MAGISTRATES & CONSTITUTIONAL PROTECTIONS

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MAGISTRATES & CONSTITUTIONAL PROTECTIONS

An ethnographic study of first production and remand in Delhi courts

Jinee Lokaneeta & Zeba Sikora

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NOTE FROM THE EXECUTIVE DIRECTOR, PROJECT 39A

THIS STUDY IS AN ATTEMPT to draw attention to the manner in which core constitutional protections are translated into legal processes at the level of the magistracy. By looking at issues of production within the first 24 hours of arrest and determination of remand hearings, this study by Jinee Lokaneeta and Zeba Sikora breaks important new ground. As a criminal justice programme, Project 39A undertook this study because these issues have considerable bearing on core liberty protections in the Constitution against arbitrary arrest and detention. Further, in these proceedings before the magistracy, important aspects of the subsequent trial get determined and therefore have significant fair trial implications.

Despite the constitutional interests at stake, the academic focus on proceedings before the magistracy in these contexts has been rather thin. In that sense, this study seeks to challenge two dominant approaches within legal scholarship. The first is to challenge the tendency to understand constitutional law and its practice largely through judgments of appellate courts. By locating the study in magistrate courts on the issue of first production and remand hearings, this work invites us to imagine the content and practice of constitutional law in very different ways. Of course it might even raise the question of whether any of it is even constitutional law, but that is just one of the many provocations of this study.

This study is also important because of its focus on magistrate courts as its site. For far too long, legal research in India has not paid sufficient attention to the district and magistrate courts - courts where the law gets shaped and assumes a life of its own. In order to understand first productions and remand hearings, we certainly need to travel beyond the provisions of the Constitution, the Criminal Procedure Code and various judgments that declare the law on the issues. As is plainly obvious from the findings of this study, the law on these issues is much more than just those things. It is imperative that the technical legal understanding of the law on these critical aspects of criminal justice be infused with a real understanding of its practice at its primary site.

Criminal justice research, and more so when it is ethnographic, is difficult in India. Many factors contribute to that difficulty, and thanks is due to the Thakur Family Foundation for their generous support for this project. It is a testament to the commitment and rigour of the researchers on this study that we were able to study Delhi's courts in this manner. Research of this kind is invariably a methodological and logistical minefield. In addition to the tremendous contributions from the researchers, we owe the successful completion of this study to the scholarly and empathetic leadership from Jinee Lokaneeta and Zeba Sikora.

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INTRODUCTION

I

IN AN INTERVIEW for the book *In Custody*, SAR Geelani, initially convicted and ultimately acquitted in the 2001 Parliament Attack case, described his experience in December 2001 in Delhi:

> We were taken to Safdarjung Hospital. It was early morning, so it was deserted, and they had evacuated the whole place...There was only one doctor. The policeman filled up my medical form, I protested to the doctor. But he just said, 'There is a lot of pressure.' So, the medical report said: 'BP, Pulse everything normal, no marks or injuries.' I could not even stand on my own. That day [16 December] was a Sunday; we were taken to Mandir Marg, to a flat. It was the magistrate's house. ACP Rajbir went inside and spoke to her. We were waiting outside. Then the magistrate came out. She asked us, 'Do you have anything to say?' I asked her, 'What are we arrested for?' I showed her my feet [badly beaten on the soles]. I told her that they kidnapped my wife and children and that they are in the police station. But her order does not record anything.[1]

In an interview published in *The Truth Machines*, a lawyer for the Muslim youth detained and finally acquitted in the 2007 Mecca Masjid case, Hyderabad, recounted the experience:

> And they [the youth] were all produced before magistrates at 11 in the night in a group. The judge doesn't even ask them, "Why are you producing these guys at 11 in the night?," doesn't even physically examine these people, and they just get remanded to judicial custody. Habeas contestations are dealt with mechanically.[2]

In June 2020, the father-son duo Jeyaraj and Bennix, in Sathankulam, Tamil Nadu, were picked up, ostensibly for COVID-related violations, and tortured. They died in custody. In the chargesheet, Jeyaraj's sister mentions how the two accused were remanded to judicial custody to a Kovilpatti sub-jail.

> They were made to stand inside the Court campus but outside the Court building, far away from the office of the concerned Magistrate/Judge. They were surrounded by Police personnel and the Magistrate was standing on the 2nd Floor of the Corridor of the Court Building.[3]

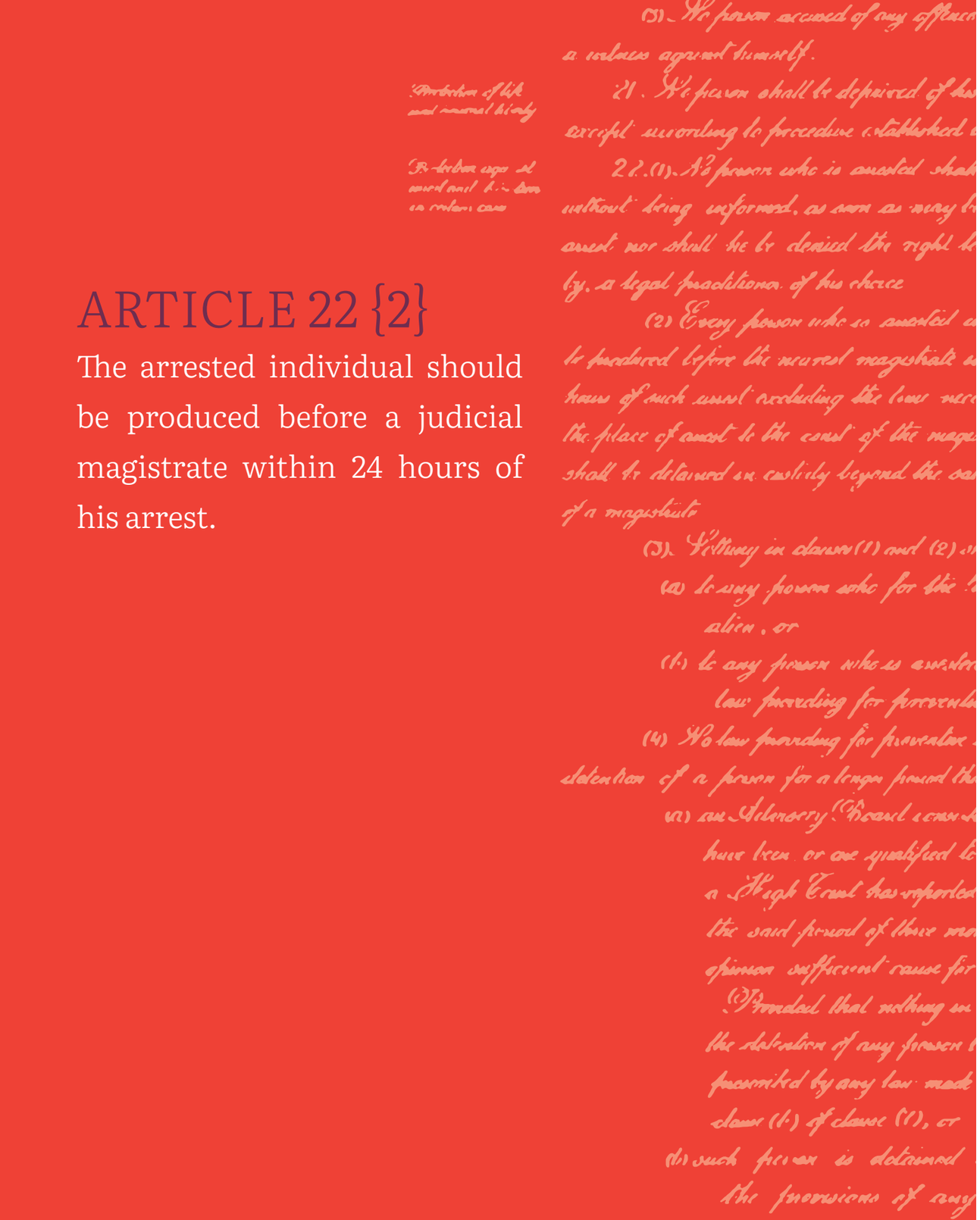
In November 2022, a researcher from our study present at the Saket duty magistrate court described the incident of a young man we call Shoeb, who was arrested in a petty theft case and brought for first production:

> The injuries were visible and I wondered whether the magistrate would figure out what had happened. My heart skipped a beat when a lawyer who was standing on the right side of the court intervened, saying that the accused had told him that the police had hit him. I looked at the magistrate to see how he would react. As the magistrate turned to the accused, the lawyer said, "*Janaab ko bejhijhak ho ke batao ki kisne maara*" – be fearless and tell the magistrate who beat you. Meanwhile, the Investigating Officer (IO) standing next to the accused on the left side of the courtroom said "*Janaab, public ne maara ise*" — sir, the public beat him up. When the magistrate asked the accused again, "*Kisne maara?*"— who beat you?, the accused quietly said, "Public *ne bhi maara*" — the public also beat me. This was loud enough to be heard by me sitting at the back of the courtroom. But before the significance of the "*bhi*" (also) could even be registered, to my surprise, the lawyer said "*Achha baat khatam hui phir*" — okay, that ends the discussion. They moved on and the tense moment passed.

The narratives from a range of cases — terrorism related, COVID violations, theft— about remand hearings in front of judicial magistrates suggest the many ways in which production hearings are unable to address custodial violence and protect the right of the accused to life, liberty, dignity, and safety.

The Constitution of India mandates that the police produce arrested persons before the magistrate within 24 hours of arrest. Article 22(2) states, "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."[4] This is called the first production, because it is the first time that the judiciary—the institution responsible for upholding the rule of law and enforcing a check on the executive—exercises its oversight powers to ensure constitutional and statutory protections to a person in custody.

At this stage, the magistrate is empowered to scrutinise the grounds and legality of arrest, assess the availability of quality legal representation, consider the safety of the accused in custody, and make a determination on bail or further detention.[5] Through subsequent remand hearings, the magistrate is also required to monitor the investigation and the entire duration spent by the



ARTICLE 22 {2}

The arrested individual should be produced before a judicial magistrate within 24 hours of his arrest.

accused in police and judicial custody.[6] Thus, the magistrate is empowered to play a crucial role in balancing the rights of an accused with the requirements of police investigation, and ensure the realisation of access to justice in accordance with the constitution.

Yet, there are numerous testimonies from a variety of cases, similar to the ones above, on the interactions of the accused with the police, the doctors and the magistrates during this crucial pretrial phase. The testimonies highlighted at the opening of this report reflect, on the one hand, the inadequate role of the individual magistrates and other actors such as the police and the doctors in these cases, and on the other hand, indicate the life-and-death impact of the first production and remand process in the Indian criminal justice system. Crucially, the testimonies demonstrate an urgent need to focus on how this process plays out in practice at the everyday level. Concerns about illegal detention not captured by Arrest Memos, manipulation of Medico-Legal Certificates (MLCs), pressures on the doctors, inadequate reasons for the necessity of arrest and continued detention, and the presence of physical injuries on the accused—all these aspects play out publicly at the stage of first production and remand hearings. The hearings thus have tremendous consequences for those in custody, and yet, systematic research on the role of magistrates in this crucial pretrial phase has been wanting.

In a landmark case in 2014, *Arnesh Kumar v. State of Bihar* the Supreme Court very clearly stated that:

> The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.
>
> Before a Magistrate authorises detention under section 167, Cr.PC, 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 is satisfied.[7]

Further, the court writes, "Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically."[8]

IT IS SURPRISING that a systematic study of magistrate courts has rarely been the subject of research.

Karan Tripathi, reporting for *The Quint*, conducted the only study of its kind of 153 remand orders of magistrates from all trial courts in Delhi, followed by interviews with 25 remand lawyers.[9] The study found that the orders of the Supreme Court regarding arrest and remand were violated and there was a tendency among the magistrates to conduct the remand proceedings mechanically without ensuring the rights of the accused. What seems particularly striking is that despite their crucial role in safeguarding constitutional rights, there appears to be much less research or focus on the role and functioning of the magistrates, the lowest rung of the judiciary, at an everyday level. While such an argument has also been made more generally about lower courts, given the prior academic focus on the High Courts and the Supreme Court, it is surprising that a systematic study of magistrate courts has rarely been the subject of research, with some notable exceptions.[10]

Even when magistrate courts become a subject of study, the pretrial matters of first production and remand have not necessarily been taken as seriously, despite these being constitutionally mandated and statutorily defined.

In this study, we focus on the first production and remand proceedings in the judicial magistrate courts in Delhi. We ask whether the implication for liberty and safety in custody—as envisioned in Article 21 and 22 (2) of the Indian Constitution—is fully realised in the magistrate courts. Here, then, it is not just about whether formal safeguards as defined within the Constitution, the statutes and in jurisprudence are implemented in practice, though that is crucial. Rather, we assess whether the substantive rights of life, liberty, safety and dignity are ensured during these proceedings. While Article 21 has been expansively interpreted to include due process and dignity of an accused in custody, and protection against custodial violence; discussion on Article 22 (2) has been limited to the almost bureaucratic procedure to be followed on arrest and remand.[11] However, the recognition that procedural compliance under Article 22(2) should be integrally connected to the spirit of Article 21 has been inadequate in jurisprudence.[12]

This study thus brings focus to the significance of the formal safeguards on arrest and remand, and highlights the importance of its substantive compliance as central to maintaining the integrity of the criminal justice system. In other words, focusing on the experience of the accused during first production and remand hearings allows for assessing whether the constitutional and statutory safeguards are realised at an everyday level. Besides the violation of individual liberty and concern for well-being, non-implementation of the law at this stage also fails to check against irregularities in investigation. This permits innocents to undergo a prolonged trial process and even get convicted based on fabricated evidence, impacting the credibility of the criminal justice system as a whole.

LITTLE IS KNOWN about the everyday experience of the arrested during the first production and remand process. In our study, our primary focus was on observing court proceedings.

Here we draw from Justice (Retd.) Muralidhar's emphasis on the normative development of criminal procedure within the framework of the Constitution. In his 2018 lecture on *Crime, Punishment and Justice in India: The Trajectories of Criminal Law* for Project 39A, he notes, "The big question is whether there has been sufficient normative development of criminal law within the framework of the Indian Constitution and if not, what has this meant for a constitutional democracy committed to the rule of law?"[13] In the spirit of what Justice Muralidhar notes, this study assesses whether the normative spirit of the Constitution vis-á-vis liberty and safety are actually developed and translated into practice. Article 21 states that "No person shall be deprived of his life or personal liberty except according to procedure established by law." This language was adopted after extensive constitutional debates on whether the language of due process would be better or the phrase of "procedure established by law" would be more appropriate for India, and eventually resulted in a preference for the latter.[14] In the course of these debates, Article 22 ended up reflecting at least some of the procedures regarding the magistrate's scrutiny of the police role in arrest and detention, although the link between Article 21 and 22 is not adequately emphasised.

As Justice Muralidhar explains:

> The production of an arrested person before a criminal court within 24 hours; being informed of the grounds of his arrest; being informed of his right to be represented by a lawyer of his choice; judicial supervision of the detention of a suspected person, first in police custody and thereafter in judicial custody, were elements of criminal procedure written into Article 22 of the Indian Constitution.[15]

While each of these elements are not explicitly stated in the text of the Article, it is the spirit of Article 22, as elaborated in jurisprudence and statutory law, that is captured here by emphasising the judiciary's role in first production and remand, and in turn keeping a check on the welfare of the accused throughout their time in custody. Since arrest and illegal detention are so closely related to torture and custodial violence—as seen in the *DK Basu* case that articulated, for the first time, a way to involve the public, family and the accused alongside other state officials in the protection against custodial violence—the role of the magistrate is *also* crucial in safeguarding against the same.[16]

Of course, one of the biggest challenges especially in terms of liberty and safety from custodial violence is that part of Article 22 itself is a major limitation on liberty. As Upendra Baxi put it: "The Indian Constitution is the most unusual document, for among other reasons it has Article 21 which says everybody shall have the right to life and liberty, and Article 22 which authorises preventive detention."[17] This contradiction can be starkly found in the different sub-clauses of Article 22 itself. While sub-clauses (1) and (2) of Article 22 are about rights to be ensured the moment a person is in custody, sub-clause (3) onwards refer to preventive detention with some gesture towards review over those practices as well.

The focus of this study is on routine cases in the criminal justice system as opposed to the preventive detention system. That said, in routine cases, even a good faith implementation of Article 21 and Article 22 as reflected in protection of life, liberty, dignity and safety during first production and remand has significant implications for the normative fulfilment of the Constitution. A robust enactment of the safeguards would have undoubtedly made a tremendous difference in the lives of those accused with whom we started this chapter. Thus, this study focused on whether the safeguards for liberty, dignity, and safety from custodial violence are fully realised in the magistrate courts of Delhi.

Methodology

The role of the magistrates during first production and remand processes often emerges in testimonies of those who were subject to illegal detention and custodial violence, which is documented in a very small fraction of the cases that come through the criminal justice system. The other context in which magistrates come up is regarding their role in conducting inquiries into custodial deaths and extrajudicial killings, as documented in fact-finding reports.[18] Yet in both these contexts, the discussion on the magistrates occurs once custodial violence or illegal detention has taken place in more well-known cases, or to enquire into a case of custodial death and extrajudicial execution

to get justice for forms of state violence. However, little is known about the everyday experience of the arrested during the first production and remand process. In our study, our primary focus was on observing court proceedings in different magistrate courts in Delhi to understand their role in pretrial matters. Within the broader context of the everyday functioning of these courts, the researchers observed court proceedings during first production and remand to qualitatively consider the manner in which magistrates realise due process safeguards.

As Justice Muralidhar (2018) reminds us of the constitutional function of magistrate courts: "The Magistrate's Court, the Beggar's Courts, the Railway Magistrate's Court, the Mahila Court, the JJB [Juvenile Justice Board]; all of these institutions constitute the first point of contact to the victim and the accused entering the criminal justice system. The orders passed in these Courts profoundly affect the liberties of the litigant. The Constitution and the laws do not get reduced to a mere formality. In that sense these Courts do perform a constitutional function."[19] Magistrate courts continue to be an under-explored site of study, even though they represent the first point of contact with the judicial system for most individuals—particularly those who have been arrested and drawn into the criminal justice machinery. Magistrates are legally empowered to perform a crucial oversight function in pretrial proceedings—they are responsible for ensuring the realisation of constitutional and statutory protections to an accused, as well as monitoring progress in police investigations and ensuring quality of evidence collection. Magistrates are significantly positioned to ensure that an accused person is provided access to justice at the most critical point in a criminal proceeding.

This study was conducted in magistrate courts in all district court complexes in Delhi, in an effort to account for variations and peculiarities across jurisdictions. This included diversity in geography, demographic composition and other indicators—such as crime rate and profile, number of police stations, and police capacity—as well as variations in institutional history and court architecture. These variations in court worlds and the world outside the court—or the social, political and cultural context in which they exist—and their interaction, all play a role in shaping the functioning and practices of different magistrate courts.

Field research based on court observations was conducted by a research team of eight members. Members of the research team visited magistrate courts across the six district court complexes in Delhi—Karkardooma, Tis Hazari, Saket, Dwarka, Patiala House and Rohini, over a period of three months. The study was designed in two phases. In the first month and a half, the researchers covered the magistrate courts in Karkardooma, Tis Hazari and Saket, and in the latter month and a half, they studied courts in Dwarka, Patiala House and Rohini. The emphasis was on observing proceedings in different magistrate courts—at least two magistrate courts per court complex—in order to understand the *pattern of access to justice and experiences of persons in magistrate courts* more institutionally than focusing on what happens in a single court. In addition, the researchers also spent time in the duty magistrate courts, some during weekdays and occasionally on weekends and holidays.

The methodology of courtroom observations relied on in this study was significant to ensure that any analysis of the manner in which the law is translated into practice by magistrates is situated within an in-depth consideration of the context and institutional constraints within which they function. Courtroom observations allowed the team to identify, and account for the impact of institutional cultures and everyday interactions between the judge, prosecutor, police/Investigation Officers (IOs), lawyers and the accused, and how this influences the practice of the law. These realities often do not find a place in formal documents such as court orders or other records, but are essential to understanding how magistrate courts perform their daily functioning and ensure access to justice.

All researchers were at the postgraduate level, and had some independent field-research experience, and were crucial in helping us figure out how to navigate the challenges that came up in the first phase of the study itself. An ongoing point of discussion was whether such a study required formal legal training. While undoubtedly some familiarity with the specific legal aspects were essential, the emphasis was to think of what a non-legal trained researcher might also note.[20] While the two of us have written chapters 1-4 as co-advisors for the study, we invited two of the researchers to write a chapter (chapter 5). The researchers wrote about their experiences of fieldwork and the challenges of doing research in a courtroom based on their collective observations. While in the introduction, we mention the methodology adopted by the study, chapter 5 really elaborates on how the research was experienced by the researchers at the everyday level, something not often captured by the methodology sections alone.

Inspired by the evocative court description of Tis Hazari in Mayur Suresh's ethnography and Daniela Berti's powerful description of a district court in Mandi, Himachal Pradesh,[21] all researchers were invited to write short pieces on the courts and court complexes they visited, and seemed to miss by the end of the fieldwork — which are spread out across the report.

One of the most difficult roadblocks early on was to actually figure out how courts kept track of first production and remand cases since they did not appear on the cause list, which lists the scheduled cases before a particular court on a given day.[22] The methodological and substantive implications of this will be analysed later in chapters 4 and 5. However, it is important to note here that in the initial days of the study, it became imperative to continually revisit the methodology, conduct internal workshops with the team, and rely on the research team to discover approaches to identifying cases of interest, particularly through conversations with the court staff. It was the remarkable initiative, sheer ingeniousness and persistence of researchers that led to this discovery that first productions, police remand/judicial custody matters that do not even appear on the cause list in some ways exist in this liminal space. These productions are integral to the magistrates' role in ensuring constitutional safeguards in custody but may also be formally invisibilised until the remand orders appear much later in a case file.

The team came up with their own ways of navigating each court complex and identifying courtrooms for observations. They were advised to don black and white attire, while being unequivocally told to never assume the identity of being advocates.

DELHI DISTRICT COURTS

ROHINI COURT COMPLEX
p125 - p128

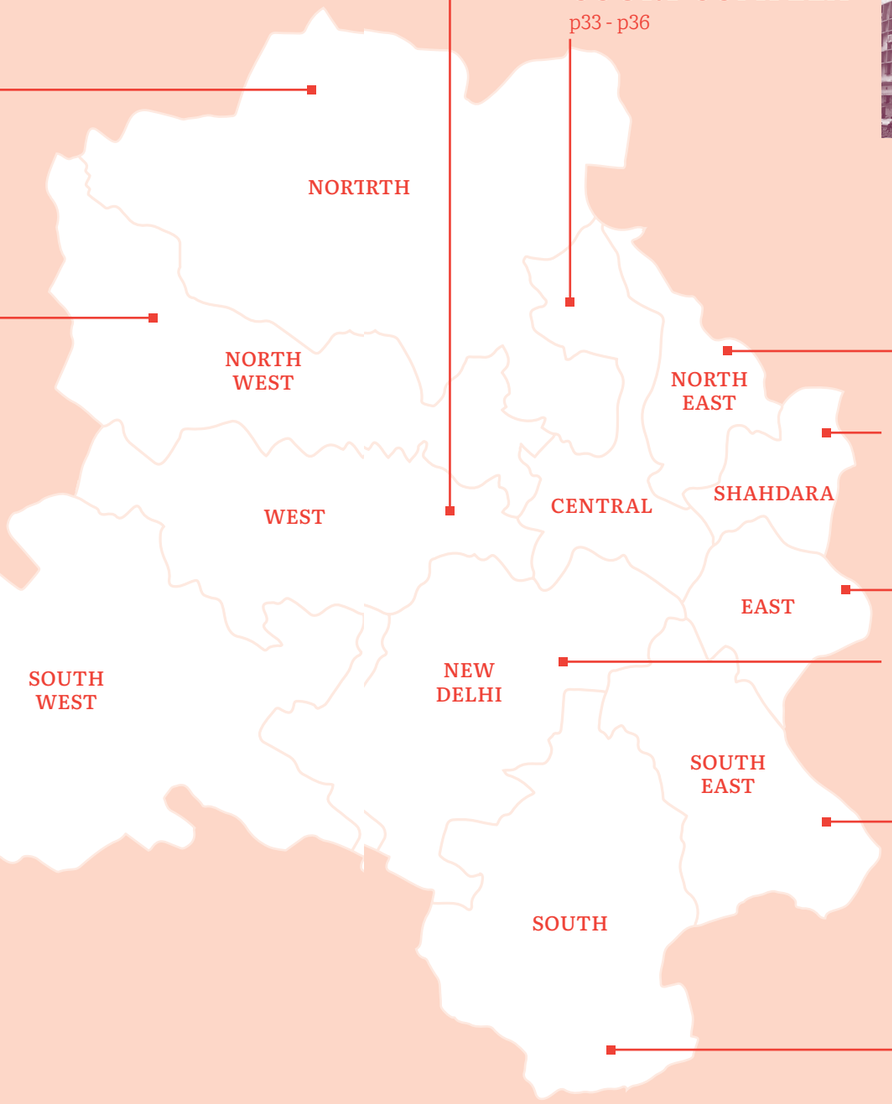
TIS HAZARI COURT COMPLEX
p33 - p36

KARKARDOOMA COURT COMPLEX
p99 - p102

DWARKA COURT COMPLEX
p155 - p158

PATIALA HOUSE COURT COMPLEX
p163 - p166

SAKET COURT COMPLEX
p67 - p70



Additionally, their identity cards as researchers associated with National Law University, Delhi (NLUD) helped the researchers navigate the field site, and gain initial access into courts. Since courts are public spaces and the emphasis of the study was on recording the public performance of the role of the magistrate during first production and remand, the researchers would consistently go to the magistrate court that they chose over a few days.

Choice of courts depended on a range of reasons: audibility, space to sit, friendly court staff, gender of the magistrate and whether the proceedings were easy to follow. In each court complex, certain magistrates were appointed as duty magistrates, on a rotational basis, to be available in court beyond regular hours until 5pm on working days and from 11am to 5pm on holidays.[23] Beyond these hours, the duty magistrates were available at their residence for urgent productions or other matters. The researchers identified the magistrate on duty through circulars periodically uploaded on the court websites, or through inquiries with court staff when information was not updated online. In the second phase of the study, the researchers explicitly asked the magistrates for permission, while in the first phase they were mostly asked to observe and introduce themselves if asked. Other than a couple of magistrates, most magistrates permitted the researchers to observe proceedings in their courtroom, though some were surprised at the focus of the project and wondered why the focus was on pretrial procedures.

Since the scope of the study was new, and court spaces were unfamiliar for most of the researchers, the study was designed to ensure that researchers always travelled in pairs. Logistical flexibility sometimes created challenges such that researchers occasionally went to court by themselves. An upsetting experience in a courtroom over a weekend reinforced the need to once more stick to pairs, which helped a little to mediate another experience of harassment. Each time such an incident occurred, the group met to debrief, and discuss the challenges with the consent of the impacted member. An additional workshop with ethnographer Pratiksha Baxi was organised to address the challenges of fieldwork attended by other members of Project 39A for a broader conversation about research in courtrooms. Workshops at the beginning of the project were addressed by the co-advisors, as well as ethnographers and lawyers in preparation for fieldwork.

However, traumatic experiences from fieldwork reiterated the need to periodically have check-ins not just about the logistics of the fieldwork but also to ensure a chance to talk about any personal challenges that may have come up in the process. As will be apparent from the collective experience of the research team detailed in chapter 5, the difficulties of navigating a highly gendered and hierarchical space left its toll, even as the researchers were persistent in completing the fieldwork and ended up with extremely rich court observations. Baxi also writes powerfully about the courtroom as a hierarchical space, something that researchers time and again wrote about as well. As Baxi put it: "Courtroom research demanded a threshold of toleration of sexism and sexual harassment, while having to calculate how to keep oneself safe."[24] Discussions on research ethics and preparation for fieldwork is imperative, to that extent, for both researchers in academic settings as well as for research centres. [25] Certain specific guidelines were created for the group, and consensus arrived at, which emphasised that the safety of the researchers was the top priority for the project even as we recognize the pressures created by the project itself. [26]

This study adopted an ethnographic approach, though the observations were conducted for a much shorter time frame than what many ethnographers do.[27] Yet, by adapting the ethnographic approach to court observations, the research allowed for an insightful, qualitative study over a shorter duration.[28] The strength of the ethnographic approach is that it captures how written law may be completely transformed in its everyday usage. As Pratiksha Baxi wrote in her path-breaking book *Public Secrets of Law*, how state law [often doctrinal law or law in books] "is transformed in its localization, often to the point of bearing little resemblance to written law."[29] The difficulty in representing the legal language of courts can sometimes be mediated by ethnographic details captured by researchers in the courts. Srimati Basu has written eloquently about the representation of courts, "Courts are notoriously difficult to represent ... Most commonly, the cacophony of court corridors comes to us in stiff legal language, in the form of parsed judgment less often in ethnographic jottings, as in this book."[30] It allows for the ordinary aspects of law to be revealed. As Mayur Suresh describes it, borrowing Veena Das's (2007) words, courtroom ethnography allows for a "descent into the ordinary" of the law. Despite all the challenges of entering a formal courtroom that is often hierarchical, the value of fieldwork in these spaces cannot be understated. Baxi similarly notes, "The experiences of doing fieldwork seemed relevant to me only to highlight the narratives of survivors in court and describe courtroom culture."[31] Courtroom observations become even more crucial for the relatively understudied site of magistrate courts and pretrial procedures.

COURTROOM OBSERVATIONS become even more crucial for the relatively understudied site of magistrate courts and pretrial procedures.

For the study, adopting an ethnographic approach allowed the researchers to get to know the courtroom and its actors, and most importantly, witness the experience of the accused in their first interaction with the constitutional court system during production and remand hearings. Court observations can reveal some of the intangible aspects of the court experience, which are not captured by court documents or case files. The informal and formal interactions with the court actors, in about 700 cases over a three-month period by multiple team members, allowed the study to emphasise the narratives of the accused as witnessed in the courtroom and identify patterns. Since first-production and remand matters were an unpredictable and short part of the magistrate's work day, the researchers' effort was to understand it as part of the magistrate's entire day and schedule.

For this, the research team looked at the daily cause list, even though, as discussed, pretrial remand and first-production cases were largely absent from that list. While the approach of different magistrates varied, the researchers were able to identify some enduring patterns across the courts observed. When there were no matters waiting to be heard in the courtroom, magistrates tended to retreat to their chambers, and would thereafter often continue to hear matters in chambers when they came up. Therefore, production proceedings, which were largely concentrated in the post-lunch period and before the duty magistrate, would often be heard out of sight and many times without the presence of legal representation.

Chapter 5 indicates the rich experience of field work alongside a certain amount of frustration amongst the researchers stemming from the need to both record the magistrate's day's work as well as focus on first-production and remand cases, including the boredom associated with waiting, which researchers such as Makhija, Baxi and Suresh all write about.[32] And yet, scholarship and the researchers' own court observations suggested the value of waiting. As Suresh puts it: "While lawyers, police officers, and the terror-accused often said that waiting in courts for cases to be called was a waste of time, this seemingly pointless period of waiting often proved to be the most productive for my fieldwork, since it was during this time that I was able to speak with many of the terror-accused and their families."[33] As the researchers mention in chapter 5, they observed a lot of courtroom activity as they were waiting around for the first production and remand hearings. Significantly, as discussed in chapter 4, courtroom dynamics and the important role of the naib court — court staff that acted as a link between the police stations within the jurisdiction of that magistrate and the court — all became evident, through the extended time spent in the courtroom by the researchers.

In the production matters observed, the researchers recorded, to the extent that it was possible to ascertain in a public hearing, whether the magistrate followed the formal safeguards. They were asked to note whether the magistrate looked at the Arrest Memo and MLC, ensured a right to counsel, talked to the accused, asked about custodial violence, and enquired into legality of arrest and detention. Here, the comprehensive checklist created by the Commonwealth Human Rights Initiative [CHRI] in their report on first production was absolutely crucial.[34]

Since the researchers were primarily observing the court proceedings, it was hard to determine the factual details in all cases, though they would sometimes ask the lawyers, court staff or the accused and family. But the most important part of the fieldwork was to ask researchers to go beyond the formal safeguards/proceedings, and adopt the ethnographic approach. This approach was not understood in terms of length of time spent but in terms of noting the intangible aspects of the experience. Researchers noted the tone and interactions between the different actors in the courtroom, the positionality of the actors, and their own experiences. For the researchers themselves, that meant that it became much more of a fraught and, at times, intense experience, as they too experienced courts as hierarchical and gendered spaces, and yet carried on. That too became a part of our weekly discussions and individual check-ins. Researchers also read essays on both how to do ethnographic research and also the potential challenges to do so.

Thus, in the report, we give a narrative that at once captures the happenings in the courtroom but also how the researchers themselves recorded them and how they felt as they made those observations. While at times, the narratives may feel a bit long, it gives a more textured account of the particular interaction by sharing fragments of experiences from the courtroom directly, to make these ethnographic observations as accessible as possible. In other words, the courtroom ethnography is integral to how the entire report is structured and researched. While chapter 5 is written by two of the researchers, it is meant to share the actual experience of the research team, which was integral to the writing of this report, and to serve as a resource for future research.

Locating Magistrate Courts in the Judicial System

This study is based on the observations of pretrial proceedings in the courts of metropolitan magistrates in Delhi. These courts are the first point of contact with the judiciary for any person apprehended by the police in relation to an offence. Therefore, magistrates are entrusted to perform a constitutional function through their oversight powers at the pretrial stage, where their decisions have significant implications on the life, liberty, dignity and safety of the accused.

The Indian legal system is a hierarchical, federal judicial system, with a single Supreme Court and 25 High Courts at the state level. The Supreme Court is the highest appellate authority in India. In addition to its appellate jurisdiction, it is also tasked with the important functions of enforcing fundamental rights and adjudicating matters of constitutional importance, including the interpretation of the Constitution.

The extensive powers of the Supreme Court include a unique power to decide on any issue of "larger public interest," moved by any individual through a formal writ petition or even a letter to the Chief Justice of India, also known as Public Interest Litigation (PIL). The court's PIL actions have often been given the moniker of "judicial activism" and the overreaching and unchecked powers of the Supreme Court in this regard has been widely critiqued.[35] However, the jurisprudence and guidelines arising out of PILs have also had a significant impact on recognising the importance of constitutional rights of individuals in the criminal justice system.[36] These judgments have drawn attention to fundamental issues plaguing the Indian criminal justice system, including torture and custodial violence in arrest and investigation, inhuman prison conditions, and absence of legal aid. Through these cases, the Supreme Court has issued guidelines as concrete steps for the due process rights of the accused to be translated into practice and enforced even at the lowest rungs of the judiciary, including magistrate courts.

IN CONTRAST TO the higher judiciary, district courts are relatively under-explored in scholarship.

High courts are next in the judicial hierarchy and are the highest judicial authority of each particular state or union territory under its jurisdiction. These courts also have significant powers to ensure the enforcement of fundamental rights. Appeals and review against judgments of the high courts are heard by the Supreme Court. Every high court is the appellate authority for subordinate courts and tribunals within its jurisdiction, and exercises administrative control over these courts; including the power to appoint judges as well as issue rules to regulate their functioning.[37] The high courts have jurisdictional authority over the district courts, including the magistrate courts, and oversee the rules applicable to the lower courts.

Under the writ jurisdiction of the Supreme Court and high courts, both have significant powers to issue directions to state authorities or lower courts when the fundamental right of an individual has been violated. This writ jurisdiction is commonly invoked in cases of illegal detention or for relief in cases of custodial violence. The judgments of both the Supreme Court and the high courts have authoritative value, and are binding law in the country.

HIERARCHY OF CRIMINAL LEGAL SYSTEM, DELHI

Supreme Court

↑

Delhi High Court

↑

Subordinate Courts

↑

Subordinate Courts

CRIMINAL COURTS
District and Sessions Judge
Additional Sessions Judge
Chief Metropolitan Magistrate / Additional Chief Metropolitan Magistrate
Metropolitan Magistrate

The significant position of the higher judiciary in the Indian legal system has resulted in prominent focus on their functioning, especially their role as constitutional courts, and the implications of their jurisprudence on human rights.[38] However, in contrast, district courts/subordinate judiciary are relatively under-explored in scholarship.

The district courts hear millions of cases every day, and as courts of first instance, their efficient functioning is critical for a robust legal system and the criminal justice system. They are the first site at which the judiciary can intervene to ensure that the constitutional and statutory rights of every individual are realised, and violations are prevented or checked in time. District courts are usually headed by a Principal District and Sessions Judge, and are thereafter broadly split into a distinct hierarchy of judicial officers for criminal and civil cases. In district courts in Delhi,[39] criminal courts are classified into two levels: Sessions Courts and Courts of Metropolitan Magistrate.[40] The Sessions Courts have the authority to conduct trials for more serious offences, with higher punishments (with punishment greater than 7 years to life imprisonment, and death penalty), while the courts of metropolitan magistrates conduct trials for relatively minor offences.

Within the limited literature on district courts, there is a predominant focus on the trial process and the final judgment and culminating outcomes. Besides being the focus of scholarship, the trial phase is also considered more significant by lawyers practising in district courts, and even magistrates. In contrast, the pretrial phase[41] is not given much importance.[42] This is the period from the inception of a criminal investigation and arrest, until the investigation is completed and the chargesheet is filed. This entire duration is monitored by judicial magistrates, specifically metropolitan magistrates in Delhi, who are assigned particular police stations under their jurisdiction.

It is important to remember that there is a separation of executive and judicial functions in different categories of magistrates. Metropolitan magistrates are judicial officers, under the supervisory and administrative control of the session judge and the high court. These judicial magistrates are appointed by the Delhi High Court, after they have cleared the Judicial Services Examination, which they are eligible to attempt immediately after completion of their law degree. Judicial magistrates have distinct roles and functions from executive magistrates who are appointed by the state executive and primarily oversee the maintenance of law and order under their jurisdiction, including the functioning of the police.[43]

As noted earlier, judicial magistrates, at the very bottom of the judicial hierarchy, perform a constitutional function at first production and remand. Article 22(2) mandates that any person arrested or detained be produced before the nearest magistrate within 24 hours of arrest. This is not just a procedural requirement, but a constitutional mandate, directly linked to ensuring the right to life and liberty of a person who has come in contact with the criminal justice system.

JUDICIAL MAGISTRATES, at the very bottom of the judicial hierarchy, perform a constitutional function at first production and remand.

Deprivation of personal liberty or threat to the right to life are a serious infringement of constitutional rights of an individual under Article 21, and are only permitted according to "procedure established by law."[44] At its very core, Article 21 establishes a minimum expectation of right to a life of human dignity, and not just merely being alive, in a sub-human existence. The right to life and liberty is thus an expansive imagination, which has been consistently articulated and developed through jurisprudence.[45] It includes the right to be treated with dignity, as well as, protection against torture and custodial violence.[46]

The law recognises that while arrest and detention are, at times, necessary for investigation and protection of society, it also recognises the undeniable vulnerability of a person apprehended, and the possibility of abuse of power and custodial violence by state functionaries. Therefore, even at the time of drafting the constitution, the need to explicitly include criminal procedural safeguards to prevent Article 21 violations on arrest and detention was realised through Article 22.[47] Article 22(1) stipulates that every arrested person be informed about the grounds of arrest, and has the right to consult and be defended by a lawyer of their choice. This provision is effectively geared towards ensuring that an accused or suspect in a criminal investigation has the capacity to explore appropriate legal remedies from the time of arrest or detention. Additionally, statutory safeguards and jurisprudential developments have further articulated procedures that the state must follow to ensure that Article 21 rights are not compromised on arrest and detention. This includes the requirement of an Arrest Memo, intimation to family or friend of an accused on arrest, medical examination, and the right to legal aid, to name a few.

Article 22(2) mandates production before the magistrate within 24 hours of arrest, and thereby ensures judicial oversight from the very beginning. This process is critically situated so that the magistrate can ensure that the rights of the accused under Article 21 have been realised by inquiring into substantive compliance with all safeguards on arrest, and scrutinising the safety of the accused in custody and the necessity for further detention. Besides deciding whether the accused is eligible to be released on bail,[48] the magistrate court decides whether the accused is to be sent to police custody, for further investigation, or to judicial custody/prisons.[49] Therefore, in their functioning, magistrates are in fact entrusted with ensuring that constitutional commitments are realised at an everyday level. However, the pretrial stage, the link between Articles 21 and 22 of the Indian Constitution, and the significant role of the magistrate therein has not been given due attention in scholarship.

Existing Discussions on Pretrial Processes

Recent developments in jurisprudence on arrest have come down strongly against unjustified and unnecessary arrests. Recognising the enduring and intangible impact of arrest on the Article 21 rights of an individual, the Supreme Court in *Arnesh Kumar* stated: “Arrest brings humiliation, curtails freedom and casts scars forever.[50] Crucially in this case, the Supreme Court introduced guidelines to ensure that the police do not abuse their power to arrest, and magistrates do not mechanically accept police demands for further detention. Though *Arnesh Kumar* arose in the context of arrests for the

offence of dowry, this case also extended caution against unnecessary arrest for all cases punishable with at most seven years imprisonment.[51] Thus, *Arnesh Kumar* recognised the critical role of the magistrate to act as a check against unnecessary arrest, and also held them liable to departmental action if they failed to record reasons when authorising further detention. Thus, our study does indirectly serve as a reflection of how much *Arnesh Kumar* has impacted the first production and remand process in the last ten years.

Arnesh Kumar guidelines, and their importance as a check against unnecessary arrests, has been frequently reiterated in jurisprudence,[52] and its resonance was felt strongly in magistrate courts in Delhi during the fieldwork. This emphasis against unnecessary arrest in current jurisprudence is also an important approach towards regulating a prison population that is stretched to its brim. Overcrowding of prisons is one of the biggest challenges in the Indian criminal legal system.[53] Prisons in Delhi have an occupancy of 184.5%.[54] Across the country, about 4,34,302 prisoners live in understaffed and under-resourced prisons, of which 75.8% are undertrial and have been incarcerated in harsh conditions prior to their conviction by the lower court. Long pendency of cases is another problem facing India's judicial system, which has also been recognised as a violation of Article 21 rights. Moreover, the prison population disproportionately includes individuals from socio-economically marginalised groups without quality legal representation and hindered by the financial system of bail, who are forced to spend significant proportions of their sentence even before they are tried, let alone found guilty by the court.[55]

Therefore, ensuring that unnecessary arrests are checked at the earliest point of judicial intervention, as required by *Arnesh Kumar*, acts as a check against a rising prison population and ensures the possibilities of fairness in the criminal justice system at the earliest stages. It also bypasses the need for recourse through bail or anticipatory bail applications in such situations, and limits additional litigation in an overburdened judicial system. Therefore, by acting as a check against unnecessary arrest, the magistrate at the pretrial stage protects the personal liberty of an accused during the early phase of criminal investigation.

Additionally, at the pretrial stage the magistrate is crucially positioned to guarantee the realisation of other constitutional rights of an accused, especially their safety against custodial violence and dignity in custody. The National Crimes Research Bureau's *Crimes in India* data analysed by Commonwealth Human Rights Initiative suggests that almost 63% of custodial deaths between 2010-2020 took place within the first 24 hours of arrest or before the person was produced in front of the magistrate.[56] Illegal detention and the use of torture to extract information from the suspect during investigation, and the consequent vulnerability of the accused in police custody has been widely recognised, even in Supreme Court jurisprudence.[57]

The Supreme Court's most significant intervention against torture and custodial killings, were the safeguards introduced in *DK Basu*. Originally arising out of a PIL which moved the court to take note of custodial deaths in West Bengal, the Supreme Court introduced guidelines to ensure transparency and accountability of police action during arrest and further detention. Prominent amongst the safeguards was the emergence of an Arrest Memo

that required witnesses, family members or a respectable person from the locality to attest to the arrest, and which was also to be countersigned by the person arrested in the case. In the absence of a specific law against torture and an understanding that torture is often linked to illegal detention, the Arrest Memo was created as a primary way of creating documentation of arrest and a concrete way through which a magistrate could inquire into the legality of the arrest. And the medical exam became an additional step to ensure that there was protection against custodial violence. *DK Basu* guidelines were codified into the CrPC by the Indian parliament in 2009.

The *DK Basu* guidelines, the Supreme Court's custody jurisprudence, and statutory protections clearly indicate the expectations of the Arrest Memo and other safeguards on arrest—such as a right to medical exam, right to legal counsel—to protect the right to life, liberty, dignity and safety under Article 21. Yet, it is really the magistrates who have the responsibility of ensuring that such protections are provided to persons in custody at first production, arising from the constitutional mandate of Article 22(2). Interviews and testimonies from those who have experienced state violence suggests that this is one of the most significant stage for protection of due-process rights.[58]

A report on torture preventive mechanisms in India between 1985-2014 also showed the significance of following procedural safeguards on arrest and detention to prevent custodial violence.[59] Therefore, during production hearings, magistrates are bound to ensure that the person has been kept safely in custody, and serve to keep the police in check. Even though their role is often considered a bureaucratic checkmark in the process of investigations, magistrates represent the first judicial officials who can realise constitutional rights against custodial violence in the everyday, and are in effect custodians of human dignity and safety of the arrested person.[60] In addition to the role of the magistrates as a check against unnecessary arrests and illegal detention, as recognised by *Arnesh Kumar* and other jurisprudence; the magistrate is also required to play a critical role to ensure other constitutional rights are realised particularly with respect to how the accused is treated in custody, and prevent inhuman treatment during both police and judicial custody.

Official data since 2000 has reported over a thousand deaths in prison every year, due to "natural" and "unnatural reasons,"[61] with a large number of deaths attributed to medical complications and death by suicides.[62] The categorisation of deaths as natural and unnatural is curious, and as Justice Lokur puts it in *In Re: Inhuman Prison Conditions in 1382 Prisons*:

> The distinction made by the NCRB [National Crime Records Bureau] between natural and unnatural deaths is unclear. For example, if a prisoner dies due to a lack of proper medical attention or timely medical attention, would that be classified as a natural death or an unnatural death?[63]

There is a greater lack of transparency in deaths in judicial custody. Even regarding natural deaths, there is a lack of clarity about whether the medical conditions were pre-existing or developed during incarceration, and whether adequate treatment had been provided.[64] Considering the overcrowded, understaffed, and resource-crunched reality of Indian prisons, inadequate nutrition, poor hygiene and violent conflict between inmates are reportedly

common, resulting in an unhealthy environment in prisons, which is bound to have implications on the safety of an accused even in judicial custody. There are also inadequate medical facilities and doctors available for treatment in every prison.[65]

Though judicial custody is often treated as a better and more lenient alternative to police custody during the pretrial phase (as discussed in later chapters), the reality of the conditions in judicial custody or jails/prisons challenges this presumption. Therefore, the significance of the role of the magistrate during the pretrial phase extends beyond first production, to every production proceeding for extension of judicial custody. Productions in court are a significant measure through which transparency and accountability in the experience and treatment of the accused in judicial custody can be ensured. Therefore, "mechanical" extension of period in judicial custody (remand) by the magistrate, without inquiring into the condition of the individual produced, and ensuring safety, has been cautioned against by the Supreme Court. The troubling consequences of an ineffective magistrate were recognised in *Khatri* (1981), where despite suffering from serious injuries resulting in their blinding, the period in judicial custody of 33 detainees was consecutively increased without any inquiry into their injuries, and in the absence of legal representation throughout first production and remand.[66]

The jurisprudence has consistently emphasised the importance of legal representation as a check against constitutional violations during legal proceedings. The right to free legal aid has been recognised as a constitutional guarantee under Article 21, and as an intrinsic part of the right to fair trial. The state is constitutionally obligated to provide free legal aid to an indigent person. In this context, the role of the magistrate to explicitly inform the accused of their right to legal aid, and to ensure that representation is provided, has been reiterated by the Supreme Court.[67] Every accused cannot be expected to be aware of their legal rights, nor be empowered enough to assert themself in court and ask for representation.

While absence of legal representation during trial has the consequence of vitiating the trial, the absence of legal representation at the pretrial phase does not have the same effect. However, at the same time, the importance of legal representation from the time of arrest, and during every remand hearing has been appreciated in jurisprudence[68] and in the institutional organisation of the legal aid system. In 2019, the National Legal Services Authority (NALSA) released a handbook *Early Access to Justice at Pre-arrest, Arrest and Remand Stage* with guidelines on the role of lawyers from the very inception of a criminal proceeding. The guidelines underscore the vulnerability of the accused at this stage, and the importance of legal assistance to protect the accused from extra-legal abuses, move bail applications, and challenge arbitrary remand.

The important role of legal-aid services in ensuring access to justice at the pretrial stage has also been recognised by NALSA. A model scheme introduced by NALSA in 1998 mandated the requirement of a legal aid counsel in all magistrate courts, to ensure that legal aid could be made accessible from an individual's first appearance in court. Consequently, our research showed that in Delhi courts, a "remand lawyer" is appointed in all magistrate courts, who is specifically expected to provide free legal assistance at first production and remand.

However, despite this separate category of legal aid counsels, entrusted with safeguarding the constitutional rights of an accused during pretrial, there is an absence of attention on the manner of functioning of this special panel of legal-aid counsels. Other research suggests that there appears to be an underutilisation of legal-aid services in India, despite disproportionate representation of accused from marginalised and impoverished contexts in Indian prisons.[69] However, besides further research on the causes of underutilisation, there is also a need to better understand the nature of utilisation of legal aid at the pretrial stage.

Despite the constitutional rights of an accused at stake at the pretrial phase, there has been inadequate attention on this stage both in scholarship but also in official data. The CLPR report, *Reimagining Bail Decision Making*, included court observations on first productions though focusing on bail. A very insightful report, it reaffirms the need to do more extensive court observations in magistrate courts not just during first productions but all through the pretrial proceedings. As the CLPR study on bail hearings suggests, there is in fact a lack of focus on pretrial proceedings. The Report notes, "we introduce the distinction between the 'pre-trial' and 'under-trial' stages of the criminal process – one that has not been made in the substantive law, academic analysis or policy literature in India."[70]

Additionally, though there has been some focus in jurisprudence on the role of the magistrate to ensure personal liberty by protecting against unnecessary and illegal detention,[71] the role of the magistrate as a protector against custodial violence in police custody and jails has received very limited attention. Scholarship on custodial violence has often focused on the role of police[72] on how impunity enables such violence;[73] and on how other semi state actors such as forensic psychologists may relate to custodial violence.[74] The Supreme Court justices have drawn attention to the need to closely monitor police stations through CCTVs, and ensure right to counsel.[75] While courtroom ethnographies have helped us think about trial courts,[76] magistrate courts still remain inadequately studied.[77] While first production and remand processes are extremely important as far as ensuring oversight over police powers regarding arrest, one of our primary focus areas is to understand the significance of these proceedings towards addressing custodial violence.

Despite the concern over the prevalence of torture and custodial deaths in the Indian criminal justice system, there has been little focus on how magistrates are empowered to address this at the pretrial stage. In this context, a handbook by CHRI on the role of the magistrate at first productions is significant. Drawing from jurisprudence of the Supreme Court and various state high courts, read along with constitutional guarantees and statutory provisions, the CHRI report consolidates the obligations of a magistrate in terms of the necessary judicial scrutiny to ensure the compliance of constitutional rights, particularly at first production. Recognising the additional responsibility of the magistrate in cases where women or juveniles are produced, the report provides guidelines for the magistrate to ensure compliance with special procedures related to arrest and interrogation of women, and with the Juvenile Justice (Care and Protection of Children) Act, 2015, such as inquiring into the age of the suspect. The checklist produced at the end of this CHRI report was one of the most valuable resources for our study.[78]

JOURNEY OF A CASE

I PRETRIAL

II CHARGESHEET

III TRIAL

IV JUDGMENT

WITHIN 24 HOURS

1. FIR
First Information Report

S.154 CRPC Information in cognizable cases

2. ARREST

S. 41 CRPC When police may arrest without warrant

S. 41A CRPC Notice of appearance before police officer

S. 41B CRPC Procedure of arrest and duties of officer making arrest

S.41D CRPC Right of arrested person to meet an advocate of his choice during interrogation.

S.50 CRPC Person arrested to be informed of grounds of arrest and of right to bail.

S.50A CRPC Obligation of person making arrest to inform about the arrest, etc., to a nominated person

S.54 CRPC Examination of arrested person by medical officer

S.55A CRPC Health and safety of arrested person

3. FIRST PRODUCTION

S.56 CRPC Person arrested to be taken before Magistrate or officer in charge of police station.

S.57 CRPC Person arrested not to be detained more than 24 hours.

S.167 CRPC Procedure when investigation cannot be completed in 24 hours.

4. REMAND HEARINGS

S.167 CRPC Procedure to be followed over a maximum period of 60 or 90 days.

POSSIBLE OUTCOMES

Police Custody
Detention in police station for further interrogation

Judicial Custody
Undertrial detention in jail

Release
As per procedures for bail or discharge under CrPC

While the CHRI report is significant in setting out the legal standards expected from the magistrate at first production, there is a need to better understand the manner in which constitutional rights of the accused are realised in magistrate courts in their everyday functioning. Anecdotal evidence, journalistic accounts, and testimonies suggest that the role of the magistrate may sometimes be more mechanically done. This is reflected in the findings of Tripathi's study for *The Quint*, based on an analysis of remand orders and interviews with remand lawyers. As per the findings, in a majority of cases, the right to counsel was not ensured, police narratives were accepted without question, and 14-day judicial remand was granted even in cases of non-heinous offences (with a maximum imprisonment of up to seven years) and minor offences (with a maximum imprisonment of up to three years).

