

JUDICIAL CUSTODY AND POLICE CUSTODY – RECENT TRENDS

The word 'custody' means apprehending someone for protective care. In case, you are in charge of a room with some kids and you find acts of one of those kids dangerous to other kids, you'll want to tie arms of that kid and make him sit away from other kids. So this is the principal behind arresting the suspect of a crime, to save other people in the society.

The words "custody" and "arrest" are not synonymous. It is true that in every arrest there is custody but vice versa is not true. Mere utterance of words or gesture or flickering of eyes does not amount to arrest. Actual seizure or touch of a person's body with a view to arresting is necessary.

Arrest, remand and bail are components related to investigation. They generally come into play as an aid to investigation. Arrest directly curtails personal liberty of an individual. It strikes at his freedom. Therefore, many a times unwarranted arrests have reached courts of law. There have been occasions when unlawful detention has been considered as a violation of fundamental right and compensation thereof has been paid. There are several provisions which incorporate safeguards for illegal arrest. If the method of arrest is not performed as prescribed by Sec. 46, the arrest would be nugatory.

POLICE CUSTODY:

When following to the receipt of an information/complaint/report by police about a crime, an officer of police arrests the suspect involved in the crime reported, to prevent him from committing the offensive acts further, such officer brings that suspect to police station, it's called Police Custody.

It is actually the custody of a suspect with the police in a jail at the police station, to detain the suspect. During this detention, the police officer in charge of the case, may interrogate the suspect and this detention is not supposed to be longer than 24 hours.

The officer in charge of the case is required to produce the suspect before the appropriate judge within 24 hours, these 24 hours exclude the time of necessary journey from the police station to the court.

What is the meaning of **Judicial Custody**?

Police Custody means that police has the physical **custody** of the accused while **Judicial Custody** means an accused is in the **custody** of the concerned Magistrate. In former, the accused is lodged in police station lockup while in latter, it is the jail. When Police takes a person into custody, the Cr.P.C kicks-in and they were produced him/her before a Magistrate within 24 hours of the arrest.

Difference between Judicial Custody and Remand:

Police Custody means that police has the physical custody of the accused while **Judicial Custody** means an accused is in the custody of the concerned Magistrate. In former, the accused is lodged in police station lockup while in latter, it is the jail.

What happens after Judicial Custody:

A person may be held in the custody of the **police** or in **judicial custody**. ... The first thing that happens to a suspect on arrest is that he is taken into **police custody**, following which he is taken before a magistrate and he may either be remanded to **judicial custody** or be sent back into **police custody**.

What is the difference between Police Custody and Judicial Custody in Criminal Procedure code. How long can a accused be detained under police or Judicial Custody?

When a person accused of a cognizable offence is arrested and detained by the police and produced within 24 hours(excluding travelling time from the place of arrest),or he himself surrenders before the nearest Magistrate. Then the Magistrate can either release him on bail or he can either send him to judicial custody or to police custody. If the accused is juvenile, his age is to be ascertained and if he finds that he is juvenile, then he be directed to be produced before Juvenile Justice Board.

- A suspect under Police Custody or Judicial Custody is assumed to be a suspect. A suspect becomes a criminal only after the court finds him/her guilty and convicts him/her for the crime reported of.
- These types of custodies are preventive measures.
- A police officer in charge of a suspect may treat the suspect arbitrarily. In case of arrests by police and pending the investigation, the lawyer of a suspect generally prays for Bail or Judicial Custody. In Judicial Custody, suspect becomes responsibility of Court.
- **Police Custody with permission to interrogate** - During Judicial Custody,
the police officer in charge of the case is not allowed to interrogate the suspect. However, the court may allow the interrogations to be conducted if
it opines the interrogation being necessary under the facts produced before the court.

