

SUMMARY OF WORKSHOP PAPERS ON THE SUBJECT :
REMAND WORK IN GENERAL AND COMPLAINTS OF
POLICE ATROCITIES BY ARRESTED ACCUSED AND STEPS
TO BE TAKEN BY MAGISTRATE.

01. The dictionary meaning of “Remand” is to send back into custody. Here, we send back the accused into the custody of police or that of the magistrate for collecting evidence and completion of investigation. The purpose of remand is to facilitate completion of investigation.

02. Section 41 of Cr. P. C., empowers the police officer to arrest a person without order of Magistrate and even without warrant if the situation stated in the section is made out. Arrest of a person is an encroachment over his liberty guaranteed by fundamental rights and it also adversely affects his reputation and status. Hence, it is expected that the police officer exercise the powers cautiously.

03. If a person is arrested without warrant, the police officer has to complete the investigation within 24 hours and till then, he can keep the accused with him. He has no power to detain the person arrested exceeding that period without authorization by nearest Magistrate. This is the mandate prescribed by section 57 of Cr. P. Code.

04. Here the provisions of section 167 of Cr. P. C., which authorizes a Magistrate to direct further detention of accused comes into play.

05. Before a Magistrate authorizes detention under section 167, Cr. P. C., he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorize his further detention and release the accused.

06. In the case of **Ram Doss..V/s... State of Tamilnadu, 1993 Cr.L.J. 2147** Hon'ble Madras High Court has held that while granting remand U/sec. 167 Cr.P.C. a Magistrate has to see : (i) The grounds why detention beyond 24 hours is sought for. (ii) If there is a report disclosing cognizable offence. (iii) If case has been registered for investigation. But a Magistrate cannot question why such case has been entertained in absence of material therefor.

7. Section 167 (2) of the Code gives power to the Magistrate to detain the accused after satisfying himself that there are grounds for detaining the accused. The magistrate can pass an order of detention for a maximum period of 15 days in police custody and thereafter in magisterial custody. It is clear that the satisfaction of the magistrate as regards existence of adequate grounds for detention is necessary. This cannot depend upon the application which is presented to him but the material regarding investigation which is produced before him which is contained in the case diary. Therefore, the application presented on behalf of the investigation officer must mention the name of the officer who is presenting the same and the said application is required to be considered by the Magistrate as contemplated by Section 167 of the Code. (**Shrawan Waman Nade vs. State of Maharashtra. 1994 (1) MAH.L.J. 220**)

08 Taking into consideration these aspects Hon'ble Apex Court in the case of **Adri Dharan Das v. State of W.B. (2005) 4 SCC 303**, has held that ordinarily arrest is the part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other person, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary

to curtail his freedom in order to enable investigation to proceed without hindrance and to protect witness and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation.

09. In the case of **Manubhail Ratilal Patel v. State of Gujrat and others (2013) 1 SCC 314**, Hon'ble Apex Court observed that, remand is a fundamental judicial function of the Magistrate. While performing this judicial function, Magistrate has to satisfy himself that there are reasonable grounds therefor and that materials placed before him justify remand of accused. While remanding accused it is obligatory on part of Magistrate to apply his mind to facts and not to pass remand order automatically or in a mechanical manner.

10. The Hon'ble Supreme Court, has in the case of **ARNESH KUMAR VS STATE OF BIHAR AND ANOTHER (2014) 8 SCC 273**, held as follows:

“ Our endeavor in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically ”.

In that case the Honourable Supreme court has issued following directions in respect of all offences which are punishable with imprisonment for a term which may be less than 7 years or which may extend to 7 years; whether with or without fine.

1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the I.P.C is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C;
2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

3. The police officer shall forward the check list duly filed and furnish the reasons and material which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;
 4. The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;
 5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;
 6. Notice of appearance in terms of Section 41(A) of Cr.P.C be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;
 7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction;
 8. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.
11. A careful reading of S. 167(1), Cr. P. C. would show that an investigating officer can ask for remand only when there are grounds for believing that the accusation or information is well founded and it appears that the investigation cannot be completed within the period

of 24 hours fixed by S. 57. Therefore, it follows that a remand by a Magistrate is not an automatic one and sufficient grounds must exist for the Magistrate to exercise their powers of remand..