The *Quint* study also emphasised that socio-economically marginalised are most often under-represented during arrest and remand. The District Legal Services Authority (DLSA) lawyers interviewed for the study also pointed to the institutional constraints faced by the magistrates. For instance, one of the DLSA lawyers stated, "Magistrates have a humongous case load. They just can't and don't take the facts of each case seriously. They are just focused at disposing as many cases as they can in a day." Consequently, they end up agreeing to either the police narrative and to avoid having frequent remand hearings due to heavy caseload, give 14 days in judicial custody. As Tripathi notes in conclusion, "The discourse on judicial reforms would remain lip service as long as the focus is not shifted towards the everyday practices of the "lower judiciary."[79]

The Quint study was conducted during the peak of the COVID-19 second wave in Delhi, between 30 April and 15 June 2021, where the injustices increased due to lack of access to those in custody, or even to the courts. Yet, it is important to note that the mechanical nature of remand has been identified more generally as an issue of concern. As Justice Madan Lokur noted in a foreword to the CHRI (2020) report, "Unfortunately, due to extremely heavy caseloads, some Magistrates and lawyers seem to treat the first production of an accused as a more or less routine matter."[80] Thus, this study draws from the valuable insights from the limited scholarship and reports on magistrate courts and pretrial process, to focus on first-production and remand processes. In doing so, this report hopes to encourage even further studies of these courts and proceedings due to their immense importance in ensuring liberty, safety and dignity in custody, at the first stage in which they interact with the justice system.

Brief Overview of the Chapters

In the next two chapters, chapter 2 and 3, we present an ethnographic account of the two main documents—which we term artefacts—that always accompanied the accused into the court with the police, namely, the Arrest Memo and the Medico-Legal Certificate (MLC). These crucial safeguards were introduced through jurisprudence in response to demands made by lawyers, and civil liberty and democratic rights activists over the years. Rather than thinking of these safeguards as bureaucratic documents, we define them as artefacts that were introduced as creative mechanisms to address concerns with liberty and safety of the accused at this stage, and function as a starting point for the judicial scrutiny of the magistrate at first production and remand. The most important aspect of the court observations thus focused on the interaction between the accused and the magistrate in the court, not just whether the Arrest Memos and MLCs were a part of the case file. These public interactions represent how constitutional safeguards enshrined on paper are translated and protected substantively in practice during the hearings.

THE MOST IMPORTANT aspect of the court observations thus focused on the interaction between the accused and the magistrate in the court, not just whether the Arrest Memos and MLCs were a part of the case file.

While chapter 2 focuses on the arrest and detention related safeguards, chapter 3 focuses on the MLC, which is meant to ensure the safety of the accused in custody. Chapter 4 represents an analysis of the overall role of the magistrate and discusses whether the current structure of their role invisibilises some of their important work on first production and remand. Throughout the chapters, other actors in the courtroom, such as the court staff, the lawyers, the accused, and their families, are also discussed in order to capture the interactions in these hearings. In most cases observed by the researchers, the accused were cis-male and lower or working class, unless specified otherwise in the narratives. We have omitted all identifying information from the narratives. In some cases we have added pseudonyms for the accused, and attempted to choose names that are consistent with their social identity as reflected in the researchers' notes. In chapter 4, in particular, we focus on the dynamics of the court hearings such that the hierarchical nature of the proceedings and its impact on marginalised identities becomes even more prominent. While all chapters draw on the court observations, given the paucity of materials especially in reports on the methodology and on the magistrate courts, chapter 5 highlights the experience of fieldwork conducted by the researchers in the team, and is written by two of the researchers from the team.

Limitations of the Study

Of course, not all sites of first production and remand could be captured in this study, especially those that take place at the homes of the duty magistrate, after regular court hours, sometimes even in the middle of the night.

A lot is left unsaid or is inaccessible during court hearings. Therefore, the team hoped to substantiate the courtroom observations with access to relevant court records and interviews with sitting and retired magistrates, to ensure that researchers have contextual knowledge about the proceedings, as well as an understanding of the approach towards judicial decision making. Courtroom observations would have also benefited from structured and semi-structured interviews with other relevant actors, including police officers, lawyers, court staff, and the accused. But the given time frame required much negotiation with the courtrooms across different district complexes and to continually focus on various aspects of first production and remand. As a result, it was difficult to add interviews, which will hopefully be done by subsequent research. However, there were many informal conversations with a range of lawyers, court staff, magistrates, lawyers, activists, accused, and their families that have contributed to this study.

KEY ACCTORS

JUDICIAL MAGISTRATE

Or **Metropolitan Magistrate** in Delhi. Judicial officers presiding over the lowest criminal court in the judicial hierarchy, before whom first production and remand hearings are conducted. They also deal with all other pretrial proceedings, including recording of evidence (identification proceedings, recording of confessions), bail applications, cognizance of chargesheets, committal to Sessions Court for trial of serious offences etc. They also conduct trials for less serious offences.

DUTY MAGISTRATE

Judicial Magistrate on duty beyond regular court working hours.

COURT READER

Court official incharge of managing the court schedule and daily case files.

STENOGRAPHER (STENO)

Court official responsible for typing court orders, judgments and other case paperwork.

ORDERLY

Court official (Peon) who announces each matter on the causelist at the courtroom door to indicate its turn to the parties involved. He was observed to gatekeep entry in the courtroom.

AHLMAD

Court official incharge of the record room (adjacent to the courtroom) where case files are stored.

NAIB COURT

Police officer who links the police and the court; incharge of managing case information and paperwork. Keeps track of first production and remand matters.

PRIVATE LAWYERS

Defence lawyers appointed by the accused.

REMAND LAWYER

Special panel of legal aid lawyers assigned to each magistrate court for defence representation at first production and remand, and other pretrial proceedings.

PUBLIC PROSECUTOR

Lawyer representing the state in a criminal prosecution.

STATION HOUSE OFFICER (SHO)

Police officer in charge of the police station, usually of the rank of Inspector or Sub-Inspector.

CONSTABLES

Lower rank of police officials from the police station where investigation is ongoing. They escort the accused from Police Custody to the courtroom for production, along with the IO.

INVESTIGATING OFFICER (IO)

Police officer, usually of the rank of Sub-Inspector (SI), from the police station where investigation is ongoing. Accompanies the accused brought from Police Custody for production in court.

POLICE ESCORTS

Police officers who escort accused being produced from Judicial Custody (jail), from the court Lock-Up to the court. They belong to a separate cadre of officers from the ones involved in investigation.

ACCUSED

FAMILY OF ACCUSED

Usually waiting outside the courtroom to briefly meet the accused when they are brought for production from custody.

COURT OFFICIALS

LAWYERS

POLICE

ACCUSED

FAMILY OF ACCUSED

We mostly focus on routine criminal cases in the Delhi district courts and while undoubtedly, a range of criminal cases are addressed in National Investigation Agency (NIA) courts or specialised courts, we decided to focus on the routine cases in part because of the close way in which the routine and the exception are linked. One kind of linkage is pointed out by Ujjwal Singh's famous formulation of the interlocking of the ordinary and the extraordinary where the emphasis is on the impact of the extraordinary on the ordinary.[81] As Lokaneeta's earlier work on *Transnational Torture* has pointed out there is "... another kind of interlocking in which the tensions within the ordinary itself perform a constitutive role in extraordinary laws." [82]

This linkage between the ordinary and extraordinary is also mentioned by Suresh in his recent ethnography of terror trials: "I am often asked, "How did you get access to the courts?" This question imagines terrorism to be an exceptional crime, which is tried in specialised trials screened off from the public and marked by special procedures. As I show later, far from being "exceptional," the terrorism trials that I follow in this book, like other criminal trials, take place in this milieu of ordinary criminal courts."[83] Undoubtedly, the realm of the extraordinary courts and laws require a different kind of focus and must be analysed separately as well. Yet, a study of routine criminal law and the tensions therein also have implications for all kinds of criminal cases, and that was the focus of this particular study.

Since the literature clearly shows that access to justice is mediated by social hierarchies such as class, caste, gender, sexuality as well as other marginalised identities, there was an attempt to explore how those appear during courtroom observations. Researchers were encouraged to take note of details and visual cues indicative of the social location of the accused. While it was not possible to track all this information uniformly for all the cases observed, the research material was organised in a Google Sheet to track information such as name, gender, economic profile, occupation, and demographic profile such as religion, caste or nationality wherever available. However, through our research observations it was not always evident whether the social profile of the accused played a role in a particular experience during first production or remand. In any case, this correlation cannot be ruled out, since studies like the *Status of Policing in India Report* (2019) have pointed to the prevalence of biases amongst the police against Muslims. Besides documenting court processes, interviews with different court actors, in future research, might be useful to assess whether the experience of the accused is directly influenced by their social and cultural profile. Overall, of course we also note that often the public performance of the magistrate's role and their ability to exercise their powers to ensure the liberty, safety and dignity for all is constrained by serious structural limits, particularly how their work day is organised. Therefore, during our research, only in a few instances where additional efforts were made to follow up with the lawyer, or through informal conversations with key actors after the proceedings, did signs of discrimination begin to reveal themselves.

Finally, our decision to focus primarily in Delhi courts was based on a range of factors, including the availability of resources. However, this decision often prompted suggestions from others that other states may have revealed even less functionality of the safeguards at the magistrate level. Yet, given that such a study had not been undertaken systematically even in the capital, the attempt was to examine how the safeguards functioned even in a context where there is more visibility, oversight and availability of resources than in some other contexts. As the report indicates, Delhi courts continue to face challenges regarding protection of constitutional rights at first production and remand. There is undoubtedly a need to follow up in other states. One hopes that this study will be followed by numerous others on the magistrate courts given the significant role that these courts and judges play in the everyday lives of people and the criminal justice system. ■

JURISDICTION
CENTRAL,
WEST

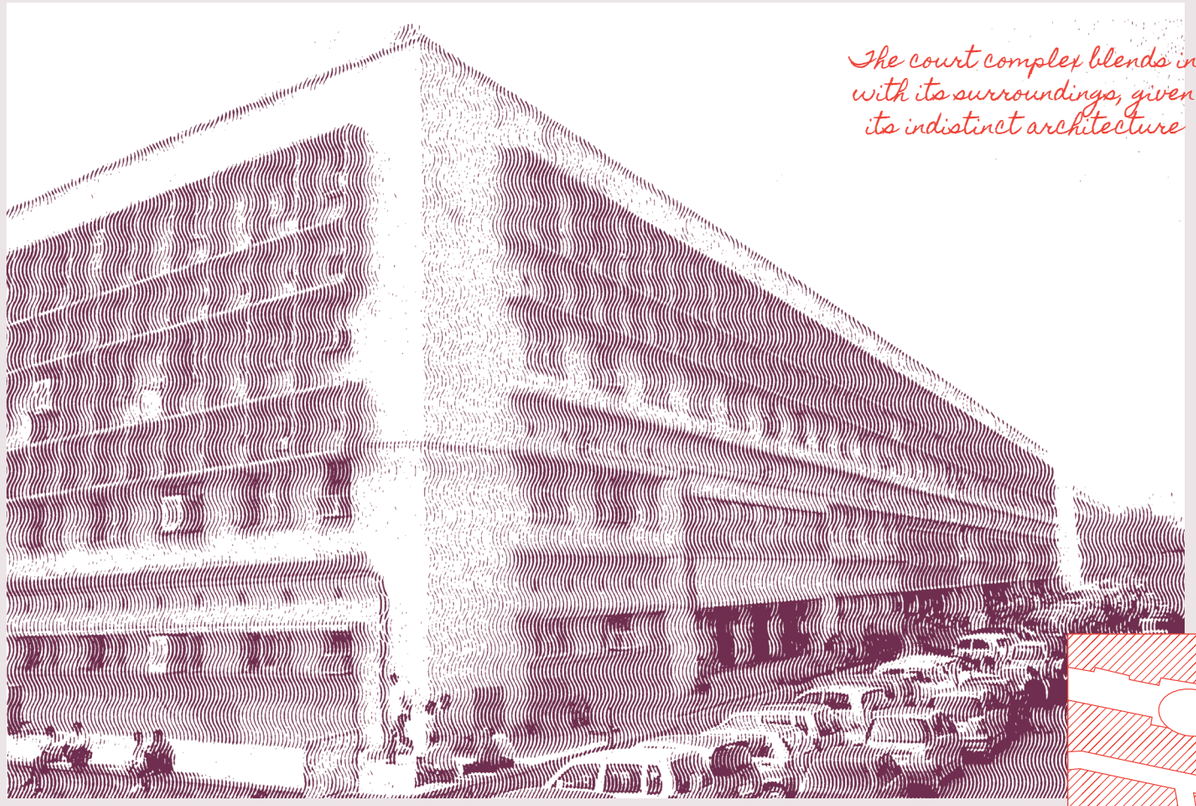
INAUGURATED
1958

TIS HAZARI

HIMANSHU MISRA AND SATYENDER SINGH

The Tis Hazari Court, which has jurisdiction over the West and Central districts of the national capital, is situated on the edge of Old Delhi. It was inaugurated on 19 March, 1958 by Chief Justice A. N. Bhandari, who presided over what was then known as the Punjab High Court. The metro station closest to the complex is the eponymous Tis Hazari metro station on the red line. The complex is also quite close to the Mori Gate bus terminal, and adjacent to a hospital, right across a bustling market. Given its indistinct architecture, the court complex blends in with its surroundings. Were it not for the hordes of lawyers marching in and out of the gates, or those standing on the footpath as they wait for prospective clients, it would be difficult to identify the premises as having something to do with justice.

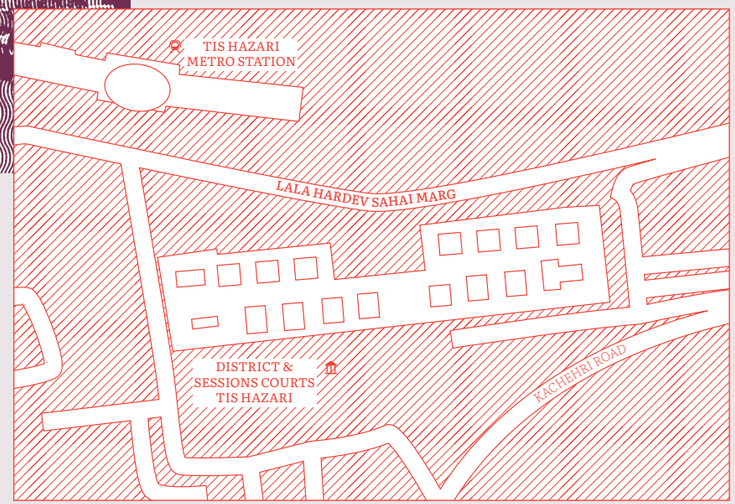
The court building consists of three floors, with seemingly endless corridors, which are at times quite narrow. The structure is surrounded by the chambers of numerous advocates. While these chambers are places of work, they also double up as a way of securing space within the court premises. Lawyers occupy every available space possible, staking their claim through names etched on the wall, or signs placed on tables.



The court complex blends in with its surroundings, given its indistinct architecture

The lock-ups are situated on the side of the complex that is parallel to the metro station. The buses that ferry prisoners to and from the court tend to be parked near its entrance. This is to ensure that they enter the building directly and have minimal contact with other people on the premises. The prisoners' relatives usually collect near the lock-up area, expectantly looking at each bus until the one they are awaiting arrives. The relatives then proceed to accompany them to the court, which affords them some time to talk. Police escorts generally appear to be indifferent to these conversations, but they do not relinquish their hold on the prisoner, either clasping their hand or keeping them in handcuffs throughout - to prevent them from escaping.

The court complex is broadly separated into two parts: the civil and the criminal side, signifying a separation of cases between the two wings.



The complex is 5-10 mins away from Kashmiri Gate, Old Delhi

Jail buses enter the premises and are parked so prisoners directly enter the court building

The prisoners' relatives collect near the lock-up area, looking at each bus until the one they are awaiting arrives

The court complex is quite close to the Mori Gate bus terminal, and adjacent to a hospital, right across a bustling market

Apart from this, the courts at Tis Hazari courts are diffused throughout the building without any clear organisation based on jurisdiction. The courts of various district and sessions judges are located at the opposite end of the custody lock-up. The third floor has a mediation centre, while the office of the District Legal Services Authority (DLSA) is situated on the second floor.

The civil side courts appear to be infrastructurally better than most of their criminal side counterparts. But some of the magistrate courts in the newly constructed annexe building have dedicated ahlmad rooms. Each of these rooms house all the case files from their corresponding courts. Most of the courtrooms are quite small. These spaces heave with humongous piles of files; both lawyers and litigants struggle to find their way through to present their case. Within the rooms, the magistrate sits on the highest dais, followed by the reader and the stenographer. The advocates and litigants stand before the dais during their proceedings. Other visitors to the courtroom can sit on the chairs if they are able to find empty ones, which tends to be rare. Once historically important, the Tis Hazari court — possibly named after the 30,000 trees that are said to have once flourished there, and an important site in India's independence struggle — now tends to be known for security lapses, an acute shortage of space, and an ever-present backlog of cases. ■

Police escorts hold on the prisoner - clasping their hand or in handcuffs - to prevent them from escaping

I II III IV V

CONSTITUTIONAL PROTECTIONS THROUGH THE ARREST MEMO

ARREST MEMO

Au per direction of Hon'ble Supreme Court of India (माननीय उच्चतम न्यायालय भारत के निर्देशानुसार)

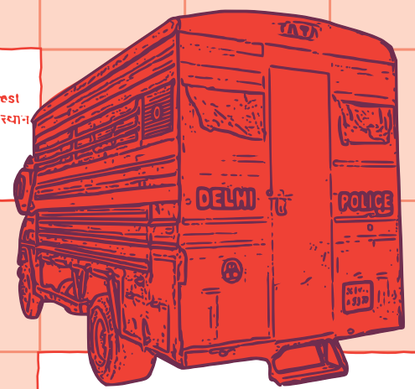
गिरफ्तारी पत्र

Case F.I.R. No. ..... Dated ..... U/s .....
प्र.सू.रि.सं. / दै.डै.सं. दिनांक धारा-तर्गत
P.S./ थाना ..... Distt./ जिला ..... Delhi / दिल्ली

DOB / जन्म तिथि

Witness / गवाह
1 .....
2 .....
3 .....

5. Place of Arrest
गिरफ्तार का स्थान



1. Name with Alias and parentage of the Arrestee
गिरफ्तार व्यक्ति का नाम, उपनाम एवं पिता का नाम

4. FIR No./DD No. & Sec. of Law
प्र.सू.रि.सं / दै.डै.सं तथा विधि धारा-तर्गत

6. Date & Time of Arrest
गिरफ्तार का समय व तारीख

7. Name, Address & Tel. No. Whomsoever to
...nvey the Arrest Information
...फ्तार के संदर्भ में जिसे सूचित किया
... नाम, पता एवं फोन नं0

Note: One copy delivered to Arrestee
एक प्रति गिरफ्तार शुदा को भी दी जायेगी।

8. Name, Rank & No. of the officer who making Arrest
गिरफ्तार करने वाले अधिकारी का नाम, ...ैं... एवं नं0

Signature of Arrestee / गिरफ्तार व्यक्ति के हस्ताक्षर

Signature of the I.O. (जांच अधिकारी के हस्ताक्षर)
P.S. / थाना ..... Delhi / दिल्ली

3. P... Permanent Address of the Arrestee
...गिरफ्तार व्यक्ति का स्थायी पता

2. Present Address of the Arrestee
गिरफ्तार व्यक्ति का वर्तमान पता

NEXT THING I KNOW, *there is a police person who came with an escort, most likely with an IO (Investigation Officer) and the naib court just took the file to the magistrate, who said, "Arrest papers dikhao" –* show the arrest papers. *That indicated this was a fresh arrest, and to my surprise the naib court brought the paper back to the accused and asked him to sign it. I knew it was an Arrest Memo because he* [the naib court] *even asked him* [the accused] *to give the name of a relative – in this case, the police said to give the name of the mother and they even added the time of arrest as 10:30. I was a bit surprised that this was done so casually. And then the paper was put in file, shared with the magistrate who looked* [it] *over and then the person was sent away. I could see the Arrest Memo, which I can now recognize. No conversation, no name of the accused, no asking the IO about anything — this is one of the rare cases of first production where nothing was done. It was a young man who looked at me since he was watching me look at this* [process] *intently. I don't know whether he was sent to judicial custody or police custody, or even what he was there for, because nothing was said at all. There were a set of lawyers who then went out, a paper was added to the file and the escort asked whether it* [the production hearing] *was done and he was told it was.*

— Observation from Karkardooma court

At the pretrial stage, the magistrate is empowered to safeguard the individual rights of an arrested person through a range of constitutional and statutory protections. This chapter will focus on how the artefact of the Arrest Memo helps the magistrate scrutinise the circumstances of an arrest, and ensure the accused's personal liberty and safety at first production. The Arrest Memo was first introduced as a safeguard against illegal detentions and unlawful arrests as part of the Supreme Court's custody jurisprudence in *DK Basu* (1997),[1] and was subsequently codified under section 41B of the Code of Criminal Procedure (CrPC) in 2009. The Arrest Memo mandates a contemporaneous and accessible record of all the details of arrest to ensure transparency and accountability in the exercise of police powers, and serves as a critical means for protection of an accused's Article 21 rights - their right to life and personal liberty.

While neither the jurisprudence nor the statute prescribe a definite format for the Arrest Memo, they do stipulate the inclusion of certain information. The memo must contain details of the date and time of arrest; be attested by independent witnesses, such as a friend or relative of the accused, or "a respectable member of the locality;" and be countersigned by the accused. The Arrest Memo has the potential to clarify whether the accused had been detained illegally beyond the prescribed time frame of 24 hours. Prolonged detention in police custody without the authorisation of the magistrate also raises concerns about the safety and dignity of the accused. The attestation of external witnesses in the Arrest Memo ensures a record of independent participation in the arrest process. This requirement of record-keeping and the involvement of the public in an arrest, ensures that the police does not exercise its power in secrecy, and important information is easily accessible for judicial scrutiny. At first production, scrutiny of the Arrest Memo can enable the magistrate to not only check for procedural compliance, but also ensure that the substance of these protections have been realised.

DRAWING FROM COURT observations in magistrate courts in Delhi, this chapter considers the manner in which magistrates are able to realise their constitutional responsibilities at first production, primarily through the lens of their engagement with the artefact of the Arrest Memo.

Drawing from court observations in magistrate courts in Delhi, this chapter considers the manner in which magistrates are able to realise their constitutional responsibilities at first production, primarily through the lens of their engagement with the artefact of the Arrest Memo.

We argue that while the presence of an Arrest Memo in a case file is a significant step in ensuring the protection of an accused person's rights, the observations point to the limits of the format. More importantly, our research also points to the inadequacy of magistrates' scrutiny in addressing a number of concerns. These include an individual's protection against illegal detention and abuse of police power; the meaningful realisation of safeguards such as the requirement that the family of an accused be intimated of their arrest; and the verification of an arrested person's age in every case of first production. Even though the Arrest Memo figures prominently in first production proceedings, our observations suggest that unless the magistrate embarks on a meaningful interaction with the accused, their family, and the remand lawyers, they are unable to ensure the actual protection of accused's rights.

Several safeguards on arrest, including those relating to the Arrest Memo (section 41B CrPC) and the mandated duration within which an arrested person must be produced before the magistrate (section 56, 57 CrPC), are also explicit statutory protections. We ask: how do magistrates respond when these violations are revealed in the course of the proceeding? Are their interventions geared towards holding officers accountable, and ensuring the well-being of the accused? In the absence of the magistrate's intervention on these fronts, the import of the Arrest Memo tends to diminish. The full potential of the Arrest Memo is only realised when magistrates are able to verify the actual experience of the arrest and check police abuse. Meaningful engagement is key to ensuring that the paperwork corresponds with the actual experience of the accused on arrest. This is not only important for effective compliance with the law, it is a decisive element in ensuring the integrity of the criminal justice system.

Arrest Memo, Jurisprudence, and the Role of the Magistrate on First Production

As noted in the introductory chapter, there is wide-spread concern about the high numbers of arrests and detentions in India. Historically, the prevailing jurisprudence's focus on personal liberty of the accused at this stage has been through the lens of necessity of arrest, limits to detention in custody and the threshold for bail. In this chapter, we instead draw attention to the role of the magistrate in protecting Article 21 rights of the accused, particularly through the artefact of the Arrest Memo and its relationship to Article 22 (2).

Although the magistrate is significantly positioned and empowered to ensure the constitutional rights of the accused at arrest — given the Article 22(2) requirement of first production — their role as a protector of the accused's personal liberty has received inadequate attention. Moreover, the significance of the Arrest Memo — the artefact that embodies these protections at first production — as a crucial instrument in aiding magisterial scrutiny on arrest, has also been largely ignored.

UNLESS THE MAGISTRATE embarks on a meaningful interaction with the accused, their family, and the remand lawyers, they are unable to ensure the actual protection of accused's rights.

Moved by the prevalence of custodial violence during arrest and investigation, the court in the *DK Basu* case introduced the Arrest Memo, as one among many concrete mechanisms to check against abuse of police power on arrest and protect the Article 21 rights of the accused.[2] However, the *DK Basu* guidelines — as well as the procedural norms subsequently laid-out under section 41B — provide limited directions on the contents of an Arrest Memo. As a result, there is no standard format for an Arrest Memo across different Indian states.[3]

During our research in Delhi courts, the Arrest Memo included the following information most commonly: (1) the date, time, and place of arrest; (2) case information such as the First Information Report (FIR) number, police station details, and the criminal provisions attracted; (3) identifying details of the arrested person including their name, parentage, and address; (4) details of the arresting officer, including name and rank; (5) details of the person intimated about the arrest of the accused; (6) details and signature of the independent witness to the arrest; and (7) signature of the accused person.[4]

While this information is significant, there exist considerable gaps in the details provided in this Arrest Memo format. For instance, there is no separate column for the age of the accused, even though it is vital to verify that the arrested person is an adult at first production. While it was observed that some formats of the custody warrant carried by the police – to request for further detention – included a column for date or birth and age,[5] provision for this information was conspicuously absent in the Arrest Memo in use. By contrast, the format for an Arrest/Court Surrender Form[6]— recommended via a 2001 notification under the Delhi Police Act — is a lot more comprehensive, and includes a separate column for the date or year of birth of the arrested person. However, our research observations suggested that this format was not used in the proceedings observed during our research in Delhi courts. This Arrest/Court Surrender Form also includes a provision for details on any injuries suffered by the accused and their physical condition on arrest, which is missing in the Arrest Memo format currently used in Delhi. The inclusion of such information was also a safeguard recommended in the *DK Basu* guidelines — termed an Inspection Memo — which required that the police include the details of any major and minor injuries visible on arrest, at the request of the accused. Record of this information would have an undeniable impact towards ensuring the safety and dignity of the accused on arrest (further discussed in chapter 3).

Nevertheless, even in its most basic format, the significance of the Arrest Memo as a constitutional protection is evident and has been reiterated in jurisprudence. In a case of illegal detention, while directing compensation to the accused and inquiries against the officers who were involved, the Bombay High Court acknowledged that the absence of an Arrest Memo constituted a violation of the Article 21 rights of the accused.[7] Referring to the *DK Basu* guidelines, the court reasoned that "as the directions issued by the Apex Court flow from Articles 21 and 22 of the Constitution of India, breach thereof amounts to violation of Article 21 of the Constitution of India."

The grave implications of violations in the Arrest Memo appear to attain prominence when they impact the very credibility of the criminal case against the accused. This comes up particularly in cases relating to the possession of contraband, where gaps such as irregularities in the date and time of arrest, absence of independent witnesses to the arrest, and non-production of the Arrest Memo before the magistrate, are not simply seen as procedural lapses. They also raise questions about the veracity of the case against the accused.[8] In a case of irregularities on arrest, the Calcutta High Court condemned the fabrication of evidence and "abuse of statutory power" by the investigation agency. The court directed compensation as a "balm" to assuage the immense suffering and stigma that the accused's unlawful arrest and violation of fundamental rights caused for them and their family.[9] In a writ petition before the Chhattisgarh High Court,[10] the court took note of the wrongful confinement and illegal arrest of juveniles, along with delays in production before the magistrate. There were further allegations of torture and clear evidence suggesting over-writing in the Arrest Memo and case diary by the police. Here, besides granting compensation, the court also directed a departmental inquiry or prosecution of the errant officers.

However, this jurisprudence fails to acknowledge the role of these safeguards in identifying violations at the first instance, and the role of the magistrate in ensuring the same. The constitutional mandate of first production before a magistrate critically positions them to check for actual compliance with all safeguards on arrest rather than at a later stage of the trial or appeal. First production is significant because it allows the magistrate an opportunity for the "immediate application of a judicial mind to the legal authority of the person making the arrest and the regularity of the procedure adopted by him."[11] At this stage, the magistrate is required to perform a judicial oversight function and ensure that the constitutional rights of the accused are attentively guarded.[12] Therefore, the magistrate must be satisfied that the arrest is legal and all the constitutional rights of the arrested person have been protected.[13] Besides the contents of the Arrest Memo, the magistrate must check whether the accused is an adult and competent to undergo the legal process, verify their

eligibility for bail if they have been accused of committing a bailable offence, ensure their legal representation, inquire into their treatment in custody and the possibility of torture, as well as scrutinise the reasons for their arrest and further detention.

In the representative cases we have cited above, irregularities in the Arrest Memo and possible violations of the safeguards on arrest — including arbitrary arrests, the failure to verify the age of the accused and the allegedly torturous treatment of the accused in custody — are not simply a reflection of the police's abuse of power. They are also an indictment of the magistrate, pointing to their failure in effectively performing their role. The magistrate is critically positioned to take note of these violations at the earliest possible instance and to *cure* them through appropriate action to ensure the safety and dignity of the accused, as well as for maintaining the credibility of the evidence and investigation. The role of the magistrate at this point, in acting as a check against fabricated evidence and coerced investigation, is inextricably linked to the integrity of the criminal justice system.

In recent jurisprudence, however, the primary focus has been on the magistrate's role in preventing unnecessary and unjustified arrests and detentions. Particularly in cases where the punishment is less than seven years — even if arrest is legally acceptable, as is the case with cognizable offences — there has been an emphasis on the need for the police to clearly specify the reasons for arrest, and for the magistrate to scrutinise these reasons. The power to arrest does not mean that an accused must be arrested in every case without clarity on the necessity for arrest.[14] This has been clearly articulated by the Supreme Court in *Arnesh Kumar* (2014), where detailed guidelines have been provided for the police and magistrate to consider the necessity and justification for arrest and detention. Within this context, the role of the magistrate in authorising further detention has also been stressed, as a "solemn function," which "affects the liberty and freedom of citizens and needs to be exercised with great care and caution."[15]

"THE MAGISTRATE IS to be alive to the need to preserve the liberty of the accused guaranteed under law even in the matter of arrest and detention before he orders remand...apart from being satisfied about the continued need to detain the accused."

Magistrates cannot merely accept the word of the police. They need to apply their own mind based on the material presented by the police and provide explicit reasons for authorising further detention. Non-compliance with this requirement can lead to departmental action against a magistrate, besides the initiation of possible action against concerned police officers. Courts have emphasised that procedural requirements for further detention are not an "empty formality,"[16] and that "the Magistrate is to be alive to the need to preserve the liberty of the accused guaranteed under law even in the matter of arrest and detention before he orders remand...apart from being satisfied about the continued need to detain the accused."[17] However, it is surprising that while *Arnesh Kumar* and this line of jurisprudence on unjustified arrests detail the magistrate's role at first production, they do not mention the Arrest Memo — or the interaction around it — which is primary document that the magistrate must consider in order to ensure the protection of the accused's Article 21 at first production and address its violation.

As much as the onus is on the police to comply with procedural requirements on arrest, the scope of this safeguard will be limited unless there is a corresponding recognition of the magistrate's role, as the judicial oversight body, in ensuring procedural compliance as well as the substantive intent behind these procedures. The jurisprudence on the Arrest Memo only considers the importance of this safeguard after the violation has been committed — when the credibility of evidence in appeal had to be reassessed, or when a separate petition has been moved for relief against violations. Therefore, existing jurisprudence reflects a gap in imagination of how these safeguards on arrest can be given life, and the magistrate's role in this process at the first stage itself. Consequently, the potential of the constitutional mandate of first production before the magistrate, as mandated by Article 22(2), is significantly under-developed in terms of how it is experienced by the accused at an everyday level at first production.

AS MUCH AS the onus is on the police to comply with procedural requirements on arrest, the scope of this safeguard will be limited unless there is a corresponding recognition recognition of the magistrate's role, as the judicial oversight body, in ensuring procedural compliance as well as the substantive intent behind these procedures.

The significance of the magistrate's role in assessing the reasons for arrest and detention to safeguard against unnecessary detention, and its direct link to protection of personal liberty of the accused emerges strongly from the jurisprudence.[18] However, scrutiny into substantive compliance with all procedural safeguards on arrest – including compliance with the spirit of the Arrest Memo — has a direct impact on the personal liberty and other constitutional rights of the accused in custody. But this explicit connection between the role of the magistrate under Article 22(2) and effective compliance with the Arrest Memo to the Article 21 rights of the accused is underdeveloped in the jurisprudence. This has an impact on the manner in which these proceedings are carried out in practice, as well as the experience of the accused.

Magistrate's Scrutiny into Illegal Detention and Legality of Arrest

During court observations, the research team was asked to note whether the Arrest Memo was mentioned in the context of every case observed, especially at first production. Since the researchers did not have access to case documents, they were often unclear about whether the Arrest Memo was discussed, and only noted "yes" if it was explicitly mentioned or they directly saw it, usually through the court staff. Additionally, the researchers observed whether the accused was physically present before the Metropolitan Magistrate (MM) and whether the MM spoke directly to the accused. Researchers also noted the age of the accused, where available, and any discussion in court about the question of juvenility. The court observations also documented whether the accused had legal representation, and whether such representation was provided by a remand lawyer or private lawyer.

However, at the heart of these court observations lay the interactions between different actors — such as the MM, court staff, the IO (Investigation Officer), escort officers, lawyers, the accused and their family — on issues relating to illegal detention and unlawful arrest, as well as procedural safeguards on

arrest. These details present a granular understanding of the experience of the accused — and sometimes their families — during their first production in magistrate courts as observed by the research team.

Drawing from the court observations, it appeared that most magistrates are attentive to and relatively more engaged with ensuring procedural compliance during first production hearings, compared to subsequent remand hearings. In addition, while magistrates did enquire into the reasons for further detention in police custody, there was little to no questioning when the accused were produced for extension of judicial custody. At first production, magistrates were particularly conscious about ensuring that the production had occurred within 24 hours of arrest — as constitutionally mandated.[19] In most instances, the IO first handed over the case documents to the naib court — the court official who acts as a link between the court and the police station — who would go through the file and check whether everything was in order. Thereafter, the file — including the custody warrant[20] — was handed over to the magistrate.

Some magistrates would silently skim through the file and grant further custody, while others would directly ask the IO follow-up questions, largely about the offence, the facts of the arrest, and the reasons for detention. Most magistrates tended to accept the IO's statements with barely any cross-questioning, although there were a few notable exceptions.

A few magistrates would interact directly with the accused,[21] but these exchanges were largely limited to procedural necessities, such as cross-checking the name of the accused and their father's name, and whether a family member had been informed. Follow-up questions to the accused were rare. In most first production cases, the accused did not have any legal representation, and nothing was done about this by the magistrate.

Even at first production, most court actors appeared to be focused primarily on ensuring documentary compliance with all procedural safeguards on arrest. In such cases, the Arrest Memo just became an artefact to be checked-off in the case file, rather than emerging as a central point of reference to ensure that the accused's rights against arbitrary detention were protected.

Drawing from the court observations, the following sections consider the manner in which magistrate courts in Delhi engage with and respond to crucial safeguards on arrest in their daily functioning, and whether the constitutional rights of an accused are adequately protected at an everyday level.

Judicial Scrutiny

The observation we started the chapter with, from the initial days of the court observations, reflect the researcher's shock at the disconnect between the ideal expectation of first productions and the reality of everyday functioning. Since the Arrest Memo was intended as a record of compliance with basic procedural safeguards at the time of arrest, its preparation in the courtroom — especially getting the signature of the accused in the courtroom in this case — subverts the very purpose behind these safeguards. However, court observations suggest that preparation of case paperwork — including the Arrest Memo — inside or outside the courtroom, minutes before first production, is a frequent occurrence in everyday court functioning.

DK Basu (1997) recognised the link between a large number of deaths in custody and illegal detention. To prevent the problem of illegal detention, it emphasised the involvement of public witnesses to an arrest, and prescribed a systematic format to record the presence of independent witnesses as well as to intimate relatives of the accused through the introduction of the Arrest Memo. The preparation of the Arrest Memo at the moment of arrest also ensures that there is a record of the correct *time* of the arrest, and clarity about the *time* that the accused has spent in police custody. Therefore, when an Arrest Memo is prepared in court as happened in the observation above, its inherent value as a safeguard is diminished, and the substantive protection of personal liberty and safety for the accused on arrest is significantly compromised.

THE OBSERVATION we started the chapter with, from the initial days of the court observations, reflect the researcher's shock at the disconnect between the ideal expectation of first productions and the reality of everyday functioning.

Magistrates regularly witness the Arrest Memo being prepared in court, but do not recognise the non-preparation of the Arrest Memo at the time of arrest as a serious violation of the accused's constitutional rights. While the magistrate's unquestioning acceptance of this practice might be a reflection of how normalised it is, it also suggests that paperwork, such as the Arrest Memo, tends to be treated as merely a technical requirement, without much recognition of its value as a protection of personal liberty and safety for the accused.[22] As we indicate in chapter 4, court staff may also play a major role in examining the paperwork as opposed to the magistrate. Even when the magistrate looks over the paperwork, the focus is on ensuring that all the paperwork is filled and *reflects* compliance with procedural safeguards, without approaching the artefact of the Arrest Memo as an occasion for the application of judicial mind on whether the constitutional rights of the accused have been substantively realised.

Researchers' observations suggested that families of the accused were often left in the dark about the whereabouts of their loved ones, as well as the case against them. This has been seen especially in cases of "formal arrest" — where an accused already in custody for another case is formally arrested in a new case, and produced before the magistrate in the fresh case. Thereafter, the magistrate often entrusts the concerned police station with the accused's custody for further investigation. Researchers have observed investigating officers sitting with the accused outside the courtroom, asking the accused about his personal details and name of his family members as they fill out the Arrest Memo. In one such case observed in Karkardooma court, an accused handed over a phone number to the researcher and asked them to inform his mother. The accused had been produced from a jail in another state, and was being formally arrested in a case in Delhi. The researcher noted that neither the legal aid lawyer nor the MM directly spoke to the accused, who had been directed to police custody for two days. Instead, in this instance, the researcher stepped in to intervene and actually intimated the accused's family, at his request. A first production case observed by a researcher in Tis Hazari further illustrates this. In this case, the accused had been arrested for the offence of theft in the

morning, but was being produced beyond the regular court hours before the duty magistrate. The researcher was particularly struck by the way the IO was hurriedly filling in the paperwork inside the courtroom, in the presence of the duty magistrate. The researcher was positioned behind the IO and accused, and could catch a glimpse of the documents with the IO, while observing the goings-on in court.

While the duty magistrate was impatiently urging the IO to hurry up, "*Jaldi karo, kitni der aur lagegi? Bas tumhare liye baitha hu ab mein*" — hurry up, how much longer will you take? I am only sitting here for you now. As the IO placated the duty magistrate, "*Bas do minute, janaab*"— just two minutes, sir[23]— he pointed to the Arrest Memo and asked the accused to sign it.

The duty magistrate appeared to be unconcerned that the Arrest Memo was being filled in court, or about its implications for the constitutional rights of the accused. Instead, on being presented the Arrest Memo and other case documents by the IO, the duty magistrate started going through them, and then inquired into the circumstances of arrest. During this process, it emerged that there was an irregularity in the time at which the police claimed the arrest had been made. The researcher recorded the following interaction between the MM, the IO, and the accused:

> The IO provided the facts of the offence upon being asked for these details by the magistrate: "*Ye subah-subah train se kisi ladies ka purse chura ke parking ki taraf bhag raha tha, pakad liya police ne aur yaha le aayi.*"— he had stolen the purse of a woman on the train, and was running towards the parking lot, when the police caught him and brought him here.
>
> MM: "*Time of arrest kya hai?*" — what was the time of arrest?
>
> IO: "*Subah 7:30 janaab*" —7:30 in the morning, sir.
>
> MM: "*Isme toh 11:00 likha hai*"— it says 11:00 here.
>
> IO: "*Woh janaab, pakda, phir thane laaye, phir main aaya, tab likha file mein*" —actually *sir*, he was first caught, then brought to the police station, then I came, and that is when I wrote it in the file.
>
> The MM furiously cut the IO off: "*Time of arrest kya hota hai, arrest kis time pe kiya, kab pakda? Itne saalo [se kaam kar rahe ho] itna bhi nahi pata aapko?*" — what does time of arrest mean, what time was he arrested, when was he caught? Even after all these years you don't know this much?
>
> After this, the MM questioned the accused. This was the first time that he had any direct communication with an accused that day: "*Kaha se ho*" — where are you from?
>
> **Udit** said something that was inaudible, the MM asked: "*Yahan kyun aaye the*?"— why did you come here?
> Udit responded: "*Mama se milne.*" — to meet my maternal uncle.
>
> The MM asked the IO about the Medico-Legal Certificate (MLC) — to be prepared based on the medical examination of the accused in custody — and the reader pointed it out in the file after turning two pages. The MM signed the file for judicial custody.'

In this instance, the scrutiny of the duty magistrate revealed an arrest violation that is often overlooked. There was an irregularity in the time of arrest, and the IO inadvertently confirmed that the accused had been illegally detained for about five hours. Although the accused had been apprehended by the police at around 7:30 am, the time of arrest reflected in the Arrest Memo was 11 am. Therefore, the personal liberty and safety of the accused appeared to have been compromised, as none of the safeguards on arrest were substantively realised, especially since the accused had been unaccounted for in police custody for a prolonged duration.

The duty magistrate was conscious of the illegal detention of the accused and reprimanded the IO harshly. However, the MM appears to have overlooked the fact that the violation of the accused's rights continued up until seconds before first production, since his Arrest Memo was being prepared in court, beyond 4 pm, many hours after the alleged time of arrest at 11 am. Moreover, in his inquiry, the MM also missed the implication of the incorrect time on the Arrest Memo and the illegal detention of the accused. He did not ask the accused any questions about his well-being or treatment in custody, and appeared to be satisfied with the presence of the MLC on record (the problems with this will be further discussed in chapter 3). The MM also did not make any effort to ascertain whether the family members of the accused had been informed about the arrest, or whether any independent witness had been present at the time of arrest. He also failed to ensure that legal representation had been provided to the accused.

Therefore, although the MM scrutinised the case documents — including the Arrest Memo and the MLC — noted a violation and reprimanded the IO, eventually he accepted and legitimised the time of arrest on the memo. The accused was sent to judicial custody, and everyone moved on. Details such as the incorrect time on the Arrest Memo and illegal detention admitted by the IO in court were completely omitted from the record. Moreover, the MM also took no action to ensure that the constitutional protections guaranteed to the accused were substantively realised. Instead, procedural compliance on paper obfuscated the reality of the experience of the accused and violations on arrest.

The limits of procedural compliance on paper are further illustrated in a researcher's notes about the manner in which an MM at the Saket court scrutinised the police's justifications for arrest during first production. As noted earlier, recent Supreme Court jurisprudence in *Arnesh Kumar* recognises unnecessary arrests and the misuse of the power of arrest by the police to be a violation of personal liberty under Article 21. Drawing from section 41 (when police may arrest without warrant) and section 41A (relating to notice for appearance before the police for investigation), *Arnesh Kumar* laid down guidelines, which stipulated that for an arrest, there must not only be genuine suspicion about commission of an offence, but the police must also provide compelling reasons for mandating the arrest in writing to the magistrate, as

per the conditions provided in section 41. Instead of arrest, the jurisprudence placed emphasis on ensuring the presence of the accused for investigation, whenever required, through issuing a notice of appearance as per section 41A.

In their observation, the researcher notes the interaction between the MM and IO to ascertain the necessity of arrest.

> MM: "*Mauke pe pakda hai kya isse?*" — was he arrested from the spot [of incident/offence]?
>
> IO: "*Sir, CCTV footage se pakda hai.*" — sir, he was caught on the basis of CCTV footage.
>
> MM: "*Notice nahi diya kya 41A ka?*" — was he not given a section 41A notice?
>
> IO: "*Nahi sir, ye habitual hai.*" — no sir, he is [a] habitual [offender].
>
> MM: "*Aaya nahi tha kya 41A ke notice dene par?*" — did he not come upon being summoned under 41A notice?
>
> IO: *Nahi sir, teen-chaar din aise hi baitha hua tha ye ghar pe.* — no sir, he has been sitting at home for the past three-four days.
>
> MM [in an exasperated tone]: "*Arre, notice diya tha ki nahi diya tha?*" — did you give him the notice or not?
>
> IO: "*Same day hi diya tha.*" — we gave it to him on the same day.
>
> MM: "*Dikhao, 41A ki notice dikhao.*" — show it to me, show me the 41A notice.

In this instance, the MM persisted with questioning the police about the reasons for the arrest. Despite their evasive responses, he scrutinised the documents himself and identified an irregularity — the police did not give the accused enough opportunity to respond to the section 41A notice. The police arrested the accused on the same day that they issued the notice, without giving him an opportunity to present himself in court.

> MM: "*Isko aana kab tha compliance ke liye?*" — when was he due to appear to be in compliance [with the notice]?
>
> IO: "*Investigation join karne ke liye 26 ko hi aana tha. Pehle do-teen baar ghar gaya tha toh mila nahi tha. 22 tareekh ko ghar gaya tha.*" — he was supposed to appear on the 26th to join the investigation. I had gone to his house two-three times earlier, and did not find him. On the 22nd, I went to his home.
>
> MM: "*Nahi, 41A ka notice aapne 22 tareekh ko hi diya hai?*" — no, was the 41A notice given on the 22nd?
>
> IO: "*Nahi, 26 tareekh ko notice diya tha, aur same day arrest bhi kiya.*" — no, the notice was given on the 26th and he was arrested on the same day.

Thus, the MM noticed the irregularity, but then directed the IO, "*isme special reasons wale column me mention karo*" — fill in the details in the special reasons [for arrest] column. From the observations, however, it was unclear what justifications for arrest were provided at this point, and whether the MM was finally convinced of the IO's passing claim that the accused was a habitual offender or that the IO had been unable to locate the accused despite making several trips to his residence.

These observations are a reminder that while there has been an important emphasis on documentation in police practice — through the Arrest Memo or through a checklist for reasons for arrest (*Arnesh Kumar*) — the presence of appropriate documentation on the case file is not enough proof that the personal liberty and safety of the accused had been substantively realised through safeguards on arrest. The everyday functioning of the courts reveals irregularities in the manner in which these documents are created and the critical realities they obfuscate. It further reveals that a magistrate's inability to closely consider these artefacts as a starting point for further inquiry into the experience of the accused threatens the substantial protection of their rights.

Production within 24 hours of arrest

The time-period of 24 hours specified in the law is the outer limit for first production before the magistrate. According to constitutional provisions, this should ideally happen at the earliest. Normally, first production must happen before the magistrate who has jurisdiction of the police station that has carried out the arrest. However, in practice, the time requirement for production is treated as an elastic concept, where 24 hours is considered to be the maximum period for which an accused can be in police custody after arrest. This results in production occurring before the duty magistrate court, and not the jurisdictional magistrate, beyond the regular working hours of the court. Prevailing concerns such as scepticism around police versions and apprehension about the safety of an accused when they are in the custody of the police are widely acknowledged including in the jurisprudence.[24] Delay in first production, in particular, results in a longer period during which the whereabouts of the accused are unknown and their safety is potentially at risk, since their detention continues without the magistrate's authorisation.

HOWEVER, IN PRACTICE, the time requirement for production is treated as an elastic concept, where 24 hours is considered to be the maximum period for which an accused can be in police custody after arrest.

Researchers observed a wariness about delayed first production among magistrates in a few cases, even when the accused had been produced within the time frame of 24 hours. For instance, a duty magistrate in a Dwarka court questioned the IO about the delay between the medical examination of the accused and first production — post 4 pm — even though the medical examination of the accused was completed at 1 pm.

> MM: "*Medical kab kia?*" — when was his medical [examination] conducted?
> IO: "*Ek baje ke aas pass.*" — around 1pm.

MM: "*Ek se abhi tak kya kar rahe the?*" — what were you doing since 1 pm?

IO: "*Duty thi uske baad aaye the.*" — I had "duty" [other work], and came after that.

The duty magistrate's line of inquiry in this case was warranted because there is good reason for suspicion when there is an unexplained gap between medical examination and first production. While the MLC is considered to be one of the most important safeguards against custodial violence, this delay leaves open the possibility of violence being inflicted on the accused after the medical examination but prior to production — when there is no danger of its traces being reflected on record.

In another case in Tis Hazari court, the researchers observed the duty magistrate interrogating the IO about the reasons for delay in first production when the accused had been arrested the previous night.

MM: "*Yeh arrest ko kaafi time ho gaya, itne late kyu la rahe ho?*" — quite some time has passed since the arrest, why are you producing him so late?

IO: "*Woh janaab aur raids kar rahe thhe*" — sir, we were conducting other raids.

As observed in instances through the period of research, even where the magistrate questioned the IO about the reasons for delay in first production, explanations provided by the IO were largely accepted without further challenge – regardless of how feeble or vague they might have been.

In another interaction at a first production between a duty magistrate at a Dwarka court and an IO, a researcher made the following observation:

MM: "*Arrest kab ki hai ?*" — when was the arrest conducted?

IO: "*Kal shaam.*" — last evening.

MM [in an explanatory tone]: "*9:40 kal raat ko arrest kiya tha, toh aaj 4 baje se pehle produce karna chahiye tha.*" — since the arrest was at 9:40 last night, you should have produced before 4 pm [during the regular court working hours].

Here again, while the MM questioned the police about delay in production, his emphasis was on guiding the officer to be conscious about avoiding such delays in the future. In this case, the MM might have chosen to adopt this approach because the IO was visibly inexperienced — and was seeking the help of another officer as well as the court staff to fill out the paperwork — and, perhaps, because she was a woman, which is significant considering that both the court and the police are male-dominated spaces.

These illustrations are also important because they reflect a consciousness among magistrates against delayed production, even when first production has been completed within the constitutionally-prescribed time-limit of 24 hours. Magistrates are also conscious of the possibility that the IO may delay things unnecessarily, and often take the time to guide police officers and advise them to follow procedures appropriately.

However, the court observations suggest that while most magistrates were focused on ensuring that there was no delay in production, they exhibited a lack of corresponding attention in examining the implications of this delayed production for the safety and dignity of the accused in police custody. Prolonged detention without production before the magistrate has serious implications for the Article 21 rights of the accused, that Article 22 (2) is intricately linked to protecting. The magistrate's perceptive scrutiny, at this point, is particularly important considering the power dynamic at play — including the vulnerability of the person in police custody — and the potentially intimidating experience of being produced in court alongside the IO and officers from the same police station that is investigating their case. Therefore, the magistrate can use a number of approaches such as inquiring directly with the accused about their experience in custody, scrutinising the injuries of the accused from the MLC as well as their body, and ensuring adequate legal representation, for the substantive realisation of the constitutional rights of the accused at first production. Researchers' observations suggest that this degree of scrutiny and attention to the experience of the accused is missing from most first production proceedings.

HOWEVER, THE COURT OBSERVATIONS suggest that while most magistrates were focused on ensuring that there was no delay in production, they exhibited a lack of corresponding attention in examining the implications of this delayed production for the safety and dignity of the accused in police custody.

In the two examples that were cited from the Tis Hazari court, the accused also did not have any legal representation, and the magistrate did not make any explicit effort to ensure the same. Troublingly, in the first example, the researchers noted that the order[25] dictated by the duty magistrate falsely recorded the presence of a remand lawyer and stated that the lawyer's arguments opposing police custody were heard. In reality, there was no lawyer for the accused present in court, nor were there any arguments on custody (elaborated in chapter 4).

Thus, even though magistrates spend time scrutinising the Arrest Memo and other case documents, and notice irregularities, the researchers' observations suggest that their responses frequently fall short of addressing the violations and ensuring the well-being of the accused by interacting with them or ensuring the fulfilment of their right to counsel.

Illegal detention

Illegal detention, while a common violation, is among the most elusive and hardest to prove. Documents are manipulated in a manner that legitimises the police's version of events. Most often, the magistrate does not verify the contents of the Arrest Memo by questioning the accused directly. The perspective of the accused is rarely represented in the courtroom due to a number of factors, such as lack of legal representation and a fear of the police. But even in the rare cases where the issue of illegal detention is raised and a specific plea for further inquiry is made on behalf of the accused, the

magistrate's response is often inadequate. Researchers observed this in a case where the issue of illegal detention and custodial violence was argued by the defence lawyer before a duty magistrate in Patiala House court.

According to research observations, the accused was arrested the day before he was produced before a duty magistrate. The researchers noted that the accused, **Kartik Chauhan,**[26] appeared to be from a middle-class background, with decent economic capacity, as suggested by his occupation as a business-owner engaged in selling gold. It appeared that a police investigation had resulted in evidence of the accused's dealings with stolen jewellery. The IO applied for the accused's further detention in police custody for two more days. This was opposed by a private lawyer representing the accused, who argued that prior to his arrest and production in court by this police station, his client had been illegally detained and beaten by another investigating agency for three days.

The private lawyer argued, on behalf of the accused:

> [Investigating agency] came to my shop, arrested me, kept me in detention for three days and then handed me over to [name omitted] police station... Police kept me in custody for four days. Now I don't know why they are asking for police custody for two days. *Sirf 411 ka case banta hai.* — it is only a case of section 411 [relating to dishonestly receiving stolen property].

