

Police Malpractices

COMMON
ILLEGALITIES BY
THE POLICE -
THE STANDARDS
THEY BREACH



COMMONWEALTH HUMAN RIGHTS INITIATIVE

Working for the practical realisation of human rights in the countries of the Commonwealth

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

The nature of CHRI's sponsoring organisations* allows for a national presence and an international network. These professionals can also steer public policy by incorporating human rights norms into their own work and act as a conduit to disseminate human rights information, standards and practices. These groups also bring local knowledge, can access policy makers, highlight issues, and act in concert to promote human rights.

CHRI is based in New Delhi, India, and has offices in London, UK, and Accra, Ghana.

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* Commonwealth Journalists Association, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Parliamentary Association, Commonwealth Press Union and Commonwealth Broadcasting Association.

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POLICE MALPRACTICES

Common Illegalities by the Police The Standars they breach

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FIRST INFORMATION REPORT [FIR]

What is it

- It is the first information in time of an offence received by the police
- It can be filed by the witness or the victim or a police officer or anyone who has knowledge of a crime
- Once the FIR is lodged the police are duty bound to carry out the investigation



Procedure for filing an FIR

- If you are a victim/witness of a crime you may give in writing information about any cognizable offence to the officer in charge of the police station
- If you cannot write you can tell the facts about the incident to the officer and this must be put into writing
- The police must read the information back to you
- The information should be signed by you
- A copy of the FIR should be given free of cost to the informant
- The information should be entered in the station house diary



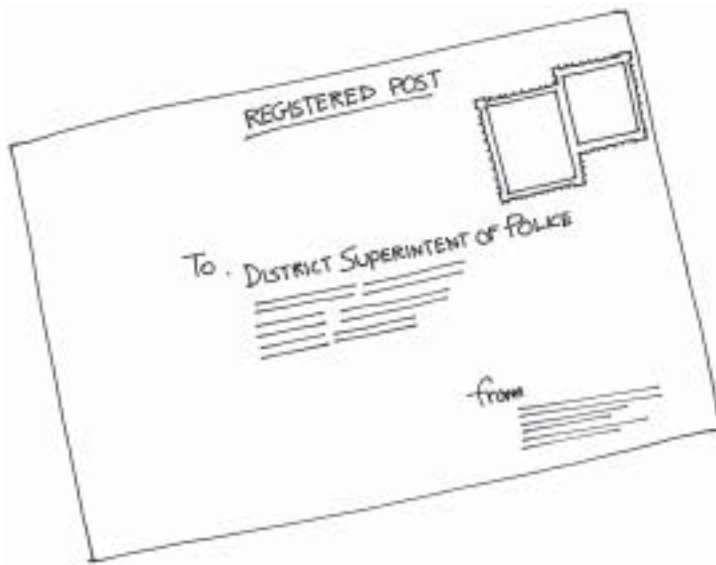
Types of Offences: Cognizable and Non-cognizable

Cognizable Offences

- Offences which the police can investigate WITHOUT a warrant from the Magistrate.
- These offences are of a more serious nature like murder, rape, dacoity & rioting

Non-cognizable Offences

- Offences which the police can investigate only WITH a warrant from the Magistrate
- These offences are of a trivial nature



What if the police refuses to take the complaint

- Send information about the crime in writing to the District Superintendent of Police (DSP) by post; - get a registered a/d
- The DSP has to investigate the case if the information discloses the commission of a cognizable offence
- If the DSP does not take any action then complain to the Magistrate who will then examine you on oath.
- The Magistrate can inquire into the case himself or ask for an investigation by the police or any other person he thinks fit.