12. Article 22(1) of the Constitution gives a person arrested a twofold protection, viz. (1) that an arrested person shall not be detained in custody without being told the grounds of such an arrest and (2) that he shall be entitled to consult and to be defended by a legal practitioner of his choice. Article 22(2) gives yet another protection stating that every person who is arrested and detained in custody must be produced before the nearest Magistrate within 24 hours excluding the time necessary for the journey from the place of arrest to the Court of Magistrate and that no such person shall be detained in custody beyond the said period without the authority of a Magistrate. Section 50, Cr. P. C. which is a corollary to Article 22, Clause (1) and (5) of the Constitution of Indian, enacts, that the persons arrested should be informed of the ground of arrest, and of right to bail. Section 57 Cr. P.C. which is also in consonance with Article 22(2) of the Constitution of India, provides that no police officer shall detain, in custody a person arrested without warrant for a longer period that under all circumstances is reasonable and such period shall not in the absence of a special order of a Magistrate under Section 167 exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. Section 167 Cr.P.C. deals with the procedure when investigation cannot be completed in 24 hours. It is not necessary for the purpose of this case to elaborately go into the history behind the importance and object of the constitutional provisions as well as the other provisions of the general law.

13. A careful reading of S. 167(1), Cr.P.C. would show that an investigating officer can ask for remand only when there are grounds for believing that the accusation or information is well founded and it

appears that the investigation cannot be completed within the period of 24 hours fixed by S. 57. Therefore, it follows that a remand by a Magistrate is not an automatic one and sufficient grounds must exist for the Magistrate to exercise their powers of remand. That is the reason why it is required that a copy of the entries in the diary should be forwarded to the Magistrate along with the arrested persons. This is the second stage in remanding the accused persons.

14. If the prima facie accusation or information is not well founded and sufficient grounds do not exist for the Magistrate to exercise his power of remand, in such cases, remand of accused can be refused. A fortiori, a remand by a Magistrate is not an automatic one and sufficient grounds must exist for the Magistrate to exercise their powers of remand. “Judicial remands should not be passed in a routine manner”.

15. Sec. 167 of the code provides for the detention of the accused during pendency of investigation. Sec. 209 provides for detention of the accused during pendency of Committal proceedings and Sec. 309(2) provides for detention of the accused during pendency of trial or inquiry. While dealing with the remand work the Magistrates are required to adhere the following principles and guidelines.

1. The period of 24 hours commences from the time the person is arrested by the police.
2. The arrest of person is a condition precedent for taking the arrested person in judicial custody.
3. Fifteen days’ time for remand is to be counted from the date of production of the said person before the court.
4. A person arrested without warrant must be immediately informed the grounds of his arrest and in case of every arrest it must be immediately be made known to the arrested person that he/she is entitled to apply for bail.

5. The arrested person is entitled to get legal aid on his arrest from the nearest Legal Aid Committee, and such committee has to provide legal assistance to the arrested person as per rules.
6. A person held in judicial custody can if circumstances justify be transferred to police custody or magistrate custody or vice versa within a period of 15 days referred to in Sec. 167(2) of the code.
7. Accused should not be ordinarily remanded to police custody unless there is reason to believe that some material and valuable information is likely to be obtained which cannot be obtained expect by remanding the accused to police custody.
8. For verifying the statement made by the accused police custody may not be necessary. In such cases ordinarily Magistrate should remand the accused to Magistrate custody.
9. If the Magistrate is of the opinion that the presence of the accused with police is not necessary for investigation he may remand the accused to magisterial custody.
10. While remanding the accused to police custody the Magistrate has to take note that (1) such custody should not be granted for more than 15 days on the whole, (2) reasons for remanding the accused to police custody should be mentioned in the order and (3) copy of the order and reasons should be sent to the Chief Judicial Magistrate.
11. Before remanding the accused to police custody the Magistrate should first get satisfied that the accusations against the accused are well founded, and for that purpose he should not only go through the case diary and the statements of the witnesses, he should scrutinize the record and decided as to whether the prescribed formalities are followed and complied.
12. In case of the female accused, they should not kept in the police lock up in which male suspects are detained. Female accused should be kept in separate lock ups and guarded by

female constables. Interrogation of female accused should be carried out only in presence of female police officers.