The duty magistrate ignored the accused's request to make a submission before the court about his experience in custody. Instead, the duty magistrate scrutinised the police report on the investigation conducted and evidence recovered against the accused. The duty magistrate appeared to be convinced about the need for the accused's detention in police custody for further investigation. However, the defence lawyer interjected. The following exchange was noted:

> Lawyer: "What about illegal detention? Mention it in the order and call the CCTV footage of [investigating agency] office...there is no ground for police custody remand. Illegal detention should be mentioned in the order."
>
> MM: "*MLC kahan hai inki? Age kya hai?*" — where is the MLC? What is the age [of the accused]?
>
> The IO gave the MLC to the magistrate and informed him that the accused was 39-years-old.
>
> MM: "No fresh injury has been recorded as per the MLC."
>
> Lawyer: "*Aap ek baar accused se pooch lijiye, chaar din tak kaise peeta hai ise.*" — please ask the accused once, how he was beaten for four days.
>
> The magistrate still didn't ask the accused any questions.
>
> MM: "Not in the MLC"
>
> Lawyer: "*Sabko pata hai police kaise peet-ti hai. Itna peet-ti hai, pata bhi nahin lagne deti.*" — everyone knows how the police beats [an accused]. They beat them so much, and don't even let it be known.
> The magistrate directed the accused to police custody for two days.
>
> MM [to the lawyer]: "File the bail application in concerned court."
> MM [to the police]: "*Inka medical karayenge aur iska reply denge concerned court mein.*" — get his medical done and file the reply in the concerned court.

Court observations reveal that many first productions were carried out before the duty magistrate, beyond the regular working hours of the court. There is also a tendency among most duty magistrates to defer follow up actions including on violations to the *concerned* jurisdictional court. This could be because section 167(2) limits the powers of a duty magistrate — as a magistrate not having "jurisdiction to try the case or commit it for trial" — in deciding whether further detention is unnecessary. Instead, questions regarding the release of the accused — such as bail — are forwarded to the jurisdictional magistrate. As another duty magistrate explained to a defence counsel while refusing to take a bail application on record — the jurisdictional magistrate was "better equipped" to hear the matter —even if this meant waiting for two days — as they would be better apprised of the situation of that area.[27] The researchers' observations suggest, IOs tend to bypass scrutiny by the jurisdictional magistrate by producing the accused before the duty magistrate, after court hours.[28]

In Kartik Chauhan's case discussed above, the duty magistrate's decision to defer not only the bail application, but also the allegations of custodial violence to the *concerned* court after noting that the MLC is clear of injuries, could potentially lead to serious, unintended consequences including the possible destruction of evidence of custodial violence and further threat to the safety of the accused in police custody. When violations in police custody are raised, time is of essence, not only for the safety of the accused in custody, but also to ensure that responsible officers are brought to book. The Supreme Court has repeatedly stressed the importance of CCTV footage in preventing custodial violence.[29] But deferring any consideration of such allegations to the concerned court inevitably grants extra time to the police to cover up their tracks and may lead to the possible loss of crucial evidence proving the violation.

As will be argued in chapter 3, sole reliance on the MLC to verify the occurrence of custodial violence ignores the reality that custodial violence is often committed by the police and other officials such that no marks are visible on the body. In the above case, the duty magistrate chose to rely on the MLC despite the explicit submission of the defence lawyer about the manner in which the police ensures that no traces of such beatings remain. Neither did the MM hear the statement of the accused about their experience in custody, nor did he include the lawyer's detailed submissions on illegal detention in the record. Therefore, the police version was legitimised on record by the duty magistrate, making it difficult to raise these violations during the trial.

As per jurisprudence, once a magistrate has authorised detention, the accused can no longer claim relief for prior illegal detention.[30] This is based on the presumption that during production hearings, magistrates are bound to ensure that the constitutional rights of the accused have been substantively

realised before they authorise arrest or further detention. However, as research observations from court suggest, in reality there is often a gap between the scrutiny of the magistrate, compliance with procedural safeguards on record, and the actual realisation of the accused's rights.

Arguments on illegal detention and custodial violence before the magistrate were rare during the research period even though these violations have been widely recognised as a common part of police investigation[31] — as will be discussed in detail in chapter 3.

In another first production proceeding before a duty magistrate in Saket, the fact of illegal detention came up most casually and was not addressed directly by the judge. In this case, the accused – **Anmol** – was produced along with a co-accused – **Bhavik**. The duty magistrate found the documents pertaining to Bhavik to be in order to remand him to judicial custody. However, there was no MLC for Anmol in the file. The IO suggested to the duty magistrate, "[MLC] *Jaate hue karwa dunga*."— I will get it done on my way back.

> The duty magistrate was not convinced, and called the IO again.
>
> MM: "*Ek ka abhi kar dete hain [remand]. Kal kitne baje arrest kiya tha dusre ko?*" — we'll do it for one now [referring to remand for Bhavik]. What time did you arrest the other one [referring to Anmol]?
>
> IO: "*Aaj 3:30pm baje kiya tha. Raat ko 8 baje detain kiya tha.*" — Today it [referring to the arrest] was done by 3:30pm. He was detained at 8pm last night.

This exchange suggests that though Anmol had been arrested on paper an hour before his production, he had been detained for about 19 hours in custody prior to arrest. However, no questions or objections were raised in court by the MM or the defence lawyer for this extended confinement without authorisation. Instead, the emphasis of the entire proceeding turned to the issue of the absence of the MLC. The magistrate went out of his way to ensure that the medical examination was conducted at the earliest, and rejected every attempt by the police to evade this requirement. The researcher's observations and reading of the situation is as follows:

> The IO then asked the duty magistrate if he could get the medical examination done from a private hospital and then later at AIIMS, since it would take at least two hours for the report to come out from the latter.
>
> MM : "*Aap ek ki file leke aaiye. Dusre ki MLC karwa ke aaiye, chahe raat ko aana pade.*" — please bring the file of the first one [Bhavik]. Get the MLC of the second one [Anmol] done, even if you need to bring it to me at night.
>
> The IO said that it would take time for them to get the MLC done, indirectly hinting that it could go beyond the time that the duty magistrate would be available in court. The duty magistrate thought about it for a while, but then was insistent that the MLC had to be done before he could send them to judicial custody. The duty magistrate then instructed the naib court to share his contact details with the IO and to inform him at least half an hour before their arrival, probably at his residence since it was 17:00 already.

Here, the reality of illegal detention, unwittingly mentioned by the IO, was erased and further legitimised by the MM's acceptance of the time of arrest mentioned in the Arrest Memo. Instead, everything hinged on the presence of the MLC — despite the common knowledge that not all signs of violence are visible on the document. Within this exchange, the MM also ignored other implications of illegal detention, such as the fabrication of evidence, as observed in High Court jurisprudence.

The MM's insistence on a medical examination may have been well-intentioned — though inadequate as we will discuss in chapter 3 — to confirm the safety of the accused in custody. But it inadvertently allowed for irregularities by the police and the illegality of the arrest to be legitimised under the cloak of due procedure. Even in the order, the irregularity of the police was only limited to the absence of MLC, and would be rectified once the police presented an MLC to the magistrate. Once again, the magistrate appeared to accept the police process, instead of fulfilling the requirement of probing further and effectively monitoring the safety and well-being of the accused, as is needed at this stage.

Intimation to family, on arrest

An important requirement of the Arrest Memo is the presence of an independent witness on arrest, which is proved through their signature. This safeguard — along with the mandatory requirement for a friend/relative named by the accused to be informed on arrest — is significant to ensure that there is a public gaze over police processes to check against excesses and ascertain that due procedure has been followed.[32] Further, the legal requirement for the family member or friend named[33] by the accused to be informed on arrest is an essential mechanism through which the accused can inform and activate support networks of their choice. This is an essential mechanism to ensure accountability of police action, safety of the accused in custody, as well as to make practical arrangements regarding their legal defence or bail. Therefore, the inclusion of public witnesses to arrest and intimation to the accused's family or friend is more than just a formal requirement or a signature to be entered in the Arrest Memo. This record in the Arrest Memo is directly linked to protection of the personal liberty of the accused, as it gives the magistrate an opportunity to probe deeper and ensure that the constitutional rights of the accused have been fully realised.

The researchers did not observe any discussion or inquiry regarding independent witnesses mentioned in the Arrest Memo by the magistrate during first production.[34] By contrast, questions around information to the family, which is a crucial safeguard on arrest, came up very frequently in court observations, regardless of the class and socio-cultural location of the accused. The magistrate or the naib court routinely inquired into whether a family member of the accused had been informed when they were going through the Arrest Memo presented by the IO. Under Section 50 A, it is also the magistrate's

explicit duty to inquire into whether a family member has been intimated. However, court observations also suggest that there is no consistency in the manner in which these inquiries are conducted.

A striking example in this regard took place in a duty magistrate court in Karkardooma. The arrested person, **Dhiren**, was injured and on a wheelchair — with a plaster on his shin — when produced. The researcher noted that despite the accused's vulnerable state, he had to make persistent efforts to get the duty magistrate's attention and have his say in court. While the duty magistrate eventually heard the accused, he did not engage or further inquire into the accused allegations of being falsely implicated or his complaints of inadequate medical care.[35] However, the MM did engage with the accused's complaint about his family members not being informed, and reprimanded the IO harshly. The researcher noted:

> The [Duty] magistrate also scolded the IO since the accused's family was not informed. He said this might constitute "illegal arrest." There were five police alongside [the accused] and they weren't letting me [the researcher] speak to him. The remand lawyer said that the IO claims that the wife of [the accused] has been informed but the IO didn't inform the accused that the wife was informed. The naib court got a police officer who was not the IO to call the wife. She said she was informed by the friends of [the accused] but not the police. The [duty] magistrate again scolded the police personnel. He said, "we should not become like machines." He said this would get both him and the IO in trouble. He said it is because of such behaviour that the institution of police gets a bad reputation and each family member should know the details about their family. He gave the example of how his [the IO's] family would feel if he went missing. After all this, [the accused] got police custody.

Crucially, the MM warned the police against a mechanical performance of their duties. He went so far as to personalise the intention behind the safeguard by emphasising how important it was for family members to be aware, and by rhetorically asking how the officer would feel if he had a family member go missing. While the law does not burden the police with informing each and every family member of the arrested person, the key purpose behind this safeguard is to ensure that an individual of the accused's choice is informed about the arrest, who might also act as a resource person for the accused in custody. Further, confirmation must be provided to the accused that this family member has in fact been intimated.

However, the response of the same duty magistrate and his commitment to this safeguard was inconsistent, as was evident from the experience of another accused, Ramesh, produced immediately after, possibly in connection with the same case as Dhiren. In this case, the duty magistrate did not interact directly with Ramesh. There was also no effort to assign a remand lawyer to him, despite the fact that he was produced without legal representation. Ramesh was silent during the proceeding, however, opened up a bit in a conversation with the researcher after the proceedings —Ramesh requested the researcher to inform his family of his arrest and to ask them to come to the police station to see him, and also conveyed that he was scared of the police. The researcher noted:

> Ramesh said that he was beaten many times and now again has gotten [sent back to] police custody with Dhiren. He was scared of the police and that his family is not informed and lawyers are not also there... He asked me to call his sister and tell her to visit [name omitted] police station with his mother and three-four boys. I did as he asked. His sister later called me again to try to speak with him, which could not happen because of the number of police officers with him.

Here, the onus was on the accused and their ability to effectively draw the attention of the magistrate to ensure the rectification of violation of crucial safeguards on arrest. In these illustrations, the duty magistrate, despite recognising the importance of informing family members on arrest, and urging against mechanical police action, failed to acknowledge their own role in ensuring that these safeguards are realised in each case. The burden cannot be on the accused to draw attention to themselves and always speak up before the magistrate. In the above examples, Dhiren was able to persevere and draw the duty magistrate's attention, perhaps, in part, due to the physical injuries on his body. In the second case, Ramesh appeared to be scared and disoriented due to beatings and frequent remands to police custody. According to the researchers, he also appeared to be emotionally vulnerable and therefore, was perhaps incapable of speaking up before the MM. Therefore, for the magistrate to merely go through the paperwork and direct remand, without interacting with the accused and verifying the relevant details, is insufficient. In Ramesh's case, the accused's family was made aware of his whereabouts only because the researcher felt ethically responsible and went out of their way and informed the accused's family.

Court observations reveal that very few magistrates really engage with the accused directly or create opportunities for them to articulate their experience. In most inquiries, the IO's confirmation of intimation to the accused's family was accepted by the magistrate unquestioningly. There were also instances in which the verification of this fact —along with the contents of the Arrest Memo and other documentation on first production — was conducted by the naib court, and the magistrate merely signed the order for remand (elaborated in chapter 4). This level of reliance on the court staff and acceptance of the IO's word reflects a dilution in the responsibilities that a magistrate is meant to discharge. Any reliance on the court staff to conduct this verification also overlooks the camaraderie and dynamic between them and the police, and suggests that this is largely seen to be a mechanical, bureaucratic step while its substantive importance is missed.

Thus, judicial scrutiny at first production requires a deeper inquiry into whether there has been actual compliance with the safeguard. This would mean that such an inquiry cannot be restricted to examining whether the requisite details have been mentioned in the Arrest Memo. For instance, a researcher observed the first production of two accused before a duty magistrate in Tis Hazari. After inquiring into the offence and the investigation leading to IO's arrest of the two people, the duty magistrate turned to ask the accused whether their family members had been informed. The IO responded that "the mother of one of the accused and the maternal [grand]mother of the other accused has been informed." Both the accused were largely silent through this proceeding, only responding to the duty magistrate's direct question about the place of

arrest. However, after the proceeding, one of the researchers observed one of the accused telling his remand lawyer to inform his father of the arrest. While the advocate complied with the request of the accused and called his father, he did not raise this issue before the duty magistrate. The magistrate also did not confirm with the accused whether the police had been compliant with this requirement during the proceeding.

This can be contrasted with observations in another case in Saket court, where the MM spoke directly to the accused and asked follow-up questions, giving the accused an opportunity to speak.

MM: "Spoke to family members?"

Accused: "Yes."

MM: "Whom [did you speak to]?"
Accused: Spoke to my brother.

RESEARCHERS OBSERVED THAT often family members, and even lawyers, had no information about the time of first production, as well as subsequent productions from police or judicial custody.

Such follow-up questions constitute a creative engagement with the artefact of the Arrest Memo. They ensure that compliance goes beyond what is on paper — which, while relevant, might obfuscate the accused's actual experience. This leads to a more comprehensive understanding of whether the procedural safeguard has been substantively realised; especially the accused's right to have a person of their choice informed of the arrest.

It is also important for the magistrate to ensure that the family has been intimated because of the opacity of proceedings at the pretrial stage. Researchers observed that often family members, and even lawyers, had no information about the time of first production, as well as subsequent productions from police or judicial custody. Many family members would spend hours outside courtrooms, waiting for their loved ones to be produced. This became particularly complicated when there were multiple cases against an accused. The researchers observed several instances in which an accused — already in custody for a case — was subsequently apprehended in new cases through *formal arrests*. As these accused were transported from one court date to the next, from custody-to-custody, neither they nor their family were able to keep track of all the cases against them. In this context, the magistrate can play an extremely critical role in ensuring transparency in arrest, by moving beyond a mechanical check of compliance, and instead pushing for a meaningful realisation of this safeguard for the accused; especially since the Arrest Memo already includes explicit provision for this particular detail.

Age Verification

When an accused in an offence is a child or a juvenile, the investigation against them cannot be undertaken in the same manner that it would if they were an adult.[36] Special procedures under the Juvenile Justice (Care and Protection of Children) Act, 2015 kick in from the moment the police apprehend a child allegedly found to be in conflict with law. The act provides that no such child shall be apprehended in police lock-up or lodged in a jail, and requires for the child to be produced before the Juvenile Justice Board without any loss of time, within a period of 24 hours.[37] A specially-constituted Juvenile Justice Board (JJB)— involving two social workers in addition to a specially-appointed judicial magistrate of first class — is responsible for conducting the inquiry and trial of a suspected juvenile in conflict with law.[38] Therefore, if a juvenile is produced by the police before a regular jurisdictional magistrate (not the JJB), the magistrate is required to send the child to the Juvenile Justice Board.[39] If there is uncertainty about the actual age of the accused produced before the magistrate, the magistrate is required to send the arrested person to *protective custody*, not judicial custody or police custody, until the magistrate has ascertained the age of the individual.[40] It is, therefore, significant to note that the law is clearly against sending a juvenile to adult jails or police custody, either during inquiry, trial or on being found in conflict with law. This is because the law recognises culpability for a juvenile very differently, and emphasises its restorative and rehabilitative objectives for children suspected of committing a crime. [41]

Yet, juveniles slip through the legal protections, and undergo the harrowing experience of arrest, investigation, and undertrial detention. At times, they are even convicted and sentenced with the harshest sentence of death.[42] In this instance, even the Arrest Memo appears inadequate. The absence of a separate column for information pertaining to the age of the accused in the Arrest Memo in Delhi is important to consider in this context. For magistrates to effectively fulfil their responsibility, it is necessary that the accused's age is duly scrutinised in every case, and is not left to the discretion of individual magistrates.

According to research observations, although the question of age came up often, there was no consistency in its treatment. Sometimes, the police noted the age of the accused in the column relating to personal identifying details of the accused (name and parentage). In other instances, magistrates themselves questioned the IO and the accused to verify their age, especially when the accused's physical appearance suggested that they were below the age of 18 years.

One significant case emerged, in which the question of age became a serious point of dispute. This was a first production case before the duty magistrate court in Tis Hazari, for which three accused, Kabir, Shankar, Dinesh, with two of them belonging to Denotified Tribes (DNT) — communities that the colonial government had labelled as criminal tribes — were produced after their arrest for their alleged involvement in a theft. The IO had applied for police custody for further investigation. The MM considered the Arrest Memos and the documents submitted by the IO for the three accused, and questioned the IO about their age. Excerpts from the detailed research notes are included below.

MM: "*Age kya hai inki?*" — what is their age?
IO: "*19-20 hai, janaab.*" — about 19-20, sir.
MM: "*Teeno ki, kahaan hai age proof ?*"— all three, where is the age proof?
IO: "*File mein hi hai.*" —it is in the file.
MM: "*Dikhao, isme toh Dinesh ka kuch bhi nahi hai.*" — Show me, there is nothing for Dinesh here.
IO: "*Woh uske documents nahi thhe, baki dono ke laga diye hai.*" — There were no documents for him, we included them [documents] for the other two.

The duty magistrate then directly inquired with Dinesh about his age, and he responded by saying that he was 17-years-old, but would turn 18 in a month. In light of this information, the duty magistrate then proceeded to further question the IO.

> MM: "*Janaab, iske documents kahaan hai?*" — where are his [Dinesh's] documents?
> IO: "*Nahi mile, janaab*" — could not find them, sir.
> MM: "*Iske ghar se kaun hai, bulao unko.*" — who is there from his house, call them.
> Dinesh's mother was called.
> MM: "*Iske documents kahan hai?*" — where are his documents?
> Dinesh's mother: "*Inke pass, ye lekar gaye thhe humare pass se.*" — with them [pointing towards the IO], he came and took them from us.
> IO: "*Mere ko nahi diye janaab, mere pass bas Shankar ke thhe wahan se.*" — I was not given any, sir, I only got [documents pertaining to] Shankar from there.

The duty magistrate then proceeded to inquire with the other accused. She asked Kabir about his age. His response suggested that he was already 18-years-old. The duty magistrate then spoke to Shankar.

> MM: "Shankar?"
> Shankar: "05-05-2005"
> IO: "*Iski 2003 ki hai, Aadhaar attached hai*"— his [birth-year] is 2003, his Aadhaar [card] is attached.
> Shankar: "*Woh ma'am meri dadi ne galat likhwa diya tha.*"— actually ma'am, my grandmother had gotten my age recorded incorrectly.
> MM [to the IO]: "*Aapko pata nahi hai ki Aadhaar ko as a age proof nahi le sakte, school certificate hi use kar sakte hai?*" — do you not know that Aadhaar [card] cannot be used as proof of age, only a school certificate can?
> IO: "*Kabir ka school certificate hai*" — we have Kabir's school certificate.
> MM: "*Aur baki do ki age verify kyun nahi ki aapne yaha laane se pehle*" —and why did not verify the age of the other two before you brought them here?
> IO: "*Kad kaathi se lag rahe the* 19-20 *ke.*" — from their physical appearance, they seemed to be 19-20 [years-old].

> MM: "*Kaha se dikh gaye ye* 19-20 *ke, mujhe toh nahi dikhe…Yeh production illegal hota hai jab tak aap age verify na karo, inko JJB ke aage le jaakar age verify karwani chahiye thi aapko … 94 section JJ Act ka nahi pata aapko.*"— They do not look 19-20 [years-old] to me … the production is illegal until you verify their age. You should have produced them before the JJB [the Juvenile Justice Board] to verify their age. Are you not aware of section 94 of the Juvenile Justice Act?

Eventually, the duty magistrate was emphatic about ensuring that the arrested persons were not sent to police custody. She directed that they be sent to protective custody — as provided under the JJ Act — and brought before the appropriate court only once their age has been verified.

A detailed account of the proceedings in this case reveals the thorough nature of the duty magistrate's inquiry. Crucially, it also reflects the discretionary power of an individual magistrate and even a duty magistrate to intervene strongly if they so desire. Besides examining the additional documents submitted by the police, the duty magistrate also questioned the IO and all three accused in an effort to verify their age. The magistrate went out of her way to get more information, even calling upon the family of the accused waiting outside the courtroom. This is a significant but rare inclusion of family in the first production proceedings, possibly because of the apparently young age of the arrested person. This instance demonstrates the vital potential of including the family during first production proceedings, since they may be able assist the magistrate in their scrutiny. The duty magistrate also asked the police to conduct proper age-verification, based on school documents,[43] and dismissed the validity of the Aadhaar card as proof of age. In this instance, the documentary artefacts merely serve as a starting point for the inquiry.

Importantly, unlike other instances observed by the researchers, this duty magistrate did not defer to the *concerned* court, and there was no hesitation on her part in taking immediate action. Nor did the MM remand the accused to judicial custody pending age-verification. Instead, she directed that the explicit procedure under the JJ Act be followed. This is particularly crucial when it is considered in contrast to other instances in which uncertainty about the age of the accused at first production was noticed.

Court observations suggest that although the magistrates tended to scrutinise the age of the accused who were produced, and undertook precautions to ensure that the person was not a juvenile, they appeared to be limited by the two options available to them at this point: of sending the accused to police or judicial custody. Additionally, the detention of potential juveniles along with adults contradicts the intention of the law towards a rehabilitative and reformative approach in dealing with the former. These approaches also ignore the heightened vulnerability and threat to safety and dignity of a juvenile who is placed in custody along with adults.

Although most magistrates observed by the researchers did inquire into the age of the accused persons, most also appeared to be satisfied with the answer they were provided unless the arrested person looked particularly young. While this is important, solely relying on the physical features of an accused person constitutes a limited approach, because it inevitably involves a degree of arbitrariness. Even in the Tis Hazari case discussed above, the police seemed to have treated the apprehended individuals as adults (19-20 years) because of their reading of their physical features. Similarly, while the duty magistrate in this instance was unconvinced about establishing their status as adults merely through observation, another magistrate could have agreed with the police version, and enabled a potentially illegal detention. Moreover, a person's age is not always evident in their physical appearance, considering the impact of nutritional and biological factors on the physical features of individuals. Given the high number of juvenile detainees who have been illegally incarcerated in adult jails,[44] it is evident that there are gaps in the current approach towards determining the age of an accused person at the pretrial stage.

Constitutional Function of the Magistrate

Court observations suggest that Arrest Memos and safeguards on arrest do feature frequently in the everyday functioning of magistrate courts in Delhi, although the nature of engagement tends to vary. Transparency in police action on arrest — advanced in *DK Basu* and thereafter through statutory provisions — has ensured that safeguards such as the Arrest Memo make an appearance either explicitly or implicitly at first production. However, neither the jurisprudence nor the statute mandates a standard format for the Arrest Memo. Nevertheless, even the basic information contained in the Arrest Memo in use in Delhi provides the magistrate with a clear account of the manner in which arrest was effected and enables them to point out irregularities immediately. However, in practice, magistrate courts tend to focus on ensuring compliance with safeguards on arrest only on paper and rarely even interact with the accused. The actual experience of the accused in custody is often overlooked in this process.

The artefact of the Arrest Memo and its contents allow the magistrate a significant opportunity to probe deeper into the police narrative and verify information from the accused produced in court. However, it is not very common for a magistrate to conduct a further inquiry into the Arrest Memo by way of regular practice — the degree of engagement depends on the inclination or discretion of individual magistrates. When a violation is noticed, the response and action taken also varies across magistrates. The tendency among most magistrates is to ensure that the violation is not apparent on the record, and at times they even assist the IO in curing the defect. Most duty magistrates tend not to engage much with violations and instead defer judgment to the jurisdictional magistrate. Finally, when in doubt, remand to judicial custody is the most frequently-adopted *remedy* for a potential violation of arrest.

On rare occasions, the magistrate was seen to criticise an irregularity or recommend direct action against the officer. While there are individual magistrates who are conscious of the Arrest Memo's significance, there is a lack of corresponding attention to the implication of any of these violations on the accused. This suggests that magistrates do not recognise the full potential of their function at first production and remand, and what a closer scrutiny of the Arrest Memo might reveal for the realisation of accused's rights, as well as about the manner in which the police investigation was conducted. The full potential of the artefact of the Arrest Memo remains unrealised at the moment.

Court observations suggest that details in the record are often in complete contradiction to the actual experience of the accused. There were rare instances when irregularities in arrest were revealed because of the persistence of the magistrate or interventions by the defence lawyer. Even the constitutional right to a lawyer at first production is not always ensured despite the presence of a mechanism whereby a remand lawyer is assigned to magistrate courts.

Although the constitutional protections for accused persons are reflected through explicit statutory protections on arrest, there is an absence of clear guidance in the law about the consequences of violations and the intervention to be made by magistrates in these situations, including the nature of action against errant officers. Even jurisprudence has not fully defined how the magistrate can translate constitutional protections into everyday practice. As a result, there has been a failure to expansively articulate the full potential of the role of the magistrate under Article 22(2) in ensuring the personal liberty and safety of the accused on arrest and detention, linking it to Article 21. This is notably contrary to the seriousness with which the jurisprudence considers the magistrate's role in preventing unnecessary arrests, by clearly articulating their role and imposing consequences in the event of lapses.

ALTHOUGH THE CONSTITUTIONAL protections for accused persons are reflected through explicit statutory protections on arrest, there is an absence of clear guidance in the law about the consequences of violations and the intervention to be made by magistrates in these situations, including the nature of action against errant officers.

Further, the inadequate realisation of the constitutional rights of the accused during first production is also worrying because of the position in jurisprudence that once further detention has been authorised by the magistrate, relief cannot be claimed against prior violations.[45] Implicit in this position is the belief that on production, the magistrate would only authorise the further deprivation of an accused's liberty if they are satisfied with the protection of the accused's constitutional rights in this process. The reality of remand proceedings — which tend to be characterised by an emphasis on paperwork over the experience of the accused — certainly dispels this assumption.

The study notes that the artefact of the Arrest Memo was indeed a creative remedy for transparency and accountability over the police, and observations attest to the manner in which most magistrates emphasised its presence at first production. However, this step appears to be inadequate to ensure that a person's constitutional right to safety and liberty is fully realised. These rights can only be protected when the magistrate actually takes the Arrest Memo as a starting point, to ascertain its veracity from the accused, and ensuring that any violation of such safeguards are met with consequences. ■

JURISDICTION
SOUTH,
SOUTH-EAST

INAUGURATED
2010

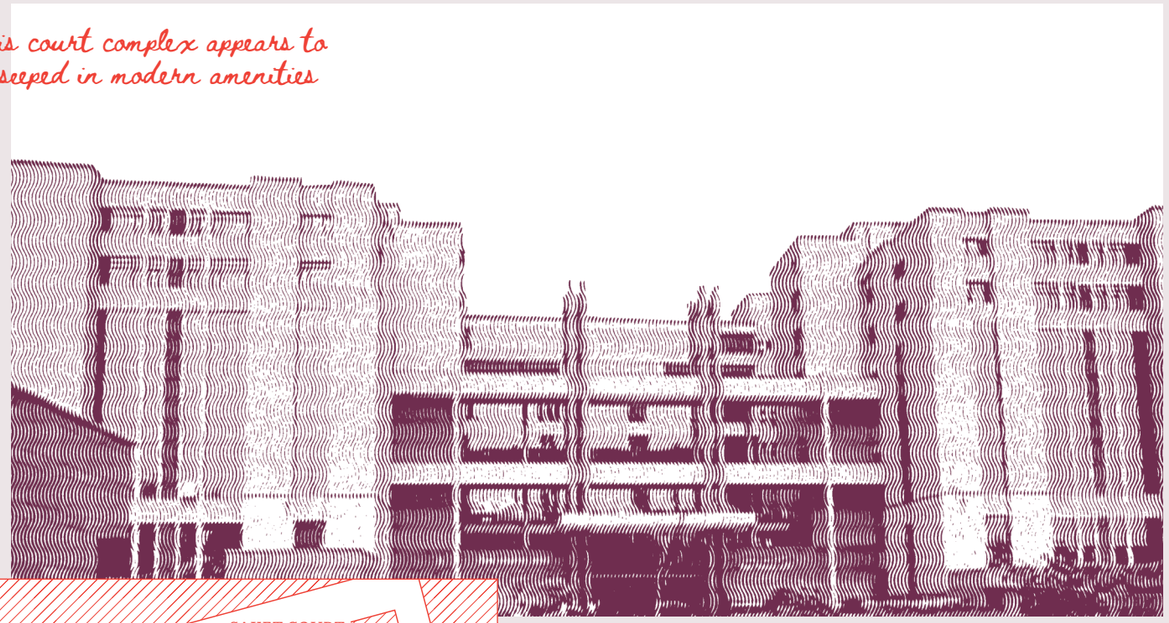
SAKET COURT

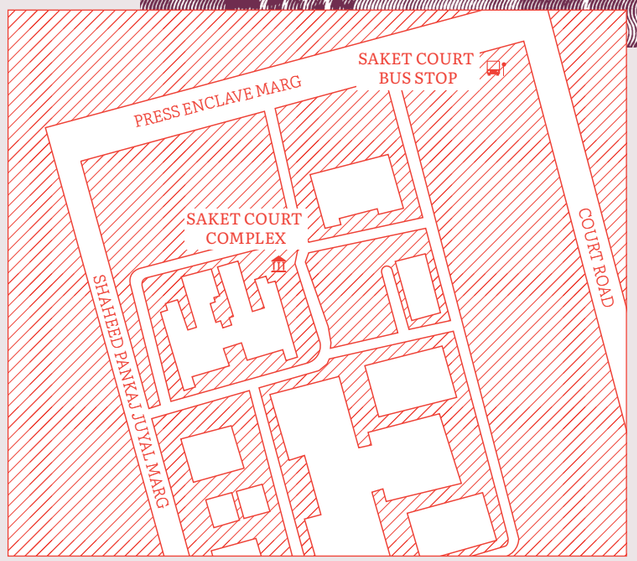
SHRUTIKA PANDEY & MARY ABRAHAM

The Saket Court Complex is nestled amid contrasting contexts: swanky malls, a prominent hospital of South Delhi, and semi-residential, low-middle income areas such as Hauz Rani and Khirki Extension. Since its location is fairly convenient, many researchers and lawyers tend to prefer it to other courts in Delhi. The court, which was inaugurated on 28 August, 2010, by a former Chief Justice of India, S.H. Kapadia, caters to the South and South-East districts of the city. These districts earlier fell within the jurisdiction of the Patiala House Courts.

This court complex appears to be seeped in modern amenities. Naturally well-lit domes crown the centrally air-conditioned structure, escalators that resemble those of the malls nearby run across its seven floors, and a sleek ramp paves the entrance to the lock-up. The lawyers' block and the main building dominate the landscape, while structures such as the police lock-up, the family courts, the mediation centres and the District Legal Services Authority (DLSA) offices are relegated to a position of lesser visibility. A few Mahila courts — specialised courts that deal exclusively with crimes against women — and a room for vulnerable witnesses are both located on the ground floor.

This court complex appears to be seeped in modern amenities



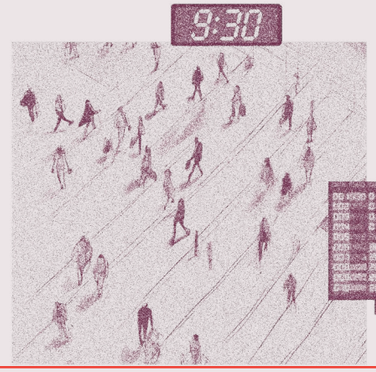


Even as early as 9:30 am, the court complex is usually marked by a sense of urgency in the scenes that one witnesses everywhere — hurried steps scrambling into the main building, frenzied conversations between the litigants and their lawyers, police officers rushing to courtrooms with files in their hands. This is in stark contrast to what one observes on holidays or post regular court hours when only the duty magistrate courts are in operation and the entire complex wears a deserted look. Unlike regular days, when people go through multiple security checks to get in, on holidays, visitors to the court complex are frisked only once, while their bags move through unattended machines.

Each courtroom, equipped with state-of-the-art facilities, is uniform in its layout. The magistrate sits on an elevated podium that is separated from the rest of the room by two partitions – past the first one are court officials and structures that include the witness-box; beyond the second, is the space occupied by lawyers and litigants. The court reader calls out the matter to be heard from the cause-list, which the orderly then relays again at the door of the courtroom.

Amid swanky malls, a prominent hospital, and cramped residential areas

The lawyers' block is prominently situated



At 9:30am there is a marked sense of urgency all around

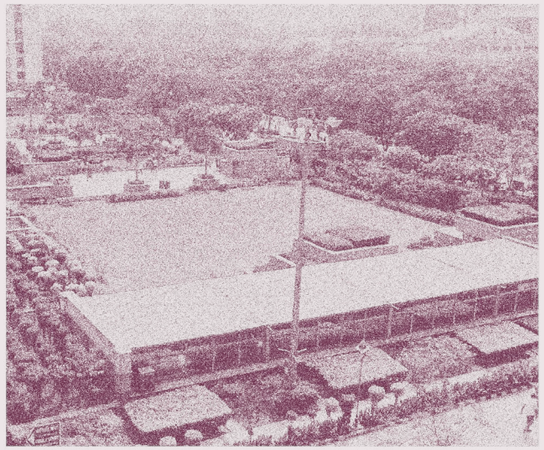
Centrally air-conditioned with escalators similar to the malls nearby

Birds out of reach

Two rows of chairs are placed at one end of the room. While the first row is reserved chiefly for lawyers — as indicated by the signs pasted on these chairs — the one after is for everyone else. The desks for the naib courts and the public prosecutor are positioned between the dais, where the magistrate sits, and the rows of seats. Bundles of files placed on different surfaces across the courtroom lend it an air of bureaucracy, emphasising the importance that paperwork generally assumes once someone accused of a crime becomes a part of the system.

In theory, the Saket Court Complex can — in comparison to other court complexes in Delhi — boast of better infrastructure and audibility; the courtrooms here are equipped with microphones for the magistrates as well as the lawyers and litigants. However, technological modernity has not ushered in more inclusivity. As with other courts, the dense technicality of the legal language and the incomprehensibility of the proceedings tend to be alienating for the accused produced in court for different hearings.

Often, the magistrate is barely audible, even while dictating orders, and is discernible only to the stenographer who sits next to the magistrate and types their orders out. The stenographer's monitor is mirrored on two screens: one facing the magistrate and the other facing the court. While these appeared to be useful for lawyers so that they can follow the court's directions in the cases that they are involved in and intervene if necessary, the accused persons — who are usually positioned with their police escorts some distance away from the dais — may not be able to read the order or understand its implications. The increasing modernisation and digitisation of legal systems is meant to enable easier access. But, in many ways, it appears to have deepened existing chasms between the courts and many accused persons. The only exceptions seem to be those who are visibly privileged — presumably belonging to middle-class or upper-middle-class backgrounds — and are likely to have access to lawyers who are as invested in their case as they are. ■



A large garden

I II III IV V

CUSTODIAL VIOLENCE THROUGH THE EYES OF THE MEDICO LEGAL CERTIFICATE

MEDICO LEGAL INJURY REGISTER

निदान विधि चोट रजिस्टर

MLC NO.
एम.एल.सी.नं.
18647

चिकित्सा अधिकारी के हस्ताक्षर
Signature of Casualty Medical Officer (CMO)
नाम (स्पष्ट अक्षरों में)
(Name in Block Letters)

THUMB IMPRESSION

THUMB IMPRESSION

M.L.C.
Dr. Baba Saheb Ambedkar Memorial
Govt. of NCT of Delhi
Mangol Puri, Delhi-110083

MLC Received by (प्राप्तकर्त्ता)

Name (नाम)	Designation (पदनाम)	Date (तारीख)	Time (समय)

यदि भर्ती किया गया
If admitted

भर्ती की तारीख / /
Date of Admission .....
छुट्टी की तारीख
Date of Discharged .....

वर्ष: 2016
Year: 2016

चोट के प्रकार
Nature of Injuries .....

साधारण, दर्दनाक या खतरनाक
(Simple, Grievous or Dangerous)

पहुँचने की तारीख व समय
Date and Hour of arrival

पुलिस डॉकेट की संख्या व तारीख
No. and date of Police Docket

चोटों या जहर के लक्षण का विवरण
PAARTICULARS OF INJURIES

No external injuries visible

III

DURING THE FIRST WEEK of the study, a researcher went to the Saket court. Since it was a district court holiday, there were only two duty magistrates in the entire complex. The researcher noted:

> Unlike regular court days, I had trouble entering at 11:16 am since the court was closed due to a holiday, although the hours for the duty magistrate's court had already begun. With the NLUD ID and in the presence of more familiar researchers, the guards later became more responsive. Until then, I roamed near the beautiful garden which prominently featured a board with a list of birds. The guards cautioned against roaming inside the garden due to security reasons. Once we entered the court, it was a challenge to find out when and where the duty magistrates would be found. This was often the case in Saket where the courtroom numbers mentioned on the website were sometimes those of the chambers on the top floor of the building [that were inaccessible to the public]. After much exploring and querying, the duty magistrate courts were identified. On this particular day, the security mentioned two rooms. Since one courtroom was locked, all of us headed to the second one and waited from 11:30 am to 1 pm for the duty magistrate. While this was a particularly eventful day with many first production cases, the final case I saw was that of Shoeb who came in with fresh injuries.

Shoeb, a young Muslim male,[1] was accused of stealing Rs. 665 and the police mentioned that three mobiles were also discovered in the course of the investigation. In this case, a lawyer was present and loudly stated that he wanted a copy of the First Information Report (FIR). At this point, the Metropolitan Magistrate (MM) who was asking about something else briefly got annoyed with the lawyer. The MM enquired about the injuries visible on the face of the accused which were mentioned in the Medico-Legal Certificate (MLC). In this chapter, the focus shifts to another prominent artefact found in the case file: namely the MLC. The researcher further writes about Shoeb's case:

> The injuries were visible and I wondered whether the magistrate would figure out what had happened. My heart skipped a beat when a lawyer who was standing on the right side of the court intervened, saying that the accused had told him that the police had hit him. I looked at the magistrate to see how he would react. As the magistrate turned to the accused, the lawyer said, "*Janaab ko bejhijhak ho ke batao ki kisne maara*"— be fearless and tell the magistrate who beat you. Meanwhile, the Investigating Officer (IO) standing next to the accused on the left side of the courtroom said "*Janaab*, public *ne maara ise*" — sir, the public beat him up. When the magistrate asked the accused again, "*Kisne maara?*"— Who beat you?, the accused quietly said, "Public *ne bhi maara*" — The public also beat me. This was loud enough to be heard by me sitting at the back of the courtroom. But before the significance of the "*bhi*" (also) could even be registered, to my surprise, the lawyer said "*Achha baat khatam hui phir*" — okay, that ends the discussion. They moved on and the tense moment passed.
>
> The researcher notes that the MM asked if there were other injuries, to which the accused replied saying that there were injuries on the "*peeth*" (back) alongside the visible one on the eye.

EVEN WHEN THE MLC is present, to what extent does the evidence of injury or custodial violence become a visible part of the court proceeding? If custodial violence is not addressed explicitly, then, is the lack of separation between the police and the accused, especially during first production, a structural barrier to ensure the safety of the accused?

Shoeb's story is central to the findings of this chapter and this report. In this instance, the MLC is present, a lawyer brings up the possibility of custodial violence and yet, the tension created by this mention is quickly overcome not just by the IO's suggestion of a public beating, but also by the fact that the lawyer too moves on. Several questions come up in this scenario, which is but one of the many instances where the researchers saw the issue of custodial violence raised before the magistrate in the three-month research period. What would the magistrate have done if the accused had reiterated that the police had beaten him up? What if the lawyer had directed attention to the "*bhi*" mentioned quietly by the young working-class Muslim? What if the magistrate had caught on to that and asked the young man why he said "*bhi*"? As this chapter will illustrate, the "*bhi*" became a major reference point for the study because it was resonant in the various cases of custodial violence that came up in the three months of the study. The case illustrates how the safeguards during the pretrial phase of first production, embodied in the artefact of the MLC and the questions prompted by the visible forms of custodial violence, may be inadequate for their purpose— to protect the accused from custodial violence. It is significant that even though the accused had visible injuries and the lawyer specifically mentioned the accused's statement about the police beating him, the matter was dismissed as public beating. In the duration of the study, not a single person in the court seemed to notice that the situation was structurally set up against the accused. It was impossible for the accused to stand next to the IO and declare that the police beat him, knowing well enough that he could be sent back to the same

police custody. Even when Shoeb in this case dared to say "*bhi*" despite the IO's presence, the magistrate and the lawyer both failed him when they did not enquire or follow up on his behalf.

In this chapter, we examine the safeguards against custodial violence imagined during first production, especially through the eyes of an artefact that accompanies the Arrest Memo, namely the Medico-Legal Certificate. Every occurrence of custodial violence may not leave traces on the body; torture may be psychological or physical beating may leave no visible scars.[2] In magistrate courts, we find that the scope of discussing this is limited and the inquiries are primarily focused on the MLC as a means to ensure the safety of the accused in custody. The MLC as a document, an artefact, gains precedence over even the physical body of the accused produced in the courtroom. Even in cases where physical injuries are visible, the magistrate's focus is often on the written document. In such a context, non-scarring injuries and psychological violence have little to no chance of being addressed. Moreover, during first production, the police official/investigating officer from the same police station accompanies the accused. The same police personnel may also be present in subsequent productions. We therefore ask: Even when the MLC is present, to what extent does the evidence of injury or custodial violence become a visible part of the court proceeding? If custodial violence is not addressed explicitly, then, is the lack of separation between the police and the accused, especially during first production, a structural barrier to ensure the safety of the accused?

We argue that the MLC alone is inadequate to ascertain the occurrence of custodial violence or to ensure the safety of the accused. The constitutional safeguard of first production can be fully realised only when magistrates use the MLC to ensure two things: i) put the burden on the police to explain how the person gets injured, rather than accept just any explanation presented to them; and ii) question the accused separately, outside of police pressure, to ensure their well-being (both physical and psychological) and identify the source of the violence.

Jurisprudence on MLC and Custodial Violence

Extensive jurisprudence exists on the constitutional and statutory safeguards against custodial violence, especially regarding custodial deaths.[3] However, the jurisprudence and scholarship have primarily focused on the aftermath of custodial violence. Beyond some declarations and guidelines, there is little focus on the safeguards that are available to the accused during the pretrial phase to prevent custodial violence. The jurisprudence has broadly noted the role of the magistrates in enquiring about custodial violence and scrutinising the MLC to ensure the safety of the accused. More importantly, addressing the mechanics of the safeguards in the particular milieu of the magistrate court has been woefully inadequate.[4] Here, we focus on the role of the magistrate during the very first point of interaction when there is a real possibility to prevent further violence and ensure some safety and medical treatment if necessary.

The *DK Basu* (1997)[5] case on deaths in custody created a powerful framework to recognise custodial violence in the arrest/investigation phase by requiring the MLC to ensure the safety of the accused. As one of the guidelines stated:

> (8) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by 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.

This follows another guideline that:

> (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 "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

As we note later in the chapter, the Inspection Memo could play a major role in determining the origin of the injuries in a case. At this point, it does not do so and did not come up even once during the court observations. Instead, the only mention of injuries at arrest is on an arrest/court surrender form, distinct from the Arrest Memo and the MLC.

The *DK Basu* case is an explicit articulation of opinions in previous cases that reiterated the significance of the medical exam. A particularly egregious case of police and custodial violence was *Khatri v. State of Bihar* (1981) where thirty-three undertrial prisoners were blinded in the Bhagalpur jail. The court was shocked on many grounds including the lack of counsel for many prisoners who were neither informed of the right to counsel nor were counsel ensured (which is focused on a lot in this case and after). There are three crucial aspects in the Supreme Court decision relevant to first production and remand that have not received due attention. The court was concerned that the prisoners had not been produced before the magistrate within 24 hours after arrest, but did not take any action on that front. The court also expressed shock that the prisoners were often not produced for the legally mandated remand proceedings; and that despite the prisoners being blinded and the report mentioning the injuries on the prisoners, the magistrates did not enquire about the injuries at all.

> We also cannot help expressing our unhappiness at the lack of concern shown by the judicial magistrates in not enquiring from the blinded prisoners, when they were first produced before the judicial magistrates and thereafter from time to time for the purpose of remand, as to how they had received injuries in the eyes.[6]
>
> The court further writes:
>
> The forwarding report sent by the Police Officer in Charge stated that the accused had sustained injuries and yet the judicial magistrates did not care to enquire as to how injuries had been caused.

Significantly, the medical exam is not mentioned at all and there is no discussion on section 54 of the CrPC referring to "Examination of arrested

person by medical practitioner at the request of the arrested person" which had already been in existence as a part of the CrPC.[7] Yet, despite such limitations, the crucial role of the magistrates does get focus in this case.

An important case that both reiterates the role of the magistrate during first productions and more explicitly brings up the question of the MLC is *Bholey & Another v. State of UP* (1982).[8] In this case, the lawyers of the accused challenged their client's remand from judicial custody to police custody. The lawyers stated their fear of torture and third-degree, which they argued was being done for the fabrication of evidence, particularly the planting of incriminating material for recovery.[9] The court upheld the remand order for police custody, but in the process reiterated the importance of the MLC as a way to ensure the well-being of the accused both before and after police custody.[10] As the Supreme Court put it:

> It is further clear from the impugned order that the interest of the accused is fully safeguarded inasmuch as he has to be medically examined before being handed in police custody and after remand, therefore it is not possible for the prosecuting agency to use third-degree methods for making further investigation in connection with the recovery of the incriminating articles.[11]

Thus, the court determines the medical exam as an important safeguard against torture and third-degree. Of course, as we note later, our court observations point to how and whether the magistrate is able to peruse the MLC to determine either the origin of any injuries or the well-being of the accused.

A significant intervention in this realm was also made in the *Sheela Barse* (1983) case since it focused not only on the right to counsel for all undertrials but also emphasised the role of the magistrate to remind the accused of their right to get a medical examination.[12] The court noted:

> We would direct that the magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody and inform him that he has right under section 54 of the Code of Criminal Procedure 1973 to be medically examined.

Here then, the court notes the explicit role of the magistrate to ask the accused whether they have been tortured:

> We are aware that section 54 of the Code of Criminal Procedure 1973 undoubtedly provides for examination of an arrested person by a medical practitioner at the request of the arrested person and it is a right conferred on the arrested person. But very often the arrested person is not aware of this right and on account of his ignorance, he is unable to exercise this right even though he may have been tortured or maltreated by the police in police lock up. It is for this reason that we are giving a specific direction requiring the magistrate to inform the arrested person about this right of medical examination in case he has any complaint of torture or mal-treatment in police custody.[13]

THE CIVIL LIBERTIES and democratic rights groups in their fact-finding reports have also mentioned that public beating is often provided as a cause in cases of custodial torture and deaths and is often contradicted by the accused and their families.

Even in 1983, the Supreme Court appears to be cognisant of the reality of custody that may prevent an accused from actually knowing this right to a medical exam or indeed of a hearing such as the first production where the experience of custodial violence could be shared. The onus is thus put on the magistrate to ensure that the accused both knows of this right in law and that conducive conditions be created to follow them in practice. The MLC was imagined to be an essential part of the first production and remand hearings since the hearings were the first point of interaction between the accused and the magistrate at the pretrial phase. The court exhibits faith in this direction.

> We have no doubt that if these directions which are being given by us are carried out both in letter and spirit, they will afford considerable protection to prisoners in police lock ups and save them from possible torture or ill-treatment.[14]

And yet, the court was inconsistent about the role of the medical exam in first productions. In *State of U.P. v. Ram Sagar Yadav* (1985), the High Court reversed the conviction of the police for the custodial death of Brijlal.[15] Brijlal had complained against a police demand for a bribe and ended up dead in custody. He was "hale and hearty" when he was picked up from the fields but when he was brought before the magistrate's court for a remand proceeding, the magistrate was told that the accused was too injured to come in. At this point, the magistrate came out to the verandah and the accused, with great difficulty, was able to share his name and say that the police, the *darogah* and the constables, had beaten him up. This was noted by the magistrate in the remand order. The Supreme Court agreed with the trial court and lauded the magistrate for stepping out to meet the accused. While the magistrate was undoubtedly concerned about recording the experience of custodial violence even including observations against the police, it was surprising that the magistrate just sent the injured Brijlal to judicial custody without even ensuring treatment. There is no mention in the entire case about the MLC or a medical exam during the first production and remand process which would have probably raised questions about treatment as well as the extent of the injuries. It was only when Brijlal was sent to jail that a doctor got involved. It was too late and Brijlal died of the severe beating that had affected his lungs. If the magistrate had ensured the MLC as well as him for treatment, perhaps Brijlal might have had a chance for survival.

Other cases highlight the significance of the MLC as well as the need for the magistrate to be cognisant of the close relationship between medical examinations and torture. In a Delhi High Court case *Mukesh Kumar v. State* (1989), the railway police arrested the accused Mukesh Kumar and an MLC was prepared before he was taken to the police station where he was tortured/beaten up.[16] When produced before the railway special magistrate, the accused stated that he wanted another medical examination since he was beaten up but the magistrate declined stating:

> Heard. Perused. Bodies of the accused seen. It is stated that the injuries alleged necessitated examination as during the course of argument the accused have been seen in normal posture and rather process would defeat the ends of justice. Hence both the applications are dismissed.[17]

The High Court disagreed and stated that the magistrate had made a wrong decision since it was mandated by *Sheela Barse* that the magistrate had to inform the accused of the right to medical examination and also ensure one if the accused asked for it. The court noted that even the state's counsel agreed that many such requests for a medical exam were being declined by magistrates and needed further directions. The court further noted that:

> The procedure adopted by the learned Magistrate in examining the body of accused person himself and then dismissing the application on his observation that they were seen in normal postures was wholly unwarranted and erroneous.[18]

Thus, just a visual examination of the accused by the magistrate may not be adequate. In fact, the law required them to both inform the accused of this right as well as to ensure that the MLC is conducted. While the court does not mention it in this case, other case law does point to how custodial violence is so difficult to ascertain anyway, especially in the absence of careful medical examination.[19]

In our study, we found that the MLC has become a required part of the procedure that the police ensure before they bring the accused to the magistrate. Despite section 54 being a part of the law since 1973, it had not necessarily become a norm and had to be reiterated by the Supreme Court in the *Barse* case. Similarly, MLC was absent in the *Ram Sagar Yadav* case, though relied upon in the *Bholey* case. *DK Basu*, in 1997, thus became the landmark for such guidelines. But it was really in 2009, that section 54 was amended to make medical examination a requirement rather than an option to be utilised by the accused.[20] This amendment finally recognised the need for the magistrate to ensure that the MLC is included as a part of the case file brought for first production, although it is unclear why it was not made a statutory requirement for subsequent productions. The question remains whether the mere presence of the MLC is adequate to ensure the safety and well-being of the accused in custody or whether the artefact is meant to be an occasion for the magistrate to ascertain the well-being of the accused.

Magistrate Courts on Custodial Violence and MLC

In this section, we analyse how custodial violence comes up during the first production and remand procedures, namely through the artefact of the MLC. We assess whether the procedural safeguards associated with the MLC and direct inquiry about custodial violence were followed. MLC was the most visible way that the safety of the accused is ensured at this stage of the proceeding. Researchers noted whether the MLC was present in a particular case. This was based on observations of its direct mentions by the magistrate, naib court, or lawyer, or through confirmations with the court staff. The researchers did not have access to the case files and were often unclear about whether the MLC came up or not. They only noted down "yes" if the MLC was explicitly mentioned by anyone in the court. Researchers also independently observed whether there were any signs or claims of injury mentioned in court and whether the magistrate specifically asked about the injuries or custodial violence. In other instances, even when there was no MLC, or it was unclear whether MLCs were there or not, they noted down injuries claimed by an accused or their families and any follow-up conversations regarding the same. Again, as noted earlier, the sign of injuries only captures the physical injuries. Custodial violence could also be hidden—physical injuries concealed through clothes or other articles, or psychological and non-scarring injuries that could not be captured in this set of court observations.[21]

Custodial Violence and the Public

Across all district court complexes in Delhi, when the magistrate asked the accused about the injuries, the most common response was that it was the result of public beating. Fact finding reports by civil liberties and democratic rights groups have documented that public beating is often provided as an official explanation in cases of custodial torture and deaths, and is often contradicted by the accused and their families.[22] Given the designated constitutional role of the magistrate, the first production provides an opportunity to inquire into the nature of the injuries to determine whether it is the public or the police who may be responsible for the injuries. Thus, once again rather than just ascertaining whether the artefact exists in the case file, the magistrate can use it as a starting point to understand the origin of the injuries. Through an analysis of the court observations, we assess whether the magistrates go far enough to ensure the safety of the accused in this pretrial phase and whether the mechanisms available are adequate to perform this role.

The accused may themselves mention the beating by the public. In one case of first production at a duty magistrate's court in Karkardooma, a researcher was speaking to the accused about the possibility of bail. The researcher noticed that the accused's face was swollen and noted, "I asked him if the police beat him up because his face looked swollen. He said only the public did." In this instance, the MLC was mentioned but the magistrate did not ask anything about the injuries and sent the accused to judicial custody.

THE MM ASKED the accused to come in front and said "*Kya hua aapko?*" — what happened to you? — "*Aap theek hain?*" — are you alright? — The accused pulled up his shirt and showed his wounds, "*Bahut dard ho raha hai*"— it is hurting a lot. He broke down and started crying.