What should happen once it is filed

Once the FIR is filed the Police officer has to:

- Send a copy to the Magistrate who has the authority to take cognizance
- Send the FIR to the Magistrate on the same day when it was recorded and not delay it
- In a medico legal case (MLC) police have to file an FIR at the hospital
- If he fails to do any of the above he has to give a strong reason for the same. The trial may suffer but it depends on each case



FIR- MALPRACTICES

What happens when you try to file an FIR

The Police may:

- Not take the complaint
- Not believe you
- Ask you for a bribe for recording the complaint
- Ask you to compromise
- Try to change the facts
- Tell you that it is a non-cognizable case
- Tell you that there is no need to sign on it
- Not read it back to you
- Refuse to give you a copy
- Not make an entry into the station diary



INVESTIGATION

What should happen as soon as a crime is reported

The Police Must:

- Consider the facts of the case
- Gather *panchas* and *experts* whose help will be required during the investigation
- Go to the scene of the crime
- Perform the Panchnama



Panchnama and when is it performed

The police must perform a Panchnama in the presence of panchas during:

- An investigation into a death
- Search or seizure of articles

Panchas are:

- Independent, respectable and unbiased members of the community called in to verify the police version



What is a Panchnama

The Panchnama:

- Is a record of what the panchas see
- It begins with the name, age, occupation and address of the panchas
- It contains the reason for which it is being held and information about the exact location of the scene of crime
- After it is written up should be signed by the panchas
- It should carry the date, the time when it was started and ended



POST MORTEMS

What are they

- Once a panchnama is complete the body has to be sent for post mortem (PM) examination to ascertain the cause of death
- Only a police officer not lower than a Sub-Inspector can send the body for PM examination

Post mortems are done:

- When the cause of death is not known or there are suspicious or unnatural circumstances
- To find out if the death has been suicidal, homicidal or accidental

The Post mortem report will indicate:

- Time of death
- Sex of the deceased
- Probable cause of death

How they must be done

- Only a certified doctor who has a letter of authority from the police can do a PM
- His rank must not be below that of a subordinate medical officer
- Once the corpse is received the medical officer has to give a receipt for the corpse



POST MORTEMS

Duties of Medical Officers

The Medical Officer Must:

- Record all external and internal injuries on the corpse in detail
- Record the presence of any foreign body found in the corpse
- Keep the foreign body safely
- Send a copy of the report to the police station
- Record the reason for death and send a copy to the DSP

The *police officer* and the *medical officer* are jointly responsible for conducting a PM.

The body must be handed over to the relatives after the PM examination is completed.

How are they actually performed

Most often PMs are:

- Done at the crime scene itself
- Performed by compounders and other non- doctors
- Completed in a very short time
- Done without making a thorough or detailed examination
- Once the body is cut open it is not properly sewn up again



INVESTIGATION

At the Scene of Crime

The Police Must:

- Gather witnesses who may have information about the offence
- Take photographs at the crime scene
- Look out for finger prints or foot prints of the culprits
- Call in experts
- Ask for a police dog squad for serious crimes like murder, dacoities and robberies
- Draw a site map of the crime scene



At the Scene of Crime

The Police Must:

- Collect evidence and must make sure that none of the evidence or setting is lost
- Seal the crime scene
- Record all items that have been recovered in the Muddamal Register
- Provide first-aid to injured persons
- Send the dead body/bodies for post mortem examination
- Maintain details of every step of the investigation in the case diary



CASE DIARY

What is it

The *case diary*:

Is a record of every step taken in the investigation of each case by the investigating officer in his own *handwriting*

Should be maintained on a day to day basis and in a faithful manner

The original record of the progress of investigation should be sent to higher authorities on a daily basis

The higher authorities have a duty to examine the case diary, check the progress of the investigation and give advice if necessary

What it contains

The *case diary* contains:

- Numbered pages
- What time the information was received
- When the investigation began and how long it took to complete
- Which places the Investigating Officer visited
- A statement of what was seen and heard
- Names of all police officers associated with the case



What it cannot be used for

- Neither the accused nor the complainant is entitled to a copy of the case diary
- The case diary is only used by the police to refresh his memory during examination in court
- It cannot be used as evidence in court but can be called upon by the court to aid the trial



What it *can* be used for

The case diary can be called for by the court to:

- Find out if the investigation has been conducted properly
- Summon witnesses not mentioned in the list supplied by the prosecution
- Bring on record other relevant material which will help in the case



INVESTIGATION MALPRACTICES

What really happens too often

The Police usually:

- Reach the crime scene at leisure
- Do not cordon off or preserve the crime scene
- Do not perform the Panchnama according to the guidelines
- Do not register the items recovered from the crime scene in the Muddamal register
- Do not seal the items recovered. In such a case the court will not rely on the circumstance of recovery and this results in acquittal
- Do not send the items recovered for analysis and they lie in the Malkhana. As a result vital evidence deteriorates and is lost