16. After expiry of the 15 days period if further police custody remand is granted, it would be violation of Sec. 167 of the Code of the Criminal Procedure. In the case of **C.B.I. V/s Anupam Kumar (2000) 9 Supreme Court Cases page 266**, the Honorable Apex Court has observed that Sec. 167 (2) provides that at a time accused can be remanded for 15 days. If further detention of accused is necessary on satisfaction of the Magistrate further detention in Magisterial custody can be allowed. Magistrate may authorize detention of the accused beyond the period of 15 days if he is satisfied that adequate grounds exist. However there is further limitation for detention of accused persons in such custody. Accused can be so detained for the period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than 10 years. The detention can be authorized for 60 days where the investigation relates to any other offense. As per Sec. 167 (2) if the investigation in respect of the offenses punishable with imprisonment up to 10 years is not completed within 60 days or if the investigation in respect of offense punishable with imprisonment for a period 10 years or more is not completed within 90 days, then the accused shall be released on bail if he is ready and willing to furnish bail and if he furnishes bail. For counting the said period of 60/90 days, the first date of remand is to be considered, and not the date of the arrest, as held in the case of **Changat Satyanarayanam and ors V/s State of Andhra Pradesh (1986) 3 SCC 141**.

17. In the case of **Uday Mohanlal Acharya V/s. State of Mahatrahstra AIR 2001 SC 1010**, the Honourable Apex court has held that where a charge sheet is not filed within requisite period of 60 days the accused is entitled to indefeasible right to be released on bail.

18. In the case of **D.K.Basu V/s State of West Bengal AIR 1997 SC 610**, the Honorable Apex court has issued the following 11 procedural guidelines in the case of arrest, detention and interrogation of any person.

- 1} The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
- 2} 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.
- 3} A person who has been arrested or detained and is being held in custody in a police station or interrogation center 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 relative of the arrestee.
- 4} The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- 5} The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

- 6} An entry must be made in the 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.
- 7} 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 “Inspector Memo” must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
- 8} 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 the 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.
- 9} Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.
- 10} The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- 11} A police control room should be provided at all Districts 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 a conspicuous notice board.

19. While dealing with remand work we are required to deal with various types of remand under the special acts. The details of which are as under.

Transit remand :

20. A transit remand is not specifically defined under the Code. However, when a warrant of arrest is executed outside the district in which it was issued, and the court which issued the warrant is not within 30 km of the place of arrest, then the person arrested may be produced before Executive Magistrate, District Superintendent of Police or Commissioner of Police who shall direct his removal in custody to such court. In case of bailable offence such Magistrate/ DSP/ CP shall release the accused on bail, and if the offence is non-bailable it shall be lawful for Chief Judicial Magistrate or Session Judge to release accused on bail, by invoking powers under Section 81 proviso II, subject to the provision of Section 437 of Cr. P. In this regard judgment of Hon'ble High Court in Criminal **C. Application No.402/2013, in Malti Ravindra Shah V/s. State of Maharashtra** may be referred regarding powers of granting transit remand.

Remand under The Narcotic Drugs and Psychotropic Substances Act, 1985

21. The N. D. P. S. Act, as it stands after the amendment of 2001 (w. e. f. 2/10/2001), provides for constitution of Special Court, for trying all offences under the Act which are punishable with imprisonment for a term of more than three years. Provisions of remand under the General 22 Of 27 Code are modified by virtue of Section 36A (1) (b) of this Act, which provides that a person accused of or suspected of the commission of an offence under the Act be forwarded to a Magistrate under sub Section 2 or sub Section 2A of Section 167 of the Code. Whereupon, Magistrate may authorize the detention of such person in such custody as he thinks fit for a period not exceeding 15 days and 7 days in a whole where such Magistrate is an Executive Magistrate. In case of offences triable by the Special Court, the proviso to the said sub section provides that when such person forwarded to him; or upon or at any time before the expiry of the period of detention authorized by him, the Magistrate considers the detention of such person is unnecessary, he shall

order such person to be forwarded to the Special Court having jurisdiction. When such person is so forwarded to the Special Court, the Special Court exercises all the powers of remand conferred on Magistrate under Section 167 of the Code.