In another duty magistrate's court in Tis Hazari, researchers observed the case of a Muslim male, **Adil**, who was accused of theft and brought for first production. The accused had injuries on the body but the MM only asked the IO about the injuries. The IO explained the injuries as the result of a public beating. Apparently, the public had caught them and especially beat up the one caught with the stolen phone. Even the lawyer did not speak on behalf of the accused. Rather, it was just a conversation between the magistrate and the IO, completely ignoring the accused present in court who, in the words of the researcher, was like "any other paper that was present in the file."

In another case from Dwarka in a duty magistrate's court, signs of injury were visible and the magistrate did ask the accused about the injuries, how they happened and whether they were all due to the fight.

> MM: "*Chotein kahaan kahaan hain*?" — where are the injuries?
> The accused showed all the injured body parts—left hand, left shoulder, right eye, right-hand knuckles
> MM: "*Sab ladaai mein hi lagi hai*?" — all these have been sustained during the fight?
> Accused: "*Haan*." —yes.

There was also a loud argument between the police and the accused in the toilet, but the researcher was unable to get close enough to listen. The accused was sent back to police custody for a day.

In another theft, a chain-snatching case, the accused was brought to a duty magistrate from police remand and had visible injuries. Here, the MM asked the accused, "How did you receive these injuries?" upon noticing his swollen face. The accused replied, "Injuries are the result of public beating." The MM looked over the documents and sent the person to judicial custody.

Even with the differences in the interactions between the accused and the MM in the three cases above, the uncritical acceptance of public beating as the cause of the injuries is significant. A particularly notable case is of an accused in an Arms Act case brought for first production in a duty magistrate's court in Tis Hazari. The conversation between the magistrate and the accused (who appeared to be middle class) is reproduced below.

> MM: "How have you received these injuries? Have they [the police] beaten you?"
> Accused: "Judge *Sahab*! No, these are because of the public beating. I was there to save the other person. This was not my fight. I didn't do anything. I was brutally beaten by 30-40 people when I reached to save the other person who got the bail. I have injuries all over my body. I fainted twice and even didn't receive proper medical treatment."
> MM goes through the MLC papers and speaks: "All the things are mentioned here, the description of injury is of a serious nature. Has anyone been informed?"
> Accused: "Yes, my wife has the information."
> MM to Advocate: "Why don't you move the bail application today? Move an application and arrange the guarantor."

This conversation was followed by an effort to put together a bail application and identify a guarantor for the accused. Yet, in an unusual turn of events, the court staff or the MM asked to check whether the person perhaps had a prior history and found that he did have prior cases. The MM turned to the lawyer who had argued that this was a first-time offence. The lawyer quickly stated that he was withdrawing the bail application since he didn't know all the facts. The existence of prior cases then played a role in sending the person to judicial custody. We suggest that the combination of severe injuries and the middle-class status of the accused may have played a role in the initial encouragement of the MM for a bail application and the lack of objection by the police to the same. As we note in chapter 4, class distinction does appear to mediate the experience of the accused in terms of access to a lawyer but also in terms of the behaviour of the magistrate.

The severity of the injuries may prompt concern from the MM across class as well, but may not lead to a similar suggestion of bail. In another case, **Zaheer**, a Muslim vegetable vendor from North East district (Karkardooma) came from judicial custody. The accused was evidently in pain, holding his stomach and crying, and the MLC prompted the magistrate to ask questions and mention the injuries in the order. The researcher noted:

> MM dictated MLC and case details to the stenographer: "This incident happened in November 2022. MLC shows that the right, left and centre parts of the abdomen are injured by the knife." In fact, immediately on entering the court the MM asked the accused to come in front and said "*Kya hua aapko*?" — what happened to you? — "*Aap theek hain*?" — are you alright? — The accused pulled up his shirt and showed his wounds, "*Bahut dard ho raha hai*"— it is hurting a lot. He broke down and started crying.

The lawyer of the accused said on his behalf: "*Main thele se pyaaz bech kar Anand Vihar to Sahibabad Mandi ja raha tha. Kuch ladkon ne mujhe gher liya aur mujhse mere 5000 rupaye chheen liye, to maine unhe daraane ke liye apne peth me chaaku mar liya*." — I was going from Anand Vihar to Sahibabad Mandi after selling onions from my cart. Some boys surrounded me and snatched 5000 rupees from me, so I stabbed myself with a knife to scare them. As the researcher described:

> Apparently, the accused stabbed himself during the incident. He started bleeding on the spot. His guts and everything came out. He was admitted to the ICU for 8-9 days and this is the first time he is being produced in court. His knife was seized. I got this information from the police officer sitting behind me.

The magistrate, the court staff and the IO were more sympathetic to the accused possibly due to his injuries and ensured that he sat down to explain what happened. The researcher further noted:

> The police personnel who brought the accused said: "*In logon ka gang chalta hai*, smack *ke nashe karte hain ye log. Chori karte hain aur logon ko daraane ke liye khud ko chaaku maar lete hain. Ye* accused incident *ke baad se* hospital *mein tha, aaj chalne laayak hua hai toh* in person *laya gaya hai. Itna* injured *nahin hota toh* PC *maangte, lekin abhi* JC *lena pad raha hai*." — these people have gangs and they are all smack addicts. They steal and to scare the public, they stab themselves. The accused has been in the hospital since the incident. He is able to walk today, so he has been brought in person. If he wasn't so injured, we would have asked for police custody, but we are having to ask for judicial custody now.

This instance is illustrative of the messy reality of the proceedings before the magistrate, where they are required to make sense of confusing counter-narratives and respond appropriately. In this instance, the MM's focus was

limited to deciding the nature of custody, rather than inquiring into whether a violation had occurred and who was responsible. While the accused claimed that he was being targeted by a group of men who took away his money, the police suggested that this was a ploy by members of the gang that the accused was a part of. Without further inquiry to resolve the inconsistent claims before them, the MM's response was limited to directing the accused to be sent to judicial custody.

Magistrates do inquire about the injuries in some instances, but once it is explained as a public beating or fight, they tend to move on. The question of how that is ascertained—whether it was the public or the police that beat them up or they were in the fight—is not clear in the process. The presence of the very police which holds their custody is not seen to hamper the process of this decision-making. We deliberately refer to claims of public beating as custodial violence because the only way in which the police may confirm that the beating was due to the public is if they witnessed it, and this raises the question of whether they intervened to save the accused.[23] The Inspection Memo is meant to be a record of the injuries at the time of arrest (perhaps co-signed by a family member or independent witness) and can play a role in confirming when the injuries occurred. If the beating occurred before the police arrived, the injuries would be noted in the Inspection Memo before the police took over custody. The *DK Basu* guidelines requiring an Inspection Memo did not come up during our research observations; they do not appear to be a mandatory requirement in arrest procedures in Delhi and were not observed to be a point of intervention by the magistrates. Though, as mentioned earlier, there is a column for injuries in the arrest/court surrender form distinct from the Arrest Memo and the MLC but dont appear prominently in the proceedings.

Injuries, Accidents and Custodial Violence

In remand proceedings, the accused often mentioned that visible marks were the result of an old injury or an accident. Three questions can be raised in this context: Are different kinds of injuries easily distinguishable? How do magistrates make that determination? Even if the injuries are old or the result of an accident, how do the magistrates ensure continued treatment in custody or follow up on the well-being of the accused?

Researchers found that the magistrates would generally inquire into the injuries if the injury was either visible or mentioned in the MLC. For instance, in a case of theft in Saket, where the first production occurred in a duty magistrate's court, the research notes included the text of the order: "Perusal of MLC of Accused 1 shows accused had multiple cut marks on his forearm. On enquiry, the accused stated that they were not fresh." Here, all the accused were sent to judicial custody. In another Saket courtroom, similarly, the main interaction during first production was about the contents of the MLC. According to the researcher, the MM asked the accused, "*Aapko chot lagi hai, kaise lagi*?" — you are injured, how did it happen?. Subsequently, the MM dictated the order: "MLC has been perused. Injury found on the lower lip. The accused person is asked how he received the injury. He submits that he fell from the stairs." This is where the interaction ends and the person is once again sent to judicial custody. In such cases, observed across multiple magistrate courts, the magistrate is diligent about enquiring into the injuries noted in the MLC, thereby reiterating the significance of the MLC as imagined in the *DK Basu* guidelines and subsequent statutory safeguards. However, it is not clear whether that is adequate intervention both for ascertaining the cause of injury or even for a follow-up.

Sometimes, the magistrates do not even talk to the accused directly. In the case of a Muslim male in the duty magistrate court in Karkardooma, the MM did inquire into the injuries but both the MM and the IO spoke only to the Legal Aid Counsel (LAC). The accused was limping and when the MM inquired with the LAC, the IO responded instead, calling it an old injury. The wife of the accused was not allowed to speak before the MM, even when she wanted to, and the proceeding carried on without any further reference to this.

In another first production case observed by the researchers in Dwarka court, where the MM also inquired into the age of the accused, there were clear signs of injury and the magistrate did speak to the accused. The magistrate asked "*Chot kaise lagi*?" — how did you get this injury? — and the accused said it was from a previous accident and the bruises were noted in the order.

> The researcher, on the other hand, further observed: "This accused appeared in some mental difficulty. His eyes were blinking rapidly and also appeared he was murmuring something. This accused appeared utterly oblivious of the time and space where he was."

THE INSPECTION MEMO is meant to be a record of the injuries at the time of arrest and can play a role in confirming when the injuries occurred. If the beating occurred before the police arrived, the injuries would be noted in the Inspection Memo before the police took over custody.

He was sent into judicial custody for 15 days. In this case, the question of the well-being of the accused in custody did come up. However, it is unclear whether the magistrate noticed the psychological state of the accused or entertained the possibility that the accused did not register the question. This reaffirms that inquiry into custodial violence primarily refers to physical injury and does not extend to the psychological state of the accused. A quick query with the accused without considering the possible psychological implications of police custody is therefore wholly inadequate.

Sometimes, the magistrates would be sympathetic to the accused and ensure some intervention in response to a request. In the case of a Muslim man's formal arrest observed before a duty magistrate in Karkardooma court, there were signs of injury noted by the researchers. The accused could not walk properly and stated that he got injured while committing the offence (motorcycle theft). He was brought to the courtroom from judicial custody.

> MM: "Police *ne* medical *nahi karwaaya*?" —did the police not get a medical exam done?
> Accused: "*Karwaaya lekin is dawai se faayda nahi ho raha hai, dard bhi nahi ja raha hai*." — they did but this medicine is not helping much and the pain isn't going away either.
> MM: "*Ab chot lagi hai to dheere dheere theek hogi*." — it is an injury, so it will heal slowly.

When the accused reiterated that he did not feel medically fit, the magistrate asked the police to take him for treatment before transporting him to police custody. While the police asked for police remand for 2 days, the magistrate gave it only for 1 day. In addition to the MM being empathetic to the accused, it is also a reminder that the medical exam is both to ascertain the cause of the injuries as well as to ensure treatment that is sometimes forgotten in the bureaucratic way the document is often considered in court.

In another first production case from Karkardooma where the MLC was mentioned in court, one of the accused had a head injury. The researchers noted that the magistrate did ask about it, but it was unclear what the accused said in response. The accused, however, spoke up before the MM and said that he had been kept outside the police station and was abused all night. The police, on the other hand, suggested to the MM that the accused had hurt himself to gain sympathy. When the magistrate asked about the two MLCs in the case, the IO explained that the second one was after the head injury. The lawyer in the case also stated that it was an accident while being arrested. The accused, however, had a different version of what had transpired. The magistrate did not enquire into these inconsistencies which could have given some insight into the cause of the injury. The researchers noted that the magistrate did appear to be sympathetic and gave a 15-day judicial custody.

A case from Patiala House illustrates how a magistrate may ascertain the exact nature of the injury. The accused were arrested in relation to car thefts. The researchers noted the following conversation that ensued in the duty magistrate's court:

> MM: "*Chaaron ki MLC hai, kiski injury aayi hai?*" —[Do you] have the MLC for all four, who has the injury?
> IO: "*Puraani* injury *hai*, **Rocky** *ki aayi hai.*" — it is an old injury. Rocky's MLC shows the injury.
> MM: "Rocky, *dekho kisi se darne ki zarurat nahi hai. Kaise* injury *aai hai?*" – Rocky, you need not be scared of anyone. How did you get this injury?
> Rocky: "*Gardan ki hai. Nayi hai.*" — Injury is on the neck. It is new.
> MM: "Arrest *se pehle ki hai ya baad ki hai?*" — is it from before the arrest or after the arrest?
> Rocky: "*Pehle ki hai.*" — it is from before.
> MM: "Police *ne to nahi maara hai?*" — The police haven't beaten you, right?
> Rocky: "*Nahi* sir." — no, sir
> MM [to IO]: "*Chaar din* to sufficient *hain, itne din kya hoga?*" — four days should be sufficient, why do you need so many days?
> IO: "*Paanch din chahiye.*" — we need 5 days.
> MM: "*Chaar din* sufficient *hain.*" – four days are sufficient.[24]

After this, the MM told the IO to negotiate and decide on the number of days of police custody with the legal aid lawyer and permitted them 10–15 minutes to figure it out. Ultimately, they agreed to 5 days of police custody to allow for evidence to be recovered across different states. Possibly due to the injury or simply caution, the magistrate reportedly said: "*Mere ko* MLC as per rules *nahi chahiye*, every 24 hours *chahiye*. As per rules 48 hours *hai. Mujhe 5 din ki* 24 hours *pe chahiye.*" — I do not want the MLC as per the rules, I need it every 24 hours. It is every 48 hours as per the rules. I need the MLC every 24 hours for 5 days. In this case, the magistrate saw the injuries on the MLC and asked clearly whether the injury was from before or after the arrest. The MM also directly asked the accused whether the police had beaten him or not. The caution of the duty magistrate is visible in the negotiation on the number of days in police custody and a clear directive that the MLC is to be done every 24 hours and not 48 hours as per the standard requirement of the law. As we discuss in Shoeb's case at the beginning of this chapter and return to in the final section, there is an unreasonably high expectation from the accused standing next to the IO that he could state that the police beat him. In this case, he knows that he would be sent to police custody. That power dynamic remains completely unaddressed in this scenario, but it is not just about the role of this particular magistrate. This is a structural limitation in how first production and remand processes have been conceptualised.

> **THE LIMITATION** of this process is brought out poignantly by one of the researchers: "To which the accused, surrounded by three policemen said, "*Nahi* sir, *kisi ne nahi maara*" — no sir, no one beat me up."

This limitation is well illustrated in another first production case observed in a Saket court, where an auto driver was accused of theft. The driver claimed that he was just driving the auto and the co-accused stole the mobile phone from the complainant. In the process, the auto toppled over and the driver was hurt. The complainant and the co-accused were also injured. The accused auto-driver was produced. The researcher noted:

> The duty magistrate dictated the order: "The MLC has been perused. MLC reports injury on the wrist and under the eye." The MM asked the accused "Police *ne toh nahi peeta*?" — the police didn't beat you, right? – and the accused confirmed that these injuries were inflicted in the auto [accident].

Clearly, the magistrate looked at the MLC that noted the visible injuries and also asked the accused directly about the injuries, forthrightly checking if these were the result of police beatings. And yet, the limitation of this process is brought out poignantly by one of the researchers: "To which the accused, surrounded by three policemen said, "*Nahi* sir, *kisi ne nahi maara*" — no sir, no one beat me up." It brings up the fundamental question of whether in such a situation, it was possible at all for the accused to substantively answer the question and state that the police beat them up. Also, is it possible for the magistrate to ascertain whether the injuries could be both the result of an accident and beating by the police in this scenario?

Custodial Violence in Police and Judicial Custody

The magistrate has the following options during a first production or subsequent remand hearing: to look into the legality of the arrest and release the person, give them bail, or send them to judicial or police custody. At each stage, they have to assess if the person has a right to counsel, whether there are reasons for the continued detention and whether the person is doing alright. Since 2009, the medical examination of the accused on arrest has become a

mandatory requirement and is also required when an accused is produced from police custody. What is the responsibility of the magistrate when a person comes from judicial custody and when questions of treatment or injuries come up?

In this section, we discuss cases from judicial custody or jails in which a major reason stated for injuries is that the accused was beaten up by the other inmates or the cause is unclear. In cases where the official explanation for the injury is public beating, a fight, an accident or an old injury, it is difficult to assess how the magistrates distinguish between the different kinds of injuries. While it can be argued that custody begins the moment the person is in the control of the police, in a narrative where the reason given is the public, the contention is that the person was beaten up by the public in the course of the criminal activity. At that point, the assumption is that the violence occured before the police got involved. An old injury, fight or accident also has similar connotations in terms of lack of clarity about the origin of injuries. However, in cases where injuries are mentioned in relation to the inmates or the context of jail, the accused are unequivocally in state custody and it is the responsibility of the state to ensure that the person is safe. The whole point of repeated productions in front of the magistrate is that the magistrate looks into it. So, what does the production and remand process look like when the person comes from judicial custody and there are allegations of custodial violence or injuries?[25]

In a formal arrest case observed in a Patiala House court, the accused told the MM that someone threw hot tea on him in the lockup and the police did not do anything. In response, the magistrate said, "*Itne dushmaan kyun paal rakhe hain*?" — why have you made enemies of so many people? And that was the end of it.

Out of the many cases observed involving cis-male accused, the researchers observed a rare production of a woman in her 30s in a Patiala House court. They noted that the accused "complained of being attacked by fellow inmates in the barracks." She did not have legal representation and the magistrate did not ask about it either. It was unclear to the researchers whether it was a pre- or post-chargesheet case, but the magistrate did listen to the accused once she repeated her complaint and took some follow-up action. The researcher notes:

THE MM WAS ALREADY busy with another case and this limp may have escaped the MM's notice, for she did not ask him about it or about custodial violence in general.

> He initially doesn't respond to her complaint of an attack on her in the barracks, but tells her when she repeats herself that, "Jail *mein* order *bheji jayegi*." — an order will be sent to the jail. The order sheet reads as follows "Accused has submitted that she has been subjected to custodial violence by other inmates and the jail administration failed to protect her in custody. Without going into the veracity of the submission, I deem it fit for that the concerned jail superintendent in jail [name omitted] is directed to look into the matter and do the needful.

In a first production observed at the Saket duty magistrate court, the accused (in a theft case) stated that he had just come out of jail after serving his term in some other case. He protested his remand to judicial custody by saying, "*Mera jail mein ek gang se anti hai*." — I have enmity with a gang in the jail. "*Mujhe dikkat ho jaaegi andar*" — I will be in trouble inside. The MM did not engage with the apprehension of the accused about his safety in jail. In another case of formal arrest observed in a Saket court, an accused asserted that he was not getting good medical care in custody and wanted to be moved to another jail.

> The researcher notes: "The accused was seen limping on one leg as he was brought into the courtroom. The MM was already busy with another case and this limp may have escaped the MM's notice, for she did not ask him about it or about custodial violence in general. But the accused did ask to be heard, and said, "*Pair ki haddi tooti hui hai. [omitted name of jail in Uttar Pradesh] Jail mein admit nahi kar rahe. Dawai ke paise le rahe hain*." — my leg is broken. [Uttar Pradesh] jail is not admitting me. They are taking money for my medicines."

In this case, while the MM spent some time working out the modalities of the accused's transfer, the accused was ultimately sent back to the jail he had been produced from because of bureaucratic hurdles (his papers were still in his current jail).

The cases in this section bring up a crucial question of what the magistrate's role is in terms of the injuries that occur while in judicial custody or when attacks and threats in jail or in police custody are mentioned. Given that judicial remand proceedings are not seen as that important and are conducted in quite a mechanical manner, the magistrate loses the opportunity to follow up on the safety and well-being of the accused in custody, alongside the crucial question of looking into reasons for continued detention.

Unexplained and Unaddressed Injuries

The biggest challenge identified by the researchers in relation to safety was injuries on the accused that were visible or were mentioned by the accused or their families, but there was very little indication of the magistrate's response to these injuries from the courtroom observations. This was either because the issue of the injuries was not raised in the proceeding before the magistrate, or because the production took place inside the magistrate's chambers (out of sight of the researchers). In this section, we explore the researchers' observations in the context of some of these cases and ask whether these instances suggest possibilities for the magistrate to follow up on these injuries during production hearings. Is the presence of the artefact of the MLC enough to ensure that the magistrate does not overlook the injuries?

In some instances, the family of the accused mentioned to the researchers that the accused person was beaten up. For instance, in a Karkardooma duty magistrate's court, the researchers observed a case where an accused was produced from police custody and then remanded back for further detention in police custody. The wife told the researchers that he was beaten in the *thana* (police station), and the researchers noted the appearance of the accused who seemed to have been crying. Yet, the accused denied the same when the researchers attempted to follow up with him. In such instances, it is hard to determine whether this denial is because of a tendency among men to

undermine the custodial violence,[26] or because they consider some beating up as a normal part of the remand experience, or because they are just scared to say anything since they may have to go back into police custody. It is also difficult to assess the role of the magistrate here because the hearing was done inside the chambers, and it is most likely that the accused would have denied having been beaten in front of the magistrate as well.

Another striking case was observed in the Karkardooma court. While the production was carried out inside the MM's chambers, a researcher's observations based on the events in the courtroom are below:

> This accused looked very *lower class* but had two very elite-looking lawyers…Before leaving, I asked the accused if the police had beaten him up and he answered affirmatively. I asked him if that was why his lawyers applied for bail (something I found out from the naib court) to which he said, "*Nahi. Andar toh kuch bataaya hi nahi ye.*" — I was not told anything inside. I asked him why. Referring to his own lawyer, he said, "*Ye peeche baithe hain jo lawyer, vahi nahi vishwaas rakh rahe ki mujhe maara tha*" — this lawyer sitting behind me does not believe me that I was beaten up. This was quite strange to hear. It wasn't clear if this was a calculated decision by the lawyers to avoid more custodial violence in a case where police custody was inevitable or not but the accused looked quite stressed at this prospect.

From the observations, it is difficult to assess the role of the magistrate and the lawyer in this case since the proceedings were conducted in chambers. However, the researcher notes that the MM granted two days in police custody, instead of the four days requested by the police. This is an indication of some engagement during the proceeding, perhaps due to the intervention of the lawyers.

In a case observed in Patiala House court, a 22-year-old Muslim man was produced from judicial custody in a case of formal arrest, and remanded back to judicial custody. The researchers noticed that the accused had an injury on his foot and a bandage, but since the production was inside the chamber, little else could be verified.

Similarly, in a case of production from judicial custody in Tis Hazari court, the accused "had a severe injury in his leg and he could not stand or sit properly." Yet, the magistrate did not pay attention to the injury, and there was no mention of an MLC. In a similar case at the same court complex, where the accused was produced from judicial custody, the researcher noted, "The individual was walking with help from supporters and it was revealed later during the day that this individual has a bullet injury on his leg." The MM did not have any interaction with the accused. However, the MM denied the two days of police custody requested by the IO, and the injured accused was sent back to judicial custody.

In the case of an African middle-class male involved in a Narcotic Drugs and Psychotropic Substances Act, 1985 case, the MM asked for MLC for all five days, before remanding the accused to police custody. The researcher observed that the MM appeared to notice the torn clothes of the accused, but did not explicitly raise concern of mistreatment of the accused in police custody. The researchers overheard racist remarks made by the police during informal conversations: "These people [pointing to the African origin of the accused] eat 5 goats…they can eat the food of five people…they sometimes eat children." During a first production in a theft case before a duty magistrate's court in Karkardooma, a researcher noticed that the face of the accused was swollen. The magistrate spent 5 minutes talking to the police to understand the case but the swollen face did not come up. When the accused tried to say something to his lawyer, he was admonished by his lawyer, "*Tum chup raho*" — you keep quiet.

Sometimes, it was due to the perseverance of the researchers that some observations were possible, reaffirming the need to do more ethnographic studies in magistrate courts to assess the experience of the accused in a public hearing. A common sight in courts was of accused with faces covered, escorted by police officers, and produced before magistrates. The face covering is to ostensibly protect the identity of the accused pending identification proceedings (Test Identification Parade or TIP), in cases where the identity of the offender is unconfirmed to the police (unlike a case where the FIR names a specific person as an offender).[27] In one such case observed in a Saket court, two men, implicated in a chain-snatching case, were presented before a duty magistrate. A researcher noted that "Their faces were muffled, which were not removed while they were produced before the MM." Furthermore, "the face covers were not asked to be removed before the MM, though she did ask why their faces were muffled. However, after he was taken outside, the cover was removed and one saw a cut near the left eye, and puffed/swollen eyes (either crying/beaten up around the eye)." As another researcher put it, "The accused was brought in muffled, in a Blinkit [name of company] carry bag that had eyes holed out for visibility. His eyes were swollen, and he had a visible cut mark near his left eye. He appeared to be quite submissive, tired/beaten up."

Further, the researchers noted that the IO explained that though the accused were being discharged in this particular case because of lack of evidence, they had been implicated in other cases and therefore their faces needed to be covered. The MM accepted the explanation. However, outside the courtroom, the face coverings were removed. The mother of the accused also told the researchers that the accused had been illegally detained earlier for 6 days and then taken to the police station. The researcher's final reflections were:

> Observed a case of possible custodial violence in her courtroom on [date omitted], and got a feeling that the face coverings were used to get away with possible injury marks on their faces. Even though the MM did ask why their faces were muffled, the curiosity did not step beyond the police version of them needing to be identified (TIP) in other cases in which they were wanted. Their coverings were removed as soon as they stepped outside the courtroom, laying false any claim of protecting their identity.

The reflections here echo another researcher's observation more generally that the accused appeared to be made to wear full-sleeved clothes regardless of the weather, and whether this was to hide signs of custodial violence.

This raises the question of whether magistrates can go the extra step to ensure that there are no hidden marks of violence that need further inquiry, and also whether arenas meant for the protection of rights, such as TIP, inadvertently allow for custodial violence to be hidden. The magistrate could indeed ask the accused to take off their face coverings, as witnessed in a Dwarka court where an MM asked everyone else to leave when men with covered faces were produced in the courtroom. Yet, to a large extent, currently, the remand process is left to the discretion of the individual magistrate. Thus, there is a need for further attention to all these aspects which act as barriers to the magistrate's scrutiny during these proceedings and result in signs of injuries being obfuscated during the process.

At times, the researchers were not sure whether the magistrate noticed or enquired about the custodial violence because the production happened inside the chambers. However, they did note steps taken by the magistrate to (intentionally or unintentionally) address the situation and provide some relief from possible police violence. In a fresh production case in Karkardooma, the researcher writes, "I spoke to this fresh case of a person who has a broken finger. My conversation happened after he had come out of the chambers. He told me that the police had broken his finger. The MM did not ask about it. The police had asked him not to tell about the finger. He had no lawyer inside *but* got judicial custody." The term "but" is used to indicate that even though the magistrate did not ask about the broken finger, at least the accused was not sent into police custody and got judicial custody.

"**THIS CASE WAS** particularly interesting since here there was a clear case of custodial violence and yet no decision was taken against the people involved and the MM with his blank poker face showed no empathy or emotion to reassure Rahul Pandey that he was heard."

A particularly striking case was from the Rohini court, where the researchers observed the production of a young man, likely in his 20s. While the researchers were unclear whether an MLC had been presented, they noted the accused's assertion before the MM: "*Maara hai mujhe poori raat* jail *mein*" — they beat me the entire night in jail. The researchers noted that the accused pointed towards his hands and his back and yet, the magistrate paid no heed.

One researcher wrote the following about the case:

> The MM turned a deaf ear to the accused's complaint of custodial violence. It is one thing to proactively ask, but it is extreme apathy and willful neglect of one's duties to turn a deaf ear to an allegation as serious as that.

Another researcher similarly noted,

> This case was particularly interesting since here there was a clear case of custodial violence and yet no decision was taken against the people involved and the MM with his blank poker face showed no empathy or emotion to reassure Rahul Pandey that he was heard. The plain ignoring of events in this case was surprising also because on multiple occasions Rahul Pandey tried to narrate what happened.

Even though the researchers had witnessed a fair number of cases of custodial violence during the study, this case seemed particularly egregious.

The role that a lawyer may attempt to play and yet the dominance of MLC as a paper artefact of truth emerges most clearly in a duty magistrate's courtroom in Patiala House in a case of theft (earlier discussed in chapter 2). This was a middle-class businessman, **Kartik Chauhan**, who was produced from police custody. The lawyer stated that the accused had alleged that he had been picked up four days earlier by the investigating agency and had been beaten up "black and blue," though the police denied the charge of illegal detention. But even in this case, the MM just did not want to interact with the accused. Instead, in response to the lawyer's contention, the duty magistrate stated that there was no mention of any injuries in the MLC. Eventually, the magistrate ordered another MLC to be conducted. Here is an extract from the exchange in the duty magistrate's courtroom:

> MM: "No fresh injury has been recorded as per the MLC."
> Defence Lawyer: "*Aap ek baar* accused *se pooch leejiye, 4 din tak kaise peeta hai ise*." — please ask the accused once, how they beat him for 4 days.
> Still, MM did not ask anything to the accused.
> MM: "Not in the MLC."
> Lawyer: "*Sabko pataa hai* police *kaise peet-ti hai. Itna peet-ti hai pataa bhi nahi lagne deti*." — everyone knows how the police beat up people. Beats them up so much but in a way that none can come to know.

Here we see that the MM over-emphasises the role of the MLC without recognising that the MLC may or may not truly reflect the accused's condition. With regards to the illegal detention, the MM asked the IO to file a response in the concerned court. In this case, the lawyer referred to the *Arnesh Kumar* guidelines and requested the magistrate to call for the CCTV footage of the investigating agency,[28] as explicit reminders to the MM of the tools provided by the jurisprudence. It remains unclear whether the duty magistrate just wanted to defer this to the authority of the 'concerned court' or just did not want to deal with the potential illegalities. By asserting that the MLC had no mention of beating, the MM did show scepticism towards the words of the lawyer while refusing to hear the accused.

This is one of the rare times that the lawyer notes that the police know how to avoid the signs of injury as noted by numerous reports and testimonies.[29] The MM does not seem to acknowledge that but does encourage a bail application suggesting that there may not be much reason to extend custody (even though he ultimately gave police custody for two more days). There is always this tension between what is considered the role of the duty magistrate versus the regular magistrate and whether the duty magistrate (while following the rules) is hesitant to take on any accountability for violations.

Response of the Magistrate to Custodial Violence

In the course of the study, there was not a single case where the magistrate fully probed whether a person was subject to custodial violence at the hands of the police or jail officials. They did ask about custodial violence, and sometimes explicitly asked whether the police beat them and also checked for fresh and external injuries. Another more concrete action by the magistrates was when they pushed back on extending police remand. This is an acknowledgment

that police remand has often been considered to be synonymous with torture.[30] Magistrates intervened by sending the accused to judicial custody even when police custody was requested or by inquiring into the reasons for further detention and reducing the number of days in police custody.[31] In some cases, the magistrate would even require the MLC to be conducted every 24 hours, instead of every 48 hours as required by the law. This indicates that the magistrates were aware of some of the dangers of police custody and tried to address them to the extent possible.

While these actions may serve as some form of deterrence against custodial violence, the current process of first production and remand is inadequate at several levels. First, there is a lack of consistency in the manner in which magistrates approach these cases, such that not all magistrates go beyond the paperwork, especially in cases of extension of judicial custody. They do not always inquire into the well-being of the accused unless the issue is raised by the lawyers or the accused are able to draw attention to themselves, and even those pleas may be ignored in some cases. Second, medical examinations and MLCs only come up in first productions and productions from police custody, but are not resorted to in productions from judicial custody or in extensions of judicial custody even where the accused is visibly injured. Third, even in the case of the first productions and productions from police custody, the magistrate may not address the injuries in all instances, or probe beyond accepting a standard answer for the injuries. Finally, there is rarely an attempt to ensure follow-up treatment and safety, even though the MLC is both a recording of the injuries and mentions the medicines and treatment for any injuries. Instead, it is mostly seen as a requirement of proper paperwork. The role of the magistrate in first production and remand is determined ultimately by whether the magistrate is conscientious about their role, and considers their role as crucial in the pretrial process.[32] While the creation of the MLC was an innovative check on police violence, the mere presence of this artefact in the case file with a brief confirmation with the accused is an inadequate check on the well-being of the person in custody.

THE ROLE OF THE MAGISTRATE in first production and remand is determined ultimately by whether the magistrate is conscientious about their role, and considers their role as crucial in the pretrial process.

The tension between the jurisprudence on custodial violence and the lack of discussion on how to effectively ensure the safeguards at the first production suggests that the main focus of the court has been on the arbitrary deprivation of liberty rather than ensuring the safety and well-being of the accused. This is apparent in the fact that two possible directions within the jurisprudence—about ascertaining the origin of injuries and the separation of the accused and the police during the first production process—that could have made this constitutional safeguard more meaningful, have not been emphasised in recent jurisprudence (or even scholarship).

The Inspection Memo can be made a more explicit part of the paperwork examined by the magistrate during the first production as it allows further probing of how and when the injuries came to be. After all, it is a record of "major and minor injuries, if any present on his/her body" at the time of arrest and has the further requirement to be signed by both the arrestee and police officer.[33] The fact that it is primarily the Arrest Memo and the MLC that appear to be the focus of the magistrate suggests only one level of scrutiny. Even the lawyers also ask only for a copy of the FIR during these proceedings, and not a copy of the MLC or the Inspection Memo (both of which the accused is entitled to a copy of). This suggests that the lawyers are also primarily concerned with making sure that they know the exact reason why liberty may have been deprived. While the focus on the deprivation of liberty is crucial, such an inquiry may not necessarily get to the safety and well-being of the accused beyond the obvious visible injuries.

THE INSPECTION MEMO can be made a more explicit part of the paperwork examined by the magistrate during the first production as it allows further probing of how and when the injuries came to be.

Jurisprudence, scholarship and law commission reports in the last several decades have already suggested that the burden of proof of explaining the injuries in custody should be on the police, articulated in the demand for 114 (B) to be added to the Indian Evidence Act. In other words, rather than putting the burden on the victim or the victim's family in case of custodial death, the police have to explain the injuries.[34] The *Ram Sagar*[35] case is an early articulation of the standard that should be used for accountability in custodial violence cases. In the case, the Supreme Court notes:

> It is as transparent, as any fact can be, that the injuries which were found on the person of Brijlal were caused to him at the Hussainganj Police Station. The few and simple steps in the logical process leading to that conclusion are that Brijlal had no injuries on his person when he was arrested at Haibatpur in the morning or when he was brought to the police station at about 10.00 A.M, and that, when he was sent for remand he had a large number of injuries on his person which had induced a state of shock. We are unable to see what other explanation can reasonably be given of this chain of facts except that the injuries were caused to Brijlal by the policemen attached to the Hussainganj Police Station.

And this understanding allows for a general principle to be suggested that:

> Before we close, we would like to impress upon the Government the need to amend the law appropriately so that policemen who commit atrocities on persons who are in their custody are not allowed to escape by reason of paucity or absence of evidence. *Police Officers alone, and none else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody.* Bound by ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that persons, on whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station, are left without any evidence to prove who the offenders are. The law as to the burden of proof in such cases may be re-examined by the legislature so that hand-maids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection. [emphasis added]

It appears from our findings that such an understanding of holding the police responsible for explaining the injuries that occur in their custody, has not percolated to the magistrate-level inquiry during first productions. This becomes even more crucial when one notes all the ambiguity regarding the reasons for custodial deaths provided in the National Crimes Records Bureau (NCRB) Report.[36] From 1999–2012, the predominant categories used for deaths in custody were: during hospitalisation, treatment followed by suicides, illness/natural deaths and during production, process in courts and journey connected with investigation. Indeed, torture/physical violence was not even mentioned as a cause of death. It was only in 2014 that NCRB added physical assault as one possible reason for custodial death. The data from 2016–2018 also shows that suicides and illness continue to be the dominant reasons. Given the concern about custodial violence and very little clarity on the categories under which custodial deaths are explained, it is important for magistrates to figure out the exact reasons for the injuries at the stage of first productions themselves since that may lead to the probing of the causes for custodial deaths as well.

A major concern here is the difficulty in ascertaining how the magistrates figure out whether the nature of the injuries coincides with the various reasons mentioned during the hearing—whether it is due to the public, or an old injury or accident. Here, we suggest that the MLC could potentially play a major role as mentioned in the new MLC guidelines proposed by the Centre for Enquiry Into Health and Allied Themes (CEHAT) and the Commonwealth Human Rights Initiative (CHRI). According to these guidelines, the medical doctors can ascertain if the injuries match the possibility of torture, and additionally assess the time of occurrence of these injuries, which could in turn be used by the magistrate to ascertain whether the person was tortured or not. [37] However, this would require the magistrates to first be willing to go beyond the artefact of the MLC and probe the reasons provided for the injuries and structurally have the time and autonomy to ascertain the nature of the injuries.

As noted earlier, the magistrates are aware of the possibility of custodial violence in police custody and therefore, either send a person to judicial custody and/or ask for regular MLCs. Still, one of the biggest surprises is the lack of consideration in both jurisprudence and in the actual discretionary practice of the magistrate to ask the accused about police involvement in violence outside of the pressure/presence of the police. This practice is ensured in the context of recording judicial confessions.[38] There is a clear scepticism in the law about the credibility of any statement made in the presence of the police, as evident from the inadmissibility of any disclosure statement by the accused[39] or the statement of any witness before the police as evidence. This is based on the recognition of the unequal power dynamic between the police and other parties to the investigation, especially the accused in custody, and the legitimate and illegitimate authority that the police are capable of exercising in the process of performing their functions. However, this logic has not been extended to the first production process.

As we know, the accused comes for remand from two different sites, judicial custody or police custody. The accused produced from judicial custody are escorted by a special battalion designated for the purpose, namely the Delhi Police 3rd Battalion. This ensures a separation of the accused from the police station and the officers therein who are investigating their case. However, in the context of first production, it is important to note that the accused are brought directly from the police station, and escorted by officers involved in the investigation and constables or other officers associated with the police station. While there is adequate focus from *DK Basu* to *Arnesh Kumar* on the need to ensure that proper arrest procedures are followed—for example, keeping the family and the public informed, and preventing arbitrary arrest and abuse—there does not appear to be any conversation in the jurisprudence which focuses on the lack of separation between the police and the accused while being produced in front of the magistrate. As a result, as shown in the court observations in the chapter, even when the magistrate is conscientious and asks the accused about their treatment in custody/injuries in MLC, there is little possibility for the accused to articulate their experience without possibly incurring the wrath of the police. At the level of first production, there is a serious concern that they may still be sent back to the same police custody. It then seems structurally impossible for the accused to answer without fear or pressure and certainly places a lot of burden on the accused. The fact that the societal hierarchies also determine who is most targeted in the system further adds a degree of complexity which is difficult for even the most sympathetic magistrate to address. While confessions before the police are excluded from consideration in a case, it is remarkable that during first production the magistrate expects the accused to answer whether the very police standing next to him were responsible for the injuries. This separation has never been a subject of jurisprudence or scholarship and needs urgent attention. ■

JURISDICTION
SHAHDARA, NORTH-EAST & EAST

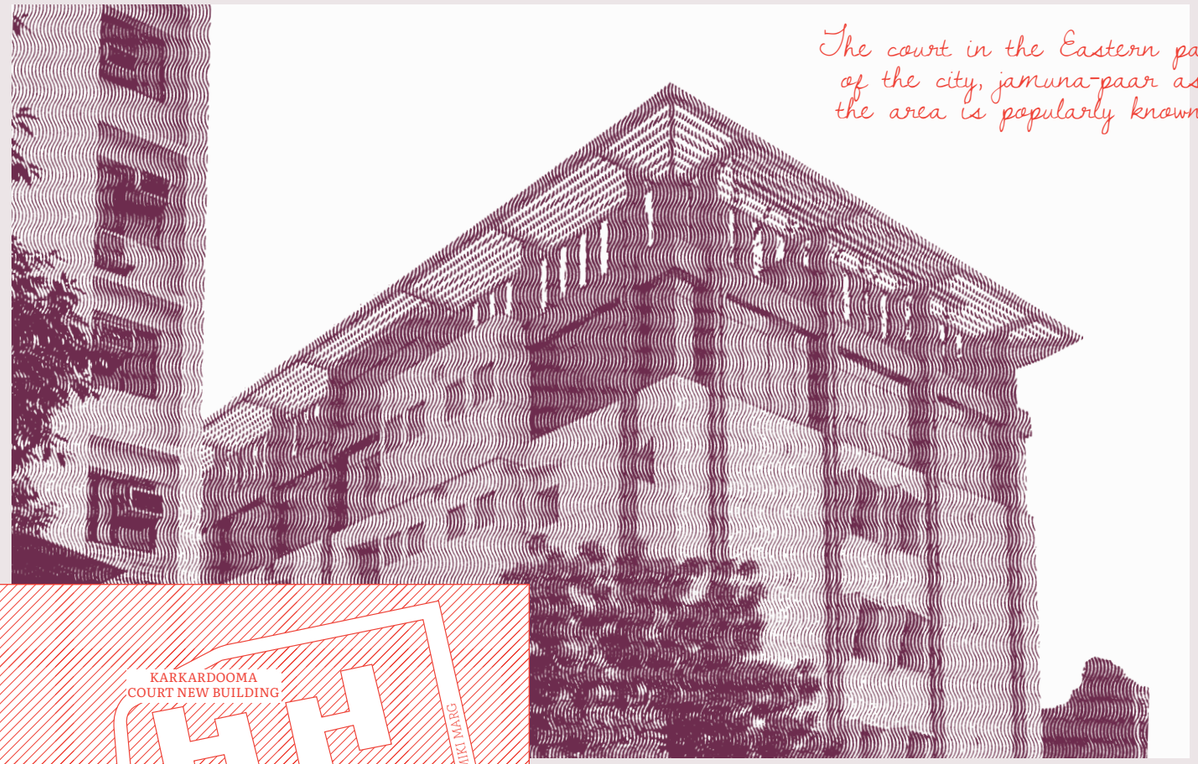
INAUGURATED
1993

KARKARDOOMA

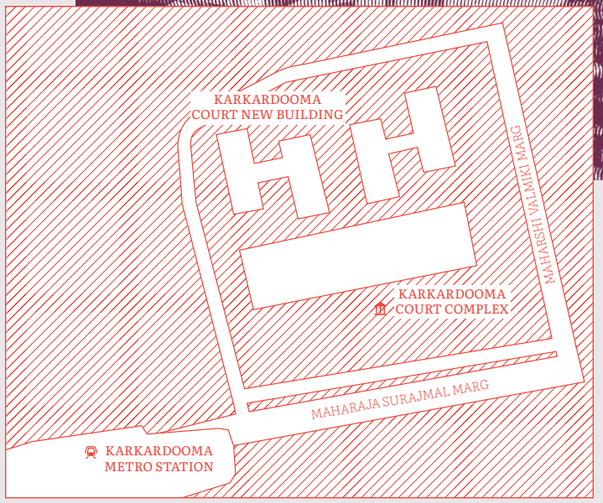
MADHURI KRISHNA, SWAPNIL SINGH AND PARESH HATE

The Karkardooma Court Complex was inaugurated on 15 May, 1993, by former Chief Justice of the Delhi High Court, G.C. Mittal. Cases from Shahdara, North-East, and East districts of Delhi fall under its jurisdiction. The complex is spread across a total area of nearly sixty thousand square metres, with a covered area of about fifty thousand square metres. It is located next to a metro station of the same name, which was created for the court. Situated in East Delhi — *jamuna-paar*, across the Yamuna River, as the region is popularly known — this court tends to incite complaints about its location, even among those who work there. The old commercial establishments and residential buildings that surround the complex are in a state of disrepair. One gets the sense that they have been abandoned even though they are occupied.

The complex has five gates: one is used exclusively by judges; the second is ear-marked for court staff, but is also open to others; the third is specifically for other visitors; a fourth is located near the buildings in which lawyers have set up their offices; and a fifth is close to the complex's judicial lock-up. While visitors have to undergo multiple security checks, lawyers or those dressed in the colours of a lawyer's attire — black and white — can walk in without being subjected to as much scrutiny. On entry from the visitor's gate, a building with lawyers' chambers and bar offices is striking because nearly every inch of its walls are covered with posters of lawyers from many formal and informal bodies, campaigning for bar council elections and wishing passers-by for festivities.

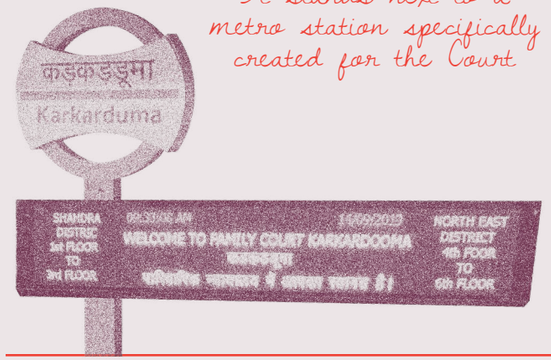


The court in the Eastern part of the city, jamuna-paar as the area is popularly known.



The office of District Legal Service Authority (where we researchers would sit sometimes), and the judicial lock-up (which two researchers gained partial access to briefly) are on the ground floor of the new building. Most magistrate courts — perhaps because they are lower in the judicial hierarchy — are located in the old building. Inside the old building, courtrooms from the three districts are divided across different floors with multiple levels, in a manner that seems somewhat arbitrary.

The new building, which has comparatively better infrastructure, primarily consists of the courts of sessions judges, as well as some digital courts. Here, cushiony seats and gleaming surroundings make you feel as though you have been transported to a new complex entirely. It has a more expansive waiting area space, better lifts, more ventilation, and relatively nicer washrooms, even though they are far from ideal. At times, courtrooms in the old building — often swarming with mosquitoes — appear to be unkempt and dusty. Most of these are located next to *ahlmad* rooms, and are just about big enough to accommodate lawyers, police officials, and court staff. For visitors, access to these courts appears to be reliant not just upon the number of seats available, but also their identity and association. As researchers, we found it relatively easy to enter these spaces, despite feeling intimidated initially. On the other hand, family members of accused persons attempted to move as unobtrusively as possible to avoid detection by the court staff, who would often ask them to leave.



It stands next to a metro station specifically created for the Court

The new court building makes you feel as if you are transported to a new complex entirely

A glass divider between the magistrate and the rest of the court amplifies a sense of distance.

As you pass through the stairs, you are likely to encounter sleeping dogs and their puppies

A maze with strong smells characterising its different parts - ranging from the inviting aroma of chai and snacks, to the stench of urine.

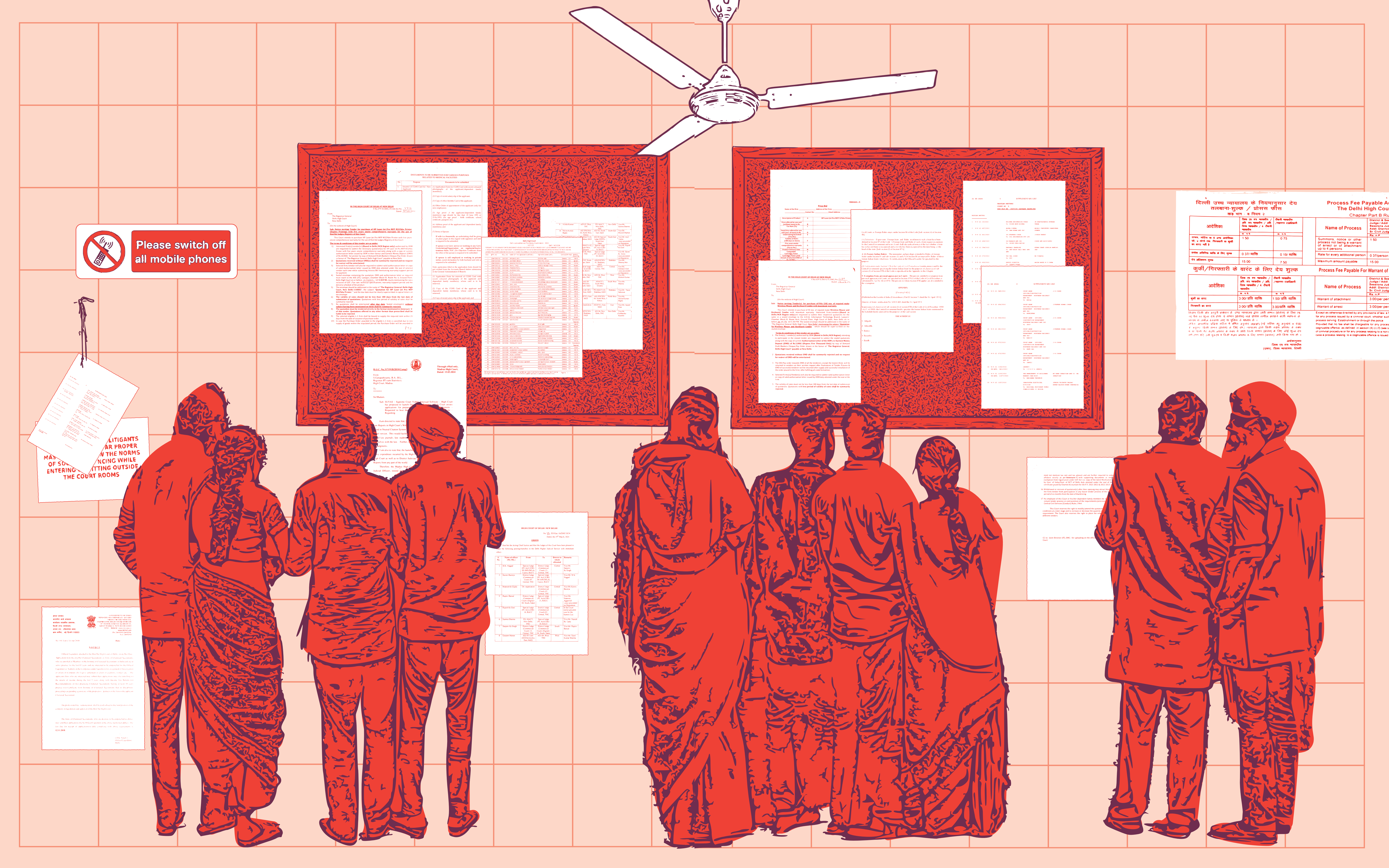
Within the courtrooms, the magistrate sits atop an ornately-embellished, elevated surface, which seems to echo the hierarchical and bureaucratic structures of many court complexes. The sense of distance between the magistrate and the rest of the courtroom is amplified by a glass divider that separates them from everyone else, very likely a byproduct of the pandemic. The witness-box ordinarily occupies one corner. It is covered from all four sides and is moved across the room from time-to-time to admit those who testify. While efforts towards the infrastructure's digitalisation and modernisation were visible even in the old building, these systems have a long way to go. For instance, most courtrooms were equipped with screens connected to the stenographer's monitor, allowing visitors to read the orders even as they were being typed-up. Yet, only a few of these screens were seen to work.

The Karkardooma court complex is a maze with strong smells characterising its different parts, ranging from the inviting aroma of chai and snacks on some floors, to the putrid stench of urine on others. As you pass through the stairs, you are likely to encounter sleeping dogs and their puppies. Each courtroom is distinguished by its own mood and complexity. Some are overwhelmingly chaotic, a few occasionally responsive, while others are simply hostile. But they all seem to be gasping for air, burdened by the seemingly never-ending piles of files that only make sense to the court staff. For accused persons or their families, these imposing stacks of paperwork can often mirror the opacity of the legal processes they are compelled to navigate. ■

In the old building, courts from the three districts are divided across different floors with multiple levels, in a somewhat arbitrary manner

I II III IV V

MAGISTRATE COURTS: COURT DYNAMICS, INVISIBILISATION AND MARGINALISATION



Please switch off all mobile phones
LITIGANTS
THE COURT ROOMS

"The criminal courts in the country are where the poor first meet the judges"
— JUSTICE MURALIDHAR, 2019

This study became colloquially known as the "magistrate study," given that it was conducted in magistrate courts and centres around their role in ensuring safeguards during pretrial productions. However, the study's focus was really on capturing the experience of the accused in the courtroom. While the researchers did occasionally speak to the magistrates, accused, lawyers and the court staff, most of the research observations studied the public interaction between these key actors and the courtroom dynamics. The observations recorded their interactions in the courtroom throughout the day, but especially during first productions and remand. This ethnographic method of courtroom observations was particularly revealing about the manner in which magistrate courts performed their role at this stage in practice. So the focus was not to assess police accountability and procedural compliance by only documenting whether the artefact of the Arrest Memo or the Medico-Legal Certificate (MLC) was a part of the case file. Rather, the observations were meant to assess whether the public performance of this check on the power of the police in every single criminal case becomes an occasion for the magistrate to ensure the life, liberty, safety and dignity of the accused.

While chapters 2 and 3 studied the interaction between the magistrate and the accused through the lens of the two artefacts, in this chapter, we analyse the role of the magistrate at first production and remand more broadly, by situating it within the context of the court ecosystem. The previous two chapters demonstrated that while most magistrates would ensure the presence of the Arrest Memo and the MLC, they were not always able to ensure that the substantive protections intended through these artefacts were realised. This chapter examines the performance of magistrate courts at this stage within its institutional context; looking at the dynamics of individual magistrate courts, and drawing out connections between the functioning of the individual magistrates to the structural organisation of court work. In particular, we note the invisibilisation of first production and pretrial remand matters in the work day of the magistrate and how that may impact the experience of the accused at this stage of the criminal justice system.

By situating the magistrate within the context of the individual courtroom, two aspects of the court observations become crucial. Firstly, we explore the manner in which the dynamic of individual courtrooms and the role of different actors mediates the experience of the accused. For instance, as demonstrated in the earlier chapters, the court staff are the most visible actors at first production and remand, and one cannot consider the experience of the accused at this stage without thinking about their role and influence in court.[1] Secondly, this chapter illustrates how social hierarchies reproduce themselves in the courtroom, and whether the magistrates are able to address and mediate them. We note that along with the inherent vulnerability of being in police custody, the hierarchical structure of court proceedings impacts the experience of the accused produced in court, particularly for those from marginalised contexts. Though the vulnerability of the accused in police custody and during investigation has been acknowledged in jurisprudence, court observations reveal how much of this is reflected in the everyday interaction with the accused at first production and remand in magistrate courts.