QUESTIONING WITNESSES

Why, by whom, where and how

A witness is NOT an Accused – but is just helping police with inquiries

Why:

- To gather evidence in a case

By whom:

- By the Investigating Officer
- No one below the rank of a Head Constable can interrogate witnesses

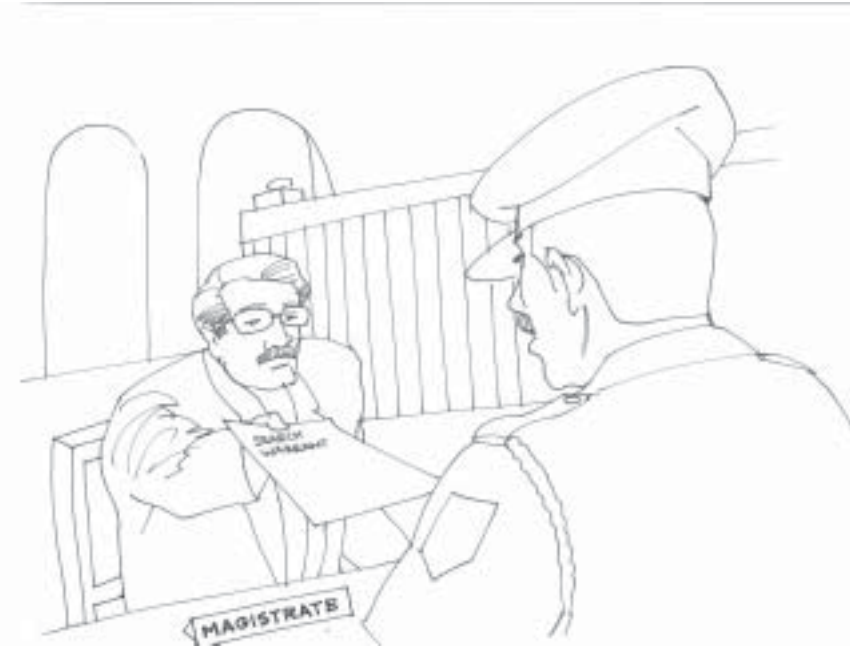
Where:

- In their homes or by calling the witness to the Police Station only through a written order
- Women and children below the age of 15 HAVE to be examined only in their homes to give them protection against inconveniences

How:

- They must be examined very soon after the event because with the passage of time memory becomes faint
- They must be examined thoroughly
- Their testimony must be recorded in their language
- No bribes, threats or promises should be made by the police
- The signature of the witness MUST NOT be taken on the statement





SEARCH

No general powers to search

The Police have no general power to search a person or a place.
Searches have to be done in very controlled circumstances.
A general 'fishing' search is not allowed.

BUT

Police can search with a warrant from a Magistrate

Or even without a warrant if:

- The police officer reasonably believes that the item necessary for the investigation would be found in that place
- That thing needs to be obtained without delay

How it should be done

A general search is not permitted under the law.

The Police Officer Must:

- Specify the thing that needs to be searched
- Record the reasons for the search
- Submit these details to a Magistrate who will then issue a *search warrant*



SEARCH WARRANT

What it should contain

- The name and designation of the police officer
- The description of the place to be searched
- The reason for the search
- An authority given to the police officer to enter the said premises with reasonable force if required and seize any property related to the crime
- Date of issue of the warrant
- Seal of the court and Signature of the Magistrate



SEARCH

The Procedure to be followed

The Police Officer Must:

- 1) Give a copy of the search warrant to the owner of the premises
- 2) Before carrying out the search call two or more respectable, independent residents of the locality to witness the search
- 3) Conduct the search in the presence of the witnesses
- 4) Make a list of all things seized and get the list to be signed by the witnesses



The Police Officer Must:

- 5) Allow the owner to be present at the search
- 6) Give the owner a copy of the list of things searched and seized
- 7) Conduct the search before sunset
- 8) If the search is conducted between sunset and sunrise record reasons why this has happened
- 9) Report the seized items to the Magistrate on the same day