LAWS OF CUSTODY IN INDIA

The provisions for holding a person in custody for the purpose of furthering investigation, in India are governed by Section 167 of the Code of Criminal Procedure. Section 167 of the Code allows that a person may be held in the custody of the police for a period of 15 days on the orders of a Magistrate. A Judicial Magistrate may remand a person to any form of custody extending up to 15 days and an executive magistrate may order for a period of custody extending up to 7 days. A person may be held in the custody of the police or in judicial custody. Police custody may extend only up to a period of 15 days from the date custody begins but judicial custody may extend to a period of 90 days for a crime which entails a punishment of death, life imprisonment or period of imprisonment exceeding 10 years and 60 days for all other crimes if the Magistrate is convinced that sufficient reasons exist, following which the accused or suspect must be released on bail.

The Magistrate has the authority to remand the person into judicial or police custody. The detaining authority may be changed during the pendency of the detention, provided that the total time period does not extend 15 days. If a person is transferred from police to judicial custody the number of days served in police custody is deducted from the total time remanded to judicial custody.

The most important difference is of the fact that the accused can be sent to police custody only within first fifteen days of the presentation before the Magistrate after the arrest, as held by supreme court in **State v. Dharampal, 1982** as mentioned in proviso (a) to section 167(2). But in case of judicial custody, such person can be sent to Prison, either within first fifteen days or

even thereafter.

Such accused can be kept in judicial custody if its a case of police investigation that is police report or challan has not been filed to the magistrate, within 60 days (if offence is punishable with 10 or less than years) 90 days (if the offence is punishable with more than 10 years imprisonment) and even then the accused does not file bail bond ,then he would continue with judicial custody.

But if the police report is filed within aforementioned days then then the accused wont be released on default bail and thus will continue to be detained under judicial custody because after investigation the process of enquiry has started.

As per Section 436A of the code of criminal procedure, If the accused is undertrial and has under judicial custody, undergone half of the maximum punishment awardable for the offence, then he can be released on default [bail](#). So the maximum period of judicial custody can be upto half of the maximum period awardable for the offence.

The rights of the accused begin from the time of his arrest. The Constitution of India under Article 22 provides for the protection of the arrested person to the extent that he has a right to be informed of the reason for arrest and he must be produced before the nearest Magistrate within a period of 24 hours. Article 22 (1) also provides that he shall be entitled to consult and to be defended by a legal practitioner of his choice [\(Constitution of India, Article](#)

22 (i). Section 50, Cr. P.C. which is a corollary to Article 22, Clause (1) and (5) of the Constitution of India, enacts, that the persons arrested should be informed of the ground of arrest, and of right to bail.

After the legal arrest of a person, his rights are protected through the time period for which he may be held in custody. For the custody to be a legal, a person may not be held in custody for more than 15 days. A Magistrate must be convinced that there are exceptional circumstances present to extend this custody for a maximum of 60-90 days depending in the nature of the crime being investigated. A cautious reading of S.167(1) of the code of criminal procedure makes it clear that the officer in charge of the police station or the investigating officer (if he is not below the rank of sub-inspector) can ask for remand only when there are grounds to believe that the accusation or information is well founded and it appears that the investigation cannot be completed within the period of twenty-four hours as specified under Section 57. Hence, Magistrate's power to give remand is not mechanical and adequate grounds must subsist if Magistrate wants to exercise his power of remand. The same was held in ***Raj Pal Singh v. State of U.P (1983 Cr.L.J. 109)*** the case also said that the remand order sheet need not look like, a judgment delivered after full trial but application of main must be evident.

It is the right of the accused that he is brought before a Magistrate within 24 hours of arrest, excluding the time taken in transportation from the place of custody to the Magistrate. If no judicial magistrate is immediately available then he may be taken before an executive Magistrate who can remand him to custody for a maximum of 7 days following which he must be taken before a judicial magistrate.

In ***Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J.Kulkarni*** ([AIR 1992 SC 1768](#)) the question regarding arrest & detention in custody was dealt with it was held that the Magistrate under S.167(2) can authorise the detention of the accused in such custody as he thinks fit but it should not exceed fifteen days in the whole. Therefore the custody initially should not exceed fifteen days in the whole. The custody can be police custody or judicial custody as the magistrate thinks fit.