22. Thus, under N. D. P. S. Act, for the offences triable by the Special Court, first remand is done by the Magistrate and subsequent orders of remand are passed by the Special Court. The offences for small quantity of contraband are punishable with rigorous imprisonment up to six months or a fine of Rs. 10,000/ or both, which offences are triable by the Magistrate and hence Magistrate exercises powers of remand under Section 167 and 309 (2) of the Code. The period of remand of 90 days under Section 167 of the Code is modified with a period of 180 days, only for the offences under Section 19 or Section 24 or Section 27A or for offences involving commercial quantity.

Remand under The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 :

23. The controversy as to whether a Special Court designated under Section 14 of this Act could take cognizance of an offence, was set at rest by the Hon'ble Apex Court in case of **Gangula Ashok Vs. State of Andhra Pradesh** reported in **AIR 2000 Supreme Court 740**. It has been held that Special Court designated under Section 14 of the Act is essentially a Sessions Court and hence it cannot take cognizance of the offences under the Act as a Court of original jurisdiction without the case being committed to it by a Magistrate. The reason assigned is that neither in the Code nor in the Act, is there any provision to the effect that Special Court would take cognizance of the offence as a Court of original jurisdiction.

Remand under The Prevention of Corruption Act, 1988 :

24. Sub Section 1 of Section 5 of this Act makes provision for taking cognizance of the offences under the Act by Special Judge without the accused being committed to him for trial. Hence, the Special Judge exercises powers of remand under Section 167 of the Code.

Remand under the Maharashtra Control of Organised Crime Act, 1999 :

25. Powers of remand under MCOCA vest with Special Judge appointed under Section 5 (3) of the Act. The power of Special Judge may not be conferred on any Judge unless he has been appointed as a Special or Additional Special Judge by the State Government in consultation with the Chief Justice of the High Court.

Remand under The Electricity Act, 2003 :

26. After the amendment done by State of Maharashtra in the year 2005, for the State of Maharashtra and after amendment of Central in the year 2007 (w. e. f. 15/06/2007), for whole of India, the Court can take cognizance of offences under the Act on police report filed under Section 173 of the Code. The provision is made for Constitution of Special Courts in Section 153 of the Act for the purposes of providing speedy trial of offences referred to in sections 135 to 140 and section 150. The second proviso to Section 151 provides that special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial. Thus, for the aforesaid offences the Special Court can exercise powers of remand under Section 167 of the Code.

Remand under The Protection of Children From Sexual Offences Act, 2012 :

27. Power of remand under this Act vest with Special Judge appointed under Section 28 of the Act. It is imperative for all police officers to produce the accused for remand before the special Court and not before the court of the magistrate.

COMPLAINT OF ILL-TREATMENT AND PROCEDURE TO BE FOLLOWED

01. Custodial violence is worst form of human rights violation which has become very serious and alarming problem. "Torture" denotes intense suffering physical, mental and psychological, aimed at forcing someone to do or say something against his or her will. It means an attempt to break down detainee under severe physical pain and extreme psychological pressure. The suspect is detained in some isolated place beyond reach of family, friends and legal assistance. Interrogators control everything, even life. The torture is not called torture for obvious reasons, by those who practice it. It goes under the names of "sustained interrogation" 'questioning' or "examining". Whatever the name be, brutalisation is the result always. In the words of Hon"ble Krishna Iyer : Justice V. R. "We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens, that their lives and liberty are under a new peril when the guardians of the law gore human rights to death. The vulnerability of human rights assumes a traumatic, torturous poignancy (when) violent violations is perpetrated by the police arm of the State whose function is to protect the citizens and not to commit gruesome offenses against them. The state, at the highest administrative and political levels is expected to organize special strategy to prevent and punish brutality by the police methodology. Otherwise, the credibility and the rule of law in our republic vis-a-vis the people of the country will deteriorate . There is urgency of stamping out the vice of third degree from the investigative armoury of the police".