SEARCH & SEIZURE

What the police generally do

Whilst conducting a search the police will usually:

- Barge into your house using unnecessary force
- Not show you the search warrant
- Not call in witnesses
- Not allow the owner of the house to be present
- Not make a list of things searched and seized. At times cash and valuables are taken away by the police during searches
- Not give a copy of the same list to the owner of the premises
- At times even place false evidence in the premises
- Conduct the search in the middle of the night



ARREST

What should be done

The Police MUST

- Immediately tell the person being arrested, the reasons why he is being taken into custody (grounds for arrest)
- Let the arrested person consult and be defended by a lawyer
- Take the arrested person before the Magistrate within 24 hours
- Inform the arrested person that he is entitled to bail if he is arrested for a bailable offence
- Inform a relative or friend of the arrested person of the arrest and make an entry of the same in the station diary.
- Record reasons for arrest in the station diary



- Arrested person should not be handcuffed
- Search of the arrested person must be done in front of a witness
- If weapons are found with the arrested person they should be seized after recording in the panchnama
- If injuries are found on body of the arrested person he should be forwarded to a medical officer for treatment
- No arrest to be made in a place of worship



What really happens

At the time of arrest the police usually:

- Use unnecessary force
- Do not tell the person why he is being arrested
- Handcuff the arrested person
- Do not produce the arrested person before the Magistrate within 24 hours
- Do not record the arrest immediately
- Show the arrest at a later date and then produce the arrested person before a Magistrate within 24 hours of the false date
- Do not inform the relatives of the arrest



INTERROGATION

Rights of a person being questioned

When you are being interrogated:

- You cannot be hit or slapped or in anyway intimidated or threatened
- You can ask for your lawyer to be present during questioning
- You can refuse to answer questions that may go against you.
- You must be taken to a doctor to confirm that no violence has been inflicted upon you



BAIL

What is it

Bail is:

- The release of an arrested person on certain conditions
- The person released will appear before the court or police when asked to
- He will also follow the conditions set by the court

Is bail a right

- Yes sometimes. It depends on whether the offence has been listed as aailable or non-bailable offence:

BAILABLE OFFENCES

What are they

- Offences of a less serious nature fall under bailable offences for eg. taking bribes, giving false evidence etc.

When you are arrested for a Bailable offence:

- The police officer **MUST** inform you of your right to be released on bail
- You have a right to be released on bail immediately after arrest
- You may be released after giving a bond with or without sureties for your appearance in court
- You will have to assure the court that you have roots in the community and that you will not run away **OR**
- You can ask a respected person of the community to give a guarantee that you will not run away and if you do he will pay the amount of the surety



NON BAILABLE OFFENCES

What are they

- If a crime carries more than 3 years of punishment it is a non-bailable offences, for e.g. murder, rape, dacoity
- For non-bailable offences bail is not a right but a privilege.
- Bail in such offences can be got from the courts

HOW CAN YOU APPLY FOR BAIL

- You have to apply for bail in court
- There will be a bail hearing
- In court the prosecution lawyer may:
 - 1) oppose the bail on the grounds that you will interfere with the evidence or threaten the witnesses
 - 2) agree to the bail but on certain conditions
- The Defence may argue in your favour that:
 - 1) you are not involved in the crime
 - 2) you have roots in society and will not run away
 - 3) you will respect all conditions set out in the bail

GROUNDINGS FOR GRANTING BAIL

What will the court consider before it gives you bail

- The seriousness of the crime
- Whether you will run away when released on bail
- Whether you will tamper with the evidence when released

What conditions can be imposed on the bail?

- You may be asked to visit the police station at regular intervals
- You will cooperate with the police during questioning
- You will appear before the court
- You will not leave the country and you will surrender your passport



CHARGESHEET

A complete record of the investigation

Once the investigation is complete:

- A chargesheet is filed in court through the public prosecutor
OR
- A final report is filed

After hearing the Public Prosecutor and the Defence:

- The Court can reject the chargesheet and the accused will be discharged OR
- The Court can accept the case, frame the charges, and post the case for trial

THE CHARGESHEET

What it contains

- The names and addresses of the accused
- The time, place and date of arrest
- The name of the arresting officer
- Whether the accused has been released on bond
- Names and addresses of absconding accused (marked in red ink)
- The Muddamal recovered
- The names and addresses of witnesses
- The charge or information, name of offence and section of law