The words "such custody" and "for a term not exceeding fifteen days in whole" are very significant. On a combined reading of S.167(2) and (2A) it emerges that the Judicial Magistrate to whom the Executive Magistrate has forwarded the arrested accused can order detention in such custody namely police custody or judicial custody under S.167(2) for the rest of the first fifteen days after deducting the period of detention order by the Executive Magistrate. The detention thereafter could only be in judicial custody.

There are also specific rights during arrest and custody, governing the right of medically unfit prisoners. These are that women accused of any offence, if arrested so soon after child birth that they cannot at once be taken before the Magistrate without personal suffering and risk to health should not ordinarily be removed until they are in a proper condition to travel.

They should be allowed to remain under proper charge in the care of their relations, or be sent to the nearest dispensary, and suffered to remain

there until the officer in charge of the dispensary certifies that they are sufficiently recovered. In such cases, sanction must be obtained by the police from the nearest Magistrate for their detention at their homes, or in the dispensary, beyond the period of 24 hours as allowed by section 57 of the code of criminal procedure 1973. The same procedure should be followed in the case of other accused persons who are too ill to travel.

If the arrest is invalid on account of breach of procedure or violation of any other right or if the custody is not passed within the framework of the law by a competent Magistrate who has jurisdiction over the issue, the person so detained can file a writ of *habeas corpus* under Article 32 or 226 of the Constitution of India. However it must be noted that a writ does not lie against a legal custody, no matter what rights may have been violated before the lawful custody.

In ***Kami Sanyal v Dist. Magistrate (1990 Cr.L.J. 2685), Darjeeling*** the Supreme Court observed that “*while a person is committed to jail custody by a competent Court by an order, which prima facie does not appear to be without jurisdiction or wholly illegal, a writ of habeas corpus in respect of that person cannot be granted*”. It has been held that the crucial date when the legality of the remand is to be looked into is the date when the petition comes up for hearing, in ***Kana v. State of Rajasthan (1980 Cr.L.J. 344)*** the Jaipur Bench of the Rajasthan High Court, referring to the Full Bench decision of the Patna High Court, in ***Babunandan Mallah v. State (1972 Cr.L.J. 423)*** held that “if the detention of the accused is legal, when the bail application is preferred, his previous illegal detention should not be considered.”

Difference between Sections 167 & 309 of Cr.P.C.

In case of **State through C.B.I. -v- Dawood Ibrahim Kaskar and others reported in 1997 Cri.L.J. 2989** - The Hon'ble Apex Court held that there cannot be any manner of doubt that the remand and the custody referred to in the first proviso to S. 309(2) are different from detention in custody under Section 167. While remand under the former relates to a stage after cognizance and can only be to judicial custody, detention under the latter relates to the stage of investigation and can initially be either in police custody or judicial custody. Since, however, even after cognizance is taken of an offence the police has a power to investigate into it further, which can be exercised only in accordance with Chapter XII, there is no reason whatsoever why the provisions of Section 167 thereof would not apply to a person who comes to be later arrested by the police in course of such investigation.

If Section 309 (2) is interpreted - to mean that after the Court takes cognizance of an offence it cannot exercise its power of detention in police custody under Section 167, the Investigating Agency would be deprived of an opportunity to interrogate a person arrested during further investigation, even if it can on production of sufficient materials, convince the Court that his detention in its (police) custody was essential for that purpose. Therefore the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation.

So far as the accused in the first category is concerned he can be remanded to judicial custody only in view of Section 309 (2), but he who comes under the second category will be governed by Section 167 so long as further

investigation continues. That necessarily means that in respect of the latter the Court which has taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfillment of the requirements and the limitation of Section 167. Following the above ruling in case of C.B.I. -v- Rathin Dandapath and others reported in AIR 2015 S.C. 3285 , the Hon'ble Supreme Court reiterated that police remand can be sought in respect of accused arrested even after filing of charge-sheet.

POLICE CUSTODY REMAND AFTER FIRST 15 DAYS WHETHER PERMISSIBLE?