Finally, this chapter explores whether the inconsistencies in how different magistrates perform their role at first production and remand is influenced by an invisibilisation of these matters as a significant part of their work day. The study emphasises that there are structural limitations to what the magistrates can currently do because of the lack of importance accorded to this particular stage of the criminal justice system- we term this as an invisibilisation of their work.

Courtroom Dynamics

One of the most striking observations of the research team was the role of the court staff. They are the most visible actors facilitating first production and remand proceedings. The team had been advised to make connections with the court staff—specifically, the reader and the naib court—who tend to monitor and often gate-keep the courtroom. The advice was crucial, given that the remand cases were not mentioned on the cause list, which meant that the researchers had to depend on the benevolence of the court staff to understand how the court kept track of first productions and remand extension cases.

More significantly, the team gradually recognised a larger-than-life role of the court staff in these kinds of cases, occupying a central role in the production and remand processes. The standard practice observed by the researchers was that a police officer enters the courtroom with the accused for first production or further remand hearings, and first approaches the naib court to hand over the case files. The naib court looks over the files, to check if all the necessary documents are present and filled, and then hands over the files to the magistrate in the court or the chambers.

ONE OF THE MOST striking observations of the research team was the role of the court staff.

For first productions and remand extensions to police custody, the researchers observed that there is usually some interaction between the magistrate, the Investigating Officer (IO), and even the accused (or their lawyers). On the other hand, for extension of remand to judicial custody, magistrates would normally directly sign the custody warrant form and grant the extension without much visible interaction. In such cases of extension of judicial custody, where there was almost no interaction between the accused and the magistrate, the role of the naib court became all the more critical, because of the implicit trust and responsibility in their inspection of the case file.

Researchers from one court noted the manner in which extension of remand to judicial custody was primarily orchestrated by the naib court, and "mechanically" approved by the magistrate.[2]

> The researchers note: This has been one of the pervasive patterns in the court no. [omitted] where the custody warrants are obtained by the [naib] courts without any application of mind by the magistrate. In the most obvious manner, the custody warrant will be signed by the judge without any questioning when the accused is present in the courtroom. In many of the cases when the judge is not present and is in the chamber ... the accused is not generally produced before the judge.

It was also noticed that in all cases of production in chambers, because the magistrate was absent from the court, the role of the court staff—and the naib court in particular—became all the more significant. Court observations revealed that unless magistrates had scheduled any matters during the post-lunch period, most magistrates tended to retreat to their chambers. Some would return and sit in open court if there were many matters before them, while others would continue to hear them in chambers. In this context, the naib courts, as the first point of scrutiny of the remand papers and by acting as a link to the magistrate, were crucial in shaping the dynamic of the courtroom and the experience of the accused at production.

This is illustrated from a case observed in Saket court, where the accused, a working-class Muslim man, was produced in chambers of the magistrate. The actual interaction during the proceeding could not be witnessed by the researchers. Yet they were significantly positioned to observe the general dynamic in the courtroom, including the role of the court staff, and the interaction between the court staff, accused, Investigating Officer (IO) and lawyers. In these situations, the importance of the ethnographic research methodology of court observations became clearly apparent. The researchers' continuous presence in particular magistrate courts allowed them to often build a good rapport with the naib court, which in turn often led to a more open willingness to chat and informally share documents with the researchers. In this particular instance in Saket court, it was clear that the arrested person had a visible injury.

> The researchers noted: The accused had a purple bruise around the left eye. The IO had two photocopies of the MLC from AIIMS. The copies said that the accused was conscious and *there were no fresh injuries on the body*. No injuries at all. And signed in the end. It was clear that there were inconsistencies in the MLCs and even the naib court could recognize that. And it was apparent in the courtroom thereafter.

As one researcher put it:

> The naib court had an overwhelming role to play in this particular production. He pulled a chair and sat right in front of the accused. He looked at his bruises, he looked at the file, he must have noticed the inconsistencies too. They were more than just apparent. He then engaged everyone around him in a conversation about the accused and how "dangerous" he is, etc. He was the subject of conversation amongst them for a while. "Does he not look like a criminal?" said one to another. "He has 46 pending cases against him," he then added. Seeing an injured man constantly trying to loosen the policeman's grip was just a pastime for the court staff. The paperwork proceeded as usual. We are unsure if the magistrate took a moment to look at him.

The other researcher read the situation differently:

> The naib court threw sympathetic glances at the accused - his injury. Asked the IO on details regarding the same. Also asked me whether one could make out if he appeared dangerous/looked like an accused (adding that he was), and then proceeded to show me the MLC on asking.

But what was common between the two sets of observations is the emphasis of the naib court in establishing the dangerousness of the accused to those present in the courtroom. Here perhaps, presenting how the accused was treated by the police escorts becomes important. One researcher noted:

> The accused was brought chained - handcuffed and fettered. These were removed by the police officers outside the [courtroom]. The IO was present as the accused was taken inside the chamber to be produced. Was engaged in paperwork after the accused was brought outside. The accused's hands were swollen and he let out a squirm when the constable tried hand-holding him again. Had started sobbing quietly on coming out - the constable holding his hand casually asked, "*aise hi aansu nikal aate hai*?" – why are you crying without reason?

Meanwhile the accused's demeanour was described by the other researcher in this way:

> The accused was brought hand-cuffed, chained, with at least three police officers by his side. He had a purple bruise around the left eye - eyes were generally moist from crying silently. He had a very defeated/ tired demeanour - short, appeared timid, not restless but almost resigned to his fate. The handcuffs were removed outside, and he was taken in and made to sit on the first row. In a few minutes, he was taken inside the MM's chamber with no legal representation by his side. Was brought out as quickly as well. His eyes were moist - seemed to have been sobbing inside. He squirmed when the constable tried holding his hand again and asked the constable to hold it lightly - that it was swollen and hurting.

This case is revealing of the everyday interaction between the police and the accused, and the role of the naib court. Particularly, it is illustrative of how the perceived dangerousness of the accused, based on whether he is brought in handcuffs or the number of cases against him, influences his treatment in court. The role of the naib court in determining the treatment of the accused was visible in yet another case, with vastly contrasting results. Here, the

naib court instructed the police escort to leave the hand of the accused, and the researchers noted the accused roaming freely while his paperwork was being completed. Gauging the middle class status of the accused from his appearance, and the fact that he was represented by a private lawyer, the researchers wondered if the accused would have been treated differently had he been from a different social context.

In fact, the naib court's power in the courtroom was not restricted to the inspection of paperwork, but could often go a step further and even influence the proceedings. For instance, in one case, the naib court was observed steamrolling their way, and denying an accused their constitutional entitlement of legal representation of their choice at first production, stating that this was just a "formal matter" that would not affect their case substantively. The accused already had a private lawyer, and requested the naib court to call the lawyer before he was produced in front of the duty magistrate. The naib court refused the request, and stated that a legal aid lawyer would be sufficient for this proceeding. The legal aid counsel (LAC) did not dispute this position. The researcher overheard the IO telling the LAC that the accused had been arrested the previous day at 4pm. Since these events transpired in the duty magistrate's court after the regular working day of the court (post 4pm), there is a strong likelihood of illegal detention. However, this did not come up explicitly in the courtroom. The first production of the accused, thereafter, took place inside the chambers of the magistrate with the legal aid lawyer, and the accused was remanded to judicial custody for 14 days. The private lawyer of the accused came soon after, along with family and relatives of the accused. Unlike the LAC, the accused lawyer appeared to be extremely proactive - he took a photograph of the FIR from the IO and obtained permission to enter the magistrates' chambers, and stepped out evidently pleased with the order granted by the magistrate due to his intervention (however, the researchers were unclear about the nature of interaction inside the magistrate's chambers).

THE NAIB COURT was observed steamrolling their way, and denying an accused their constitutional entitlement of legal representation of their choice at first production, stating that this was just a "formal matter" that would not affect their case substantively.

These observations of courtroom interactions demonstrate how the role played by the naib court goes beyond a mechanical scrutiny of documents to effectively gate-keeping procedural practices, shaping courtroom perceptions and even influencing court proceedings. In stark contrast, the magistrate was seen to play a very limited role during some of these first productions and remands, despite this being a critical stage where the constitutional rights of the accused are at stake. At this stage, it is really the magistrate who must scrutinise the functioning of the police, question the legitimacy of the curtailment of liberty of the accused, as well as inquire into the safety of the accused.

It is not just the naib court who plays a more crucial role than procedurally expected of them—even the stenographer (steno) was observed to play a prominent role in some cases. For instance, often the steno would write a version of the order before the magistrate had pronounced it. In one Enforcement Directorate case observed by the researchers, the steno wrote out an order directing two days police custody for two people and judicial custody for the rest, before the accused had even been produced in court. When the matter was called up, the magistrate asked for identification of the accused right at the door but then asked them to leave, possibly because of the number of accused and their lawyers alongside the police.

Thus, the court staff plays an important role in streamlining and expediting the court's processes, as well as clearing up the daily caseload of the magistrate court. However, the significance of the proceedings and the critical role of the magistrate gets lost in the everyday functioning of the court. To further illustrate, in one case in a Rohini Court when the magistrate and accused were both absent, the steno asked the IO whether the accused was injured or not, and recorded the response, effectively completing compliance with an important procedural safeguard, without the magistrate's scrutiny and without even looking at the accused.

While the naib court and other court staff are of course essential to the functioning of the court, court observations suggest that in the current structure, they appear to be playing a greater role in remand and production matters than procedurally mandated by law. This is particularly the case in judicial custody extensions, though their direct or indirect interventions do appear in the first production cases as well. While the focus of this section has been on the prominent role played by the naib court in first production and remand processes, it is important to recognize the implication of this for the role of the magistrate. Many of the court staff's actions serve the purpose of efficiency in routine—such as looking over the paperwork, or getting the orders ready—but in the process, they end up playing a role that overlaps with the magistrate. The unintended consequence of this may be an inadequate dispensation of a significant stage of due process.

Experiences of Marginalisation

Marginalised communities are disproportionately impacted by the violence of the criminal justice system, and it is important to study first production and remand proceedings, their limited judicial scrutiny, and the prominent role of the court actors in that context. As noted in the introduction, there is adequate evidence of discrimination on the basis of class, caste, religion and gender in Indian policing.[3] Yet, to some extent, other than class,[4] and perhaps gender,[5] not much of the discrimination was very visible in the court interactions. However, this may be a limitation of the research methodology of court observation, rather than being indicative of the absence of discrimination. Moreover, certain markers of discrimination were still evident. For instance, class discrimination is visible in how the police might handcuff a person more tightly or instruct them to stand while they themselves sit on the seats available, or how they react if the accused and their family speak to each other.

As noted in the previous chapters, and further detailed in chapter 5, the researchers felt compelled in certain circumstances to intervene and call family members of the accused or guide them with advice about the court proceedings, at the request of the accused. There were other instances where researchers could only document their shock at the treatment of certain accused in their notes.[6] Yet, during the research period, the researchers observed limited instances of overt violence against the accused within the

courtroom. Sometimes the police would permit the accused to talk to their family, and allow them some leeway by not strictly following the time limit for family conversation given by the magistrate, knowing that the magistrate may move on to other matters in the time being. Thus, to borrow the term coined by Suresh (2023), there is a sense of "custodial intimacy" in the interaction between the police officer and the accused. There was striking physical proximity due to their inter-linked hands, and at times light conversation was also observed between police escorts and the accused in the time spent waiting for the production in court. Yet this intimacy was precarious, and could suddenly turn violent; as observed through a tighter and painful clasp of the hand, or a sudden slap when the accused was considered out of line.

Discriminatory practices also occur due to inherent judicial structures, insofar as the rigidity of court processes or the unwillingness of court staff to respond to unusual situations. For instance, researchers occasionally came across cases where the accused had been granted bail but was still in custody, usually due to an inability to afford surety. In a case observed in Karkardooma court, the accused was unsuccessfully trying to get the attention of the judge, but asked to keep quiet by the naib court. The accused claimed to be in custody for 45 days without a lawyer. In another case, researchers noted an alarming incident where there was an apparent mix-up of names, causing an accused who had been produced in one case to be mistakenly remanded to police custody in another case. The accused sobbed in front of the magistrate, trying to explain that though he shared a name with the other accused, their fathers' names were different. He accused the police officers of severely beating him the previous night, frustrated and refusing to believe his claim of mistaken identity. While much time was spent in court to verify his claim and identify the other accused, the magistrate completely ignored and left unaddressed the allegation of police brutality. It was unclear if any departmental action or inquiry was initiated by the magistrate for the mix-up.

CLASS DISCRIMINATION is visible in how the police might handcuff a person more tightly or instruct them to stand while they themselves sit on the seats available, or how they react if the accused and their family speak to each other.

As is well documented, while violence plays a prominent role in the everyday functioning of the criminal justice system and can impact anyone; this violence and discrimination is experienced more acutely by persons from marginalised sections of society.[7] As already noted, most of the cases observed by the researchers pertained to accused who were cis-male, and from low-income or working-class backgrounds, unless specified otherwise in the narratives. Though the narratives in the earlier chapters reflect the everyday violence of the system, courtroom observations were not adequate to gauge the experience of discrimination felt by particular sections of society. This may be better documented through interviews with the accused, their families and their lawyers.

Occasionally, signs of discrimination revealed themselves in overheard conversations and informal follow-ups, outside of the formal proceedings before the magistrate. This is well illustrated in a case observed in Patiala House, where the magistrate failed to recognise the possibility of discrimination, in turn perpetuating the discrimination further.

The researchers observed proceedings under the Immoral Trafficking (Prevention) Act in a magistrate court in Patiala House. Two accused had been arrested the previous day, and were being produced in court after a day in police custody. The lawyer for one of the accused was arguing that there was no evidence of his client's involvement and proposed moving a bail application. During the course of the hearing, the magistrate appeared to accept the lawyer's arguments that his client became inadvertently embroiled in the crime because he had recently come to Delhi from West Bengal and taken up a driving job without knowing its details. Though the lawyer persuaded the magistrate to direct the police to conduct further investigation about the owner of the car, the magistrate observed that the client ought to have been more responsible, and stated that he was not inclined to grant bail. The lawyer withdrew the bail application, and the magistrate directed the accused to judicial custody for 10 days.

THE SIGNS OF DISCRIMINATION revealed themselves in overheard conversations and informal follow-ups, outside of the formal proceedings before the magistrate.

This was the extent of the magistrate's interaction with the case and the accused. However, one of the researchers then noted:

> I overheard the lawyer talking to the client in Bengali - whether he himself did right, why he thought there wasn't any point in applying for bail since the magistrate wasn't inclined, and something about being unhappy about how the police said something. The lawyer then said a strange thing: "Even though the police beat them as a part of their work, they shouldn't have said that." We [the researchers] decided to chat with him [the lawyer] and he told us about the case and it turned out the owner of the hotel and the accused were both his clients. When asked about what he was saying to the client, he also explained how the police had beaten his client and called him a Muslim. While earlier when he was talking to the accused, he focused on being called a Muslim as the main issue, with us, he was concerned about the beating too. When asked about what the MLC said, he clearly stated that the injuries wouldn't show. I remember the accused pointing to his soles while talking to the lawyer and figured out that the beating was done in a classic sense of beating while ensuring that they don't show up in the MLCs. I wondered if the fact that the lawyer himself was Muslim played a role in his responses.

This case is instructive about why the experiences of marginalisation do not always feature in the interactions with the magistrate. The violence inflicted upon the accused due to his Muslim identity only came up in a passing conversation between the lawyer and his client, but not before the magistrate. As discussed in chapter 3, the current process of analysing the MLC is inadequate to determine whether a person faced custodial violence, partly because the accused is asked in front of the police. Even when the magistrate inquires about an injury, the police offer standard explanations—such as the accused being beaten by the public, or it being an old injury —which are accepted by the magistrate without much scrutiny. As a result, the hidden forms of violence remain unexplored, as does the disproportionate impact of marginalisation. The procedures involved in first production and remand

proceedings fail to account for the pervasiveness of such discrimination, and as such, it largely remains hidden during these initial court processes.

Role of the Lawyers

Legal representation plays an important role in alleviating the overt or the implicit discrimination and marginalisation experienced by the accused due to their socio-economic location in a hierarchical site such as the courtroom. As shown in the illustration earlier in this chapter, the importance of strong legal counsel at this stage is recognised by the court staff and reflected in actions such as that of the naib court refusing to call the private lawyer engaged by an accused.

Recognising the vulnerability of an accused in custody during pretrial, the Supreme Court has consistently emphasised the importance of legal representation from the earliest stages of a criminal proceeding.[8] Further, the obligation is on the magistrate to ensure that the accused is informed of their right to legal representation, as well as apprised about the facility for legal aid.[9] In furtherance of this, all magistrate courts in Delhi are assigned a special legal aid lawyer to provide representation at the pretrial stage, called the remand lawyer.[10] The presence of a lawyer often plays a role in bringing the attention of the magistrate to specific aspects of the case, and can compel more engagement and occasionally some action from the magistrate.

District court complexes in Delhi have a Delhi Legal Aid Services Authority (DLSA) office prominently located, and most have posters enumerating the constitutional right to legal representation for all as well as the duty of the state to provide legal assistance for indigent persons. However, access to legal representation continues to be a challenge for accused during productions. Despite the remand lawyer scheme, legal aid counsels are not always available during first productions and remand hearings in magistrate courts. Remand lawyers were especially absent during proceedings before the duty magistrate.

This appears to be a consequence of multiple interlinked reasons, which have a compounding effect on the nature of legal representation during production and remand, as became clear through court observations and informal conversations with some remand lawyers. One remand lawyer shared that no special training had been provided before he was assigned a magistrate court as a remand counsel. This might have an impact on how remand lawyers view their role at first production and remand proceedings, as well as its significance as a constitutional function. In fact, in recent years the National Legal Services Authority has sought to address these concerns in light of the vulnerability of suspects/arrested persons at pretrial, and released a report highlighting the role of lawyers at pre-arrest, arrest, first production and remand stages.[11] However, the practices recommended in the report are not reflected in the magistrate courts in Delhi. Unless the arrested person is clearly eligible for bail or there are very serious violations, remand lawyers tend to treat their presence in productions for extension of remand at pretrial as a formal requirement and the magistrates do not consistently ask for their presence in a case.

Additionally, the unpredictability of production proceedings, at any point during regular court hours or before the duty magistrate, imposes an impossible demand on remand lawyers to always be available, on a nominal fee. Most remand lawyers, in addition to their duties as legal aid counsel, have their independent practice across different courts in Delhi, making it difficult for them to be present when a first production or remand hearing comes up suddenly. The pervading belief that nothing of importance occurs during these proceedings does not help. Indeed, there is very little incentive against the high demands of their job, and as such reflects the low priority afforded to this stage of the criminal justice process.

As a result, in practice, accused were usually not represented by any counsel in production proceedings. Moreover, even in the absence of lawyers, most of these matters were considered by the magistrates in chambers, further invisibilising the proceedings and the manner in which the magistrates discharged their duties. Even when productions were conducted in open court, court observations suggest that there were many cases where the magistrate raised no question about the absence of a defence lawyer during the proceeding, despite the specific provision of a remand lawyer for each court.[12]

In one case, researchers witnessed the duty magistrate reassuring a visibly distressed accused—a working-class 40-year-old cis-woman who was produced for offences under the Protection of Children from Sexual Offences Act—that she would be assigned a lawyer in the concerned court. Despite the visible concern, the importance of legal representation on that day itself was completely lost on the magistrate. The duty magistrate directed the accused to one-day police custody, with no opportunity to oppose the same, in disregard of her right to a lawyer at that stage.

There were instances when the accused themselves drew the magistrate's attention to the fact that they had no legal representation, compelling the magistrate to take notice and assign one to them. However, as recognised by the Supreme Court in *Khatri* (1981) the onus cannot be on the accused to demand fulfilment of this right, recognising that most come from socio-economically marginalised backgrounds, and might lack the awareness to assert their constitutional entitlements and their right to free legal aid, especially when they have just been arrested. While there were some magistrates who were particular about ensuring the presence of a remand lawyer when an accused was produced without representation, and would ensure that the naib court called the assigned lawyer in these situations, these cases were few and far between.

In magistrate courts in Delhi, there was no consistent practice to ensure that every accused had legal representation at every production hearing, as constitutionally required. Researchers observed a couple of instances, where even though no remand lawyer was present in court, the magistrate recorded the presence of the lawyer in the order.[13] Fortunately, in another case, the magistrate directed the court staff to remove the remand lawyer's name from the order, on noticing his absence during the proceedings.[14] As such, the magistrate's failure to ensure the presence of the remand lawyer is another aspect of the judicial process that results in the perpetuation of societal hierarchies, which can have significant consequences for liberty and safety.

Court observations attest to the importance of legal representation during pretrial proceedings. Most cases where the accused was unrepresented were completed within minutes, often without any arguments or opposition to further detention. In these cases, scrutiny into the legality of arrest, compliance with safeguards on arrest, and realisation of constitutional rights of the accused were all entirely dependent on the individual discretion of the magistrate. While some inquired with the IO, very few spoke to the accused, and most wordlessly skimmed through the file and acquiesced to police demands. As discussed in the previous chapters, there are notable examples where the presence of lawyers and their interventions on issues such as juvenility, custodial violence, bail, the necessity for further police custody and so on, compelled the magistrate to take note.

It is important not to overstate the impact of a remand lawyer. The mere presence of a lawyer is not a guarantee that accused is afforded a due opportunity to safeguard their constitutional rights. Most remand lawyers were unable to adequately consult the accused, or even given sufficient time to read through the relevant case documents when they were appointed in court. Very few would make submissions before the magistrate at this stage or request copies of all relevant documents. For all intents and purposes, their presence was only in fulfilment of a formal requirement, and there was a tendency among the remand lawyers to compliantly accept the directions of the magistrate.

In fact, the lawyers themselves often appeared to view their role as a formality, and requests for access to case documents at the pretrial phase were rare even amongst private lawyers.[15] A few were observed requesting a copy of the FIR, however, no lawyer was observed requesting a copy or inspection of the MLC (which the accused is entitled to under section 54), the Arrest Memo, Inspection Memo, application for extension of remand filed by the police, or orders passed by the magistrate. In the absence of these documents, the ability of lawyers to intervene and ensure realisation of safeguards on arrest and custodial violence is significantly limited.[16]

Yet, intervention on these issues appeared to be less of a priority amongst lawyers. Researchers overheard several conversations between lawyers and the accused, where the accused would inform their lawyer about beatings or injuries suffered in police custody, but would be hushed or disregarded by them. This interaction was also witnessed between private lawyers and their arrested clients. In conversation with a researcher, discussed in an earlier chapter, an accused acknowledged having been beaten in police custody, but was unaware whether this had been raised by his private lawyer during the proceedings before the magistrate. The accused added, "Lawyer *[hi] nahi vishwas rakh rahe* ki *mujhe mara tha*"—The lawyer himself is not believing me that I was beaten.[17]

The decision of private lawyers to not raise an issue before the magistrate might be a conscious strategic decision with the intention to benefit the accused during trial. One lawyer shared their opinion about the futility of raising such violations at the pretrial stage, unless there was a complaint of a particularly egregious case of a human-rights violation. The lawyer felt that any action taken by the magistrate would inevitably be inadequate, and might foreclose the opportunity to raise pretrial violations at a later stage during trial, in order to challenge the credibility of evidence against the accused. However, the implication of this silence is to wilfully overlook the continued violation of constitutional rights of the accused. It also ignores the fact that the pretrial and particularly the remand stage is crucial for the liberty and safety of the accused. In fact, as noted in chapters 2 and 3, this is when the possibilities of arbitrary deprivation of liberty, physical safety and dignity are most stark.

Observations suggest that even when lawyers are present and raise submissions, they are often unable to protect against the abuse of personal liberties of the accused.[18] This was observed in a case of formal arrest, where four accused were produced from judicial custody before the link magistrate—since the regular magistrate was on leave—and the police had applied for police custody for two days. The magistrate was keen to allow the police application, without even inquiring about the necessity of police custody. The remand lawyer intervened, and submitted, "Judge *sahab kam se kam ye to puch lijiye do din* ki PC *kyu chahiye*" – Judge sir, at least ask why they are asking for two days of police custody. The magistrate did not inquire with the IO, and instead responded to the remand lawyer, "Investigation *ke liye chahiye hoga aur kyu, agar aapko as a* LAC accused *se baat karni hai to uska* time *main de sakta hu*" – They probably need it for investigation, but if you as the accused's legal aid lawyer want to speak to your client, I can grant time to you. To this, the lawyer replied, '*Nahi* judge *saahab, aap* proceed *kijiye*" – No judge sir, please proceed.

Court observations suggest that most magistrates tend to, at the very least, inquire about the status of an investigation to seek some justification about the need for and duration of further police custody in the initial stages of investigation. In light of this, the LAC's easy acceptance of the duty magistrate's vague reasoning—that it must be needed for the investigation—and to further decline the opportunity to even consult the accused and seek instructions suggests a failure on his part to recognise the importance of his role at first production. In this context, it is important to consider the question of incentives to be a remand lawyer, as opposed to a private lawyer, as even the most well-intentioned lawyers need to move on to their next case.

In the same case, recognising that there was no aid coming from his appointed lawyer, one of the four accused, **Shyam**, sought permission to speak before the magistrate. When granted, the accused requested the magistrate for a direction of medical examination. He alleged that he had been beaten in police custody, and even named a specific officer responsible. Yet, even at this point, the legal-aid lawyer did not intervene, and remained silent. The magistrate pointed to the lack of injuries noted in the medical report on record, and pressed the accused about why this had not been raised before the jurisdictional magistrate. The ensuing exchange is worth reproducing in full:

> Shyam: "*Jab waha* judge *ke samne le gaye the toh muh-haath sab bandha hua tha, kaise bolte? Aur* MLC *mein toh* doctor *ne chhua bhi nahi, dur se hi likh diya sab theek hai. Aap* medical *karwa dijiye mera.*" – When they produced me before the judge there, my hands and mouth were all tied, how could I have spoken up? And during the MLC, the doctor did not even touch me, just wrote that everything was okay from afar. Please get my medical examination done.

MM: "*Yeh jis* jurisdiction ki *baat hai aap ussi judge ke saamne boliyega*" – Please make this point before the jurisdictional magistrate.

The researcher noted that eventually, in the order, the magistrate directed that all the accused be sent for a medical examination then and also before the next date of production in court. The accused were also granted permission to meet their lawyer and their family for 15 minutes while in police custody. Ultimately, the magistrate did provide some protection to the accused, based on his own discretion. However, the question remains whether this is enough, considering the concerns regarding the limits of the MLC as a safeguard against police torture (as discussed in chapter 3). The case also highlights the precarious position of the accused, who is sent back to police custody after having made an allegation of custodial violence. While these issues regarding custodial violence and MLC have been discussed in detail in chapter 3, this example highlights the serious implications of the lack of effective legal representation, and raises concerns about whether most remand lawyers adequately understand the significance of the pretrial stage and their responsibility during it.

Invisibilisation of the Magistrate's work on Remand and First Production

As noted earlier, the research team initially had trouble in identifying the pre-chargesheet matters. Just as scholarship, activism and jurisprudence has not paid much attention to first production and remand, worthy of a constitutional safeguard, there was also very little familiarity of the everyday work of the magistrate more generally.

With every court, the document that most defines the daily work of the court is a cause list and therefore, even for magistrate courts this was our first site of exploration. The cause list is a daily list of matters scheduled to be heard by a court on that day. This list, usually running into several pages, is prominently displayed for the public on a soft board outside the courtroom. The cause list distributes the hearings listed for the day into multiple categories depending on the nature or stage of the proceedings for which the case was listed for hearing. These categories include Misc/Appearance, Charge, Evidence, Arguments and Judgment. However, over the course of the first few days in the district courts, it became clear that matters related to first production or remand at the pretrial stage were never mentioned in the cause list.

As we consulted other lawyers and researchers familiar with Delhi courts, we got a number of recommendations about how to find cause lists that *may* include first productions and remand. One suggestion was that the Misc/Appearance category of the cause list might include pretrial remand matters, along with productions from judicial custody during the trial. However, the researchers soon learnt that the productions mentioned on the cause list did not pertain to first production and pretrial remand proceedings, but pertained to production at other stages. Lawyers suggested that perhaps the pretrial production proceedings were included in a second handwritten cause list prepared during the day. Though the research team subsequently kept a look-out for these handwritten cause lists, and were able to find them, even this miscellaneous list prepared later did not concern pretrial remand or first production cases, but listed out bail and other miscellaneous applications. Yet another suggestion was that the cause list could be subsequently updated with remand matters and uploaded on the ecourts website. But this was not the case either.

As noted in chapter 5, in the courts observed by the researchers, they eventually found ingenious ways of identifying the internal mechanism of how different magistrate courts keep track of remand matters. The researchers found that some naib courts kept track of first productions and productions from police custody through updates received on police WhatsApp groups or through phone calls from the police station. For productions from judicial custody, the naib court of most courts would descend to the court lock up and make a list of cases for production based on the accused present there. However, each court seemed to have its own unique way of keeping track of the first production and remand cases, and they did not appear to ever put up the lists publicly.[19]

Initially, we considered this to be a methodological challenge for the study, which is the first of its kind and as such could not rely on previous research. As the research team identified the unique systems of different courts and witnessed the first production and remand matters over a period of three months, the observations led to another realisation. Despite the significance of the remand and production matters, both constitutionally and in terms of implications for liberty and safety, these matters were not adequately reflected in the records of a magistrate's daily work load.

If the cause list is supposed to reflect the daily work of the magistrate, the absence of first production and remand matters on the cause list effectively invisibilised this significant aspect of the magistrate's work. Moreover, these matters do not appear to be counted publicly or officially in the daily workload of the magistrate. This lack of information created confusion not just for researchers conducting such a study for the first time, but also for all persons involved in these court processes on a daily basis, including the lawyers, the accused's family, and the court staff. For instance, in a case where the Enforcement Directorate was involved, the family of the accused were financially stronger than the usual families observed during first production and remand proceedings, and as such, they were able to contact the police ahead of the hearing possibly through their lawyer and find out when the accused would be produced in court. While this line of communication between the defence lawyer and the police station appears to be commonly adopted, it is also important to note that very few accused persons have access to lawyers at that stage, and most are produced at first production unrepresented. Therefore, in most cases, the family were either unaware of the arrest/detention at all, or were often sitting at the court the whole day with no certainty of when and where production would happen (see chapter 5 on this).

INVISIBILISATION IS NOT MEANT to suggest that no one (including the actors) knows about this process of first production and remand in courts. Rather, it is about the public invisibility in terms of the cause list.

Invisibilisation is not meant to suggest that no one (including the actors) knows about this process of first production and remand in courts. Rather, it is about the public invisibility in terms of the cause list. First productions are one of the

most crucial safeguards against police excess during the pretrial process. Once a person enters the trial stage or even subsequent stages of the pretrial process, there is much more visibility in the cause list. It begs the question: why is there no such visibility from first production itself? Lawyers suggested that the reason is because the cases are at the pre-chargesheet stage, and there is no formal case registered in the absence of a chargesheet, as a result of which it is not included either in the e-courts website or the daily cause list. Others also noted that since the time for first production is flexible, depending on when the police are able to bring the person to the court after conducting a medical examination, it might be logistically difficult to create a cause list with their names.

RESEARCHERS ALSO OBSERVED that magistrates sometimes undermined their own role in pretrial remand matters. In fact, in at least two-three instances, the magistrates insisted that their role was more important in trial matters.

Our initial reaction to this exclusion of first production matters on the cause list was to accept it as an understandable, if unfortunate, practical necessity. However, gradually, we asked: why is this necessarily the case? Why can't these matters be included in the same cause list under an additional miscellaneous list—perhaps even a handwritten one. As one of our researchers discovered, the Delhi Police already has a daily arrest list that is made public where the names of the accused, FIR numbers and other details of arrest are mentioned.[20] The jurisdiction of the courts is already known and the accused have to be produced before the required magistrate within 24 hours of arrest. Even if there is a potential delay in terms of the time required for processing someone, or interrogating them or even taking them for a medical exam, the matters could still be listed based on the arrest list and modified, as other cases often are as well.[21]

It is also important to acknowledge that even if, for some reason, first productions are difficult to record, it is also unclear why subsequent productions are not recorded on the cause list, since a clear date is always provided for the next date of production in these cases. A clear record of the first production and remand matters due to be produced before a particular magistrate would help in better accounting of the work of the magistrate as well as make this part of their load publicly known and available for monitoring. This would also be a more systematic way of keeping track of the number of productions heard by the jurisdictional magistrate, and the number that are forwarded to the duty magistrate after hours in court, and those produced at the residence of the duty magistrate. Even more crucially, the family of an accused would gain a sense of when the matter may appear and in which court, regardless of their personal equation with the police and the lawyer, and even in the absence of legal representation.

Researchers also observed that magistrates sometimes undermined their own role in pretrial remand matters. In fact, in at least two-three instances, the magistrates insisted that their role was more important in trial matters. One magistrate expressed surprise that the researchers wanted to focus on remand and first production matters. Needless to say, there are a range of other matters that magistrates deal with, many of which are crucial for safeguarding liberty and safety of the accused as well, and studies focused on bail for instance have highlighted these cases.[22] However, first production and remand matters are

significant in terms of how they occur immediately upon a person being brought into custody. That is arguably the most vulnerable point for a person in custody, and the 24-hour rule empowers the magistrate to ensure that the police has realised all procedural safeguards and the constitutional rights of the accused.

As a result, the invisibilisation of their work publicly on this front may also have an unintentional impact of causing magistrates to undermine their own role as far as remand and first production is concerned. Since these production matters are often heard in addition to their regular cases on the cause list, one wonders whether the remand matters get a bit more side-lined as well. After all, there is always also a performance associated with running a court, which in turn leads to some kind of an experience for everyone involved, including the actors and the observers.[23] But given the arbitrary manner in which first productions are conducted, at random through the magistrate's day—for instance, as and when the buses from jail bring the accused from judicial custody or an IO produces them from police custody, without any record of this on the cause list—it is possible that this has an effect on how the magistrates themselves view their work. This is particularly important given that, as shown previously, their performance is often largely dependent on their individual discretion, rather than being structurally defined.

The magistrate's role in production and remand matters may need to be centrally recognised in order to address the current invisibilisation. It is unclear at this point whether digitisation efforts are going to address this lacuna in recording the workload of the magistrate. It is also difficult to ascertain whether there is any record of the pretrial remand matters dealt with by the court, especially given the prevailing language of courts overburdened with trial cases. Indeed one might argue that the spirit of *Arnesh Kumar*—with its mandate to prevent unnecessary arrests and detention, and the role of the magistrate therein—must also extend to recognising the role of the magistrate at every subsequent production to ascertain the need for continued custody.[24]

Moreover, though the jurisprudence recognises the vulnerability of the accused and their constitutional rights under Article 21 on arrest and detention, there is also a failure in the jurisprudence to explicitly link the rights of the accused protected under Article 21 to the role of the magistrate under Article 22(2). Therefore, while the custody jurisprudence, through *DK Basu* and others, emphasise the importance of safeguards on arrest to protect the accused from illegal detention and torture, they fail to correspondingly emphasise the role of the magistrate under Article 22(2) to ensure this protection. While *Arnesh Kumar* emphasises the role of the magistrate to prevent unnecessary arrest and detention, thereby linking Article 21 and Article 22(2), it fails to also recognise the other constitutional safeguards that the magistrate is bound to protect at this stage. Thus, one may conclude that even though the jurisprudence focuses on the role of the magistrate in ensuring safeguards of the accused at the pretrial stage, this has not translated into practice in a manner that is adequately visible, as a result of which, the importance of this procedure and its significance as an extremely important constitutional safeguard has never been fully realised.

THE MAGISTRATE'S ROLE in production and remand matters may need to be centrally recognised in order to address the current invisibilisation.

Implications

In this chapter, we focus on four aspects of the first production and remand process in magistrate courts. First of all, we draw attention to the dynamics within the magistrate court, emphasising the role that several actors play in the court proceedings and in informing the experience of the accused during the hearings. In particular, we point to the significant role of the court staff, particularly the naib courts, in mediating the experience of remand extensions for the accused as well as the first production hearings. While such a role may be born from a need for efficiency, the observations suggest that it may also reflect the lack of importance given to first production and remand matters when considered in the entirety of the magistrate's day. Like other judges, magistrates, too, are overworked and may rely on the court staff a little more in matters that are not seen as significant. This may further have a cascading effect on the accused, who is repeatedly brought to court, with each hearing becoming shorter and treated as a mere formality by the magistrate and the staff. In the process, the magistrates might overlook their responsibility to ascertain the police compliance with due process, and examine whether there are adequate reasons for continued detention, and to ensure the safety and well-being of the accused at each stage.

Second, we examine whether the disproportionate impact of the criminal justice system on marginalised communities is reflected in the first production and remand stage as well. We acknowledge that an effective study of the experience of marginalisation in this context would require follow up interviews with the accused, and it was difficult to assess the role of the social identities of the accused in the court while only recording court observations. In the report, we selected key cases from the court observations based on the dominant patterns capturing the experience of the accused at this stage. Incidentally, the identity of the accused in many of these cases happened to be Muslims. However, the impact of the identity on the experience of the accused was not reflected in the observations regarding these cases, except in the case study in this chapter where the impact of discrimination emerged in a follow up conversation with the accused's lawyer. To that extent, the mention of particular identities—Muslim, DNT, women, middle class throughout the report—is a reminder of the possibility that the identities play a role here, as they do in other contexts in law and society. Yet, it is difficult to definitively state the nature of its connection through this study without follow up interviews.

Third, the role of lawyers is crucial in making certain interventions in the first production and remand stage. As such, the commitment to providing the accused with a remand lawyer as a requirement in this stage has been a major step in ensuring the protection of the rights of the accused. However, this right has been inconsistently observed, and given the pressures on lawyers and the lack of importance given to this stage of the criminal justice process, may have erroneously led to lawyers not prioritising their presence as a crucial requirement in this stage.

Finally, the chapter points to the lack of mention of first-production and remand cases in the cause list. It identifies this omission as a major reflection of how these cases may not be even enumerated in the magistrate's workload, even though constitutionally and statutorily they are the ones responsible for it.

TO ENSURE THE CONSTITUTIONAL RIGHTS of the accused, therefore, it is essential for the judicial system to engage with first productions and remand with a more comprehensive and considerate approach. This would entail, firstly, to probe into the artefacts with the accused in order to ensure that the substantial aspects of liberty and safety are realised, and secondly, to recognise its implications in terms of time, effort and resources on the part of the magistrates.

As a result, the magistrates themselves may or may not be able to give it the priority it needs. As the observations show, the hearing in a case depends on the discretion of an individual magistrate's willingness to follow through on the substantive realisation of due process and constitutional safeguards. Given the heavy workload of magistrates, if there is no structural expectation to protect these constitutional rights and record it as a part of their workload, it may explain why the magistrates primarily focus on the presence of the artefacts at the first production and remand stage. To ensure the constitutional rights of the accused, therefore, it is essential for the judicial system to engage with first productions and remand with a more comprehensive and considerate approach. This would entail, firstly, to probe into the artefacts with the accused in order to ensure that the substantial aspects of liberty and safety are realised, and secondly, to recognise its implications in terms of time, effort and resources on the part of the magistrates. A failure to do both is an improper adherence to constitutional safeguards, as a result of which the accused bears the greatest burden. ■

JURISDICTION
NORTH,
NORTH-WEST

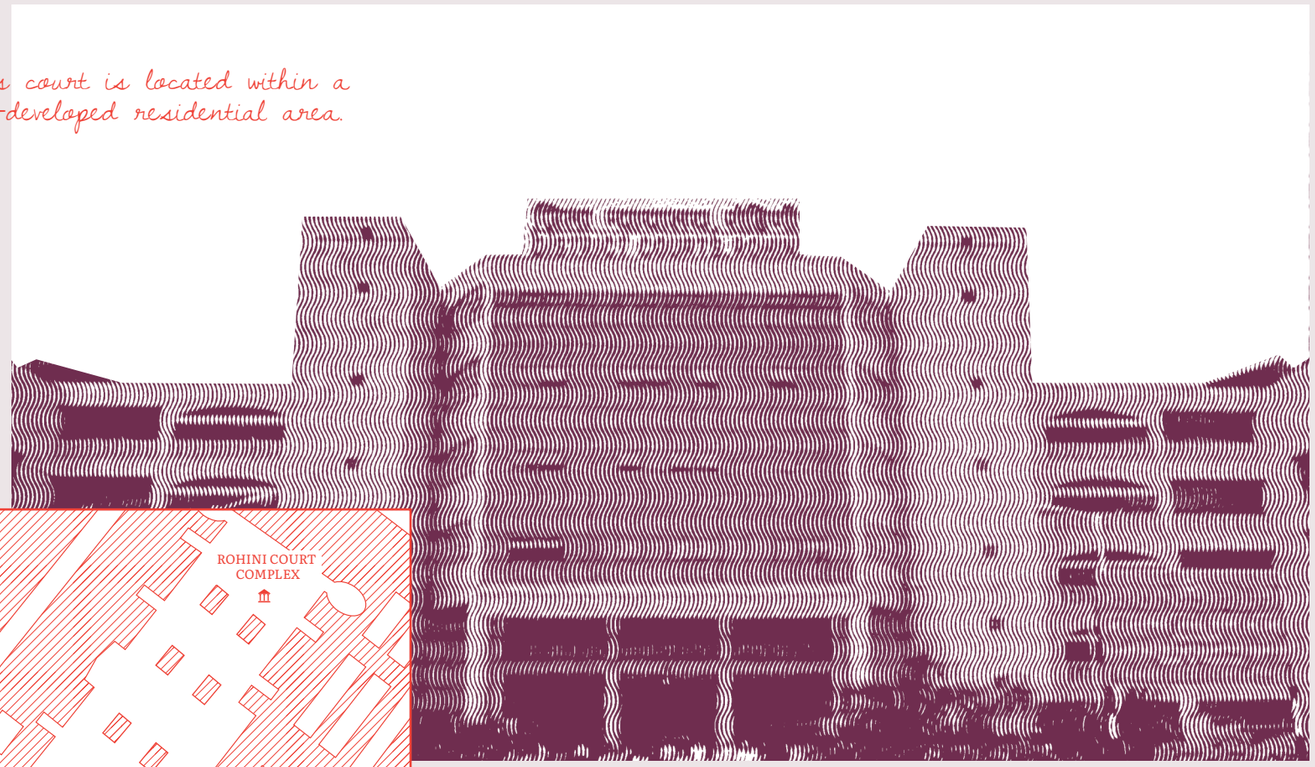
INAUGURATED
2006

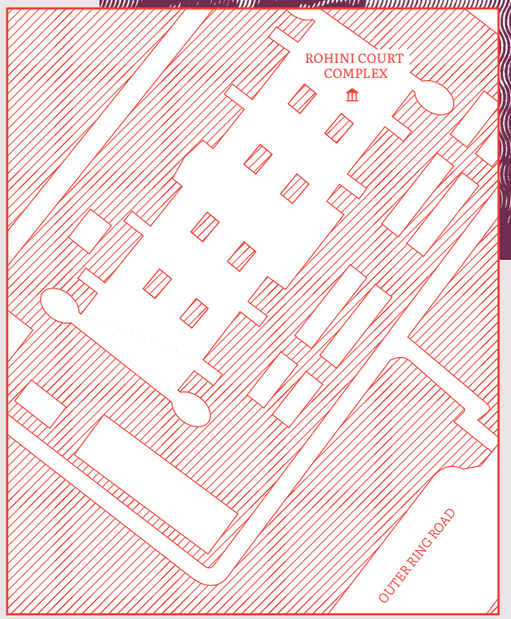
ROHINI COURT

SHRUTIKA PANDEY AND MARY ABRAHAM

The Rohini Court Complex, which serves the districts of North and North-East Delhi, is located within a well-developed residential area on the city's Outer Ring Road. Most mornings are usually marked by the rush of varied people — lawyers, litigants, police officials, and shop vendors. As the day progresses, a silence descends upon the otherwise noisy complex and its surroundings. In sharp contrast to the frenzied bustle of work-day mornings, during court holidays, the corridors and spaces outside the courtroom feel unusually quiet. On these days, even while nearby shops and canteens remain shuttered, it is common to see some accused persons along with police escorts, investigating officers, a few lawyers, and relatives of the accused persons waiting outside the duty magistrate courts.

This court is located within a well-developed residential area.

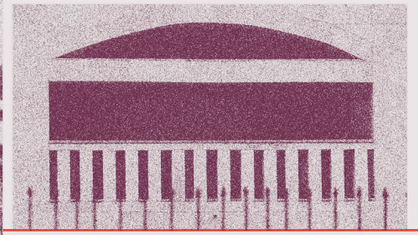




Inaugurated in 2006, the main building of the court complex is well-ventilated and naturally-lit. Four blocks, each of which have five floors, are connected to one another through stairs and ramps. Litigants and visitors must go through two checkpoints — once, at the entry gates of the court complex through Gate No.4, where they have to show a government-issued identity card, and then at the entry point to the buildings that house the courtrooms. The lawyers and court staff can also access the premises through Gate No.4, while Gate No.6 is opened only for jail vans to pass through. The lock-up is nestled between Gates No.5 and 6, obscured by a huge tree. It is a single-storey building with a seemingly impenetrable exterior boundary, all that is visible from the outside are a few exhaust fans.

The corridors have no sense of order. As a result of the somewhat circular layout, people walk in all directions haphazardly, leading to a chaotic scramble on busy days. The lobbies outside the courtrooms are filled with several sets of metal chairs for people to sit on as they wait for their matters to come up. The layout of the courtrooms comes across as unplanned and lacks uniformity. Some are extremely small and crowded, with a section for the ahlmad in the same room, marked out by a row of bulky iron almirahs. Seating spaces are scant and often disorganised, while thick bundles of files are dispersed around the room. A few courtrooms are so small that there is barely any distance between the magistrate, litigants, and lawyers, making their exchanges look like across-the-table conversations.

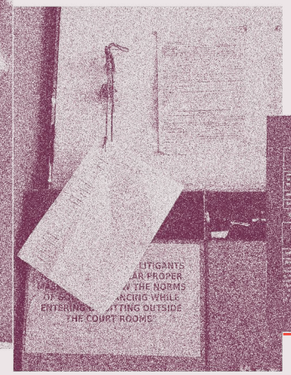
Located near Pitampura metro station



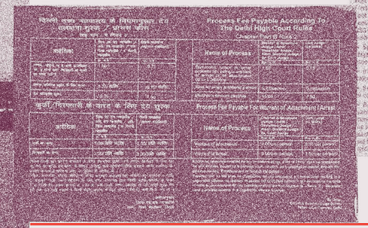
A well-ventilated and naturally-lit building, with stairs and ramps connecting its floors

Bulky iron almirahs can be found throughout the court

Other courtrooms are much bigger in size. Tall almirahs and stacked files line their inner circumference, and a connecting door leads to a separate ahlmad's room. There are also desks which are usually occupied by the naib courts and legal aid lawyers. Two rows of five chairs each are placed for the litigants and lawyers to sit; conventionally, lawyers take up the first row. The second row is usually available for litigants, accused persons, and police personnel. Sometimes, the IOs and police personnel sit along with the naib courts, while still clasping the hands of the accused person they are escorting. In situations such as these, the accused is usually left standing. Some days in these courtrooms were starkly busier than others, with an increased number of litigants and lawyers spilling out of the courtroom as everyone jostled for space. The court staff tended to mitigate this by directing litigants to wait outside till their matters were called out.



Endless stacks of files and papers piled everywhere



Some courtrooms are extremely small and crowded, others much bigger in size

Lockup is a single-storey building, with only exhaust fans visible from outside

In the more spacious courtrooms, the judge sits on an elevated dais, two steps above the rest of the courtroom, along with the court reader and stenographer. The judge occupies a magnificent chair at the centre, right below an imposing golden replica of the national emblem. There are two screens on either ends of the judge's desk — one, displays the orders typed out by the stenographer, and the other, facilitates video-conferencing for certain procedures.

There is a sense of discipline in how the judge's seating area is organised compared to the rest of the courtroom, where piles of files and papers are scattered across various surfaces. While the scale and spatial organisation of these rooms lends the court and its proceedings an air of authority, they also lead to severe issues related to audibility. On busy days, when two procedures go on simultaneously — arguments are being heard in one case while evidence is being recorded in another — it is difficult for those seated in the courtroom to follow the proceedings, much less comprehend them. ■

People walk in all directions, leading to a chaotic scramble on busy days

I II III IV V

NOTES FROM THE FIELD: A STUDY OF MAGISTRATE COURTS IN DELHI

MARY ABRAHAM & PARESH HATE*

V

AT THE END OF THE THREE MONTHS of our courtroom ethnography, all of us gathered on a Zoom call to ask each other how we felt at that moment. Despite the exhaustion of continuous field research while enduring Delhi winters, we all attested to missing the thrill of being in specific magistrate courts and interacting with the different actors in the complex. Going to court had become the daily routine of our lives. The purpose of this study was to understand the role of judicial magistrates in ensuring access to justice and adherence to constitutional and statutory safeguards, particularly concerning arrest and custodial violence. Our primary endeavour was to capture the courtroom dynamics and the textured experience of proceedings at first production and remand hearings, as the central components of the research. But the process became so much more.

Most research looks different at its inception and its end. The trajectory of a study is influenced by shifting expectations, new experiences, responses to the challenges posed by the site, and acquaintances made with multi-faceted individuals who make the research more complex. Ethnography is a highly engaging methodology that demands a distinct kind of investment—physical, intellectual, and affective. Undertaking such a study revealed a complex picture of the courtroom as a site fraught with asymmetrical relations. While engaging with it with a critical lens, we simultaneously immersed ourselves in the everyday functioning of law itself. In the process, we saw the courtroom as a space that produces the good, the bad, and the ugly. As a result, these contrasting yet overlapping facets and our immersive participation in it constituted an integral part of the research. During these three months, we observed not only the court, but also a change in our own feelings and attitudes toward the law and the courtroom.

*This chapter is primarily conceived of by the two of us, Mary Abraham and Paresh Hate, but the narratives, field notes and thoughts of other researchers in the study have been incorporated in the writing of this chapter. We are thankful to Himanshu Misra, Madhuri Krishna, Satyender Singh, Shrutika Pandey, Sonali Chugh, and Swapnil Singh.

This study is unique and significant because there is limited research on magistrate courts/trial courts, and even less work that employs a qualitative approach with ethnographic sensibilities while studying these sites. The methodology required inhabiting a field that was highly hierarchical in its structure and gendered in its design. As the aura of law and order dominated the space, both in our imagination and as a norm, our initiation into the study was marked by apprehensions. All these facts not only shaped the way we understood the courtroom, but also how the courtroom and its participants engaged with us. Our evolving understanding of the court and its processes also led to a corresponding shift in the norms, behaviours, and attitudes among the actors in the courtroom around us—whether engaging in performative acts, attempting to assert power dynamics, or extending their empathy.

This is not to overestimate our importance to the site, but despite our attempts to blend in with the space, we were not silent and passive spectators—the events we observed were, to some respect, determined by our presence. Researchers in Karkardooma said this in the first week of the ethnography: "In some courts, we have become a routine in just four days. For example, one naib court asked a researcher about another when they had not visited. Another naib court even went so far as to comment on another researcher's facial expressions or enquire about their emotional well-being when they were absent. It also seemed to us that many participants in the courtroom enjoyed our company and speaking to us. It is as if they were waiting for an audience and we were relieving them from their routine." From the acquaintance of canteen boys to the suspicion of security guards, the multi-layered structure of the court complex was reflected in our own experience, as we became a routine for the court, as much as the court became a routine for us.

This chapter presents our accounts from this immersive experience and our detailed reflections on it over weekly meetings with the whole team. Though the bulk of interpretations and insights emerge from the thoughts of the two authors, and lean on examples from the court complexes primarily observed by us, the overall argument and experiences draw from the perspectives, conversations, thoughts, feelings, field notes and narratives of all the researchers involved in the study. All of us compared our experiences, abstracted our insights, distanced ourselves from the overwhelming information gathered, made sense of different aspects of the courtroom, discussed our feelings, and understood not only the patterns across courtrooms and court complexes but also the varied hues of emotions that a field riddled with power can invoke.

Our own understanding of the research was aided and shaped by these retrospective reflections over it. Varied interpretations of the same act and figures in the courtroom gave rise to a multiplicity of narratives that reflected the different researchers' subjective experiences, which informed our understanding of courtroom dynamics and the experience of magistrate courts. The descriptions of the court complexes interspersed across this report and the accounts of our experiences realised from this intra-team brainstorming offer a nuanced narrative of the many fascinating things that we observed.

The purpose of this chapter is to demonstrate the inherently hierarchical nature of the court space, and how many aspects designed into its very

structure act as impediments to access it. The effect, for all those who interact with this structure, is an opaque picture of the law and the courtroom. Over the course of the chapter, we also discuss the strategies that helped us navigate the challenges that arose out of the hierarchical and gendered design of the court space.