02. Although safeguards are put in place to protect the rights of accused on his arrest, there is no specific provision in the code as to what procedure is to be followed if any accused alleges ill-treatment at the hands of police on his arrest or during his custody. Criminal Manual has provided a mechanism for the same.

Procedure in complaint of ill-treatment :

03. It is mandatory on the part of the Magistrate, whenever a person arrested is produced before him by police or investigation agency for remand to inquire to every arrestee about ill-treatment by police. If any complaint of ill-treatment is made by accused or prisoner procedure to be followed by Magistrate is given in para no.3 of Chapter 1 of Criminal Manual.

04. If any accused or prisoner makes allegation of ill-treatment to the Magistrate then Magistrate shall examine the prisoner's body if the prisoner consents. Magistrate has to see personally if there are any marks of injuries as alleged, and shall place on record the reason of his examination.

05. If the prisoner refuses to permit Magistrate for such examination, he shall record such refusal and reasons thereof. If the Magistrate finds substance in allegation of ill treatment he shall first record the complaint of prisoner, and forward the prisoner for medical examination to Medical Officer or Registered Medical Practitioner as provided in section 54 of the Code of Criminal Procedure 1973, and shall make report to the Hon'ble Sessions Judge. If magistrate has no power to take make necessary inquiry himself, he should forward the prisoner with the record to the Judicial Magistrate having jurisdiction to investigation the case.

06. Section 54 of the Code of Criminal Procedure, 1973 provides that Magistrate shall at the request of arrested person direct the examination of the body of such arrested persons by a registered Medical Practitioner in case of

his allegation before him that such examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body.

07. If prisoner forwarded by Magistrate to Medical Officer or Registered Medical Practitioner for examination, such Medical Officer shall examine the prisoner and make report to that effect. In report, Medical Practitioner has to mention the nature of injuries, age of injuries, marks of injuries and shall forward such report to the Judicial Magistrate concerned, and also to the Hon'ble Sessions Judge, with his opinion and also state whether the prisoner makes any allegations in regard to the injuries against police or others responsible for his arrest or custody, or state how else the prisoner explain them.

08. Thereafter Honorable Sessions Judge after satisfaction on receipt of report from Magistrate and also report from Medical Officer should arrange for an immediate magisterial investigation into the complaint through such Judicial Magistrate as he may deem most convenient.

09. Result of such investigation must be communicated as early as possible to the court seized of substantive case. If it considers necessary, the court may summon the Medical Officer or the registered Medical practitioner to give evidence in the case.

10. A complaint in respect of ill-treatment was made by the accused before the Magistrate. The Magistrate on making preliminary inquiry had submitted positive report to the Hon'ble Sessions Court regarding ill-treatment. The Hon'ble Sessions Court had directed the said Magistrate to launch the prosecution as per law. The said Magistrate filed complaint against the accused before another Magistrate. The another Magistrate took cognizance

and issued process against the accused. The said accused preferred Writ Petition before the Hon'ble High Court, Bombay praying to squash the complaint on the ground of maintainability of the complaint filed by the Magistrate. The Hon'ble Bombay High Court has in the said case Yadavrao Chavan .Vs. State of Maharashtra and others, Criminal Application No.1494/2013 has observed that – there was no specific prohibition or bar in law to take cognizance of the alleged offence on the basis of the complaint lodged by the Magistrate. There was also no legal bar or prohibition on the lodging of the complaint by the Magistrate and the question would only be of propriety and regularity. In any case, the Magistrate has clearly acted in good faith thinking himself to be acting in his official capacity and as per the directions given by the Sessions Judge to whom he was subordinate. The institution of the proceeding against the applicant/accused is not shown to be barred under the provisions of any law. It is not that the complaint does not disclose the ingredients of the alleged offences, or that it is not supported by the material collected by the Magistrate/respondent no.2.

