, or we can send a**

letter by post or send a fax from your PCO booth to the **National Human Rights Commission in New Delhi.**

"I think I'll do that, didi." said Vineet. "Will you help me write the complaint letters?" "Of course I will. Lets do it right away!" said Neeta.

As the two walked towards Vineet's PCO booth, Vineet said, "You must have heard that the police came and arrested Ramu-kaka for theft, a few days ago. He shouldn't have let them take him, he should have fought back, just like I should have." "Don't be silly, Vineet. The police had every right to arrest Ramu-kaka as they had found stolen goods in his house. They followed all the rules that day and so, unlike your arrest, Ramu-kaka's arrest was legal." Said Neeta, who went on, "And as for fighting back, you should know better. **You must never resist arrest forcibly, because a police officer is allowed by law, to use all means necessary to make the arrest - and that includes using force.**"

"I didn't know that didi...is there anything else I should know?" said Vineet.

"Well, one more thing I wanted to tell you was that **you must not refuse to tell a policeman your name and address, nor should you give a false name and address. The police**

could arrest you for that. But remember - you should only give your name and address after making sure that the person is really a police officer." said Neeta.

"Okay, didi. I understand now." said Vineet. "Good," said Neeta, "Now lets start writing those letters."

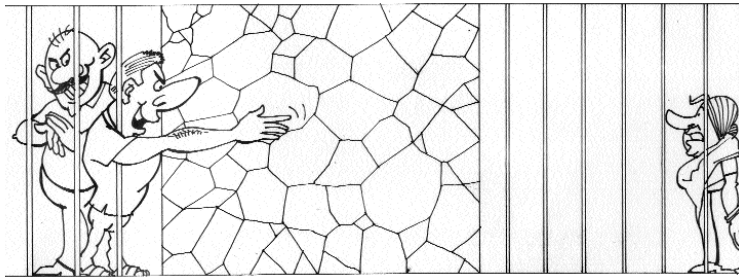
After Neeta had helped Vineet with his letters of complaint, they heard a knock on the door. It was Mary, who ran a small tailoring business in Kamla Nagar. She had come to give Vineet some kurtas that she had finished making. As Neeta made some tea for both of them, the women chatted about many things, including Ramu-kaka and Vineet's arrest. "I'm so glad that I've never been arrested." said Mary, "Can you imagine all those male police officers doing a body-search on you or being thrown into the lock-up with all the men in there?" "But the police can't do that, Mary. **There are special safeguards for women who have been arrested.**" said Neeta.

"Really Neeta? I didn't know that and I don't think that any of my women friends in Kamla Nagar know either." Mary went on, "So, what are these special protections for women?"

"There are special provisions where a woman can only be searched by a woman officer, and that too only in a strictly

decent way, with respect for her privacy." replied Neeta, "Also, **female suspects must not be put in the lock-up with the male suspects - they must be put in a separate lock-up."** "But, the police station in Kamla Nagar doesn't have a separate lock-up for women." said Mary.

"Female suspects have to be transferred to the nearest police station that has a separate women's lock-up, if the original police station doesn't have one." said Neeta.



**SEPARATE LOCKUP FOR MEN AND
WOMEN ARE MANDATORY**

"That's a good set of safeguards, but even then I'd be very scared if I was arrested. Think of being alone and having to answer all the questions that the police shoot at you. We don't know what rights we have or don't have and how to answer properly or even what the process is." said Mary. "You wouldn't have to be alone while the Police interrogate you. **A woman cannot be taken to the Police Station for interrogation. It can only be done at her residence and in the presence of her relatives."**

explained Neeta. Also, since people are not aware of their rights on being arrested, **every person has the right to speak to a lawyer of his or her choice or to receive free legal aid, if they are poor. The arrested person can consult this lawyer during interrogation but not throughout it.**" explained Neeta. "Oh, I didn't even know that!" said Mary.

"The law steps in here, once again." said Neeta, **"if a person doesn't know that they have this right, the Magistrate must inform them when they are produced before him in the court. The police also have a duty to immediately inform the nearest legal aid committee that an arrested person needs their services."** "I understand now. Thank you so much for telling me all this, Neeta. I'm going to be so much better prepared in case I ever have to speak to the police." said Mary.

The next day, Neeta received a phone call from Vineet. "Didi, I spoke to Mary and Imran and lots of other people. We were wondering if you would speak to us about the basic rights that people have when they are arrested?" "That's a good idea, Vineet. Shall I speak to everyone this evening?" asked Neeta. "Alright, didi, I'll tell everyone to come." replied Vineet, and kept the phone down quickly to go and inform everyone.

Later that day, Neeta went to Mary's shop, outside which the group had gathered. "Namaste, everyone. I'm going to speak to you all today about the rights you have if the police want to arrest or detain you. Why don't we begin with you asking me any questions that you have?"

Vineet raised his hand, "Sometimes the police don't even tell us why they are taking us away and sometimes they tell us that its for 'security' or something which makes little sense to us. They say that they don't need a specific reason to arrest or detain us and we have nothing to say to them..." "There is a right to protect you in such a situation." said Neeta, **"While the police make an arrest, they must inform the person the grounds of arrest."**



NEETA PROVIDING LEGAL LITERACY

Raghu got up and said, "Neeta didi sometimes the police only produce those who they have arrested before the

magistrate after a long time. This means that people often have to spend more than a week in custody. What can be done about this?" **"Every arrested person must be taken to the nearest magistrate within 24 hours from the time of arrest. This time limit however, does not include the time taken to travel to the Magistrate."** answered Neeta. **"An arrested person also has the right to be released on bail, if the arrest is under a bailable section. In that case the police must tell you that you have the right to be released on bail."** she added.