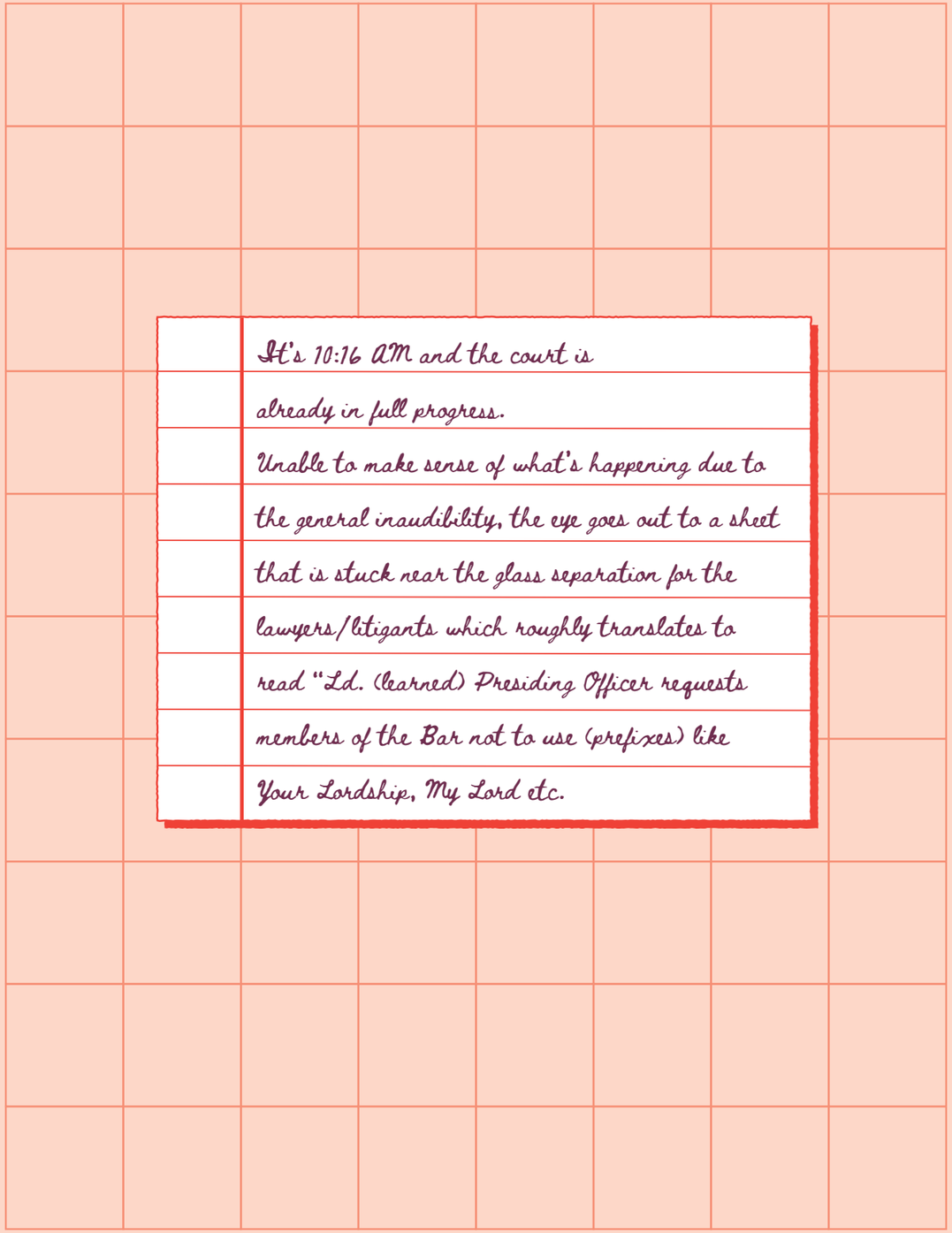
In this first section, we introduce the methodology of this study and the central insights we gained through this courtroom ethnography. In the second section, we show the process of situating ourselves in hierarchical, gendered, and inaccessible courtrooms. Then, in the third section, we discuss the challenges that limit access to the court space, particularly focusing on the arrangement of the court, the unstructured time, the lack of information, the language of the court, and the attitudes of the court actors—all of which contribute to the opacity of the law that our research attempts to demystify. In the final section, before we conclude, we highlight our privileges as researchers, and its visible impact in the court space.

Situating Ourselves in the Courtrooms

As researchers from different backgrounds, each of us negotiated these structures differently. Two researchers were trained as lawyers who found new ways of relating to the law. Others who studied sociology or politics of law and the criminal justice system found themselves surprised at various events and even confirming their suspicion of the law. What was common, however, was the experience of a feeling of chaos, confusion, panic and intimidation as we all set foot inside the complex to do this study, because conducting research in a courtroom was new to almost all the researchers. On the very first day, as the researchers in Saket went around the complex to gauge the space, they were reprimanded and redirected to the main court building. This feeling of out-of-placeness[1] led to continuing apprehensions about accessing the court spaces throughout the course of the study. This apprehension, while mitigated in the first phase of the study, arose again in the second phase, when we moved to a new set of court complexes and magistrate courts.

The reprimanding also bore an undertone of gender policing, which was something that we were never allowed to forget, as it constantly played a crucial role in the hierarchy of the court space. As a whole, the court complex is visibly male-dominated, which includes court staff, magistrates, the administrative staff, and police escorts. The only space where women made their presence felt, perhaps in equal numbers, were the family members who had stepped out to meet the accused in court. This meant that many women researchers had to routinely deal with shoves from the court staff, questions about personal details—such as their caste and class location—being followed around, and facing harassment by lawyers and magistrates that sometimes bordered on being sexual.

Given how some complexes were more gendered and tougher to navigate than others, individual subjectivities had a direct influence on these negotiations, and the possibility of having researchers with specific gender identities in certain situations helped to navigate the barriers of information in the courtroom. A team of men researchers in Tis Hazari noted the ease with



which they were able to locate information and speak to the court staff and the police. While this was advantageous to the study insofar as the access to information, many of these interactions and their casual casteism and sexism led to an emotional toll on the researchers. They were also shocked to hear the experiences of their peers.

A team comprising two women researchers found it relatively easy to access information in a particular courtroom, owing to the presence of a woman court staff. It was easier to strike a rapport there and ask about doubts regarding cases. However, this was in stark contrast to their previous interactions where all the court staff were men, and limited the information shared to merely the stage of the proceedings and the type of remand granted. Similarly, in Karkardooma, when the team was taken to visit the judicial lockup upon their request, one of the researchers, who was a femme presenting/cis-woman, was advised not to go further. As she later noted down, "The officers allowed the researcher who was [masculine-presenting] to go in but hesitated in giving me the permission. The officers said that the accused in the lockup will hoot and pass '*gande*'—vulgar— comments if I go in. Then it will be on them to take some action, which they didn't want the hassle of doing." Following this paternalistic pattern, a team of women researchers in Rohini was asked by a group of lawyers, who had gathered outside the duty magistrate courtroom, to sit elsewhere because of the absence of women there. The lawyers argued that this was in the researchers' interest, given the profanities used by the lawyers in their conversation.

Across all courts, the research teams felt compelled to introduce themselves and explain their presence. This required them to first build an initial rapport with the court staff and then seek permission from the individual magistrate to sit and observe their courtroom for a few days. The teams would introduce themselves as researchers affiliated with Project 39A, National Law University Delhi (NLUD) interested in observing the workings of a trial court, particularly pretrial remand.

Even though courts are public spaces, the magistrate's permission made it easier to situate ourselves in the courtroom. In fact, in Patiala House court, the researchers had to shift courtrooms twice due to the magistrates going on leave. We would then have to make our way to other courts, which meant restarting the whole process of identifying suitable courts, taking permissions, building a rapport with the court staff, navigating its specific spatial challenges, and so on. There were at least two instances where the magistrates made their displeasure known either by flatly refusing permission, asking the team to seek permission from the Chief Metropolitan Magistrates/High Court, or by instructing the researchers to behave in a particular way if they choose to observe the courtroom.

Obtaining prior permission from the individual magistrate also came in handy to prevent the possibility of access being denied halfway through the research. In some courtrooms, particularly before duty magistrates where our presence was limited to a few hours, we could bypass seeking permission unless explicitly asked. In cases where the duty magistrates would be the same as our regular court magistrates, there was a prevailing comfort between the court actors and us. Other times, across the courts, researchers resorted to conversing with the court staff or sitting at the back to avoid undue attention and observe the court proceedings, with or without permission.

One example from Rohini highlights the hierarchical power dynamics in play while seeking the magistrate's permission. While recceing courts at Rohini, the researchers decided to sit in one magistrate's court based on the number of productions that were happening inside, and the crowd of family members gathered outside. Since the court was already in session, the team decided to wait before introducing themselves to the magistrate. After a few productions, the researchers caught her eye and were asked about their presence in her courtroom. They introduced themselves as researchers observing proceedings as part of a study on the trial courts of Delhi. Without expressly granting permission, the magistrate sternly directed them to "sit down." While the productions ensued, the researchers could feel her gaze constantly return to them, revealing a strong dissatisfaction over their presence in her courtroom. They reflected on the experience as follows: "We got a sense of being made to go back to school to sit (in attention) in a classroom where the slightest movement (typing on our phones, whispering to one another, crossing one's legs) would earn her wrath. It was as if, like the accused, our bodies were being put on the stand to be judged and made to undergo trial."

It is worth noting that this nature of hostility was an exceptional case among the magistrates. The majority of magistrates were forthcoming to the research teams observing their courtrooms. Some magistrates would at times joke with the researchers, quiz them, explain things to them or even ask for their opinion—these interactions helped us collect an enormous amount of information for the study.

The amiable interactions with magistrates were not the only deviations from the hierarchical court structures—in one instance, a magistrate took specific measures to try and break down those barriers. A researcher in Saket describes her experience of the incident: "It's 10:16 AM and the court is already in full progress. Unable to make sense of what's happening due to the general inaudibility, the eye goes out to a sheet that is stuck near the glass separation for the lawyers/litigants which roughly translates to read "Ld. (learned) Presiding Officer requests members of the Bar not to use (prefixes) like Your Lordship, My Lord etc." The researcher felt a slight sense of elation reading this but was surprised to hear the lawyers, court staff and litigants address the magistrate with the usual references—*janaab*, your lordship, my lord—throughout the proceedings.

These phrases are commonly used to address the magistrate across all courtrooms, and perhaps due to the weight and title they carry, it was difficult to dispense with them even when requested by the magistrate. We, too, adopted the same customs and vocabulary of the court, perhaps under an assumption that it was an indispensable part of working within the court space. These strategies also allowed us to integrate more effectively and helped in negotiating the feeling of out-of-placeness, by adopting practices that gave a sense of belonging. The most direct and daily example of this was the researchers' decision to wear the colours of the court—black and white—during the fieldwork days. While taking precautions not to present as lawyers—by not wearing the lawyer's collar, for instance—we hoped that this

would help us integrate in the courtroom, and facilitate easier access to the courts themselves.

Here, too, these norms were governed by gender. A queer member of the team stated how they felt the forced gendered clothing was an emotional negotiation every morning while leaving for the court. On one occasion, when they wore a black-and-white salwar kurta typically worn by women lawyers, they drew incredulous stares from all the court actors. We also quickly learnt and followed the courtroom decorum such as standing upon the arrival of the magistrates and bowing to them, which helped in being seen as part of the site. Nonetheless, once the court actors became aware of who we were, there was an attempt to police these aspects as well. A researcher in Karkardooma was asked by the public prosecutor to not fold their sleeves while in court, while a woman researcher was admonished by a woman lawyer about the way she was wearing her shirt.

The courtroom interactions were often marked by the researchers receiving patronising comments by the court staff, the lawyers and the magistrates. These varied from demanding knowledge that the researchers did not possess—such as details about legal procedure—to offering advice about which courts or magistrates would be better to observe given the focus of our study, whom to speak with and whom to avoid. We were rarely allowed to forget that these spaces derived their power from law.

As our relationship with the court staff developed, our interactions grew increasingly informal, especially in the absence of the magistrates, revealing the multifaceted attitudes of the court staff. The court complexes would go through an array of visual changes and colours. The whole vibe of the court space would transform, depending on the time of day. As observed by one researcher, “In the morning hours, till 2 PM, the colour of the court is black and white. After 2.30 PM, it changes into khaki and civil dress. Most of the police personnel, hand-holding the accused, come wearing gloves.” Once the magistrate retired to the chamber, “there [was] light banter everywhere”, a researcher at Rohini observed, and “even as the naib courts, the *ardalee*[2] [orderly] and the *ahlmad*[3] are seen busy running around.” The researcher further noted that the “language of the courtroom, too, shifts from the oft-used mix of English and Hindi to complete Haryanvi, making it difficult to comprehend the conversations that take place.”

Over time, it was in this atmosphere that much of our conversations with the court staff took place. These conversations would sometimes surprise us, especially when our presence was acknowledged positively and we were granted greater access and mobility within the courtroom. We were often asked to move closer to the dock/prosecution’s table to have better access to the proceedings, or to sit at the naib courts’ desk to have a better look at the files/paperwork. These instances would usually be supported with encouraging statements such as, “*Aap* court *ka kaam kar rahe ho*, court *ka hissa ho gaye ho*” — you are doing court work, you are part of the court now – and “*Aap yahan khade ho kar zyada seekh paoge*” — you will be able to learn/hear better if you stand here. These instances would sometimes even extend to an interview with the magistrates, or them sharing notes and additional information about their approach towards conducting pretrial cases. The team greatly benefitted from

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the notes shared by a magistrate in Saket. The note concerned the legal position on issues of arrest and remand of the accused, the grant of bail based on recent decisions, and the observations of an intra-magistrate session on the themes.

However, sometimes the interaction with the court staff would put us in a difficult spot. For example, a researcher at Saket was once asked by a naib court to look at an accused who had come in sobbing silently to ascertain whether he came across as being an offender. The accused had been brought in from police custody handcuffed, and while the MLC recorded no injury on his body, the accused had a visible purple bruise under his eye (discussed in detail in chapter 4). He had been produced before the magistrate inside the chamber and had just managed to sit down in one of the chairs in the courtroom. He let out a little squirm when his hands were held again by the escort police, swollen from the handcuffing. Researchers tried to display stoic, unperturbed expressions in these instances, to avoid antagonising the court staff, while internalising a deep sense of anguish and helplessness at the humiliation meted out to the accused. These incidents were challenging aspects of conducting ethnographic research in a field marked by power and hierarchy. The fact that the study might eventually help in the long term did not feel adequate in the moment and weighed heavily on all of us.

The researchers were similarly able to share informal moments with the accused persons and their family members, opening up more spaces for candid conversations. These would offer a glimpse into their ideas about the criminal justice system. While sharing details of the crime that her husband had been arrested for, a woman was heard repeating the oft-used phrase "*tareekh pe tareekh*" — date after date — referring to the routine practice of cases being adjourned to a subsequent date. In another instance in Saket, the wife of an accused, in all seriousness, commented on the frivolity of the required presence of lawyers when the case was before a duty magistrate: "*Kya hi kaam hoga aaj unka*" — what work at all would they be able to do today. This was a fact that was observed to be true that day as well, as hardly any lawyers were seen despite the accused being produced.

In trying to situate ourselves in the court, we tried to have a formal yet cordial relationship with the court staff. The camaraderie with the court staff was built over time and the continued presence of the research team in pairs (as much as possible) in each of the courtrooms helped. However, we were conscious of the precarity of this equation given some discomforting experiences with the court staff.

Given that the setup of the courtroom was unfamiliar and opaque in its design, the decision to conduct the ethnography in pairs helped negotiate difficult situations. The researchers discussed how it would have been intimidating to navigate the unwelcome space, seek permission from magistrates, and answer questions thrown at the researchers on their own. The partnered research provided a sense of security, trust, and camaraderie in the field, which was acutely necessary in urgent or hostile circumstances. It also facilitated more efficient documentation because the inaudibility of the courtroom often made it difficult to understand what was going on, and for interactions with the court staff, where one team member could ask questions while the other subtly noted down the responses.

It also allowed the researchers to study different aspects of the court structure simultaneously. For instance, the small, crowded courtrooms at Tis Hazari proved difficult for both researchers to either sit or stand inside, so the team decided instead for one to sit and observe the proceedings in the court, while the other observed the informal conversations outside the courtrooms, in the designated waiting areas. The latter's knowledge of Haryanvi would also come in handy to speak to the police officials waiting outside, providing valuable insights especially on their perspectives. In this manner, the teams devised methods that helped them navigate these challenges over the course of their research.

Accessing the Court Space

To understand court dynamics and remand work, we had to first make sense of the daily routines and structures of the court. The first few days, therefore, were spent trying to get a sense of the entire working day and this meant reaching the courtroom before their day began. As we found out, a typical day in a district court started at around 10 am, with a member of the court staff calling out the cases in the cause list as the magistrate moved from one case to the next. Different courts that were observed over the three months of the study were consistent with this initial phase. The cause list organised the daily matters into categories based on the stage of the criminal proceedings, which included appearances, plaintiff/petitioner evidence, prosecution evidence, defence evidence, miscellaneous arguments, orders, charges, and arguments on sentence. This was usually observed to be the crucial work conducted in the first half of the day.

We quickly understood that the chronology of cause list matters varied across courts. In some cases, the lengthy matters were likely to be reserved to be heard after lunch or after the magistrate had heard the rest of the cause list. However, once the cause list was over, the court day was structured by the specific norms and practices of the respective courtrooms. For example, in a Dwarka court, the cause list cases were followed by applications and traffic challans, whereas in a Karkardooma court, the cause list was usually followed by miscellaneous cases that were noted down on a separate sheet of paper by the naib court. In some courts, bail cases were also heard during this period. The cause list also included the post-chargesheet remand or *rehnumai* productions, which were instrumental in getting a sense of how magistrates approached and dealt with these proceedings in general.

Since regular courts took most of our time, accessing duty magistrate courts where the bulk of first production and remand cases happened during the evenings and weekends/holidays was another challenge. Duty magistrates are assigned through monthly rosters for each district, which are put up both on the court website and the information centre in the court complex. They are expected to carry out their function from 4–5 pm at least in the court complex, and from 11 am to 5 pm on holidays, as well as remain available after those hours at their homes.[4]

Since our focus was on the pretrial first production and remand proceedings, our courtroom observation of the regular magistrates' working day had to be coupled with observation from the duty magistrates' courtrooms as well.

We were often asked to move closer to the dock/prosecution's table to have better access to the proceedings, or to sit at the nail courts' desk to have a better look at the files/paperwork. These instances would usually be supported with encouraging statements such as, "Aap court ka kaam kar rahe ho, court ka hissa ho gaye ho" – you are doing court work, you are part of the court now – and "Aap yahan khade ho kar zyada seekh paoge" – you will be able to learn/hear better if you stand here.

Researchers observed that the number of cases before duty magistrates varied between too many and too few. In comparison to magistrate courts during regular working hours, their courtrooms appeared "less relaxed in terms of work but more relaxed in their demeanour" (as described by a researcher during one of the early visits to a duty magistrate court in Karkardooma). The researchers' had to maintain a heightened state of attention, owing also to variations in practices across courts and some difficulty in keeping track of the formal proceedings as duty magistrates often heard them in chambers.

Duty magistrate courts substantially focus on first production and remand work. Since the duty magistrate is not the primary judicial officer to adjudicate the case, their responsibility is largely limited to ensuring continuous production for timely scrutiny.[5] This scrutiny could also benefit the accused by safeguarding their rights. For example, many duty magistrates refused to extend or grant police custody because they did not know the details of the case. One magistrate in Saket expressly stated to an investigating officer that he does not give police custody as a duty magistrate at all. Even with the remand to judicial custody, many duty magistrates use their discretion to list the case for its next date of hearing sooner than usual, so that the accused is produced in front of the designated regular court.

Once we were more comfortable in accessing the courtroom space, and figured out the schedules and logistics of regular and duty magistrates, we were able to situate ourselves in the space more efficiently. Our schedule mimicked the working of the court day. Nonetheless, accessing these spaces involved encountering other challenges. Through our own experiences and observing how other actors in the court navigate these issues, we soon realised that the many aspects laid out below underpin the very structure of the courtroom in its design.

Arrangement of the Court

Despite the knowledge that the courtrooms and the proceedings are open to the public by law, the teams felt a lot of hesitation because of how the courtrooms are spatially designed (hierarchically) to give access to the main actors while relegating all others to the margins. For instance, the chairs are mostly reserved for the lawyers, while the litigants and families of the accused all huddle outside the door, waiting for their case to be called out. This sometimes included the orderly manning the doors, asking those present about their purpose, and authoritatively asking the litigants waiting inside the courtroom to step outside till their turn comes. There was an implicit hierarchy in the access to the courtroom, with the court staff and lawyers given preference over the litigants, families and researchers. This hierarchy was felt and reflected across the entire court complex.[6]

As a researcher in Saket notes, "It felt that there should be a definite sense of purpose to one's presence (in the courtroom). The *ardalee* [orderly] was the most observant in terms of how the decorum was being maintained. He would not let people in plain clothes stay unless their matter was being discussed." Given the enforcement of this hierarchical dynamic within the court, we had to rely on our credentials as researchers associated with NLUD, and our black-

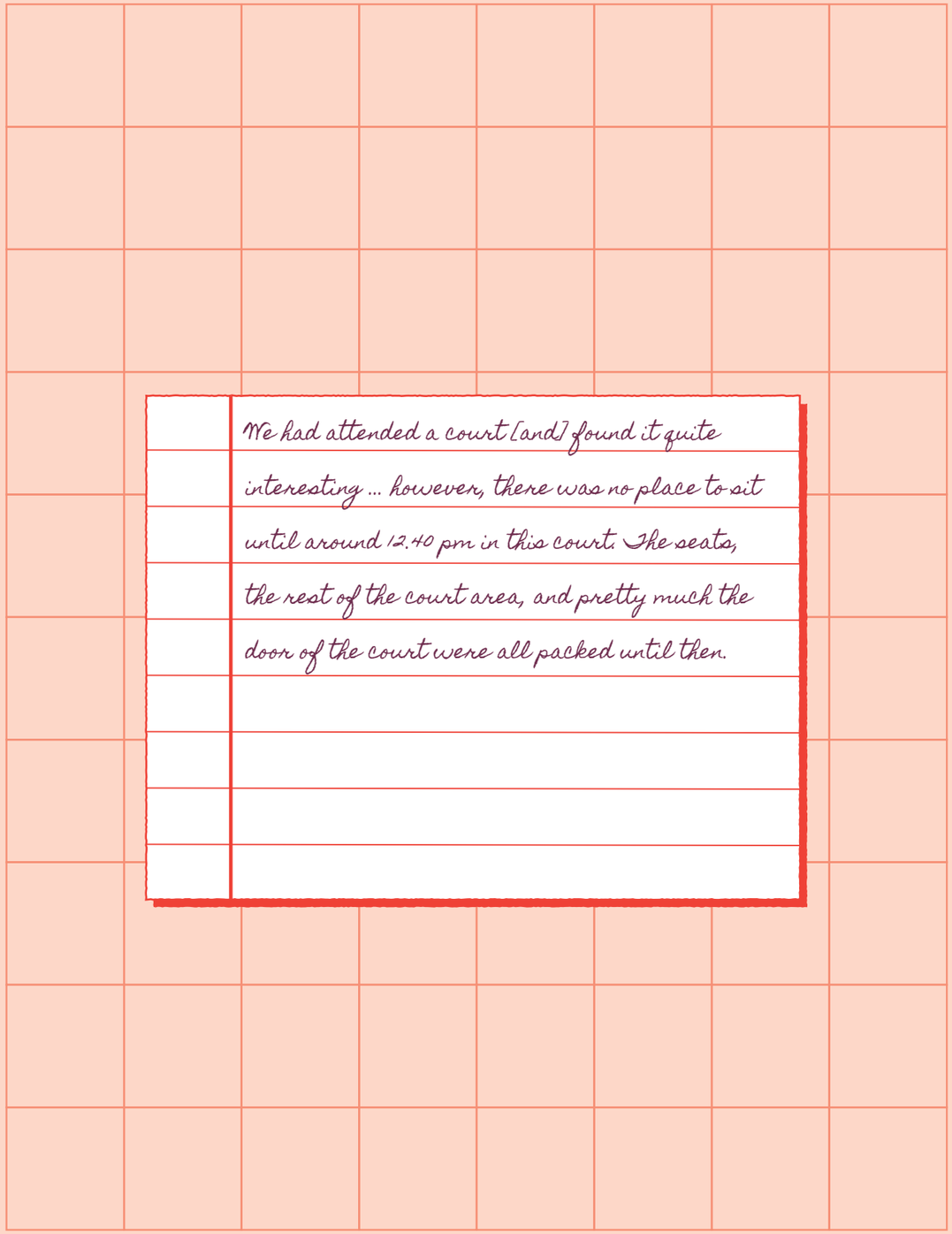
and-white clothes to gain access without much trouble. Depending on the size of the courtroom, sometimes the researchers would be asked what their case was, and could stay in the room either due to their appearance as a lawyer or because they were authorised by the magistrate or court staff as a favour.

The early morning period was the most difficult for finding a seat. A researcher in Karkardooma said, "We had attended a court [and] found it quite interesting ... however, there was no place to sit until around 12.40 pm in this court. The seats, the rest of the court area, and pretty much the door of the court were all packed until then." Access to the courts was often difficult simply due to the crowd and chaos in the morning hours, which was arguably the most important part of a typical day in a court. Nonetheless, we managed to come early to access the court, or at the very least, ensure that one researcher was inside the courtroom to observe regular proceedings - to get a better sense of the entire work day of the magistrate.

Even inside, however, the arrangement of the courtroom affected the audibility of the proceedings. As a researcher observed, "In courtrooms with restricted audibility, only the court staff can hear and make sense of the close conversations." Audibility became a determining factor in choosing a particular courtroom. The bigger the size of the room, the more unlikely for a researcher to hear all the details. The issue of audibility was compounded by the installation of a glass partition between the magistrate and the rest of the court during the COVID-19 pandemic in some courtrooms. Although there were mics in some of the courtrooms, audibility would still continue to be an issue in some cases since many of them were either dysfunctional or most proceedings were not conducted over the mics. Since the magistrates ended up not using mics, many lawyers approached the dais during proceedings. This effectively meant that the accused would usually be far removed from the proceedings that determined their future.

Since our presence in the courtroom was governed by the availability of seats for the most part, inaudibility was a central concern in accessing proceedings. However, researchers overcame this hurdle in many cases because we were more welcome than the accused persons and their families within the courtrooms. As noted by a researcher in Karkardooma, access to such spaces is determined not on the "basis of the availability of space, but dependent on where one (is) coming from." Effectively, the question of access was determined by how one was perceived by those in positions of authority in the court. When faced with such situations, the researchers would often use their camaraderie with the court staff to gather the information needed, go closer to the dais with more confidence and less risk, and peek at the police files and other paperwork that usually accompanies a pretrial case. Hence, a number of the observations that inform the study were a combination of the observations, as well as the result of many conversations with others in the courtroom, including the family, court staff, lawyers and occasionally the magistrates and the accused.

Courtrooms might seem like the only tricky bit to navigate but in reality, the entire court complex had a confusing arrangement. This was especially the case on the days when the proceedings were before duty magistrates. At times, as was often witnessed in Saket, the help desk would itself be confused about where a particular courtroom was situated because the complex had a new



building and some of the courtrooms had been reshuffled. A researcher notes, "the duty magistrate's room is a trick to find - the roster shows it as a particular room, but there are no courtrooms on that floor. Directed by the helpdesk, who seemed to be equally clueless, one set out to reach the assigned floor. We ask the security guard there but they are not aware. A *chaiwallah* (tea seller) pitches in to say that *judge ka chamber hoga*—it must be a judge's chamber." The researcher further adds, "Found an accused and the accompanying police officers and his counsel lost as well while looking for the room in which to produce the former. I tell them that those on this floor are usually found in Building II (the new building) and we proceed to go there." Even in Karkardooma, a researcher had to aid an Investigating Officer (IO) accompanying an accused to find a courtroom where the latter had to be produced.

Sometimes, the court complex was not only confusing but also difficult to access infrastructurally. The team in Rohini and Saket had to use washrooms that were reserved for women advocates. The team in Saket, comprising of two women researchers, found it difficult to locate a "ladies" toilet that was open for them, and eventually, had to make do with the one for the disabled—even that toilet could not be locked from the inside, and had to be held shut from the outside by the other researcher. This gendered disparity was also visible in Karkardooma, where the researchers noticed the dilapidated state of the washrooms reserved for transgender persons, which were exceptionally filthy despite the researchers having observed transgender staff in the complex. While the team was there for a temporary period, this clearly reflected the lack of focus on toilets for those in the courts every day including families, lawyers, and the accused. One researcher had to undergo treatment for a UTI that she had probably contracted while using an unsanitary toilet in one of the courts. The experience of finding and accessing a particular office, courtroom, or washroom was even more pronounced for the accused and their family members who found it difficult to get information about the same.

The Unstructured Time

While each courtroom had a loosely allotted time—such as post-cause list, post-lunch, post 3 pm and so on—for first production and remand at the pretrial stage, the actual time depended on many different factors. A bulk of the remand from judicial custody, for example, was very likely to be heard just before lunch irrespective of the allotted time because most of matters on the cause list would be over by then, and there was sufficient time to attend to remand proceedings. During this period, the naib court went to the judicial lock-up to check on the prisoners on remand who had arrived from judicial custody.

On the other hand, first productions and remand from police custody were more likely to happen after lunch because the accused were brought from police custody, after being taken for their medical examination. There is no way to provide a precise formulation of pretrial first production and remand schedules in each court observed over the three months, even for individual courts. However, researchers managed to capture and note the broad schedule of a typical day, despite the lack of clear information.

Our time in the courtroom, therefore, was marked by a strange experience of time. Researchers were required to scribble down notes, pay heightened attention, and regulate their meals and washroom breaks according to this uncertain and irregular schedule. At its most extreme, this would apply to specific cases, too. For instance, an accused whose case had been heard could be called back for multiple reasons, such as to rectify a clerical error, the magistrate wanting to speak to the accused again, or the lawyer forgetting to clarify something. Our field notes had details of some cases noted over several paragraphs and pages after the initial account was recorded, and sometimes the same case was described differently by the researchers who observed it together. The subjective focus of each researcher, both intentionally and unconsciously, gave us a whole host of insights that would otherwise be lost in the flood of observational data.

Even in duty magistrate courts, time posed many issues and became a challenge to work around. Despite the stipulated timings, most duty magistrates tend to not sit beyond 5 pm on weekdays, except a few who were noted to be meticulous and diligent in their day-to-day activities and sat till 6 pm. On public holidays, including Saturdays and Sundays that were off, the roster expects duty magistrates to arrive at the court at 11 am. On one particular Sunday in Karkardooma, a researcher arrived early to ensure they did not miss any proceedings. They note, "I arrived at the court complex at 11 am. Everything was shut at this time. I checked all three districts' duty magistrate courts and all of them were closed. Eventually, I decided to wait in the courtroom I was familiar with. The court opened at 1.30 pm. The police started coming in with the accused persons around 2 pm. The magistrate arrived at 2.28 pm." Similarly, almost all researchers noted that duty magistrates do not come before 1 pm and they do not sit in the courtroom before 2 pm. It was difficult to ascertain if the duty courts began late due to the timing of police bringing the accused, or whether the police brought the accused at that time due to the magistrate arriving late.

The experience of being in a courtroom could also often be incredibly boring, particularly when it came to waiting for the first production and remand matters, since they were often irregular. Given that these proceedings were quickly wrapped up, we felt frustrated many times waiting the entire day for these short hearings. For instance, one researcher recorded sitting in a Karkardooma court one day when only two productions were due after lunch. Even though both accused arrived an hour after lunch, it took two hours for the magistrate to attend to them. This was partly because the magistrate began training a new *thana* police personnel with stenographic knowledge while the person was typing up the details for these fresh cases. The situation felt bizarre because the training could have been done at any other point outside of regular court hours. The magistrate then dictated orders instead of attending to matters that were in front of her for a long time. The researcher could sense the impatience of the legal aid lawyer, the police, the accused, and the IO, at this disregard by the magistrate. Negotiating court time,[7] therefore, not only meant getting around the various ways in which the day was structured but also patiently waiting for the proceedings to happen.

In Saket court, the researchers observed that on the day of the semi-final of the T20 World Cup, when India was to play against England, the magistrate

extended the lunch break by forty minutes, and only resumed it when India finished a rather disappointing innings. The magistrate's distraction was apparent through the frequent checking of his phone during the morning session. Since this was one of the early days of the fieldwork, the researchers took a while to make sense of this seemingly absurd nature of events. Similarly, the researchers at Karkardooma were frustrated by the low number of first production cases during election weeks, till they overheard the naib court informing the LAC that most police personnel were busy with election duty. It was unclear how the 24-hour requirement was fulfilled on such days. Interestingly, this also led to the magistrate, who usually made it a point to sit till 4 pm or even longer, retiring to their chambers at 3.20 pm on that day. However, this was not the general experience, and variations were noted in the functioning of numerous magistrate courts observed during the three month period of study. There were other days when we were flooded with cases and events—sometimes too many to record.

Lack of Information

Since one of our primary goals was to understand how courts keep track of remand and first production cases at the pretrial stage, we were surprised to learn that no official or systematic procedure was followed to maintain this information. In most cases, the naib court would prepare a list of remand and production cases by identifying the accused persons brought to the judicial lock-up in the court complex. In this process, they did not make any distinction between pretrial and trial-stage cases. For first production and police custody, it appeared that WhatsApp or call intimation was the most preferred method.

Week after week, we attempted to identify the practice across courts. In courtrooms where the court staff had a decent rapport with us, they would simply tell us this information. In Karkardooma, early on, one of the researchers found a handwritten note for tracking the remand cases by simply asking the naib court. This naib court explained the entire process to the researchers, sometimes making them repeat the process to him like a teacher to a student. He also asked them to sit close by during the proceedings so that he could answer their questions. This was one of the easier ways of understanding the procedure.

Not all cases, however, were as simple. In a Patiala House court, the researchers encountered court staff in a magistrate court who often gave them contradictory information making it difficult to confirm the details of the practice of that court. In contrast to other courts, here the researchers also observed that the preparation of handwritten lists of production matters was minimal at best.

The uncertainty of access to and acquaintance with different sites across the court complexes would lead to disappointment if the information proved difficult to find, and excitement when researchers discovered distinct and novel methods across courts. For instance, researchers who went from Tis Hazari, where there was no discernible method of keeping track of remand cases, were relieved to find separate registers for judicial and police custody cases in Dwarka courts.

A researcher notes, "the duty magistrate's room is a trick to find - the roster shows it as a particular room, but there are no courtrooms on that floor. Directed by the helpdesk, who seemed to be equally clueless, one set to reach the assigned floor. We ask the security guard there but they are not aware. A chaiwallah (tea seller) pitches in to say that judge ka chamber hoga—it must be a judge's chamber." The researcher further adds, "Found an accused and the accompanying police officers and his counsel lost as well while looking for the room in which to produce the former. I tell them that those on this floor are usually found in Building II (the new building) and we proceed to go there.

That the pretrial cases did not show up on the cause list further compounded this confusion, not just for us but even the family members who would make the effort to come all the way to make their presence felt by the accused. The quickness of this procedure also caused us to lose track of what was happening in the proceedings and we would have to rely on sitting next to the escort police, the investigating officer, the accused, and the lawyer of the accused to enquire into details of the sections imposed, the date of arrest and the type of custody—whether brought from and sent to. Even here, some would be sceptical of our inquiries, while others would provide wrong information partly owing to their ignorance. Through our observations, we learnt that the indirect rule to identify these cases was based on the presence of an investigating officer during production, which signalled the pretrial status of the case. Sometimes, we resorted to following the police hand-holding the accused in order to observe remand and first productions. However, the confusion remained, especially in cases where the investigating officer was simply absent.

There were many instances of revising details when double-checked from a different source in the court. Over time, some of the researchers started sitting closer to the naib courts to be able to look at the case files for details, while juggling between the obligation of professional distance and the need for obtaining all the information. Given the speed at which the court moved through proceedings along with the limited audibility and mobility in certain cases, this delicate balance was necessary, failing which the researchers would know very little of each case. To ensure the highest clarity, many of us also decided to interact and observe first and make notes later, to avoid missing out on continuous details, while noting down doubts to clarify later. Since the research was also done in pairs, it further helped to discuss and clarify with our research partners. Learning about seemingly tangential aspects of the study eventually aided in a comprehensive account of the site. Yet, figuring out these methods and strategies required persistence, patience, and developing skills of maintaining acquaintance with court actors in the face of implicit hierarchies.

Language of the Court

Yet another aspect of the criminal justice system that limits its accessibility is the fact that the courts assumed a language of their own that is incomprehensible to the general outsider. Terms such as *vakalatnama*[8], *qalandra*[9], *rehnumai*[10], *dasti*[11], *notice under 41a*[12], *compounding*[13]—sometimes touching upon Persian and Urdu roots[14]—required us to continuously learn a new vocabulary of the courts. We needed to repeatedly confirm the meaning of a new term with the court staff, lawyers or using the internet, to understand what was happening. Here, we felt that having some—if not a lot of—knowledge about the law would have been helpful to make sense of things observed in a site like a courtroom.

The curious detail of this situation was that many of us who spoke to our lawyer friends found that they did not know many of these specific legal terms or processes either. This demonstrated how an ethnographic understanding of the courtroom is not equivalent to a litigator's account, even when it comes to the latter's speciality. We also wondered whether the lack of explanation about these legal terms in the court proceedings makes it difficult for researchers, junior lawyers, the accused, and families as well. This is not to say that legal knowledge does not matter, but that it may not lead to familiarity with all aspects of law, especially at the first production and remand level. One of the fascinating things that emerged from the weekly debrief meetings among the researchers was the space to learn from each other's experiences, by decoding and giving meaning to the different terms, discussing the different interpretations that team members had based on the usage in their respective field site.

Attitudes of the Court

The attitudes of court actors do create subtle barriers to comfortably accessing the courtroom. In some instances, these attitudes and ideas devolve into explicit actions that were based on a prejudiced understanding of the accused persons. For example, the researchers overheard many colloquial references—mostly made by the naib courts, the IOs or other police officials—during the absence of the magistrates.

On a particular day at a duty magistrate's court in Tis Hazari, a naib court exclaimed, "*Abhi naye murge nahin aaye hain*"-- the new chickens have not arrived yet — mocking the accused who are brought in as fresh arrests and produced for the first time. In another instance, a naib court in Saket said, "*Yeh dekho, aa gaye baraati*" — look here, the wedding party has arrived — when the accused were finally produced in court. In Patiala House, a researcher once heard the magistrate joke, in response to a lawyer who was opposing police custody for their client, "In Delhi, police custody is like a five-star hotel, what's the problem?" This tendency to trivialise the anguish of the accused reflected how anxious and helpless many accused persons felt during their visit to the court complex. These linguistic motifs drew, at times, upon north Indian Hindustani language and cultural references, while other times seemed to be informal court jargon developed among the court actors. Regardless, they were used in some ways to undermine the seriousness of the situation and these spaces—where a person's liberty was being taken away.

Such verbiage was not hard to come by as the day progressed. They differed in their severity, from comments made in jest to those that threatened to inflict harm on the accused. One day in Saket, an accused tried signalling to his relative, only to be told off by an irked constable to be within his limits, "*Yeh haath tod dunga*" — I will break this hand. These conversations often provided a window into the asymmetrical dynamics of the court. Similarly, handcuffs[15] were routinely relied on, but were usually removed before entry to the courtroom. However, from our observations it was often clear how painful the handcuffs were for the accused.

However, not all court actors seemed indifferent to the concerns of the accused. In the Patiala House court complex, a magistrate told the researchers about how those in judicial custody are under the protection of the magistrate, where *rehnumai* or remand at regular intervals is to confirm the well-being of the prisoner — implying that in such cases there was no need for MLCs or medical examination. Most magistrates tended to underestimate their role in pretrial matters. For example, in the Saket court complex, one magistrate stated that they have quite a limited role at the pretrial stage and the basic response to

production is always, "bail or jail," which was also echoed by magistrates in other court complexes. All of this also made us notice the under-recognised role of the court staff in remand matters, who were the main actors managing these proceedings in the courtroom.

Despite these moments of relief, the overall atmosphere appeared to be unconducive to the mental well-being of the accused persons, and affected their access to justice and comfort with the system of the law.

Demystifying the Opacity

A troubling array of factors came together to create significant barriers to accessing the court spaces. These include the physical arrangement of the court space, both in the courtroom—and its consequent inaudibility—as well as the confusing layout of the court complex; the troubles of figuring out the timings of the court and associated feelings of frustration; the immense lack of information about the legal procedures and court proceedings; and the technical legal knowledge that one had to acquaint oneself with the law. One of our key realisations, as noted in the paragraphs above, was that this experience was not unique to researchers who navigated the court space. Everyone, the accused, their family members, and lawyers, all had to go through these troubles to some degree.

Oftentimes, these challenges were easier for us as researchers to negotiate than for others. Although we had to learn to be content with the fact that some knowledge would remain partially elusive, we managed to employ multiple strategies that were discussed with the entire team and sometimes intuited spontaneously in the field. Despite the challenges and limited access, we perhaps managed to gain more information than what was usually available to others, including at times the accused. However, the key insight that became obvious over time, and which this section attempts to lay out, was that barriers to access were not coincidental but rather structural. They were inherent to the design of the court space. In the process of courtroom observation, our strategies allowed demystifying what is often the opacity of the law, the courtroom as a space representing law, and particularly the magistrate courts where every person connected with a crime is taken to, and yet continues to be an understudied site.

The Privileges of Being a Researcher

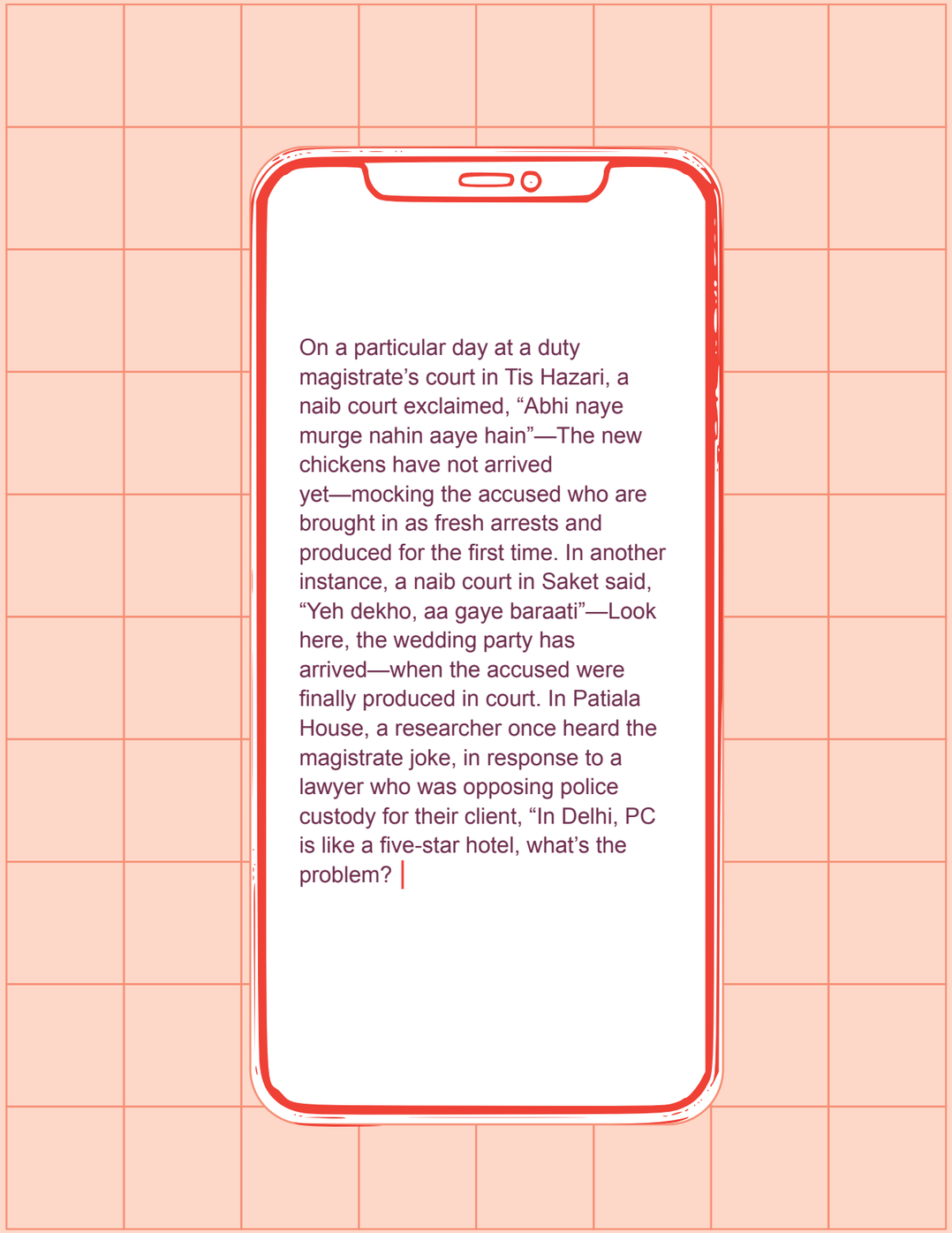
Although our period in the courtroom involved navigating the different hierarchies inherent to the court, the teams were aware of the privilege of being researchers associated with NLUD. This identity gave them easier access to observe these 'public' proceedings. As mentioned earlier, this provided some comfort in situating ourselves in the courtroom. It was a privilege that was, in many ways, not available to other researchers[16] or the family members[17] of the accused. Having more access to the proceedings and the accused, as well as the realisation that we did not have to take these details back home, led to a sense of frustration and guilt over the position of privilege that the researchers occupied.

This privilege, alongside other strategies, also helped in other ways, especially in our association with the family members and the accused. Some researchers intervened by passing over bits of legal advice about court processes, directing the accused persons to legal aid counsels, or even going out of their way to help whenever possible. We undertook these actions because of our own ethical understanding, as well as the shared understanding between us and other actors in the court, about how intimidating and confusing these spaces could be. In one such instance, an accused was observed anxiously waiting for the arrival of his father. In the absence of his lawyer, he was resigned to ask the others present to call his father up and check on his whereabouts, before he would be taken back to jail again. His requests for the same were turned down by those present before one of the team members volunteered to do the needful. In another court in Karkardooma, on the request of the accused, a researcher secretly called up their sister who told them that the police had not informed the family of the accused's whereabouts.

Our continued presence in the same courtroom also meant that we came to sometimes be recognised by family members, who would then reach out to discuss the details of their case. There were other instances when the accused would strike up a conversation or share details of their case. One such incident took place outside a duty magistrate's courtroom, wherein both the accused and the witness were waiting for the IO to return. The witness spent a great deal of time discussing his plight at having registered a complaint, and the countless appearances that he would have to make till the case was sorted. In their ability to communicate with us, we saw glimpses of how we were considered to be a part of the system but also removed enough in ways that they felt safe to reach out to. While we were willing listeners, people embedded in the system, including the magistrate, may come across as unapproachable due to the power they wield, as well as the lack of time they offered, to hear such concerns within the routinised nature of their work.

We had to be careful of how these conversations were construed by the court staff, and most of them, therefore, would take place in the back seats of the courtroom or corridors outside the courtroom. Some of the information came to us in non-consensual ways as part of eavesdropping, or with complexities[18] of the topic which not only included case details, conditions in jail, but also underhand dealings. We wanted to record as much as possible but also were anxious of creating trouble for the accused persons speaking about these things. However, some of these conversations were difficult for us to interpret for they bordered on the absurd. For example, one of the researchers overheard an accused talk to his mother, demanding for a TV to be sent to his barrack. In response to his mother's concern over what would happen to it once he was granted bail and released, the accused matter-of-factly explained that these were in high demand and would be resold within the jail itself.

These interactions were not just limited to the litigants, but even the lawyers, who came to see us as constant features of the courtroom. Our interactions with lawyers varied from simple acknowledgements of each other's presence, to help with understanding the details of a case or criminal processes, and even to informally shared views about the justice system.[19] These conversations, which were sometimes more interaction than that shared between the lawyers and their own clients, made us conscious that by virtue of our privilege as



researchers, we occupied a position of relative power in the same hierarchy that we struggled to negotiate.

Conclusion

Every field note and narrative of the researchers written over the three months of the ethnographic study constitutes a story in itself, too difficult to adequately convey, and yet pivotal in shaping this study. All writing processes involve omissions for numerous reasons but these bits not only shape the researchers but the final product as well. Although each specific instance has not been incorporated in the document that will be read eventually, it has structured the content and the form in more ways than can be registered.

Written and recorded almost every day of the week, and collectively discussed once a week, these field notes constitute the journey of each researcher, documenting their learning and unlearning of numerous aspects of criminal law, courtrooms, and themselves. The many emotions, insights, experiences, and milestones of fieldwork are too vast to be neatly divided thematically, but remain a crucial part of what it meant for us to participate in this research. Even as we set forth to observe the challenges to safeguarding the rights of an accused, we soon realised that we would have to simultaneously develop strategies to navigate the challenges confronting us because of the hierarchical and gendered design of the field, compounded by the inaccessibility of the entire institution. These challenges belie the very idea of access to law and justice in trial courts, and impacts everyone interacting with the system, including the accused, their families, young lawyers, interns, and even the court staff and the magistrates.

The various ways in which we navigated the courtroom are recorded in the field notes and narratives, and emerge as motifs in explicit and implicit ways throughout this and other chapters. This chapter was an exercise in providing a glimpse into the experiential and affective aspects of this study as well as the unstated or rarely shared daily practices that do not feature in thematized accounts of courtrooms or are even captured in methodology sections. In doing so, we hope that they offer perspectives about court spaces that are often hidden behind institutional opacity, not only for those who may engage in similar research, but also for those who practise and care about the law and legal institutions. ■

JURISDICTION
SOUTH-WEST
INAUGURATED
2008

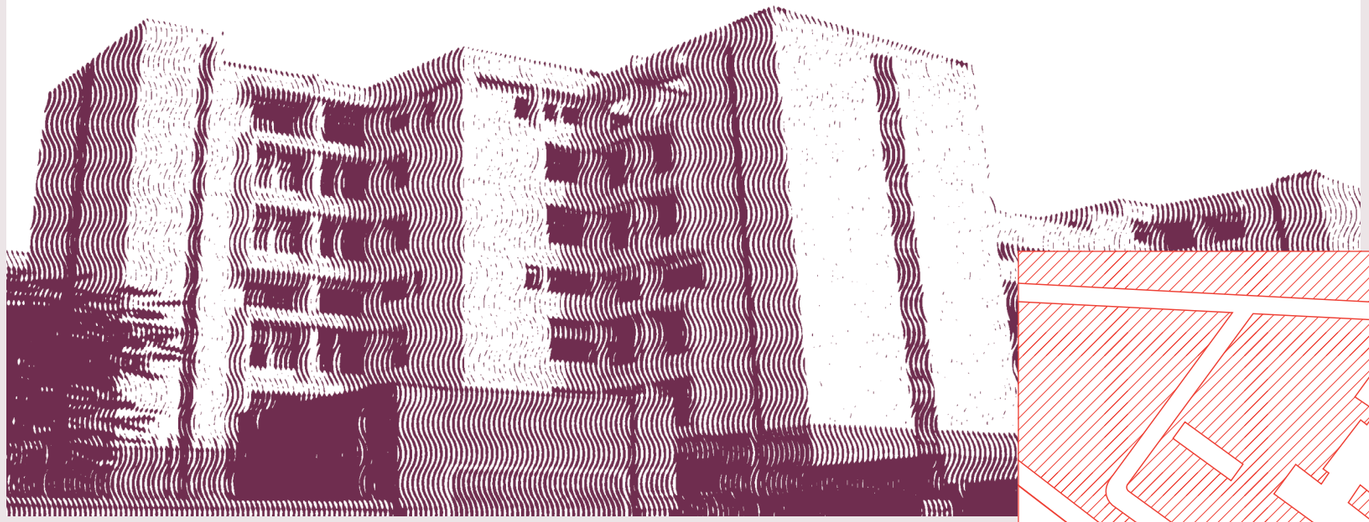
DWARKA COURT

HIMANSHU MISRA & SATYENDER SINGH

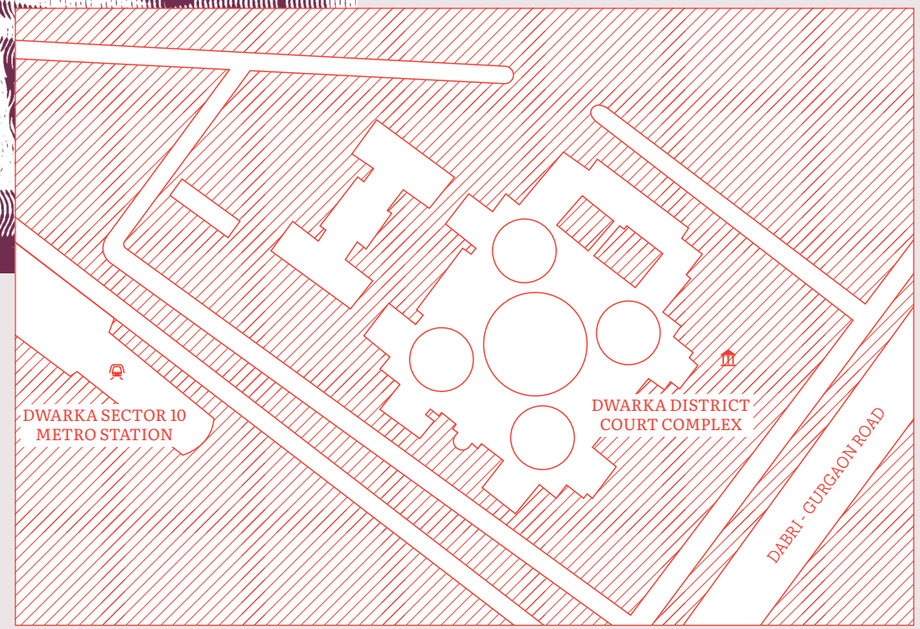
Situated between the Dwarka Sector 10 metro station and the state-run Indira Gandhi Hospital, the Dwarka District Court blends in with the government structures it is flanked by. It was inaugurated on September 6, 2008, by the former Chief Justice of India, K.G. Balakrishnan, and has jurisdiction over South-West Delhi. While the complex has multiple gates, only two are open to lawyers, as well as visitors. Unlike other courts, the entrances to this complex are not segregated. Anyone can access the complex by showing the security officials a government-issued identity card.

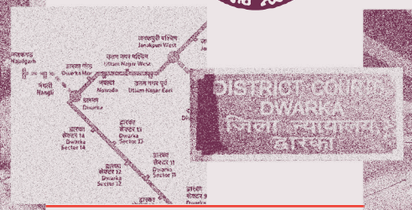
In order to access the main court building, one must cross two security check-points. This building comprises four separate wings — A, B, C, and D — which are connected by hallways or bridges. Spread across different floors of the seven-storey structure, each wing has a circular layout with courts dotting its circumference. The fourth floor is not accessible to either litigants, advocates, or visitors. The complex also has a separate administrative and lawyers' building. The ground floor of the lawyers' building has a canteen and a few other shops. Fresh air and sunshine stream in through a central courtyard — decorated with four ornamental hedges trimmed into the shapes of a peacock, a lion, a book, and a lotus.