The chargesheet must be accompanied by:

- The accused if he is in custody
- The bail bond if he is on bail
- Any descriptive roll and marks of identification of the accused
- Copy of the FIR
- All documents or relevant extracts upon which the prosecution proposes to rely
- Statements of witnesses recorded
- Any weapons or articles as evidentiary value

FINAL REPORT

When is it filed

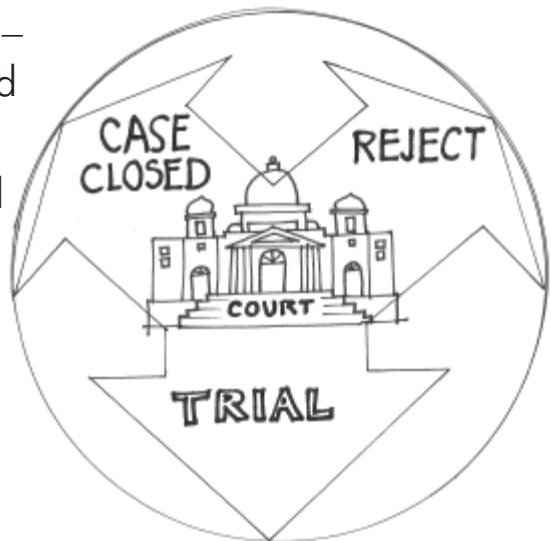
A final report is submitted:

- When there is not enough evidence against the accused to send him for trial
- When there is no case made out against the accused to send him for trial
- When the case may be made out but the identity of the accused cannot be established

What can the court do

When a final report is submitted the court can:

- Accept the final report – case is closed and accused is let off
- Reject the final report and direct the police to further investigate the case
- Frame charges and direct the case to be posted for trial



CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, as well as a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Human Rights Advocacy: CHRI makes regular submissions to official Commonwealth bodies and member governments. From time to time CHRI conducts fact finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

ACCESS TO INFORMATION

Right to Information: CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

Constitutionalism: CHRI believes that constitutions must be made and owned by the people and has developed guidelines for the making and review of constitutions through a consultative process. CHRI also promotes knowledge of constitutional rights and values through public education and has developed web-based human rights modules for the Commonwealth Parliamentary Association. In the run up to elections, CHRI has created networks of citizen's groups that monitor elections, protest the fielding of criminal candidates, conduct voter education and monitor the performance of representatives.

ACCESS TO JUSTICE

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

Prison Reforms: The closed nature of prisons makes them prime centres of violations. CHRI aims to open up prisons to public scrutiny by ensuring that the near defunct lay visiting system is revived.

Judicial Colloquia: In collaboration with INTERIGHTS, CHRI has held a series of colloquia for judges in South Asia on issues related to access to justice, particularly for the most marginalised sections of the community.

Police are an important component of the criminal justice system expected to function in accordance with the rule of law. The credibility of the criminal justice system depends on the relative strength or weakness of the laws and procedures established for the police, the prosecution and the court system. The police are an arm of the State vested with the primary responsibilities of law enforcement and prevention of crimes against the State and private citizens. Enforcement entails taking notice of criminal infractions of the law as soon as they occur, ascertaining the facts of the case, apprehending the culprit who is subsequently presented by the prosecuting agency to the court, where the judge, considers the evidence brought before him during trial and decides whether the person so charged, is guilty or not. If found guilty the culprit is awarded punishment as laid down in the law with adequate opportunities provided for appeal against the decision at a higher court.

We as citizens have different experiences with the police. The police is there to ensure the safety of all citizens and for this reason it has been given some responsibilities and some powers. But that does not mean the police are above the law. They are in fact bound by the law and have to act in accordance with the law. But in order to ensure that the police do not abuse the powers given to them it is necessary and rather important for us to know our rights vis-a-vis the police.

This book attempts to give an account of the citizen's rights in the criminal justice system. It is hoped that the book will prove to be a useful resource tool for citizen's who wish to familiarize themselves with the justice system as well as citizen's who are frequently encountered with the functioning of the police.



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