Other relevant provisions in respect of ill-treatment in the Code of Criminal Procedure 1973 :-

11. Section 53 - According to Section 53 of the Criminal Procedure Code the police officer not below the rank of a sub-inspector can request the registered Medical Practitioner to medically examine an arrested person under certain circumstance, and if he is unwilling to undergo it, the Section empowers the Medical Practitioner and his assistants to use such force as reasonably necessary making the medical examination.

12. Section 53 A :- Examination of person accused of rape by Medical Practitioner -

Amendment Act 2005 provide for a detailed medical examination of a person accused of an offence of rape or an attempt to commit rape by a registered Medical Practitioner employed in a Hospital run by the Government

or by a local authority and in the absence of such practitioner within the radius of 16 km from the place where the offence has been committed by any other Medical registered practitioner.

13. Section 54 - Examination of arrested person by Medical Officer-

Amendment Act 2008 Clause 8 substitutes Section 54 relating to Officer. Examination of the arrested person by Medical The amendment makes it obligatory on the part of the states to have the arrested person examined by a medical Officer in the service of central or state governments and in case of Medical Officer is not available by a registered Medical Practitioner soon after the arrest is made. It also provides that where the arrested person is female the examination of the body shall be made only by or under the supervision of female Medical Officer, in case female Medical Officer is not available by female registered practitioner. Such Medical Officer shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and approximate time when such injuries or marks may have been inflicted.

14. Section 55 A - Health and Safety of a arrested Person

Amendment Act 2008 Clause 9 inserts a new Section 55 A so as to make it obligatory on the part of person having the custody of accused to take reasonable care of the health and safety of the accused.

15. Section 176 - Inquiry by Magistrate into cause of death -

Amendment Act, 2005, Section 176 is being amended to provide that in the case of death or disappearance of a person, or rape of a woman while in the custody of the police, there shall be a mandatory judicial inquiry and in case of death, examination of the dead body shall be conducted within twenty-four hours of death.

CONCLUSION:

16. The Magistrate must record the complaint of ill-treatment made by accused. Police are duty bound to conduct the medical examination of accused prior to arrest. The Magistrate must if consented by the accused examine the person of the accused and note the injuries if any. The Magistrate must then send the accused for medical examination to a registered medical practitioner. On receipt of the report from the medical officer, Magistrate can compare both the reports and reach to conclusion. If substance is found in the allegation of the accused he is to be taken in Magisterial custody. The complaint lodged by the accused must be treated as a private complaint and it must be sent to the Magistrate having jurisdiction to take cognizance. The Magistrate is also duty bound to send the report (giving information about the allegation and not to send the entire complaint) to Hon'ble Sessions Court. If the Magistrate having jurisdiction to take cognizance has not proceeded in accordance with Chapter XV, the Session Court may direct the Magistrate accordingly.

LIST OF CASE LAWS

1. Ram Doss ..v/s... State of Tamilnadu, 1993 Cr.L.J. 2147
2. Shrawan Waman Nade vs. State of Maharashtra. 1994 (1) MAH.L.J. 220
3. Adri Dharan Das v. State of W.B. (2005) 4 SCC 303,
4. Manubhail Ratilal Patel v. State of Gujrat and others (2013) 1 SCC 314,
5. ARNESH KUMAR VS STATE OF BIHAR AND ANOTHER (2014) 8 SCC 273,
6. C.B.I. V/s Anupam Kumar (2000) 9 Supreme Court Cases page 266,
7. Changat Satyanarayanam and ors V/s State of Andhra Pradesh (1986) 3 SCC 141.
8. Uday Mohanlal Acharya V/s. State of Mahatrahstra AIR 2001 SC 1010

9. D.K.Basu V/s State of West Bengal AIR 1997 SC 610,
10. Criminal .C. Application No. 402/2013, in Malti Ravindra Shah V/s. State of Maharashtra
11. Gangula Ashok Vs. State of Andhra Pradesh AIR 2000 Supreme Court 740.
12. Ashok Yadavrao Chavhan .Vs. The State of Maharashtra and Ors., Criminal Application No.1494 of 2013.