The court blends in with the official buildings it is surrounded by



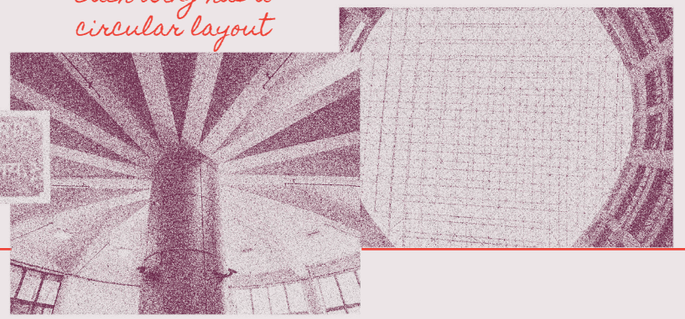
The elevators of the complex, which can be accessed by the general public, are unusual. Instead of floor buttons inside each elevator, there is a common panel of buttons outside the elevators along with an electronic screen. Once a floor number is selected, the screen on the panel indicates the lift to be taken for the particular floor selected. This design modification, presumably meant to achieve efficiency and speed, can be confusing to navigate initially. There are separate elevators for undertrial prisoners. A raised ramp for undertrial prisoners runs across all floors, and access to it is heavily guarded on the ground floor, from the court lock-up.





Between the Dwarka Sector 10 metro station and the state-run Indira Gandhi Hospital

Each wing has a circular layout



Elevators in the complex are one of a kind

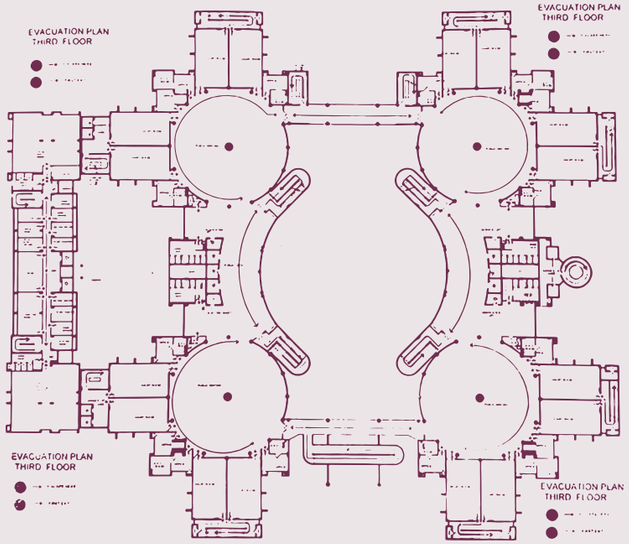
Ornamental hedge trimmed into a peacock shape

Relatives/litigants waiting outside the courtroom

The witness-boxes resemble their cinematic depictions

Fresh air and sunshine stream in through a central courtyard

The courtrooms are fairly spacious, equipped with an adequate number of chairs so that everyone who is present can be accommodated. Files tend to be stored either inside almirahs within courtrooms, or in the *ahlmad* room, which is adjacent to the main courtroom. The courtrooms on the ground floor seem to be bigger than those on other floors. Each room has a wide and tall doorway; litigants or their families often peep into the proceedings from behind the doors as they are waiting for their matters to be called out. The courtrooms in Dwarka have one partition, which separates the dais occupied by the magistrate and some members of the court staff — such as the stenographer and reader — from the rest of the courtroom. The witness-boxes adjacent to the dais, with embellished wooden railings, resemble their cinematic depictions. Witnesses step into these boxes during procedures such as the recording of their statements and cross-examination. An accused, if produced within the magistrate's chamber, would have to go across the courtroom and enter their chamber through the dais.



The building has four separate wings connected by hallways or bridges

By lunch, a restive crowd, comprising those involved in cases that are yet to commence or relatives waiting for their loved ones to be produced from custody, throngs the main door. The court orderly frequently asks them to stand aside. The delays may often feel endless, and tempers can run high — but when the course of your life can be altered by the outcome of a case, there is little to do but wait. ■

KEY CONCLUSIONS

THIS ETHNOGRAPHIC STUDY of magistrate courts of Delhi draws attention to two aspects of the criminal legal process that have received inadequate focus, but are critical for ensuring the protection of life, liberty, safety and dignity of an accused on arrest and during further detention.

Everyday Functioning of the Magistrate Courts

Though situated at the very bottom of the judicial hierarchy, the judicial magistrate courts play a significant constitutional function, where every person arrested must be produced within 24 hours of arrest.

Focus on the Pretrial Phase

The emphasis of the study is on the pretrial phase of the criminal legal process, particularly during first production and remand, and the constitutional values and substantive protections at stake in these proceedings.

First Production and Remand

The study considers the public performance of magistrates at first production and remand hearings through courtroom observations in magistrate courts in Delhi. First Production and Remand refers to the due process procedures whereby the constitutional protections of the accused — life, liberty, dignity and safety — under Article 21, can be reviewed by the magistrate under Article 22 (2) of the Constitution of India.

Ethnographic Approach

Observing the courtroom proceedings over a period of three months between — November 2022 to February 2023 — allowed the team of **eight** researchers to consider the functioning of courts at this stage, beyond questions of compliance with procedural requirements. Researchers focused on the role of multiple court actors, and observed the manner in which courtroom dynamics and social hierarchies mediated the experience of the accused in the courtroom.

Artefacts of the Arrest Memo and Medico-Legal Certificate (MLC)

Observations attested to the prominence of two key procedural requirements at first production and remand, the Arrest Memo and MLC. Both these artefacts were originally introduced to ensure transparency and accountability in police action and the safety of the accused on arrest and in detention. Rather than thinking of these safeguards as bureaucratic documents, we define them as artefacts that were introduced as creative mechanisms to address concerns with liberty and safety of the accused at this stage, and function as a starting point for the judicial scrutiny of the magistrate at first production and remand – making it a substantive protection and not only a technical requirement.

Engagement of Magistrates

Most magistrates ensured the presence of the Arrest Memo and/or the MLC in the file during production and whether the required details were filled in. The system thus acknowledges that the Arrest Memo and MLC are important to protect the accused from illegal detention and torture in this vulnerable phase of custody. .

Engagement with Paperwork

- Paperwork may not always be a comprehensive or even an accurate record of the experience of the accused. Meaningful engagement with the artefacts is key to ensuring that the paperwork corresponds with the actual experience of the accused on arrest.
- The absence of a standard format for Arrest Memo or the MLC contributes towards the lack of clarity about the information necessary to protect the rights of the accused at this stage.
- There are gaps in information arising from an absence of information in the forms. For example, in the Arrest Memo in use in Delhi, there is no column for age.
- The focus of the court was on ensuring that compliance with procedure was reflected on paper. Even where violations were noticed, they were absorbed and corrected on paper, while its impact on the rights of the accused was overlooked.
- Since first production and remand are seen as a procedural requirement where paperwork is prioritised, the court administrative staff, particularly the naib court, appear to take on an unusually important role in these proceedings. They are key actors coordinating productions and checking that the paperwork are in order.

Experience of the Accused

- Magistrates rarely interact with the accused to ascertain their well-being beyond a brief query. Unless the magistrate embarks on a meaningful interaction with the accused, their family, and the remand lawyers, they are unable to ensure the actual protection of the accused's rights.
- The entire system is organised such that the onus is on the accused to themselves draw the magistrate's attention to violations experienced in custody.
- The examination of the MLC is not taken as an opportunity to probe the origin of injuries — by the police or the public — and to ensure the continued well-being of the accused.
- There is an absence of an Inspection Memo or record of injuries/condition of the accused on arrest.
- Accused are produced from police custody by police officers from the same police station investigating their case. There is no separation between the police and the accused at this stage in order to create an environment that is conducive to the accused to raise their concerns about possible police violence, that even the most sympathetic magistrate cannot overcome.
- The focus of the jurisprudence at pretrial stage regarding first production and remand appears to be more concerned with questions of unnecessary arrest and detention, while issues of custodial violence and safety of the accused are inadequately addressed.

Role of Remand Lawyers

Despite 'remand lawyers' (a special category of legal aid lawyers) being especially appointed to ensure legal representation at the pretrial stage, they were noticed to be usually absent from court. First productions and remand were usually carried out in the absence of legal representation, often in magistrates' chambers without any public gaze on the proceedings.

Workload of Magistrates

Structurally, first production and remand proceedings do not appear to be accorded proper time in the daily workload of the magistrate. In the already burdened work day of the magistrate, first production and remand matters are heard at random, in parallel to or in between other proceedings in the court; contributing to the absence of remand lawyers and legal representation. The heavy workload of magistrates, and the perception of these pretrial proceedings as unimportant, might result in magistrates not treating each and every production matter before them as unique and warranting a careful inquiry into the detention and well-being.

Invisibilisation in Causelist

Production matters are not even mentioned in the cause list, the most publicly visible document of the schedule of a magistrate court. While these are not the only category of matters excluded from the cause list, its exclusion appears to undermine the substantive importance of this procedural requirement.

LIMITS OF ENGAGEMENT

Magistrate courts are primarily focused in the first level analysis namely (ensuring presence of artefacts in the case files). There was not enough effort to verify the contents of the paperwork, or inquire with the accused present in court or with the family of the accused. Very rarely did magistrates treat these artefacts as a starting point of their inquiry, to ascertain the reality of the experience in custody, and to ensure that the constitutional purpose behind the safeguards had been substantially felt by the accused. The public performance of ensuring compliance with statutory safeguards and ensuring realisation of constitutional rights is not given its due importance.

Consequences of Violations

While there are constitutional and statutory protections to be followed on arrest and in custody, there is an absence of clear guidance about the tools available for magistrates to deal with the violation of these safeguards at first production and remand.

Future directions

- This study offers a starting point for conversations, interventions and further research on magistrate courts and remand hearings, and district courts in general.
- With extended periods of pretrial detention in the new criminal law framework[1], there is need for urgent attention to ensure that statutory safeguards are implemented substantively and systemic faultlines addressed effectively. While the new criminal laws intend to bring about changes in the structure of the magistracy[2], the organisation and work structure of a magistrate remains unchanged.
- The implication of not providing relief for violations of safeguards at the pretrial/ first instance has the potential of undermining the integrity of the criminal justice system.
- The significance of the role of the magistrate in ensuring the life, liberty, safety and dignity of the accused has also been overlooked in jurisprudence. There also remain gaps in the law regarding what amounts to a violation of safeguards on arrest and remand, and the consequences of the same. ■

[1] *See* S.187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 which is due to replace the Code of Criminal Procedure, 1973 in July 2024, as part of the complete overhaul of criminal laws in India.

[2] A different system of judicial hierarchy of Metropolitan Magistrates in Metropolitan areas, including Delhi (Section 16 to Section 19, CrPC) has been excluded under the Bharatiya Nagarik Surakha Sanhita, 2023 (due to be enforced in July 2024).

JURISDICTION
NEW DELHI

INAUGURATED
1912

PATIALA HOUSE

MADHURI KRISHNA AND SWAPNIL SINGH

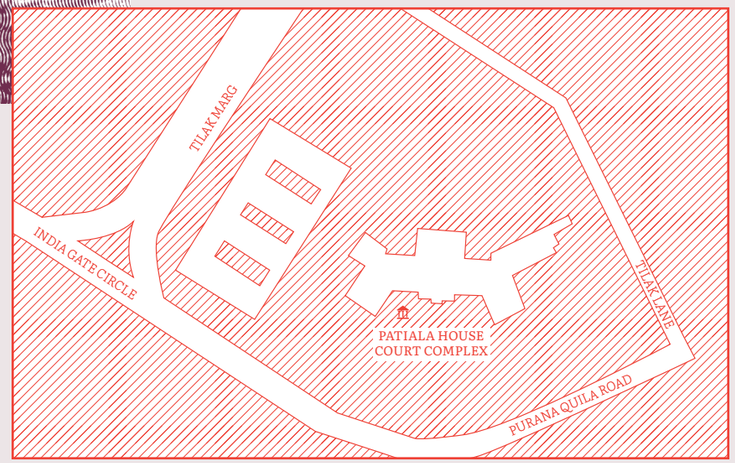
The Patiala House Court has jurisdiction over the New Delhi district, which is the administrative district located at the heart of the national capital. Until 1978, the Delhi High Court operated from here, but it then transitioned to functioning as a district court. In 1997, the criminal courts from Parliament Street were shifted to Patiala House Court. The nearest metro stations are the Mandi House and Supreme Court (Pragati Maidan) metro stations.

The court complex has eleven gates. The building previously belonged to the Maharaja of Patiala, which is why the structure is reminiscent of a feudal haveli. Located close to India Gate in Central Delhi, this court complex exudes an aura of importance despite having only one district under its jurisdiction, partly because of its historical roots.

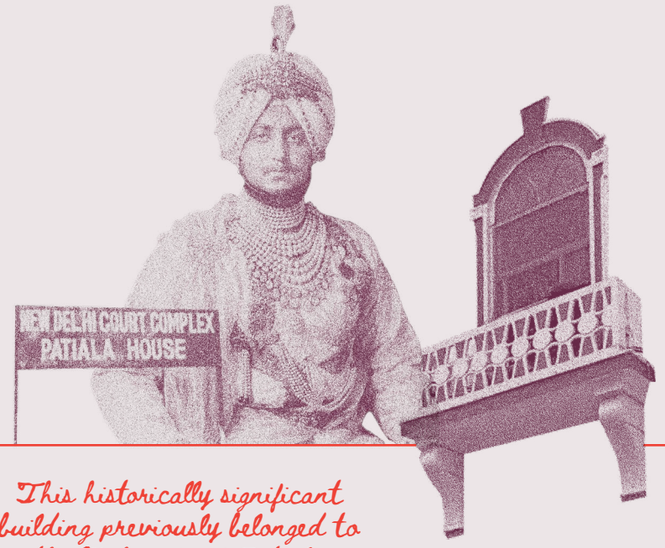
Upon entering the court complex, a person would first encounter a diverse range of stores for *chai*, vegetarian and non-vegetarian food, tailored clothes, and books. The rear of the building is populated by lawyers' chambers, law firms, and photocopy machines. The office of the District Legal Services Authority is near Gate No. 6; to its left are the *ahlmad* rooms and the dispensary. Since the complex was formerly a residential structure, the courtrooms are of varying sizes; some even have a fireplace. The court lock-up is not in an isolated space, and few courtrooms are located in the same building. A big blue board is stationed at the food-court area. It displays the name of Metropolitan Magistrates and their corresponding courtroom numbers, although the information is usually outdated. It is hard to overlook the narrow lanes connecting the decorated facade in the front of the court to the rear end of the building, as it tapers into narrow *gullies*. These winding lanes leading to lawyer's chambers, oath commissioners, more photocopy and stationery shops, as well as more food and tea stalls are evocative of Old Delhi, distinguished only by the large number of people in black coats.

The court building's structure is reminiscent of a feudal haveli

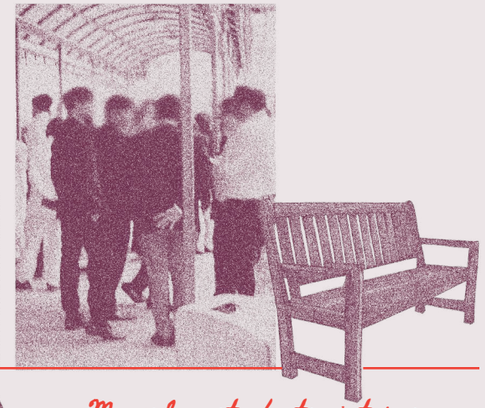
Many courtrooms in the complex were under renovation, yet remnants of the erstwhile haveli's past lingered on. Its contemporary transformation into a court seemed to have been carried out in haste, since it failed to fully accommodate the growing load of cases and the need for digitalisation. The Patiala House Court is a structure that appears to sit at odds with the demands that are being made of it. This is apparent in the continued presence of a cash counter within the building, and a room that houses a telephone exchange. Rows and rows of metal almirahs are arranged like dominoes along every corridor.



Close to India Gate, the nearest metro stations are Mandi House and Pragati Maidan



This historically significant building previously belonged to the Maharaja of Patiala

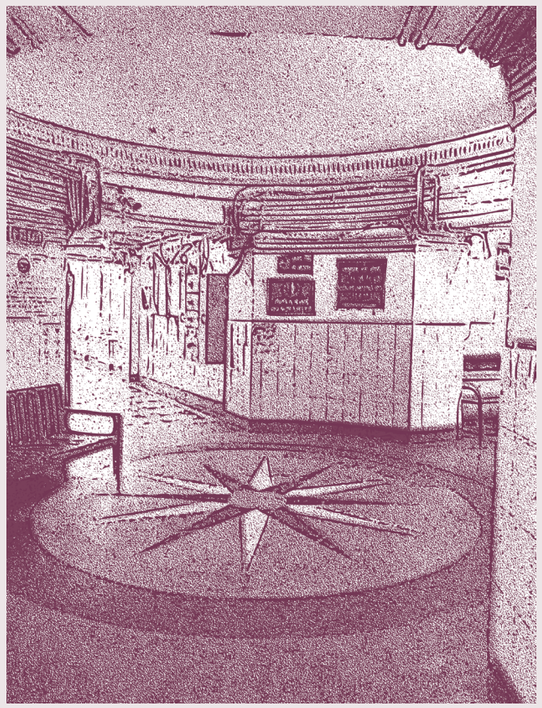


Many law students, interns and young lawyers are seen shadowing their seniors.

The rear of the building is populated by lawyers' chambers, law firms, and photocopy machines

The individual courts appear to be stuck in time as well. Some courtrooms are so small that they only manage to provide space for a single row of chairs. Every magistrate court that we saw was different, no two courts were exactly alike. At peak hours, the courtrooms are sites of frenetic activity, but by lunch they usually clear out. After lunch, the courtrooms operate at a far more languid pace, and the role of the court staff assumes a greater significance in the operation of matters.

A remarkable number of law students, interns and young lawyers shadowing their senior colleagues are present in this court complex. Since the members of the court staff were also attuned to this constant influx, it made our access and entry to the space relatively easy. In that sense, the people of Patiala House Court appear to have succeeded in keeping pace with the changing times, even as the complex they inhabit struggles to do the same. ■



Remnants of the erstwhile haveli's past lingered on

ENDNOTES

CHAPTER I • INTRODUCTION

1. Nitya Ramakrishnan, *In Custody: Law, Impunity and Prisoner Abuse in South Asia* (1st edn, SAGE India, 2013), p.144.
2. Jinee Lokaneeta, *The Truth Machines: Policing, Violence, and Scientific Interrogations in India* (University of Michigan Press, 2020), p.144.
3. Chargesheet No. 39/2020 (25.09.2020), p.55. The chargesheet is on file with the author. It mentions that the police did not ask for police custody since there were health issues involved. *See also* Megha Kaveri, "Justice for Jayaraj and Bennix: Timeline of two Shocking Custodial Deaths in TN" (*The News Minute*, 26 June 2020) <https://www.thenewsminute.com/tamil-nadu/justice-jayaraj-fenix-bennix-timeline-two-shocking-custodial-deaths-tn-127424> accessed 9 September 2023; Megha Kaveri, "Demand grows stronger to probe the role of Sathankulam magistrate in custodial deaths" (*The News Minute*, 26 June 2020) <https://www.thenewsminute.com/tamil-nadu/demand-grows-stronger-probe-role-sathankulam-magistrate-custodial-deaths-127388> accessed 25 October 2023.
4. The Constitution of India (1950), Article 22.
5. It is important to note that while the text of Article 22 does not specify all these aspects of a first-production and remand hearing, over time, jurisprudence has enumerated this expansive role of the magistrate. See *D.K. Basu v. State of West Bengal*, (1997) (1) SCC 416; *Arnesh Kumar v. State of Bihar*, (2014), AIR 2014 SC 2756; *Satender Kumar Antil v. Central Bureau of Investigation & Another*, (2022) 10 SCC 51; *Khatri v. State of Bihar*, (1981) SCC (1) 627; *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96; *Nandini Satpathy v. P. L. Dani*, (1978) 2 SCC 424. *See also* Commonwealth Human Rights Initiative, *Judicial Scrutiny at First Production of Arrested Persons: A Handbook on the Role of Judicial Magistrates*, (New Delhi, 2020).
6. See Code of Criminal Procedure (1973), s.167; *Khatri v State of Bihar*, (1981).
7. *Arnesh Kumar v. State of Bihar*, (2014), para.8.1, 8.2.
8. *Arnesh Kumar v, State of Bihar*, (2014), para.11.
9. Karan Tripathi, "Criminal 'Injustice': How Courts Use 'Remand' to Penalise the Poor" (*The Quint*, 30 June 2021) <.https://www.thequint.com/news/law/how-delhi-courts-penalise-the-poor-through-mechanical-remand> accessed 9 September 2023.
10. Sonal Makhija, *Nothing Happens Everyday: An Ethnographic Study of the Everyday In a Lower Court in Mumbai*, (PhD Dissertation, University of Helsinki, 2019).
11. See discussion in *Joginder Kumar v. State of Uttar Pradesh*, (1994) SCC (4) 260; *D.K. Basu v. State of West Bengal*, (1997); *Arnesh Kumar v. State of Bihar*, (2014); *State of Punjab v. Ajaib Singh*, AIR 1953 SC 10
12. The *Arnesh Kumar v. State of Bihar*, (2014) judgment notes, "Before a Magistrate authorises detention under Section 167 CrPC, 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*." Though reference is to "all constitutional rights," the court's focus in this decision is limited towards provisions preventing unnecessary and unjustified arrests, and there is no explicit consideration of the importance of other safeguards on arrest, such as scrutiny of the Arrest Memo, MLC and so on.
13. S. Muralidhar, *Crime, Punishments and Justice in India: The Trajectories of Criminal Law*, (Project 39A, National Law University Delhi, 2019).
14. Rohan Alva, *Liberty after Freedom: A History of Article 21, Due Process, and the Constitution of India*, (Harper Collins India, 2022).
15. S. Muralidhar, *Crime, Punishments and Justice in India*, (2019), p.6.
16. To that extent, often those discussing laws regarding torture do not necessarily mention Article 22(2) of the Indian Constitution, and those focusing on Article 22(2) similarly focus on the role of the magistrate only towards ensuring personal liberty.
17. Upendra Baxi, *The Crisis of the Indian Legal System*, (Vikas Publishing House, 1982) as cited in S. Muralidhar, *Crime, Punishments and Justice in India*, (2019).
18. People's Union for Democratic Rights, *Dead Men's Tales: Deaths in Police Custody Delhi*, (New Delhi, 2000); Youth for Human Rights Documentation, *Extinguishing Law and Life: Police Killings and Cover up in the state of Uttar Pradesh*, (2021).
19. S. Muralidhar, *Crime, Punishments and Justice in India*, (2019), p.24.
20. Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India*, (Oxford University Press, 2013) talks about how during her field research judges asked her to hide the fact that she was not a lawyer.
21. Mayur Suresh, *Terror Trials: Life and Law in Delhi's Courts*, (Fordham University Press, 2023); Daniela Berti, "Trials, Witnesses, and Local Stakes in a District Court of Himachal Pradesh (India)" in Joanna Pfaff-Czarnecka and Gérard Toffin (Eds.), *Citizenship, Democracy, and Belonging in the Himalayas* (SAGE India, 2011), pp.291-313.
22. The cause list is a document which lists the scheduled cases before a particular court. *See* Appendix - Cause list, p.x
23. Appendix - Duty Magistrate Roster, p.xii
24. Pratiksha Baxi, "Out of Place in an Indian Court: Notes on Researching Rape in a District Court in Gujarat (1996-8)" in Lynette J. Chua and Mark Fathi Massoud (Eds.), Out of Place: Fieldwork and Positionality in Law and Society (Cambridge University Press 2024), p.135.
25. Pratiksha Baxi, *Public Secrets of Law*, (2013).
26. *See* Appendix – Guidelines for Safety during Fieldwork, p.i
27. *See* for example some prominent court ethnographies Mayur Suresh, *Terror Trials*, (2023); Daniela Berti, "Trials, Witnesses, and Local Stakes in a District Court of Himachal Pradesh (India)", (2011), 291-313; Pratiksha Baxi, *Public Secrets of Law*, (2013). There is no substitution for this kind of court ethnography that can then become essential resources for short-term projects as well.
28. Baxi, for instance, spent 18 months in the field. Pratiksha Baxi, *Public Secrets of Law*, (2013). Basu similarly mentions spending 2001, 2004-5, followed by annual visits. Srimati Basu, *The Trouble with Marriage: Feminists confront law and violence in India*, (University of California Press, 2015), p. 21.
29. Pratiksha Baxi, *Public Secrets of Law*, (2013), p. xxiii.
30. Srimati Basu, *The Trouble with Marriage*, (2015), p.1.
31. Pratiksha Baxi, "Out of Place in an Indian Court: Notes on Researching Rape in a District Court in Gujarat (1996-8)" (2024), pp. 119-136.
32. Sonal Makhija, *Nothing Happens Everyday*, (2019); Pratiksha Baxi, "Out of Place in an Indian Court: Notes on Researching Rape in a District Court in Gujarat (1996-8)" (2024), pp. 119-136; Mayur Suresh, *Terror Trials*, (2023).
33. Mayur Suresh, *Terror Trials*, (2023), p. 31.
34. Commonwealth Human Rights Initiative, *Judicial Scrutiny at First Production of Arrested Persons: A Handbook on the Role of Judicial Magistrates*, (2020). *See* Appendix – Court Observations: Guiding Questions for Researchers, p.iii; Master Check-list: Duties of the Magistrate at First-Production (CHRI, 2020), p.vi
35. Anuj Bhuwania, *Courting the People: Public Interest Litigation in Post-Emergency India*, (Cambridge University Press, 2016).
36. *See* for instance, *D.K. Basu v. State of West Bengal*, (1997); *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526; *Sheela Barse v. State of Maharashtra*, (1983); *Hussainara Khatoon v. Home Secretary*, AIR 1979 SC 1377.
37. For instance, the Delhi High Court has prescribed Court Rules, which clarify the jurisdiction, practice and procedure of all subordinate courts and legal proceedings under its jurisdiction, including the rules regulating the management of judicial lockups. *See* The High Court of Punjab and Haryana, *Rules & Orders of Punjab and Haryana High Court*, vol. 3, ch. 27.
38. Again, perhaps because of the higher precedential value or ease of access to judgments, there has been greater focus on the judgments of the Supreme Court as opposed to high courts.
39. Since Delhi is a metropolitan area, with a population of more than one million people, the subordinate judiciary on the criminal side is classified into two levels. *See* Code of Criminal Procedure (1973), s.8.
40. On the criminal side, there are also additional magistrates assigned a special jurisdiction under different laws, such as the Negotiable Instruments Act courts, Motor Accidents Claim Tribunals, POCSO courts, NIA courts, and *Mahila* Courts (for domestic violence cases).
41. Though all accused involved in a case, prior to conviction by the trial court, are placed within the broad defining category of undertrial, this distinction between pretrial and undertrial is significant because of certain unique features of this stage, particularly the fact that there is no publicly available record of cases at this stage - either on the cause list or on the e-courts website. For purposes of record, matters in the lower courts are assigned a case number only after a chargesheet has been filed, and as such it is at that stage that a case officially comes into being. Therefore, the pretrial period can be defined as the period extending from arrest to the stage when a chargesheet is filed. Significantly, this is the stage in a criminal case when the investigation is ongoing, and the police are gathering evidence to file the chargesheet and may need even more public oversight.
42. Notably, there are certain issues at the pretrial phase that has been increasingly getting some attention—the large undertrial population in India, which stands at over 75% of the prison population based on data in 2022, *see* National Crime Records Bureau, *Prison Statistics of India*, (New Delhi, 2023); issues around bail and the difficulty of securing release, and problems of adequate legal representation and legal aid. *See* Centre for Law and Policy Research, *Reimagining Bail Decision Making: An Analysis of Bail Practice in Karnataka and Recommendations for Reform*, (Bengaluru, 2020), p 22; Anup Surendranath and Gale Andrews, "State legal aid and undertrials: are there no takers?" (2022) *Indian Law Review* 6 (3), 303-330.
43. *See* Code of Criminal Procedure (1973), s.167 (2A). This sub-section prescribes the exception to this rule. It notes that an executive magistrate may be conferred with powers of a judicial magistrate when a judicial magistrate is not

available. The executive magistrate is then empowered to remand an accused after providing reasons in writing, but only up to seven days, and as such exercises less power than done by a judicial magistrate.

44. In *Maneka Gandhi v. Union of India*, (1978), AIR 1978 SC 597, the Supreme Court noted that the law here must not only be a legal enactment, but must also withstand constitutional scrutiny, and be 'fair, just and reasonable'.
45. In the context of the criminal legal process, Article 21 includes the right to fair trial and fair investigation, the right to legal representation, and the right against prolonged under-trial detention.
46. *D.K. Basu v State of West Bengal*, (1997).
47. There was much debate and disagreement amongst the framers of the Constitution about including a due process clause, as in the US Constitution, in Article 21. Eventually, inspired by the Japanese Constitution, the phrase "procedure established by law" was retained in the text of Article 21, and a separate provision Article 22 was introduced to protect against unlawful arrest and prolonged detention, in certain conditions. Article 22(1) and (2) include provisions already mentioned in the criminal procedural code. For history of "due process" in the Indian context, and the scope of Article 21 and Article 22, their critiques and strengths *see* Rohan Alva, *Liberty after Freedom*, (2022).
48. The magistrate can check whether the accused is eligible for bail and release the accused, if the offences under investigation are bailable. For non-bailable offences, the magistrate has the power to hear and decide bail applications on other grounds, and direct for them to be released on sureties or based on other conditions considered necessary. A significant problem plaguing the system is that though many accused have been granted bail, they are not released because of their inability to provide a surety amount.
49. Police custody involves detention of the accused in the police lockup, when considered necessary for further investigation by the police. This cannot be granted for a period greater than 15 days in total and is only permissible within the first 15 days of arrest *Central Bureau of Investigation v. Anupam Kulkarni*, (1992) SCR 3 158. Though this position is pending review before the Supreme Court in *Central Bureau of Investigation v. Vikas Mishra*, (2023) Criminal Appeal No. 957 of 2023. Judicial custody, on the other hand, is to send the accused to prison. This is permissible for a period of 15 days at a time and can extend to a maximum period of 60 days or 90 days. If the police are unable to file a Police Report (charge sheet) until this time, the accused is eligible to be released on *default* bail. *See* Code of Criminal Procedure (1973), s.167. Also *see* Appendix — Custody Warrant p.xix, form submitted by the police to the magistrate seeking extension of period of detention of the accused.
50. Arnesh Kumar v. State of Bihar (2014), para.5.
51. The police is required to demonstrate justification for arrest, on the following grounds: (1) prevention of further offences, (2) arrest necessary for investigation, (3) to prevent tampering of evidence, (4) for protection of witnesses and others from threats and inducement, and (5) arrest is necessary to ensure presence of accused in court. Instead of arrest, the police are first encouraged to secure the appearance of the accused for purposes of investigation through a notice for appearance. Code of Criminal Procedure (1973), ss.41, 41A.
52. *See* for instance, *Satender Kumar Antil v. Central Bureau of Investigation & Another*, (2022).
53. *In Re: Inhuman Conditions in 1382 prisons*, (2013) Writ Petition (Civil) No. 406 of 2013.
54. National Crime Records Bureau, *Prison Statistics of India*, (2023).
55. *See* for instance, former Chief Justice of India NV Ramana's speech in Shruti Kakkar, "'Hasty Arrests, Difficult in Obtaining Bail': CJI Says 'Process Is Punishment' In Our Criminal Justice System" (*LiveLaw*, 16 July 2022) <https://www.livelaw.in/top-stories/hasty-arrests-difficulty-in-obtaining-bail-cji-says-process-is-punishment-in-our-criminal-justice-system-203962> last accessed 5 April 2024.
56. Raja Bagga, "Over 60% of Deaths in Police Custody Are Within 24 Hours of Arrest" (*India Spend*, 26 October 2020) <https://www.indiaspend.com/over-60-of-deaths-in-police-custody-are-within-24-hours-of-arrest/> last accessed 14 September 2023.
57. Nitya Ramakrishnan, *In Custody*, (2013); Jinee Lokaneeta, *The Truth Machines*, (2020).
58. Abdul Wahid Shaikh, *Innocent Prisoners*, (Pharos Media & Publishing, 2019); Nitya Ramakrishnan, *In Custody*, (2013).
59. Jinee Lokaneeta and Amar Jesani, "India" in R. Carver & L. Handley (Eds.), *Does Torture Prevention Work?* (Liverpool University Press, 2016), pp. 501-548.
60. Jinee Lokaneeta, *The Truth Machines*, (2020); Manisha Sethi, *Kafkaland: Prejudice, Law and Counterterrorism in India*, (Three Essays Collective, 2014).
61. For instance, the classification of causes of death in National Crime Records Bureau, Prison Statistics of India (2023) for data for 2022 was as follows: out of 1,773 natural deaths, 1,670 have died due to illness (including heart disease, lung disease etc) and 103 died due to ageing. Out of 159 unnatural deaths, 119 died by suicide. Other causes of death include murder by other inmates (4), death by accidents (10), assault by outside elements (1). Cause of death is unknown for 63 inmate deaths.
62. National Crime Records Bureau, *Prison Statistics of India*, (2023).
63. *In Re: Inhuman Conditions in 1382 prisons*, (2013).
64. Meenakshi D'Cruz, "Death and denial of care in Indian prisons" (2023) *Indian Journal of Medical Ethics*, 8 (3), 175-178.
65. India Justice Report, *India Justice Report 2022: Ranking States on Police, Judiciary Prisons and Legal Aid*, (New Delhi, 2023).
66. *Khatri v. State of Bihar*, (1981).
67. *Ajmal Amir Kasab v. State of Maharashtra*, (2012) 8 SCR 295.
68. *Khatri v. State of Bihar*, (1981); *Sheela Barse v. State of Maharashtra*, (1983); *Nandini Satpathy v. P. L. Dani*, (1978).
69. Anup Surendranath and Gale Andrews, "State legal aid and undertrials: are there no takers?" (2022).
70. Centre for Law and Policy Research, *Reimagining Bail Decision Making*, (2020), p 22.
71. *Arnesh Kumar v. State of Bihar*, (2014); *Satender Kumar Antil v. Central Bureau of Investigation & Another*, (2022).
72. Beatrice Jaregui, *Provisional Authority: Police, Order and Security in India*, (University of Chicago Press, 2016); Santana Khanikar, *State, Violence and Legitimacy in India*, (Oxford University Press, 2019); Rachel Wahl, *Just violence: Torture and human rights in the eyes of the police*, (Stanford University Press, 2017); Jinee Lokaneeta, *The Truth Machines*, (2020).
73. Navsharan Singh, and Patrick Hoenig (Eds.), *Landscapes of Fear: Understanding in India*, (Zubaan Books, 2014); Nitya Ramakrishnan, *In Custody*, (2013).
74. Jinee Lokaneeta, *The Truth Machines*, (2020).
75. *Paramvir Singh Saini v. Baljit Singh*, (2021) 1 SCC 184; People's Union for Democratic Rights, *Dead Men's Tales*, (2000).
76. Pratiksha Baxi, *Public Secrets of Law*, (2013); Mayur Suresh, *Terror Trials*, (2023); Daniela Berti, "Trials, Witnesses, and Local Stakes in a District Court of Himachal Pradesh (India)" (2011).
77. Sonal Makhija, *Nothing Happens Everyday*, (2019).
78. Appendix - Master Check-list: Duties of the Magistrate at First-Production (CHRI, 2020), p.
79. Karan Tripathi, "Criminal 'Injustice': How Courts Use 'Remand' to Penalise the Poor." (*The Quint*, 30 June 2021).
80. Commonwealth Human Rights Initiative, *Judicial Scrutiny at First Production of Arrested Persons*, (New Delhi, 2020), p.5.
81. Ujjwal Kumar Singh, *The State, Democracy and Anti-Terror Laws in India*, (SAGE India, 2007), p. 345.
82. Jinee Lokaneeta, *Transnational Torture: Law, Violence, and State Power in the United States and India*, (NYU Press, 2011), p.198.
83. Mayur Suresh, *Terror Trials* (2023), p.9.

CHAPTER II • CONSTITUTIONAL PROTECTIONS THROUGH THE ARREST MEMO

1. "It is desirable that the officer arresting a person should prepare a memo of his arrest at the time of arrest in the presence of at least one witness who may be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. The date and time of arrest shall be recorded in the memo which must also be countersigned by the arrestee." *D.K Basu v. State of West Bengal*, (1997) SCC (1) 416, p.34.
2. *See Shri Subhash Namdev Desai and Ors. v. The State of Maharashtra*, (2012) Criminal WP No.1555 of 2011; *Smt. Girija Tiwari v. State of Chhattisgarh & Ors.*, 2001 (1) CGLJ 511.
3. *See* Commonwealth Human Rights Initiative, *Arrest Memos: A Study on Requirements and Compliance in Rajasthan and West Bengal*, (2016).
4. *See* Appendix - Arrest Memo, p.xvi
5. *See* Appendix – Custody Warrant, p.xix
6. Arrest/Court Surrender Form provided under Notification u/Section 147, Delhi Police Act, 1978 (No.F. 13/13/98/H.P.I/ ESTT./55-74), dt. 5th January, 2001, in *Delhi Police Manual* (Capital Law House, 2022), pp.125-128. This notification includes a detailed format for an arrest and court surrender memo which besides standard details such as date and time of arrest, case details, witnesses, and relations intimated (included in the current Arrest Memo format), includes additional information about injuries, cause of injuries and physical condition, and whether a medical examination was conducted; date or year of birth; date and time of when the accused is taken in custody and whether the accused is informed about grounds of arrest; nature of further detention; demographic profile of the accused including religion, caste location, income and economic capacity; physical features and deformities; opinion on prior criminal history etc.
7. *Shri Subhash Namdev Desai and Ors. v. The State of Maharashtra*, (2012).
8. *Jamal Ali Mondal and Ors. v. State of West Bengal*, (2006) CriLJ 198; *Laxmi Sardar and Ors. V. State of West Bengal*, (2015) 3 CALLT 623 (HC).
9. *Md. Salim Akhtar v. State of West Bengal and Anr.*, (2008) 3 CALLT 345 (HC).
10. *Smt. Girija Tiwari v. State of Chhattisgarh & Ors.*, (2001).
11. *State of Punjab v. Ajaib Singh*, (1953) AIR 1953 SC 10.
12. *C. Enumalai v State of Tamil Nadu*, (1984) SCC (4) 539; *Khatri and Others v. State of Bihar*, (1981) SCC (1) 627; *Deepak Mahajan v. Director of Enforcement*, (1991) CriLJ 1124 (1134).
13. *Arnesh Kumar v. State of Bihar*, (2014) AIR 2014 SC 2756, p. 8.1.
14. *Joginder Kumar v. State of Uttar Pradesh*, (1994) SCC (4) 260.
15. *Arnesh Kumar v. State of Bihar*, (2014), p. 8.1. *See also Mohammed Zubair v. State of NCT Delhi and Ors.*, (2022) SCC OnLine SC 897, p. 30.
16. *Venugopal Nandlal Dhoot v. CBI*, (2023) SCC OnLine Bom 161.
17. *Gautam Navlakha v. State* (NCT Delhi), (2021) WP (Crl) 2559/2018, p. 103.
18. *Arnesh Kumar v. State of Bihar*, (2014), *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51, *Chanda Deepak Kochhar v. CBI*, Criminal Writ Petition (Stamp) No. 22494 of 2022 (Bombay HC) [9 January 2023].
19. If the police believe that the investigation cannot be completed within 24 hours of arrest, they must bring the accused before the magistrate at the earliest. Therefore, 24 hours is really the outer limit before which first production must happen. *See Iqbal Kaur Kwatra v. The Director General of Police, Rajasthan State, Jaipur and Ors*, (1996) CriLJ 2600. *See*

also Code of Criminal Procedure 1973, s.57.

20. *See* Appendix – Custody Warrant, p.xix
21. In most cases observed by the researchers, the accused persons were cis-male, lower or from working-class backgrounds unless specified otherwise in the narratives.
22. Mayur Suresh, *Terror Trials: Life and Law in Delhi's Courts*, (Fordham University Press 2023).
23. Honorific term to indicate hierarchy.
24. *See Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96; *D.K Basu v. State of West Bengal*, (1997).
25. The fieldnotes of the researcher include the order dictated by the duty magistrate: "heard learned LAC [legal aid counsel] who has opposed the remand application but considering the fact of the case where recovery is to be made, the remand is being granted."
26. Pseudonym includes last name because this information was included in the research notes.
27. Court observations from Saket Court.
28. A researcher noticed an accused who was with the investigating officers in the Dwarka court complex since lunch but was eventually only produced before a duty magistrate after the court working hours, for a transit remand. The researcher noted: "The IO, the constable and the accused had been spotted during lunch near the canteen. They had tags around them and initially appeared to be from the railway police, and the accused also had a school bag on him. They were [probably] only produced at the Duty MM's [court] even though they were there since lunch."
29. *Paramvir Singh Saini v. Baljit Singh*, (2021) 1 SCC 184.
30. *Sadhwi Pragyna Singh Thakur v. State of Maharashtra*, (2011) Cr. App. No. 1845 of 2011.
31. *See* People's Union for Democratic Rights, *Dead Men's Tales: Deaths in Police Custody Delhi*, (New Delhi, 2000); Human Rights Watch, *Bound by Brotherhood: India's Failure to End Killings in Police Custody*, (2016).
32. "The police strategy of bypassing existing safeguards led the Court to involve the public as witnesses of arrest. Since most cases of custodial torture and deaths occurred when the police just informally arrested someone, the Court's insistence on the Arrest Memo was an extremely creative remedy. The absence of the "public gaze' from the police process had been a major obstacle both at arrest and during interrogations. Involving the public directly in the process was significant also because the Court acknowledged, indirectly of course, that an incident of custodial death and torture became an issue only when the public protested against it." Jinee Lokaneeta, *Transnational Torture: Law, Violence, and State Power in the United States and India*, (NYU Press, 2011), p. 157. See also People's Union for Democratic Rights, *Dead Men's Tales*, (2000) - indicates how public protests in certain cases of custodial violence was crucial in initiating judicial action/ remedies.
33. Code of Criminal Procedure (1973), s. 41B; Code of Criminal Procedure (1973), s. 50A.
34. The presence of independent witnesses is also mandated in other procedures during investigation such as search and seizure by the police, and recovery of evidence based on disclosures by the accused persons. However, in reality, this requirement is often subverted by obtaining the signature of the witnesses retrospectively at the police station and through the inclusion of "stock" witnesses by the police. *See*, for instance, Amarjeet Singh, "*This Duo Figure as Witness in 90% of Cases at MP Thana*" (*The Times of India*, December 30, 2023).
35. This is also a serious lapse in the context of the significant number of deaths in judicial custody attributed to medical illness, according to official government data. *See* National Crime Records Bureau, *Prisons Statistics of India* (New Delhi, 2023). Also *See* Meenakshi D'Cruz, "Death and Denial of Care In Indian Prisons" (2023) *Indian Journal of Medical Ethics* 8 (3), 175-178.
36. The Juvenile Justice (Care and Protection of Children) Act (2015), s.15.
37. The Juvenile Justice (Care and Protection of Children) Act (2015), s.10.
38. The Juvenile Justice (Care and Protection of Children) Act (2015), s.4.
39. The Juvenile Justice (Care and Protection of Children) Act (2015), s.9.
40. *See* also *Jitendra Singh @ Babboo Singh & Anr v. State Of Uttar Pradesh*, (2012) JT 2013 (11) SC 152.
41. *See* for instance The Juvenile Justice (Care and Protection of Children) Act, 2015, s.16.
42. Express News Service, "Over 800 Juveniles Were Temporarily Locked Up in Jails for Adults, Delhi HC Takes Note" (*Indian Express*, 3 February, 2022) <https://indianexpress.com/article/cities/delhi/over-800-juveniles-were-temporarily-locked-up-in-jails-for-adults-hc-takes-note-7753451/ > last accessed 12 September 2023; Rohini Roy, "A Child on Death Row? How a wrong name and age landed a 12-year-old on death row in India" (*The Quint*) <https://www.thequint.com/quintlab/child-juvenile-death-penalty-wrong-name-niranaram-chaudhary/ > last accessed 12 September 2023.
43. *See also* The Juvenile Justice (Care and Protection of Children) Act (2015), s. 94.
44. *See* for instance: Express News Service, "Over 800 Juveniles Were Temporarily Locked Up in Jails for Adults, Delhi HC Takes Note" (*Indian Express*, 3 February, 2022) <https://indianexpress.com/article/cities/delhi/over-800-juveniles-were-temporarily-locked-up-in-jails-for-adults-hc-takes-note-7753451/ > last accessed on 12 September 2023; Karan Tripathi, "Over 123 Juveniles in Tihar: Why Children End Up in 'Adult Jails,'" (*The Quint*, 27 July, 2021) <https://www.thequint.com/news/law/how-delhi-incarcerates-juveniles-in-adult-prisons> last accessed on 12 September 2023.
45. *Sadhwi Pragyna Singh Thakur v. State of Maharashtra*, (2011).

CHAPTER III • CUSTODIAL VIOLENCE THROUGH THE EYES OF THE MEDICO-LEGAL CERTIFICATE

1. In most of the observed cases, the accused were cis-males or belonged to lower class or working-class backgrounds. Exceptions have been specified. Pseudonyms have been used wherever names of the accused have been mentioned.
2. See Darius Rejali, *Torture and Democracy*, (Princeton University Press 2009); Jinee Lokaneeta, *Transnational Torture: Law, Violence, and State Power in the United States and India*, (NYU Press, 2011).
3. See the discussion on anti-torture provisions in Jinee Lokaneeta, *Transnational Torture* (2011); Nitya Ramakrishnan, *In Custody: Law, Impunity and Prisoner Abuse in South Asia* (1st edn, SAGE India 2013); Law Commission of India, *152nd Report on Custodial Crimes* (New Delhi, 1994); Jinee Lokaneeta and Amar Jesani, "India" in R. Carver & L. Handley (Eds.), *Does Torture Prevention Work?* (Liverpool University Press, 2016), pp. 501-548; Joshua N. Aston, *Torture Behind Bars: Role of the Police Force in India*, (Oxford University Press, 2020); Abhinav Sekhri, "Separating Crime from Punishment: What India's Prisons Might Tell Us about Its Criminal Process" (2022) *National Law School of India Review* 33(2), 280-302.
4. An overall point here is that while jurisprudence may exist in terms of the declaration of what is prohibited (such as custodial violence or arbitrary deprivation of liberty) or even guidelines, there may not be an attempt to remove the impediments that stop those rights from being realised.
5. *D.K. Basu v. State of West Bengal*, (1997) SCC (1) 416, para 35.
6. *Khatri v. State of Bihar*, (1981) SCC (1) 627, para 8.
7. *See* Code of Criminal Procedure (1973), s.54. Prior to the Code of Criminal Procedure (Amendment) Act 2008, enforced in 2009, this section was as follows: "Examination of arrested person by medical practitioner at the request of the arrested person. When a person who is arrested, whether on a charge or otherwise alleges, at the time when he is produced before a Magistrate or at any time during the period of his detention in custody that the 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, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice."
8. *Bholey & Another v. State of UP*, (1982) SCC OnLine All 1028.
9. The relationship between recovery and torture is crucial; see Nitya Ramakrishnan, *In Custody*, (2013); Jinee Lokaneeta, *The Truth Machines: Policing, Violence, and Scientific Interrogations in India*, (University of Michigan Press, 2020).
10. The case also emphasised the importance of examination of case diaries by the magistrate and preparation of a reasoned order.
11. *Bholey & Another v. State of UP*, (1982), paras 5, 8: "The Magistrate took further care to see that the accused were not tortured and pressurised by directing that they would be medically examined before being handed over to police custody and also on their return to jail after three days of remand."
12. *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96, para 4(vii).
13. *Sheela Barse v. State of Maharashtra*, (1983), para 4(vii).
14. *Sheela Barse v. State of Maharashtra*, (1983), para 5.
15. *State of UP v. Ram Sagar* Yadav, (1985) SCC (Cri) 123.
16. *Mukesh Kumar v. State*, (1990) CriLJ 1923.
17. *Mukesh Kumar v. State*, (1990), para 1.
18. *Mukesh Kumar v. State*, (1990), para 9.
19. *D.K. Basu v State of West Bengal*, (1997).
20. Code of Criminal Procedure (Amendment) Act 2008 (5 of 2009), dated 7.1.2009, w.e.f. 31.12.2009 substituted the earlier iteration of Section 54 with 'Examination of arrested person by medical officer.'
21. Descriptions of the accused do show their psychological state as well which we occasionally mention; *See* non-scarring techniques in Darius Rejali, *Torture and Democracy* (2009).
22. *See* People's Union for Democratic Rights, *Dead Men's Tales: Deaths in Police Custody Delhi*, (New Delhi, 2000); Human Rights Watch, *Bound by Brotherhood: India's Failure to End Killings in Police Custody*, (2016).
23. *See* Appendix – Body Inspection Memo, p.xviii
24. While we have not explicitly talked about handcuffing as an issue of pain/custodial violence, it is important to note that researchers did mention the accused protesting about handcuffing at various points.
25. *See Delhi Jail Manual* (Capital Law House, 2014).
26. Masculinity and shame are an important part of the torture narrative; *see* Abdul Wahid Shaikh, *Innocent Prisoners*, (Pharos Media & Publishing, 2019).
27. Conducting a Test Identification Parade is a common part of the magistrate's work. During the court observations, the magistrates were noticed sending accused due for TIP to the link magistrate (each court is assigned a corresponding court which takes over in case a court is unable to function because the judge is on leave, or for other judicial work as provided), to obtain the accused's consent for the TIP. If the person agrees, the magistrate will conduct the TIP in police or judicial custody.
28. See *Paramvir Singh Saini v. Baljit Singh*, (2021) SCC (1) 184.

29. Abdul Wahid Shaikh, *Innocent Prisoners*, (2019); Human Rights Watch, *Bound by Brotherhood*, (2016); Jinee Lokaneeta and Amar Jesani, "India" in R. Carver & L. Handley (Eds.), *Does Torture Prevention Work?* (2016), pp. 501-548.
30. For instance, police remand is a metaphor for torture: "In popular parlance, 'remand lena' (from the ordering into police remand by magistrate on first production) means to be thoroughly physically or verbally abused, to the point of humiliation." See Nitya Ramakrishnan, *In Custody* (2013), p. 5; Pratiksha Baxi, *Public Secrets of the Law: Rape Trials in India* (Oxford University Press 2013).
31. Of course, in such a context, judicial custody by definition appears more safe and benevolent even though there are high numbers of deaths in judicial custody. *See* Meenakshi D'Cruz, "Death and Denial of Care In Indian Prisons" (2023) *Indian Journal of Medical Ethics* 8 (3), 175-178.
32. Here, an important theme is the lack of clarity on what exactly the MLC should look like.
33. Asking for a copy to be given to the accused is unclear at this point since the person will be in custody.
34. *See* for instance: *Nilabati Behera v. State of Orissa*, (1993) SCC (2) 746; Law Commission of India, *152nd Report on Custodial Crimes* (1994); National Human Rights Commission, *Annual Reports* (1995-2020); *In Re: Indiscriminate beating of Sri K. Raghu Rama Krishnam Raju*, W.P. (SR) No.14718 of 2021, order dated 15.05.2021, where medical exam orders were not followed and the Andhra Pradesh High Court exercised its contempt jurisdiction as a consequence.
35. *State of UP v. Ram Sagar Yadav*, (1985).
36. *See* Appendix p. xx – Table 15.3 'Custodial Deaths in police custody 1999-2012' in Jinee Lokaneeta and Amar Jesani, "India" in R. Carver & L. Handley (Eds.), *Does Torture Prevention Work?* (Liverpool University Press, 2016) p. 511.
37. Centre for Enquiry into Health and Allied Themes, *Guidelines for Medico-Legal Examination in Police Custody and Documenting Custodial Torture* (2020).
38. Code of Criminal Procedure (1973), s.164.
39. Confessions before the police are not admissible as evidence under the Indian Penal Code (IPC). The exception to this is Section 27 of the Indian Evidence Act which allows for the admissibility of incriminating articles recovered in evidence based on the disclosure statement of the accused before the police.