"Neeta, could you tell us something about the paperwork that the police need to complete when they arrest someone? Sometimes, when we go to the station, the policeman at the desk don't have the forms that are later needed when we go in front of the Magistrate." said Sunita. "Well, to begin with, **the police officer carrying out the arrest must prepare a 'Memo of Arrest', which should have the date and time of the arrest. This has to be signed by the arrested person and by one of his/her friends or relatives or by a respectable person from the locality.**" explained Neeta. **"Details of every arrest and the place of detention should be given to the State and District Police Control Room within twelve hours of the arrest. These details should be displayed clearly on the notice board of the Control Room."** She continued. **"Copies of all documents are to be sent to the local area Magistrate for the record."** Neeta added.

"And finally, the names of the officers who conducted the interrogation of the arrested person, must be recorded in a register." said Neeta.

"There are a few more things that I wanted to explain to all of you. To begin with, I wanted to say that **it is the duty of the police officer making the arrest to have an accurate identification in the form of a nametag, which is clear and visible and which mentions his designation on it.**" Neeta said.

"Next, I want to talk about handcuffs. I know that in films and on television we see that the first thing the police do is handcuff a suspect." said Neeta, "In real life, however, **the law says that a police officer making an arrest should not handcuff a person who is being arrested. However, only on two occasions exceptions are made to this,- the first is if there is a clear danger of the person escaping or attempting to escape**



USE OF HANDCUFFS BY POLICE
IS CONDITIONAL

and the second is if the person becomes violent and can be only taken away by using handcuffs." Upon hearing her words, the crowd began to murmur. "We never knew about this," said Fatima, "the police always handcuff the people whom they arrest, even if they come willingly and behave themselves." "I've seen that sometimes the police just shout that a group of you must get in to the police jeep because you have been 'arrested'. But, you must know, that **to make an arrest, the policeman must actually touch you - he can't just order you to go away with him."**

"You must make it clear to the police, that you are aware of your rights. While there is no reason to become angry or agitated, you must not let the police go on doing whatever they please. They have rules to follow as well." said Neeta. As the group was busy discussing, Dadaji came and patted Neeta on the shoulder. He had been quietly listening to the group all this while. Imran told Dadaji, "now we understand, what our rights are and I am sure in future we will be able to prevent the police from misbehaving with us."

Dadaji said " there are laws other than the ones you have just heard to protect us. Hey Vineet, when the police took you to the police station, did they search you? Vineet, said, "Yes Dadaji, Havildar Bhan not only searched my pockets, but

asked me to take out all my money, take off my watch and rings and made me put them in a handkerchief. This was later put away in a locker in the duty officers room." Dadaji said, "see this is where the police should have issued a receipt for the articles that were being kept by them, so while Vineet was being detained in the police station, his possessions were also being kept illegally."



**A RECEIPT NEEDS TO BE ISSUED
FOR THE ARTICLES THAT ARE
TAKEN BY THE POLICE**

Vineet said, "but Dadaji, what about the rights while the police question a person, eh..what ..is ...it called...hah! Interrogation? Dadaji said, "while a person is interrogated by an officer, the accused or the suspect may be questioned many times, but the police cannot at any time beat, slap, kick, or even handcuff or tie up the person while asking questions." The group listening to Dadaji was surprised. Mary said "Dadaji, then why do we always see this in the movies?"

Dadaji said "what is shown in the movies is wrong depiction, because the law says that the police cannot do this. **Every arrested person has the right not to be subjected to more restraint than what is necessary to prevent his escape. The law also says that anyone who is kept in detention for more than 48 hours or two days should be medically examined by a registered doctor. The doctor is supposed to record all the injuries or conditions that may be faced by the person who is being checked. This will ensure that if any of you are beaten or slapped or if any inhuman treatment is given to anyone at the police station, it will get recorded. And every 48 hours the person who is in police custody can ask for this check-up.**"

Neeta asked, "dadaji, is it true that an **inspection note** has to be prepared by the doctor who will do the check up?" "Yes", Dadaji said "infact **this memo** must be signed by a relative or friend of the arrested person or a respectable person of the community and be also signed by the arrested person. The arrest memo must have the date and time of arrest. **Vineet said "this is very useful as this will really help in bringing out the wrong methods that any police officer may adopt. The most important thing that we must remember is that we must know the law as this is the ticket to our freedom".**

Dadaji said, "the Magistrate can order for a medical examination to be conducted at the request of the arrestee. This also has the benefit in proving false the reason behind a person's arrest. For example, if Ramu Kaka had proved through a medical examination that it was impossible for him to climb the wall and get on to the roof of the house to steal due to his old injury on his foot, then he would have been let off."

Neeta said "dadaji, to protect ourselves and our dear ones, we must know the law especially to help us to interact with policemen such as Inspector Khan and Inspector Bhan better."

The Series **“Police & You: Know Your Rights”** includes:

- First Information
- Arrest and Detention
- Police Interrogation
- Legal Aid Services
- SC/ST Atrocities Act
- Bail
- Fundamental Rights

MINISTRY OF HOME AFFAIRS
Human Rights Division
Government of India