Cr.P.C. S.167(1), S.397(2) – Police Custody Remand (PCR) – Lapse of initial period of 15 days – Accused granted bail. If accused is not in jail for whole first 15 days then he can be remanded in P.C.R. even after lapsed of first 15 days. (Para 10, 11) **Alim A. Patel Vs. State of Maharashtra 2011 (2) AIR BOM R 271.**

TRANSFER FROM PCR TO MCR AND MCR TO PCR WITHIN FIRST 15 DAYS FROM THE DATE OF FIRST PRODUCTION OF THE ACCUSED BEFORE THE MAGISTRATE – CAN BE DONE.

Cr.P.C. S.167(2), Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), S.20 – Change of custody – Validity – Accused in judicial custody, if circumstances justify, can be remanded to police custody or vice versa within time limit (15 days) as prescribed in S.167(2) Cr.P.C. (Para 2, 4) **Kosanapu Ramreddy Vs. State of A.P. and others 1994 CRI.L.J. 2121 (SC).**

POLICE CAN INTERROGATE ACCUSED WHEN HE IS IN MAGISTRATE CUSTODY.

Cr.P.C. S.167 – Criminal Procedure – Judicial custody – Interrogation by Police – Permissible – Magistrate can direct the place and manner – Mere interrogation by Police, during such custody by permission of the Magistrate, cannot change the nature of custody (Para 4) **Gian Singh Vs. State (Delhi Administration) 1981 CRI.L.J. 100.**

In **Nijamuddin Mohd. Bashir Khan...vs...State of Maharashtra reported in 2006 (5) Mah. L.J. 690**, it has been held that in every case in which offence is punishable with imprisonment for a term which may extend to ten years, provisions of section 167(2)(a)(ii) of Cr.P.C, will be attracted and if investigation in such case is not completed within period of 60-days, no Magistrate shall authorise detention of accused beyond the said period.

Accused who has been granted bail cannot be taken into police custody for further investigation unless bail is cancelled [**Mithabhai Pashabhai Patel and others Vs. State of Gujarat (2009) 6 SCC 332**].

When accused is released on bail for offence under section 306 of IPC and later on offence under section 302 is added, it was wrong on part of Magistrate to say that for every addition of offence, police can not arrest him. With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime - **Pralhad Singh Bhati ..vs.. N.C.T. Delhi reported in AIR 2001 SC 1444**. If the accused is released on bail for bailable offence and if later on non bailable offence is added, then police can arrest the accused without seeking cancellation of order of bail - **Ahamed Basheer and another**

Vs Sub Inspector of police 2014 Cr.L.J 137 (Ker).

While passing the orders, the Magistrates must also see to the background of the victims and follow the guidelines mentioned in **D.K.Basu V. State of West Bengal (AIR 1997 SC 610)**....

- 1) That Policemen must wear visible and legible identification when arresting a person and when carrying out interrogation. Names and Particulars of police personnel handling interrogation must be recorded in the register;
- 2) It is the right of every person detained or questioned by Police to know the grounds for detention or questioning;
- 3) The Person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or detention;
- 4) A person arrested must be produced before a Judicial Magistrate/Judge within 24 hours of his/her arrest;
- 5) A person arrested should be medically examined at the time of arrest and major & minor injuries on arrested person be recorded in Inspection Memo duly signed by both Police officer carrying out the arrest and the person arrested and the copy of this memo be provided to the person arrested;
- 6) Any person arrested must be medically examined by a doctor from an independent and approved panel of doctors, every 48 hours during detention;
- 7) Arrest or Search of women should only take place in presence of Women Police Officers and it should not take place in night. And women should be detained separately from men;
- 8) While an accused is in Police custody, his lawyer should be permitted to visit him;
- 9) Information of the arrest of accused person should be given to the district Control Room and the State Police Headquarters.

The provisions of Section 167 of Cr.P.C extends to allowing the person bail if there is not sufficient cause to hold him in custody. The Section, however also explicitly states that if the accused is unable to furnish bail then he continues to remain in custody.

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This is my humble submission of the topic "Judicial custody and Police custody – Recents Trends" designated to me.

I thank one and all.

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