CHAPTER IV • MAGISTRATE COURTS: COURT DYNAMICS, INVISIBILISATION & MARGINALISATION

1. Pat Carlen, "Remedial Routines for the Maintenance of Control in Magistrates' Courts" (1974) *British Journal of Law and Society* 1 (2), p.101-117; Pat Carlen, "Magistrates' Courts: A Game Theoretic Analysis" (1975) *The Sociological Review* 23 (2), p. 347–379; Pat Carlen, "The Staging of Magistrates' Justice" (1976) *British Journal of Criminology* 16 (1), p. 48-55.
2. Researcher noted an observation about a magistrate: "The way the MM conducts himself is evidence of his lack of empathy. He appears as an automated machine fed with instructions to carry out a specific set of tasks in a given day, devoid of emotion."
3. Common Cause and CSDS, *Status of Policing in India Report: Police Adequacy and Working Conditions*, (New Delhi, 2019); Project 39A, *Death Penalty in India Report*, (vol. I and II, New Delhi 2016); Radha Kumar, "Witnessing Violence, Witnessing as Violence: Police Torture and Power in Twentieth Century" (2022) *Law and Society Inquiry* 47 (3), pp. 946–970; Deana Heath, *Colonial Terror: Torture and State Violence in Colonial India*, (Oxford University Press, 2021); People's Union for Democratic Rights, *Dead Men's Tales: Deaths in Police Custody Delhi*, (New Delhi, 2000).
4. Middle-income and rich clients usually had private lawyers and were often treated better than the others.
5. Most of the cases were that of male detainees and there were less women who were accompanied by women police. There were cases, for instance, of African women whose clothes were commented upon. As a researcher noted, "The staff casually comments in Hindi with the inspector, "Jeans *phati hui hai ya isne phada hai*?"—were the jeans torn or did she tear them—referring to the jeans that she was wearing, which had slits around the knees."
6. A researcher noted their shock at witnessing a police officer repeatedly slap and beat an accused in the court premises. The officer evidently suspected the accused of smuggling contraband to judicial custody, because the beating started after the officer saw another person give something to the accused. See also chapter 5 where researchers talk about their experience negotiating this.
7. Common Cause and CSDS, *Status of Policing in India Report*, (2019); Criminal Justice and Police Accountability Project, *Counter Mapping Pandemic Policing: A Study of Sanctioned Violence in Madhya Pradesh*, (2023); People's Union for Democratic Rights, *Dead Men's Tales*, (2000).
8. *Nandini Satpathy v. P.L Dani*, (1978) 2 SCC 424; *Khatri v State of Bihar*, (1981) SCC (1) 627; *Sheela Barse v. State of Maharashtra*, (1987) 4 SCC 373.
9. Failure to discharge this duty opens up the possibility of departmental action against the magistrate. See *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid v State of Maharashtra*, (2012) 8 SCR 295.
10. For instance, see South District Legal Services Authority Office Order (28 November 2015) available at <https://dslsa.org/sd/wp-content/uploads/Remand-Advocates-in-MM-Courts.pdf> last accessed 5 April 2024.
11. National Legal Services Authority, *Early Access to Justice at Pre-Arrest, Arrest and Remand State*, (2019).
12. Questions remain about the consequent action against magistrate in situations where orders are passed without the presence of lawyers, in light of guidelines in *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid v State of Maharashtra*, (2012).
13. Researchers noted that the order recorded the name of the lawyer and that arguments opposing remand were heard. However, in reality there was no remand lawyer in court, and there were no arguments in this matter.
14. On noticing that the legal aid lawyer was not in court, a duty magistrate in a Karkardooma court instructed the naib court to remove the lawyer's presence from the record. However, the proceeding was conducted and further judicial custody granted without legal representation for both the accused, who had been accused of murdering the woman accused's husband. The duty magistrate also did not speak to the accused directly, and only confirmed with the IO about the family members informed about the arrest.
15. One lawyer shared that if the accused's lawyer wanted to see the documents with the court at the pretrial stage, their only option was to file an inspection application before the magistrate and request permission to read the file.
16. Many defence lawyers lamented that their hands were tied during the pretrial stage, because they were only permitted full access to all the case documents after the charge sheet was filed, as per provisions of the procedure code. The law favours the police against sharing details of the police investigation as reflected in the case diaries or the evidence collected during the pretrial stage, to save against possible disruptions to the police investigation. However, this did not explain why lawyers did not make applications for other documents like the Arrest Memo or the MLC at this stage.
17. This case is discussed in further detail in chapter 3.
18. For instance, in Shoeb's case discussed in detail in chapter 3, his lawyer encouraged him to fearlessly speak up before the magistrate about his experience in custody. However, when Shoeb, evidently intimidated by the presence of the IO beside him, responded "*public ne bhi mara tha*"—The public beat me as well—as an explanation to his injuries in custody, the lawyer did not raise the critical question about who else, besides the public, threatened the safety of the accused. Instead, the lawyer withdrew, and quickly moved on stating, "*Challo phir baat khatam*"— Oh, that ends the conversation then.
19. Needless to say, this is the observation based on the three-month study by the research team. Since it is left to the practices of the individual court, it may be the case that some courts were adding their first production and remand cases to the cause list, but no such instance was observed by the research team. Moreover, not every item of business conducted by the magistrate is put on the cause list. For instance, a lawyer in Patiala House suggested that there may be bail applications that are brought directly to the magistrate, without being put up on the cause list.
20. *See* Appendix–Arrested Persons Details (last 24 Hours) dt. 14 November 2022. (Extract), arrested persons list — p.xv
21. In many other cases, there are adjournments or matters moved to the afternoon for a variety of reasons.
22. Centre for Law and Policy Research, *Reimagining Bail Decision Making: An Analysis of Bail Practice in Karnataka and Recommendations for Reform*, (Bengaluru, 2020).
23. *See* John L. Austin, *How To Do Things with Words*, (Oxford University Press, 1962).
24. *Khatri v State of Bihar*, (1981).

CHAPTER V • NOTES FROM THE FIELD: A STUDY OF MAGISTRATE COURTS IN DELHI

1. Pratiksha Baxi, "Out of Place in an Indian Court: Notes on Researching Rape in a District Court in Gujarat (1996-8)" in Lynette J. Chua and Mark Fathi Massoud (Eds.), *Out of Place: Fieldwork and Positionality in Law and Society* (Cambridge University Press 2024), pp. 119-136.
2. The orderly, phonetically '*ardalee*', is the member of the court staff responsible for calling out the cases on the cause list to the crowd seated outside the courtroom.
3. The *ahlmad* is the member of the court staff incharge of the court's record room.
4. This is based on the limited information that the researchers found on duty magistrates. One roster from the New Delhi district, which was one of the most comprehensive, stated, "It is enjoined upon the Duty Magistrate to hold the trial of accused persons involved in petty cases and to attend all the emergency matters such as recording of dying, declaration etc. Whenever such a matter is placed before them they should always be available in their houses on the day of duty. The Magistrate named stand deputed for the trial of demonstrators who may be arrested on the date on which they are performing their duties. If fresh Traffic/STA/Evening Courts Challans are filed during holidays, the same shall also be disposed of by the Duty Magistrate. On Sundays and other holidays, they are required to reach court around 11:00 AM and remain there till the disposal of the entire remand and other miscellaneous work. Even on working days, Duty Magistrate is expected to remain in the court till 5:00 PM. The Duty Magistrate would be assisted by his/her own staff." At the same time, Volume III Chapter 1 titled 'Practice in the Trial of Criminal Cases' in the Punjab and Haryana High Court Rules applicable in Delhi (<https://delhihighcourt.nic.in/uploads/courtrule/CourtRuleFile_CST4NM5N.PDF> accessed 31 August 2023) states that the works of Duty Magistrates is that "on holidays, [they] should check and supervise the work of the selected reader for the Criminal Courts at least once in the course of the morning."
5. Section 167(2) Criminal Procedure Code prescribes certain limits to the powers of the duty magistrate before whom an accused is produced during investigation. They can authorise further detention to police or judicial custody, but if they

consider further detention unnecessary, they may order the accused to be forwarded before the jurisdictional magistrate (who has powers to try the case or commit the case for trial before the Sessions Court for more serious offences).

6. This hierarchy in access applies to many aspects including, but not limited to, navigating the poor infrastructure, informational barriers, and the attitudes of the court actors.
7. Sonal Makhija, *Nothing Happens Everyday: An Ethnographic Study of the Everyday In a Lower Court in Mumbai*, (PhD Dissertation, University of Helsinki, 2019).
8. *Vakalatnama* is a written document submitted before a court by an advocate declaring that the client has authorised the advocate to represent them in a legal proceeding.
9. *Qalandara* is a notice issued against a person, under Sections 107 or 151 of the Criminal Procedure Code, against whom there is an information that they are likely to commit breach of peace or disturb the public tranquillity or any wrongful act leading to breach of peace or disturbance to the public, or if they violate the regulations of the judicial custody.
10. *Rehnumai* is the date given to the jail authority to produce an accused in court from judicial custody after the expiry of 14 days.
11. *Dasti* (literally meaning "by hand") is a personal summon given by a party to the opposite party, without taking the route of the appointment process server given by the court.
12. Notice under 41A refers to a notice of appearance under Section 41A Criminal Procedure Code, requiring the accused to appear before the police officer for investigation.
13. Compounding is a settlement mechanism for certain minor offences (under Section 320 Criminal Procedure Code) where a compromise is arrived at between the complainant and accused, due to which criminal prosecution can be avoided in exchange for compensation.
14. Malini Nair, "The Silver Tongue: How Urdu Lingers on as the Language of Law" (Times of India, 26 February 2017) <https://timesofindia.indiatimes.com/home/sunday-times/the-silver-tongue-how-urdu-lingers-on-as-the-language-of-law/articleshow/57350117.cms> accessed on 7 April 2024.
15. According to the Model Police Manual, handcuffing inside the court is not allowed except the permission of the court - which needs to be applied for in case of extreme situations wherein the accused may harm or run away. This is to ensure dignity and self-respect of the accused. Handcuffing to and from the court is also dissuaded except in specific extreme situations. *See* Bureau of Police Research and Development, 'Escorts' in *Model Police Manual Volume 1: Organisation and Administration* (2016), p.232.
16. In our interactions with the court staff—the naib courts, the escort police officers, and the orderlies —the team was, on more than one occasion, asked whether the research was a part of some PhD/associated with some other institution/university, before sharing their opinion or other facts of the case with us.
17. The teams had, on multiple occasions, observed family members being reprimanded for being inside the courtroom or wanting a word with the accused.
18. Sarah Klosterkamp, "Affectual intensities: toward a politics of listening in court ethnography," (2022) *Gender, Place & Culture* 30 (11), pp.1529-1551.
19. A few lawyers were sympathetic to the accused, while others considered them to be habitual criminals deserving of punishment—ironically, some of the latter were the legal aid counsels themselves. ■

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APPENDIX

Guidelines for Safety during Fieldwork*

While we appreciate your initiative during fieldwork, first and foremost we value your safety, wellbeing and peace of mind while doing fieldwork. Fieldwork by definition is challenging, exhausting and requires all your energy and initiative. We also know that courtrooms are highly hierarchical and gendered spaces that are difficult to negotiate.

Hence, we decided as a group to wear black and white to blend into the courtroom - looking like lawyers/professionals though never claiming to be. Everyone also has NLUD ID cards meant to be shown to explain the role and presence of researchers in the courtroom, recognizing that the actual courtroom is a public space to be accessed by all. But at the same time, we also know that the magistrate and the court staff do tend to decide the actual presence of people in the courtroom, so one has to negotiate that space accordingly. **The golden rule is if you feel uncomfortable you just leave.**

While some of these guidelines have been part of ongoing conversations from day 1, we have now written it down so that there is no confusion about this.

1. Always attend court proceedings in pairs, especially before the Duty Magistrate.
    - In case of unavoidable leave, please consult the leave policy about how to manage weekly expectations while also ensuring that you do not go to court without your research partner.
    - Ensure that you and your research partner(s) leave the court premises together, and are accessible to each other throughout your time in court.

2. Prioritise personal safety
    - Do not compromise your safety for more access/further information. If a situation makes you feel uncomfortable, trust your instinct and just leave.
    - Do not conduct one on one interactions with any court actor in closed spaces, especially on your own.
    - You do not have to continue an informal conversation/engagement with a court staff or anybody else if they make you feel uncomfortable.
    - Do not share your phone number with anyone, especially court staff, police etc. Can get the DLSA number of your court to share, if necessary

3. Permissions
    - Get permission from the Magistrate to observe proceedings in their courtroom, when you decide on your new courts from 25 Nov onwards.
    - With duty magistrate, you can exercise your discretion about whether to overtly ask for permission or not.
    - To be conscious of court hierarchy and perform deference towards the magistrate.
    - Since you are wearing the black and white to blend into the courtroom so avoiding any argument with magistrate (as well as court staff) is crucial. So avoid arguing with a Magistrate/police/ court staff - if you disagree with something that they are saying, attempt to respectfully exit the situation.

Guidelines for Safety during Fieldwork

1

Court Observation

1. You must scan and upload your daily (handwritten) fieldnotes at the end of everyday and upload them in the folder with your name. Do name your scanned documents with your initials and date.

2. Start your daily field notes with the following information:
   - Name
   - Name of Court Complex
   - Time - duration spent in court
   - Date and Day

3. When you are observing proceedings in a particular courtroom, it is important to make a note of the courtroom number, Metropolitan Magistrate number and the name of the Magistrate. This will make it easier to get further information (such as jurisdiction of the court), at a later point.

4. When observing proceedings, it is important to make a note of 4 aspects in every case, in addition to the guiding frame provided (**Court Observations - Guiding Questions**) in your field-notes: (1) whether the accused was physically present in court (2) whether they were handcuffed (3) whether there was legal representation (4) appearance of the accused (whether they were nervous, injured, and any other identifying detail).

** Edited for clarity*

Court Observations: Guiding Questions[1]

The following questions are designed to guide researchers in their courtroom observations. This includes questions geared towards establishing the broader context and setting of the District Court complex, as well as specific magistrate courts. These are particularly important to focus on during the initial days at a particular site. Once these observations have been recorded for a court complex or a magistrate court, the emphasis can move on to the everyday experiences within specific courts.

While an important part of the study is to observe whether the law has been formally realised in court (formal safeguards/protections have been listed at the end *Checklist for Magistrates*), it will not be restricted only to the formal noting of safeguards. Instead, the focus of the study will be on the intangible elements of the courtroom experience and access to justice - including the experience of the accused in custody, the manner in which the Magistrate engages with the accused person, as well as the dynamics in court between different state and semi-state actors[2], and their interaction with the accused. Ultimately our question is whether protections under Article 22(2) and other statutory provisions are able to protect a person from custodial violence?

Context Setting of the Court Complex

- Locate the court complex within the broader locality in Delhi
- Description of the atmosphere (crowded?), appearance/infrastructure and architecture (locate the lock up, DLSA office, different magistrate courts, Duty Magistrates etc.) of the court complex

Context Setting of Specific Magistrate Courts

- Court number, name of the sitting magistrate, jurisdiction.
- What is the practice followed by this court in organising the hearings for the day/matters? Are there variations over the course of study?
  - o What time does the court sit and what time does the court day end? How long is the lunch break?
  - o When are first production matters taken up? When are remand matters taken up? o What is the practice followed by this court regarding listing remand matters, and making the orders available? Is there a special cause list put up?
  - o What is the language in which court proceedings are carried out?
- What time does the police van come - from the Police Station (PS) and Judicial Custody (JC)?

Court Observations:
Guiding Questions for Researchers

[1] Based on Checklist in Judicial Scrutiny at First Production of Arrested Persons: A Handbook on the Role of Judicial Magistrates (CHRI 2020 New Delhi) p.51-54.
[2] Semi- state actors include legal aid lawyers, court staff, medical doctors - who are formally independent but have close associations with the state in their everyday functioning.

Specific Magistrate Court, Magistrate, Court Staff, Lawyers

Long-term observations

- Describe the role of the different constant actors in the courtroom (the Public Prosecutor or PP, remand/legal aid lawyer, the court staff- reader, steno, clerk) and how they shape the experience of the accused in custody through their everyday functioning
- Describe the interaction / dynamic between the magistrate and other state/semi state actors (Pvt. Lawyers, remand lawyers, PP) who are regular/familiar figures in the courtroom.
- To what extent do production/remand matters dominate a regular court work day. What is the total amount of time spent on first production matters and remand matters per day as opposed to other matters taken up by the court?
- Observations around the experience of detainees while they wait for their matter. Where are they held? Is there a lock-up? Are the detainees handcuffed? Are they allowed to interact with family/lawyers? Is there privacy?

To find out

- What is the procedure to verify all the first productions (FIR Register?) and remand matters before this court?
- Magistrate (social identity, gender, educational profile, experience)
- Prosecutor(s) [social identity, gender, educational profile, experience, work load, if possible through informal conversations]
- Remand lawyer, social identity, gender, educational profile, experience, work load, if possible through informal conversations]
- Details about the private lawyers who appear often in this court

First Production/ Remand Proceedings
(including hearings of specific applications filed by the accused's lawyer)

Experience of the accused

- Is the accused person **physically present in court**? Observations around the **appearance of the detainee** when they were presented before the Magistrate. Were there injuries? Were they nervous? **Were they handcuffed**? Did they address the Magistrate directly?
- What is the nature of interaction between the Magistrate and the detainee? What questions did the Magistrate ask? Did the Magistrate ask about the treatment in police custody? Did the Magistrate explain the outcome of the proceeding to the detainee?
- What is the language employed at first production/remand hearings - *Language is important too so note whether the language (and tone) is familiar for the person in custody and whether it feels reassuring*
- Did the identity of the detainee make a difference in the way the magistrate treated them? Whether the treatment of the detainee varies with caste, gender, class, religion, educational status or any other identity?

Purpose of the hearing

- **Whether the arrested person has been produced from police custody or judicial custody**?
- What is the purpose of the hearing? Describe the arguments made in court by the prosecution/police, accused's lawyer (if present) and the nature of intervention made by the magistrate. {this is particularly important where additional applications are filed by the police or the defence lawyers}
- What is the nature of interaction between the Magistrate and the police? Does the Magistrate ask them questions about the need for further detention (extension of police custody)? Does the Magistrate ask questions about the progress of the investigation?

Quality of Representation

- Legal representation - **Did the accused person have legal representation**? Does the Magistrate inform the arrested person of their right to legal representation, and appoint a legal aid lawyer to them if required? If a remand lawyer is appointed at that moment by the Magistrate, is adequate time given to them to consult their client and prepare arguments?

Magistrates' Functioning

- How does the Magistrate respond to any irregularity in police conduct/ allegations of custodial violence? Is there any difference in the nature of response of the magistrate to allegations made by the accused's lawyer and the accused person directly? • Record any other oral observations of the Magistrate, of note.

CENTRAL QUESTION

Whether access to Justice is ensured in terms of both procedural justice as well as substantive aspects of justice which for the purpose of this study refers to maintaining the life, dignity and safety of a person in custody.

Whether the public performance of the magistrate as observed in court appears to fulfil the constitutional protections of the accused from custodial violence?

Master Check-list: Duties of the Magistrate at First-Production

Master Check-List: Duties of the Magistrate at First-Production[1]

Check of the legality of arrest and examine any request for remand

- Check that the arrest is legal, in accordance with the law and all the constitutional and statutory rights are protected
- Ask for the checklist from the police; scrutinise it carefully to ensure all the necessary documents have been produced
- If the accused is a woman, ask if a female officer was present to carry out the arrest and search of the accused, and there was no breach of the special procedure to be followed when
- arresting a woman (as per Section 51; and sub-section (4) and proviso to Section 46 of CrPC)
- Check whether specific reasons have been recorded for arrest, the relevance of the reasons and whether a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated are attracted for grant of remand
- If the police are seeking remand, clearly record reasons for whether detention is justified or not
- Examine the case diaries prepared by the police to seek corroboration of the grounds of arrest and reasons for seeking remand
- If the arrest does not satisfy the requirements of Section 41 of CrPC, refuse further detention and release the person on bail or personal bond
- Check carefully if the safeguards provided by the Supreme Court in *D.K. Basu v. State of West Bengal* (AIR 1997 SC 610) have been complied with.

Scrutinise the arrest-related documents:

- Check that the arrest memo is among the documents produced by the police
- If the arrest memo is absent, censure the police officer present and record reasons for its absence
- Place on record that the arrest memo is absent and question the legality of the arrest an any further detention if requested by the police
- If present, scrutinise the arrest memo carefully to check all the mandated information to be provided is listed, including the signature of the arrested person
- Verify with the arrested person if the details recorded in the arrest memo are accurate
- Endorse the arrest memo as seen by the Magistrate after ensuring it contains all the necessary information
- If there are faults or gaps in the arrest memo, clearly mark and record such discrepancies.
- Consider the appropriate action to be taken against the police officer

[1] Commonwealth Human Rights Initiative (2020) *Judicial Scrutiny at First Production of Arrested Persons: A Handbook on the Role of Judicial Magistrates*, pp.51-54.

Verify that the arrested person was produced within 24 hours of arrest:

- Check the date and time of arrest listed in the arrest memo, and verify with the arrested person
- Verify if the production is within 24 hours of arrest
- Mandate the physical production of the accused during first production
- Note down the exact time of production in court while endorsing the arrest related documents
- If the production was after 24 hours of arrest, order the initiation of departmental proceedings against police officials

Take on record complaints alleging custodial violence/inquire whether the arrested person was tortured, and issue appropriate directions:

- Ask the arrested person if s/he was subjected to custodial violence. In doing so, as far as possible, instruct the accompanying police officer to leave the Court while interacting with the arrested person
- If the arrested person complains orally of being subjected to custodial violence, facilitate the process of getting the complaint in writing
- On reasonable suspicion of the occurrence of custodial violence against the arrested person, disallow further police custody of the arrested person
- Order the medical examination of the accused to examine him/her physically
- Transfer the arrested person to judicial custody or release him/her on bail or personal bond
- Summon the Investigating Officer immediately, or at most, within 24 hours, to provide the FIR, case diary, medical examination report and any other relevant documents for scrutiny to put together the facts
- Summon the Station House Officer or any higher supervising officer, as needed
- On receipt of a complaint regarding torture from an arrested person, direct the registration of an FIR or take cognizance of the complaint of the person and proceed against the officials under law

Ensure that the arrested person has legal representation:

- Inform the arrestee about the right to legal representation
- Ask the arrested person if s/he has a lawyer. If not, determine whether the arrested person can afford a lawyer on their own
- If the arrested person cannot afford a lawyer, immediately assign a lawyer from the list of legal aid lawyers that should be present in the Magistrate's court
- Ensure that the arrestee is represented by the said legal aid lawyer during the remand hearing
- Ensure the list of legal aid lawyers is made available to the arrested person

- Display the names and contact details of the legal aid counsels assigned to the Magistrate's court in full view of all persons who access the court

Inform the arrested person about the right against self-incrimination:

- Explain the meaning of the right against self-incrimination to every arrested person in simple non-legal language
- Direct the accompanying police officer to leave the Court while interacting with the arrested person.
- Ask the arrested person if the police used threats (physical and/or verbal) or inducements to extract a confession, or forced him/her to answer questions during interrogation. If yes, consider the appropriate action to take against the police officer(s)
- Ask the arrested person if s/he was subjected to custodial violence of any kind
- Ask the arrested person if s/he had a lawyer at the time of interrogation

Ordering release on bail/bond or remanding the arrested person to judicial/police custody:

- Check if the arrested person is accused of committing bailable offence/s
- Verify if the police offered release on bail to the arrested person
- Offer release on bail/bond if the above was not done
- Assess if the arrested person has the ability to fulfil monetary conditions to be released on bail
- Impose personal bond where the arrested person is an indigent
- Release the arrested person on bail/personal bond/surety if
    - s/he is accused of committing a bailable offence
    - s/he is accused of committing a non-bailable offence but her/his presence in custody is not required
    - the arrest/detention are unjustified or illegal
    - s/he is a permanent resident or ordinarily resident in the area with family/professional obligations
    - it can be reasonably deduced that such person will cooperate with the investigation
    - the person is infirm/old
- If the arrested person is at the risk of absconding,impose obligations and reasoned restrictions.
- Mandate the physical production of the arrested person
- Make the decision on whether to grant remand only after examining the documents of arrest, reasons of arrest and necessity
- Ensure all the documents given by the police are in a language known to the Magistrate
- Remand the arrested person to police custody only if his/her presence is absolutely necessary for investigation
- While remanding the accused to police custody, the length of the remand should be limited to the period required for the purposes of investigation and no more

- Ensure that Article 22(1) and (2) of the Constitution of India and Section 57 of the CrPC have been complied with
- Ensure judicial orders granting, or, rejecting, remand are provided in writing with clear reasons

  Note: Arrested person can be produced through video conferencing only while requesting subsequent remand, and on extenuating circumstances, while ensuring that all safeguards are followed

Ascertain the age of the accused and taking necessary measures if s/he is a juvenile in all likelihood:

- Ascertain the age of the arrested person on first production if he/she appears to be below the age of 18 or says s/he is below 18
- On suspicion thats/he may be a minor,send such person to an Observation Home immediately until the determination of his/her age and refer the case to the Juvenile Justice Board
- Order an inquiry, including the appropriate medical tests if needed, to establish the age of the arrested person
- Transfer the matter to the appropriate forum,such as the Juvenile Justice Board, if it is found that the arrestee is a juvenile on the date of commission of the alleged offence

Order action against the police personnel when the arrest involves irregularities:

- Grant monetary compensation in cases of unlawful arrest and detention
- Order departmental proceedings against erring police personnel
- Initiate criminal proceedings where illegalities are made out prima facie
- Draft the prayers, if required and grant the appropriate relief which serves the ends of justice and is justified in the facts and circumstances of the case

Cause List

Chief Metropolitan Magistrate, [redacted]

Metropolitan Magistrate

Criminal Cause List Dated 11-11-2022 Total Cases:52

S.No.	Case Type	Old Case No.	Case No.	Title	FIR/PS
Misc./ Appearance					
1	CR Cases	426/2/2013	466154/2015	STATE *Vs.* KARAN @ LOKRDH	283 /2008 (Bhajan Pura)
2	CR Cases		461174/2015	STATE *Vs.* ASHOK KUMAR GAUTAM	102 /2013 (Bhajan Pura)
3	CT Cases		46133/2015	MAMTA *Vs.* RAJESHWAR SHARMA @ BABLU PANDIT	/0 (New Usman Pur)
4	CR Cases		420/2019	STATE *Vs.* KUSUM LATA AND ANR.	250 /2015 (Bhajan Pura)
5	CR Cases		863/2019	STATE *Vs.* MANISH SHARMA AND ORS.	09 /2016 (Bhajan Pura)
6	CT Cases		2120/2019	GULAB CHAND MAURYA *Vs.* SURENDER KUMAR CHAUDHARY	/0 (KARAWAL NAGAR)
7	CT Cases		11/2020	HEERA LAL JAIN *Vs.* M/S MIDDHA SELECTION	/0 (Bhajan Pura)
8	CT Cases		406/2020	NIRBHAY KUMAR SHARMA *Vs.* RAVINDER SHARMA	/0 (Bhajan Pura)
9	CR Cases		717/2021	STATE *Vs.* AMAR SINGH	551 /2020 (Bhajan Pura)
10	CR Cases		908/2021	STATE *Vs.* SUNIL KUMAR AND OTHERS	258 /2020 (Bhajan Pura)
11	CR Cases		1105/2021	STATE *Vs.* RAJENDER	505 /2019 (Bhajan Pura)
12	CR Cases		1784/2021	STATE *Vs.* SHIV DUTT	237 /2021 (Bhajan Pura)
13	CR Cases		2767/2021	STATE *Vs.* RAJIV SHARMA	24 /2017 (Bhajan Pura)
14	CR Cases		2879/2021	STATE *Vs.* SAMEER @ JULLU	025552 /2020 (Bhajan Pura)
15	CR Cases		472/2022	STATE *Vs.* ZEESHAN@FARMAN	739 /2021 (Bhajan Pura)
16	CT Cases		323/2022	SAROJ ARORA *Vs.* HARISH ARORA AND OTHERS	/0 (Bhajan Pura)
17	CR Cases		1612/2022	STATE *Vs.* SURENDRA KUMAR	685 /2021 (Bhajan Pura)
18	CR Cases		2448/2022	STATE *Vs.* SOHARAB	490 /2021 (Bhajan Pura)
19	CR Cases		2455/2022	STATE *Vs.* MOHD SHAJAD	471 /2020 (Bhajan Pura)
20	CR Cases		3373/2022	STATE *Vs.* SAARIK@RISHABH	415 /2022 (Bhajan Pura)
21	CR Cases		4060/2022	STATE *Vs.* KAMAL KUMAR JAIN	29042 /2021 (Bhajan Pura)
22	CR Cases		4071/2022	STATE *Vs.* TARUN YADAV	35040 /2021 (Bhajan Pura)
23	CT Cases		1155/2022	SHADMA *Vs.* ALTAF HUSSAIN AND OTHERS	/0 (Bhajan Pura)
24	CR Cases		4572/2022	STATE *Vs.* SABIR	034797 /2017 (Bhajan Pura)
25	CR Cases		4711/2022	STATE *Vs.* SANJAY	683 /2021 (Bhajan Pura)
26	CT Cases		1212/2022	SATYAPAL SINGH *Vs.* NARENDER NEGI AND OTHERS	/0 (Bhajan Pura)
Charge					
27	CR Cases		460571/2015	STATE *Vs.* MOHD KHALID	333 /2010 (Bhajan Pura)
28	CR Cases	725/1/2011	463207/2015	STATE *Vs.* RAUF KHAN	153 /2002 (Bhajan Pura)

Chief Metropolitan Magistrate, [redacted]

Metropolitan Magistrate

Criminal Cause List Dated 11-11-2022 Total Cases:52

S.No.	Case Type	Old Case No.	Case No.	Title	FIR/PS
29	CR Cases		867/2016	STATE *Vs.* IMRAN	171 /2016 (Bhajan Pura)
30	CR Cases		2385/2021	STATE *Vs.* MANAV GOSWAMI	26285 /2018 (Bhajan Pura)
31	CR Cases		1883/2022	STATE *Vs.* ANUJ SINGH	04742 /2022 (Bhajan Pura)
32	CR Cases		2447/2022	STATE *Vs.* SHAWAZ ALI	312 /2022 (Bhajan Pura)
33	CR Cases		4520/2022	STATE *Vs.* JAVED @ JUNAID RAJA AND OTHERS	20518 /2022 (Bhajan Pura)
Prosecution Evidence					
34	CR Cases	638/2/2013	463228/2015	STATE *Vs.* SATISH	219/09 /2009 (Bhajan Pura)
35	CR Cases		461447/2015	STATE *Vs.* NEERAJ KR MISHRA ETC	940 /2014 (Bhajan Pura)
36	CR Cases	75/2/2015	465177/2015	STATE *Vs.* SURAJ @ SHAHID	1115 /2014 (Bhajan Pura)
37	CT Cases		1594/2016	SAVITRI DEVI *Vs.* NARESH KUMAR	/0 (Bhajan Pura)
38	CT Cases		632/2018	FAKRUDDIN *Vs.* RANJAN UNIFOMS	/0 (Bhajan Pura)
39	CR Cases		2153/2018	STATE *Vs.* DAYA RAM	230 /2017 (Bhajan Pura)
40	CR Cases		3144/2018	STATE *Vs.* ANOOP @ JULFI @ GOLU	517 /2018 (Bhajan Pura)
41	CR Cases		781/2020	STATE *Vs.* RAJU @ SABIR	287 /2020 (Bhajan Pura)
42	CR Cases		2725/2022	STATE *Vs.* IMRAN @ DEEWANA	024701 /2021 (Bhajan Pura)
43	CR Cases		3089/2022	STATE *Vs.* WASEEM	03566 /2022 (Bhajan Pura)
44	CR Cases		3374/2022	STATE *Vs.* PRASHANT SHUKLA	447 /2022 (Bhajan Pura)
Misc./ Arguments					
45	CT Cases	748/1/2015	48955/2015	M.A KHAN *Vs.* INDER CHANDWANI	/0 (Bhajan Pura)
46	CT Cases	763/1/2015	48610/2015	SACHIN *Vs.* PARVESH KUMAR	/0 (Bhajan Pura)
47	CT Cases		563/2020	BRAHM KUMAR *Vs.* RAKESH TYAGI AND OTHERS	/0 ()
48	CT Cases		772/2022	MEENU SINGHAL *Vs.* SURESH GOYAL AND OTHERS	/0 (Bhajan Pura)
Arguments					
49	CT Cases		813/2018	SATVINDER SINGH *Vs.* DHARAMWATI	/0 (Bhajan Pura)
Order					
50	CR Cases		3804/2021	STATE *Vs.* MD ALI	547 /2021 (Bhajan Pura)
Order/Argument on Sentence					
51	CR Cases	131/2/2015	466364/2015	STATE *Vs.* MUSSABBAR ABBAS	27 /2008 (Bhajan Pura)
52	CT Cases		565/2019	M/S GOYAL IMPEX *Vs.* KULDEEP JAIN	/0 (Bhajan Pura)

Roster for Duty Magistrates

OFFICE OF THE CHIEF METROPOLITAN MAGISTRATE PATIALA HOUSE COURTS NEW DELHI DISTRICT: DUTY ROSTER FOR THE MONTH OF APRIL, 2024.

The following Judicial Officers will work as Duty Magistrate at Patiala House Courts, New Delhi on the dates noted against their names. It is enjoined upon the Duty Magistrate to hold the trial of accused persons involved in petty cases and to attend all the emergency matters such as recording of dying, declaration etc. Whenever such a matter is placed before them they should always be available in their houses on the day of duty. The Magistrate named stand deputed for the purposes of trial of demonstrators who may be arrested on the date on which they are performing their duties. **If fresh Traffic/STA/Evening Courts Challans are filed during holidays, the same shall also be disposed of by the Duty Magistrate.** On Sunday and other holidays they are required to reach court around 11:00 a.m. and remain their till the disposal of the entire remand and other misc. work. Even on working days, Duty Magistrate is expected to remain in the court till 5:00 P.M. **The Duty Magistrate would be assisted by his/her own staff.**

S. No	Name of the Officers	Working Days	Holidays	Room Nos.
1	**Sh. Animesh Bhaskar Mani Tripathi, Ld.MM** 406,Karkardooma Court, Residential Comples, Karkardooma Court, Delhi	01.04.2024	**11.04.2024**	10, FF, Main Building
2	**Ms. Anam Rais Khan, Ld. MM** C-2, 1ST Floor, Pocket 9A, Jasola Heights, DDA HIG Flats, Jasola, Delhi (South East) – 110025.	26.04.2024	---	43,Publication Building
3	**Ms. Komal Garg , Ld. MM** Flat No. 2017, Delhi Govt. Officers Flats, Gulabi Bagh, Delhi - 110007		**28.04.2024**	11, FF Main Building
4	**Sh. Anurag Chhabra, Ld. MM** Flat No.2041,Type-4 Delhi,Administrative Flats,Delhi-110007	20.04.2024	---	42,Publication Building
5	**SH. Vaibhav Kumar, Ld. MM** R/o:- 3001,IFCI APARTMENTS, SECTOR-23 DWARKA	03.04.2024 05.04.2024	---	13,FF Main Building
6	**Ms. Padma Ladol, Ld. MM** B-06, Delhi Govt. Officers Flats, Modal Town-1, Delhi-09	02.04.2024	**21.04.2024**	17, FF, Main Building.
7	**Ms. Tarunpreet Kaur, Ld. MM** B-1/4, Upper Ground Floor, Nangal Dewat, Vasant Kunj	04.04.2024 09.04.2024	---	06, Ground Floor Main Building
8	**SH. Rahul Jain, Ld. MM** R/o. H. No. 999, Sector-14, Gurgaon HR.	16.04.2024	**13.04.2024**	12, Main building
9	**Ms. Anamika, Ld. MM** R/o Flat No. 106, Type IV, Ist Floor, Karkardooma Courts, Judicial Complex, Shahdara, Delhi – 110032	24.04.2024	**07.04.2024**	23, First Floor, Main Building
10	**Sh. Harjot Singh Aujla, Ld. MM** G-1309, Ground Floor, C.R.Park, New Delhi	18.04.2024 29.04.2024	---	Main Building Ground Floor, Digital Court No-01
11	**Ms. Akanksha Garg, Ld. MM** 2/10 3rd Floor Vikarm Vihar Lajpat Nagar IV-ND.	25.04.2024	**17.04.2024**	19, First Floor, Main Building
12	**Ms. Isha Singh, Ld. MM** W-21, II Floor, Grater Kailash-I,South Delhi-110048	12.04.2024 19.04.2024	---	18, First Floor, Main Building
13	**Sh. Yashdeep Chahal, Ld. MM** E-2/110 Second Floor, Sec.-11,Rohini,New Delhi-110085	10.04.2024 23.04.2024	---	21, FF, Main Building
14	**Ms. Nishtha Mehtani Ld. MM (NI Act) Digital Court-03** J-56, Patel Nagar-01 Ghaziabad, UP-201001	22.04.2024	---	Main Building Ground Floor, Digital Court No-03
15	**Ms. Neha Garg, Ld. MM** 170-B,2nd Floor,Delhi,Administrative Flats, Gulabi Bagh Delhi-110007	08.04.2024 27.04.2024	---	41,Publication Building
16	**Sh. Abhinav Singh, Ld. MM** C-1/34, First Floor, Janakpuri,Delhi	15.04.2024	**14.04.2024**	44, Publication Building
17	**Sh. Shivam Gupta, Ld. MM** Room No.43, Delhi Judicial Academy, Judicial Hostel, Dwarka Sec. 14	06.04.2024 30.04.2024	---	Main Building Ground Floor, Digital Court No-02

Contt…..

1. Whenever any working day is declared holiday the Duty Magistrate on that day will be deemed as Duty Magistrate for whole of the day without any further order.

2. No duty MM will take leave on the day of his/her duty unless there is exigency. Reason of exigency shall also be given by duty MM with one day advance request for change of duty with the consent of officer agreeing to perform duty in his/her place, to the office of undersigned".

3. It is impressed upon all the M.M.s not to leave any pending work in their courts without signing the orders passed on the day, regular files, Misc. work, bail bond and release warrants etc. The MMs are further directed to take special care that in no case they should leave the court without signing the release warrants, once the bail bond has been accepted by them, even while proceeding on half day leave, and not to leave such work for the duty M.M. of that day. In an exceptional case if an MM had left the court after accepting the bail bond and without signing release warrants, the release warrants may be signed by the concerned Duty Magistrate after taking report in writing from the Reader/Ahlmad of the concerned court and in such eventuality the Duty Magistrate shall submit a report of his having signed the release warrant of a particular court along-with the report so received by him from the staff of that court to the undersigned on the following day.

4. **The Duty Magistrate is not supposed to deal with the regular files/remand applications of any court. The Duty Magistrate is supposed to consider only the fresh remand applications filed by the Investigating Officers after 4 p.m.** besides considering the bail bond and surety bond in pursuance to bail orders passed by Hon'ble Supreme Court, Hon'ble High Court and Ld. Sessions Court on the same day. It is further being specified that in case the bail orders passed by Hon'ble Supreme Court of India or Hon'ble High Court are received in any Magisterial court after 4 p.m. even if the same has been passed on any previous date, the bail bond/surety bond with respect to such orders, if put up before the Duty Magistrate is supposed to be considered by him. (This is with reference to letter no. 1542-1631/CIR/CMM/2005 Delhi, Dated 10-02-2006 of Ld. C.M.M. Delhi).

5. M.M.s deputed for duty on holidays, second Saturdays and Sundays who actually work on such day(s) will be entitled to avail of special casual leave (Compensatory Leave) in lieu duty performed on such day (s) **within one year** thereof and members of the staff of their courts as well as the Cashier/Official of Cash Branch who actually work on such days shall be entitled to avail special casual leave (Compensatory Leave) in lieu of duty performed on such day(s) **within six month thereof.** The Special Casual Leave (Compensatory Leave) of M.M.s shall be routed through and after the verification of the undersigned. The M.M.s while forwarding the application of the staff for grant of such Spl. C.L. (Compensatory Leave) shall certify that the official concerned had actually worked on a particular day. (This is with reference to letter no. 6545-63/Ruler/DHC dated 06-03-2012 of Hon'ble High Court of Delhi : New Delhi) (ref. S.O. Issued by the Ld. District Judge-cum-Additional Sessions Judge, Patiala House Court, New Delhi District, vide letter no. 5365-85 Judl./NDD Dated. New Delhi the. 15/03/2012).

6. The Judicial Officers who are deputed as Duty Magistrate, if Summoned for the day of such duty to appear as witness in a court located in the court complex other than the place of posting will send a formal request in advance to the court where he is to appear as a witness for his exemption from court attendance. If the court in question again intimates the officer requiring his attendance for that date he may do so in the forenoon sessions under intimation to the undersigned (ref. S.O. Issued by the Ld. Distt. & Sessions Judge, Delhi vide letter no. 42534-684/DM/Gaz. Dated 20-10-1999).

7. **The duty magistrate will not look after the court work of his/her link magistrate as per the table given in link roster, but not exempted from recording statement u/s 164 Cr. P.C if marked by the undersigned.**

8. All the Duty MM's shall also dispose of any Judicial work whatsoever assigned to them by the undersigned.

9. The Regular Magisterial Courts shall take up all miscellaneous applications including bail/interim bail, superdari etc. in all matters (pending trial as well as pending investigation except those specifically assigned to Ld. Duty MMs by this order) through Physical Hearing or through Video Conferencing on Cicso Webex Platform, adhering to Delhi Video Conferencing Rules, 2020 as framed by the Hon'ble High Court of Delhi. All the above applications shall be filed directly to the concerned courts till further orders. Further, it is impressed to all the MMs, PHC, ND that the applications U/s 52A NDPS Act assigned to them as Duty MM are to be kept in their respective regular courts till its disposal. The said applications shall not be assigned to next Duty MM.

10. It is directed that all the Ld. Duty MMs shall deal with Extension of JC Remand/Rehnumai of UTPs lodged at Central Jail, Tihar, Delhi. through video conferencing.

(NABEELA WALI)
Chief Metropolitan Magistrate
Patiala House Courts, New Delhi
23.03.2024

Contt…..

03

No. 245-269 /2024/CMM/PHC/New Delhi. Dated 23.03.2024

Copy forwarded for information and necessary action :-

1. The Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi.
   (Through Ld. Principal District & Sessions Judge, Patiala House Court, New Delhi).
2. The Ld. Principal District & Sessions Judge, Patiala House Court, New Delhi.
3. All the other Ld. Principal District & Sessions Judges, Center (HQ),West / **THC,** North, North- West/**Rohini,** Shahdra, East, North-East / **KKD,** South-West / **Dwarka,** South, South-East/ **Saket,**Delhi /New Delhi.
4. All the Ld. Chief Metropolitan Magistrates, Center, West / **THC,** North, North-West / **Rohini,** Shahdra, East, North-East / **KKD,** South-West / **Dwarka,** South, South-East / **Saket,** Delhi /New Delhi.5.All the Ld. ACMMs, Patiala House Courts, New Delhi District.
6. The Concerned M.M.s, Patiala House Courts, New Delhi.
7. The Chief Prosecutor, New Delhi- District.
8. The D.C.P. New Delhi District / South District / South -West District.
9. The Incharge, District Courts Web-Site Committee, Tis Hazari Courts, Delhi.
10. The Incharge, Computer Room, Patiala House Courts, New Delhi.
11. The Controlling Officer, Pool-Car, New Delhi.
12. The Care Taker, New Delhi District with the direction to affix the copies of the same at all the notice boards at Patiala House Courts Complex.
13. The Incharge, Lock-up, New Delhi.
14. The Incharge Cash Branch, New Delhi- District, Patiala House Courts.
15. The Secretary, N.D.B.A.
16. Office File

(NABEELA WALI)
Chief Metropolitan Magistrate
Patiala House Courts, New Delhi
23.03.2024

Arrested Persons Details(last 24 hours)

14/11/2022

Sl.	District	Police Station	Name/Parentage	Address	Age	FIR/DD No.	FIR/DD Date	Name of IO	Date & Time of Arrest	Place of Arrest	Medically Examined or Not	Accused Status Status
1	DWARKA	JAFFARPUR KALAN	Name: AJAY (S/O) Sumer	DABAR ENCALVE, RAWTA MORE JAFFAPRUR KALAN, NEW DELHI, JAFFARPUR KALAN, DWARKA, DELHI, INDIA	26	GD Num: 077	GD Date: 13/11/2022	HC (Head Constable) / SUDESH KUMAR / 28081767	13/11/2022 19: 44	DELHI, DWARKA, JAFFARPUR KALAN, Near RTRM Hospital Jaffarpur Kalan	No	Arrested
2	DWARKA	DWARKA NORTH	Name: AJIT KUMAR SINGH (S/O) AJAY KUMAR	K-1/12, GALI NO. 11, SOM BAZAR ROAD RAJA PURI UTTAM, DWARKA NORTH, DWARKA, DELHI, INDIA	27	GD Num: 141	GD Date: 13/11/2022	HC (Head Constable) / GHANSHYAM SINGH / 29102036	13/11/2022 23: 31	DELHI, DWARKA, DWARKA NORTH, PS DWARKA NORTH	No	Arrested
3	DWARKA	DWARKA NORTH	Name: CHHOTE LAL (S/O) JARMAN LAL	RZF 768/21 GALI NO.8, RAJ NAGAR PART-2 PALAM COLOY, PALAM VILLAGE, SOUTH WEST, DELHI, INDIA	36	GD Num: 084	GD Date: 13/11/2022	Asst. SI (Assistant Sub-Inspector) / Subhash Chander / 28980914	13/11/2022 17: 24	DELHI, DWARKA, DWARKA NORTH, PS DWARKA NORTH	No	Arrested
4	DWARKA	DWARKA NORTH	Name: JAIDEEP (S/O) BIJENDER SINGH	27 ROSHAN GARDEN, PART-2 OLD KAKROLA ROAD NAJAFG, NAJAF GARH, DWARKA, DELHI, INDIA	31	GD Num: 117	GD Date: 13/11/2022	HC (Head Constable) / NEERAJ / 29100814	13/11/2022 21: 20	DELHI, DWARKA, DWARKA NORTH, PS DWARKA NORTH	No	Arrested
5	DWARKA	DWARKA SOUTH	Name: KRISHAN KUMAR SHARMA (S/O) DEV NATH SHARMA	E-145,, NEAR SANJAY BIHARI MANDIR, PAPPAN KLAN, SEC-1, DWARKA, DELHI, DWARKA SOUTH, DWARKA, DELHI, INDIA	27	GD Num: 103	GD Date: 13/11/2022	HC (Head Constable) / SURENDRA SINGH YADAV / 29100252	13/11/2022 21: 30	DELHI, DWARKA, DWARKA SOUTH, P.S. DWARKA SOUTH	No	Arrested
6	DWARKA	JAFFARPUR KALAN	Name: KUMAL (S/O) Ram Kumar	1582, MATA WALI GALI, VALMIKI MOHALLA, KHARIA NAJAFGARH NEW DELHI, NAJAF GARH, DWARKA, DELHI, INDIA	26	GD Num: 077	GD Date: 13/11/2022	HC (Head Constable) / SUDESH KUMAR / 28081767	13/11/2022 21: 44	DELHI, DWARKA, JAFFARPUR KALAN, Near RTRM Hospital Jaffarpur Kalan	No	Arrested

Arrested Persons Details (last 24 Hours) (Extract)

Case F.I.R. No. _____ Dated _____ U/s _____
प्र.सु.रि.सं./दै.दै.सं. दिनांक धारान्तर्गत
P.S./ थाना _____ Distt./ जिला _____ Delhi / दिल्ली

ARREST MEMO

गिरफ्तारी पत्र

As per direction of Hon'ble Supreme Court of India (माननीय सर्वोच्चतम न्यायालय भारत के निर्देशानुसार)

1. Name with Alias and parentage of the Arrestee गिरफ्तार व्यक्ति का नाम, उपनाम एवं पिता का नाम	
2. Persent Address of the Arrestee गिरफ्तार व्यक्ति का वर्तमान पता	
3. Permanent Address of the Arrestee गिरफ्तार व्यक्ति का स्थायी पता	
4. FIR No./DD No. & Sec. of Law प्र.सु.रि.सं/दै.दैसं० तथा विधि धारान्तर्गत	
5. Place of Arrest गिरफ्तार का स्थान	
6. Date & Time of Arrest गिरफ्तार का समय व तारीख	
7. Name, Address & Tel. No. Whomsoever to Convey the Arrest Information गिरफ्तार के संदर्भ में जिसे सूचित किया उसका नाम, पता एवं फोन नं०	
8. Name, Rank & No. of the officer who making Arrest गिरफ्तार करने वाले अधिकारी का नाम, रैंक एवं नं०	

Witness / गवाह

1 .....

2 .....

3 .....

Signature of Arrestee / गिरफ्तार व्यक्ति के हस्ताक्षर

Signature of the I.O. (जांच अधिकारी के हस्ताक्षर)
P.S. / थाना ..... Delhi / दिल्ली

Arrest Memo

Arrest Memo

संजय गाँधी स्मारक अस्पताल, मंगोलपुरी, दिल्ली–110083
SANJAY GANDHI MEMORIAL HOSPITAL, MANGOLPURI, DELHI-110083
राष्ट्रीय राजधानी क्षेत्र, दिल्ली सरकार / GOVT. OF N.C.T. OF DELHI
निदान विधि चोट रजिस्टर / Medico Legal Injury Register

सं.गाँ.स्मा.अ.–71
S.G.M.H.-71

M.L.C. No. [redacted]
वर्ष: 2016
Year: 2016

नाम Name [redacted]
पुत्र/पुत्री/पत्नी Son/Daughter/Wife of [redacted]
आयु Age 30yr
लिंग Sex M
धर्म Religion
पेशा Occupation
घर का पता Residential Address [redacted]
संबंधी या मित्र का नाम Name of Relative or Friend [redacted]
जांच की तारीख Date of examination [redacted]

पहुँचने की तारीख व समय
Date and Hour of arrival

पुलिस डॉकेट की संख्या व तारीख
No. and date of Police Docket

पुलिस थाने का नाम
Name of the Police Station [redacted]

जांच अधिकारी का नाम व क्रमांक
Name and No. of I.O. [redacted]

यदि भर्ती किया गया
If admitted
भर्ती की तारीख Date of Admission
छुट्टी की तारीख Date of Discharged

MLC Received by (प्राधिकर्त्ता)

Name (नाम)	Designation (पदनाम)	Date (तारीख)	Time (समय)

दो पहचान चिन्ह
Two Marks of Identification [redacted]

अंगूठे के निशान
Thumb Impression

[redacted] [redacted]
दायां / Left दायां / Right

चोट या जहर के लक्षण का विवरण / PARTICULARS OF INJURIES OR SYMPTOMS IN CASE OF POISONING

B/B Police for MLC
GE- Conscious, oriented, Afebrile
BE- BP- Normotensive PR- 78bpm
CNS- [illegible]
CVS- [illegible]
P/A- [illegible]
LIB- Non bleeding [illegible] [redacted]

चोट के प्रकार
Nature of injuries .....
साधारण, दर्दनाक या खतरनाक
(Simple, Grievous or Dangerous)

Remarks (if any)

M.L.C. Sanjay Gandhi Memorial Hospital Govt. of NCT of Delhi Mangol Puri, Delhi-110083

चिकित्सा अधिकारी के हस्ताक्षर
Signature of Casualty Medical Officer (CMO)
नाम (स्पष्ट अक्षरों में)
(Name in Block Letters)

Medico-Legal Certificate (Redacted)

Medico-Legal Certificate (Redacted)

Case FIR/D.D. No. [redacted] Dated 05/8/2012 U/S 306/506/34/120B IPC
के. सू. रि./दै. दै. संख्या दिनांक धारा
थाना/P.S. [redacted] जिला/ Distt. [redacted]
दिल्ली/ Delhi

BODY INSPECTION MEMO/ शारीरिक निरीक्षण पत्र

Physical body injuries inspection of the arrestee Sh. [redacted]
[redacted] Has been conducted/and reported/found as follows :-
श्री _____ सुपुत्र श्री [redacted]
निवासी _____ (गिरफ्तारशुदा) की जिस्मानी
चोटों का शारीरिक निरक्षण किया गया जो निम्न प्रकार पाय :-

SN. सं.	Parts of the body	शरीर के भाग	Injuries/ चोटें Old/ पुरानी	Fresh/ ताजा
1.	Head	सिर		
2.	Fore-Head	माथा		
3.	Face	चेहरा		
4.	Ears	कान		
5.	Eyes	आँख		
6.	Nose	नाक		
7.	Mouth(Lips)	मुँह (होंठ)		
8.	Teeth	दाँत		
9.	Neck(Front-Back)	गर्दन		
10.	Arms	हाथ		
11.	Shoulders	कन्धा	NIL	
12.	Elbows	कोहनी		
13.	Hands (wrist)	कलाई		NIL
14.	Palms(Back)	हथेली		
15.	Fingers (Hand)	अंगुलियां हाथ		
16.	Breast/Chest	छाती		
17.	Stomach	पेट		
18.	Hips	कूल्हा		
19.	Legs	टांग		
20.	Thigh	जांघ		
21.	Knees	घुटना		
22.	Shanks	पिण्डली		
23.	Feet	पाँव		
24.	Sole	तलवा		
25.	Fingers(Legs)	अंगुलीयां पैर		
26.	Ankles	[redacted]		

Singnature of the Arrestee (_____)
गिरफ्तारशुदा व्यक्ति के हस्ताक्षर

Witness [redacted]

[redacted]
Investingation Officer/ विवेचना अधिकारी
08/8/2012
P.S/थाना _____ Delhi.

ATTESTED
[redacted]
Date Examiner

Body Inspection Memo (Redacted)

IN THE COURT OF [redacted] METROPOLITAN MAGISTRATE [redacted] COURT
CUSTODY WARRANT

STATE Vs.
NAME OF UNDERTRIAL :
S/O :
R/O :

FIR NO. :
P.S. :

DOB / AGE :

	Sections and Act
FIR	
Investigation	
Charge-sheet	
Cognizance	
Charge	
Amendment / alteration of charge	

Stage	Record of UTP	Remarks, (if any).
Date of arrest		
Period of PC		
Date of first judicial custody		
Date of bail, if granted, and Court granting bail		
Amount of bail bond		

On the date of taking cognizance

Sections	Date on which right u/s 436-A Cr.P.C. accrues

Day on which right to 'default bail' u/s 167(2)(a) Cr.P.C. accrues _____
Accused be produced on _____

MM [redacted]

Custody Warrant

Table 15.3. Custodial deaths in police custody 1999–2012

Death during/ due to	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total (%)
During production, process in Courts, journey connected with Investigation	15	25	9	16	19	15	15	14	23	19	18	12	19	20	239 (15.6)
During hospitalization, treatment	44	35	40	37	47	33	49	18	38	15	9	16	21	13	415 (27.0)
Due to accidents	5	2	4	4	1	1	15	2	0	2	4	5	3	7	55 (03.6)
In mob attacks or riots	3	4	2	2	3	1	0	3	9	5	2	0	0	0	34 (02.2)
By other criminals	3	3	1	4	1	0	4	0	2	2	3	0	2	3	28 (01.8)
By suicides	24	26	24	36	30	24	30	24	31	38	21	18	33	24	383 (25.0)
During escape from custody	12	11	5	2	4	6	3	7	7	6	8	7	7	7	92 (06.0)
Illness or natural deaths	N/A	N/A	13	9.	16	14	28	29	29	28	33	19	35	36	289 (18.8)
Total	106	106	98	110	121	94	144	97	139	115	98	77	120	110	1535 (100)

Source. National Crime Records Bureau annual reports between 1999 and 2012. Compiled by the authors. At: http://ncrb.gov.in/.

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Custodial Deaths in police custody 1999-2012 (Lokaneeta & Jesani, 2016) ■